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International Criminal Tribunal for Rwanda

6885

S. Mussa

Or. : Eng.

**TRIAL CHAMBER I**

**Before Judges:** Navanethem Pillay, presiding  
Erik Møse  
Andrésia Vaz

**Registrar:** Adama Dieng

**Judgement of:** 16 May 2003

JUDICIAL RECORDS/ARCHIVES  
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*S. Mussa*

**THE PROSECUTOR**

**V.**

**ELIÉZER NIYITEGEKA**

*Case No. ICTR-96-14-T*

**JUDGEMENT AND SENTENCE**

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## CHAPTER I

### INTRODUCTION

#### 1. International Criminal Tribunal for Rwanda

1. The Judgement in the case of *The Prosecutor v. Eliézer Niyitegeka* is rendered by Trial Chamber I (“the Chamber”) of the International Criminal Tribunal for Rwanda (“the Tribunal”), composed of Judges Navanethem Pillay, presiding, Erik Møse, and Andréia Vaz.

2. The Tribunal was established by United Nations Security Council Resolution 955 of 8 November 1994<sup>1</sup> after it had studied official United Nations reports which revealed that genocide and other widespread, systematic, and flagrant violations of international humanitarian law had been committed in Rwanda.<sup>2</sup> The Security Council determined that this situation constituted a threat to international peace and security, and was convinced that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the process of national reconciliation and to the restoration and maintenance of peace in Rwanda. Accordingly, the Security Council established the Tribunal, pursuant to Chapter VII of the United Nations Charter.

3. The Tribunal is governed by the Statute annexed to Security Council Resolution 955 (“the Statute”), and by the Rules of Procedure and Evidence adopted by the Judges on 5 July 1995 and subsequently amended (“the Rules”).<sup>3</sup>

4. Pursuant to the provisions of the Statute, the Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda. The Statute has also empowered the Tribunal to prosecute Rwandan citizens, who are natural persons, responsible for such violations committed in the territory of neighbouring States. Under Article 7 of the Statute, the Tribunal's temporal jurisdiction limits prosecution to acts committed between 1 January 1994 and 31 December 1994. Individual criminal responsibility, pursuant to Article 6, shall be established for acts falling within the Tribunal's material jurisdiction, as provided in Articles 2, 3, and 4.

#### 2. Background of the Accused

5. Eliézer Niyitegeka was born on 12 March 1952 and is from Gitabura secteur,

<sup>1</sup> U.N. Doc. S/RES/955 (1994).

<sup>2</sup> Preliminary Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994) (U.N. Doc. S/1994/1405) and Reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (U.N. Doc. S/1994/1157, Annexes I and II).

<sup>3</sup> The Rules were last amended on 6 July 2002 at the Twelfth Plenary Session.

Gisovu commune, Kibuye Prefecture in Rwanda. He was a journalist and a news presenter on Radio Rwanda. He was sworn in as Minister of Information of the Interim Government on 9 April 1994.

6. The Accused was a member of the party called the *Mouvement Démocratique Républicain* ("MDR"), and Chairman of MDR in Kibuye Prefecture from 1991 to 1994. He was also a member of the national political bureau.

### 3. The Indictment

7. On 25 November 2002, the Prosecution filed its Harmonized Amended Indictment ("the Indictment"), which is set out in full in Appendix I to this Judgement. The Indictment charges the Accused with genocide, complicity in genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, crimes against humanity, and with serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Articles 2, 3 and 4 of the Statute. The charges relating to serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II were subsequently withdrawn.<sup>4</sup>

8. Individual responsibility for the above crimes was charged in the Indictment under Article 6(1) of the Statute. Additionally, the Accused is charged with responsibility under Article 6(3) for all counts except conspiracy to commit genocide. The charges against the Accused are considered in Chapter III of this Judgement.

### 4. Procedural Background

9. The first Indictment against the Accused was confirmed on 15 July 1996 by Judge Yakov Ostrovsky. On 16 December 1998, an arrest warrant for the Accused was issued by the same judge. The Accused was arrested in Nairobi, Kenya on 9 February 1999, and served with a copy of the Indictment. He was transferred to the Detention Facility of the Tribunal in Arusha on 11 February 1999. He made his initial appearance on 15 April 1999 before Trial Chamber III, composed of Judge Navanethem Pillay, presiding, Judge Lloyd George Williams and Judge Pavel Dolenc. An Amended Indictment was read to the Accused and he entered a plea of not guilty on all six counts alleged in the Indictment. This First Amended Indictment was subsequently filed on 29 April 1999.

10. Two applications for joinder were filed by the Prosecution: the first on 2 July 1999 with twelve Co-Accused; and the second on 3 March 2000 with seven Co-Accused. On 27 April 2000, Trial Chamber II granted the Prosecution leave to withdraw the first joinder motion. On 9 October 2000, the Prosecution sought leave to withdraw the second joinder motion. The Chamber considered the motion withdrawn as it had become moot.

11. The Accused having been found indigent by the Tribunal, the Registrar of the

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<sup>4</sup> Prosecution Final Trial Brief, p. 55, para. 230.

Tribunal assigned Sylvia Geraghty as Counsel for the Accused, in accordance with the provisions of the Directive on Assignment of Defence Counsel.

12. On 14 July 1999, 27 July 1999, 20 September 1999 and 7 October 1999, the Defence wrote to the Prosecution requesting copies of witness statements. The Prosecution responded on 25 August 1999 and 25 October 1999 by furnishing a copy of the supporting materials of the Indictment.

13. The Defence sought disclosure of evidence from the Prosecution on 29 October 1999 and 9 November 1999. On 4 February 2000, Trial Chamber II, then seized of the case, ordered the Prosecution to disclose information pursuant to Rule 66(A)(ii) of the Rules. Subsequently, the Defence filed an urgent motion for compliance with the 4 February Order and the motion was heard on 30 March 2000, wherein it was decided that the Prosecution had complied with the order and disclosed all exculpatory material within its possession.

14. On 9 March 2000, the Prosecution filed a Motion for the Protection of Witnesses. Trial Chamber II issued its decision on 12 July 2000, granting the motion in part.

15. The Defence filed an Urgent Preliminary Defence Motion on 11 April 2000: Objections based on Lack of Jurisdiction and Defects in the Form of the Indictment. On 20 April 2000, the Defence filed an Urgent Defence Motion Seeking a Stay of Proceedings Pending Decision on the Motion filed on 11 April 2000. On 21 June 2000, Trial Chamber II dismissed both motions. The Accused appealed against this decision on 27 June 2000. The Appeal was dismissed on 16 October 2000.

16. On 21 June 2000, Trial Chamber II granted the Prosecutor's Request for Leave to File an Amended Indictment by adding four new charges, including Direct and Public Incitement to Commit Genocide and Rape as a Crime Against Humanity. The deadline to file the Amended Indictment was extended, by a decision issued on 23 June 2000, to 26 June 2000. On 3 July 2000, the Accused pleaded not guilty to the new charges included in the Amended Indictment dated 26 June 2000. As the amendment added the element of superior responsibility pursuant to Article 6(3) to the existing charges, the Chamber entered a plea of not guilty on all counts in the Amended Indictment.

17. The Defence filed a motion on 29 June 2000 on Matters Arising From the Decisions Dated 21 and 23 June 2000 on the Amendment of the Indictment. The Defence also filed, on 4 August 2000, a Preliminary Defence Motion Objecting to the Amended Indictment based on Defects in the Form of the Indictment and Lack of Jurisdiction. On 20 November 2000, Trial Chamber II directed the Prosecution to file the New Amended Indictment within 21 days from the date of the decision. The Prosecution sought an extension of time on 7 December 2000 to file the New Amended Indictment. An extension to 19 December 2000 was granted by Trial Chamber II on 8 December 2000.

18. At a Status Conference held on 25 September 2000, a proposed date of February 2001 for the commencement of the trial was agreed upon by the parties. An undertaking

was given by the Prosecution to complete disclosure before 31 October 2000.

19. On 6 February 2001, the Defence filed a Motion Pursuant to Rule 5 of the Rules, which was heard on 21 February 2001. This was followed by a Defence Motion Pursuant to Articles 19 and 20 of the Statute and Rule 5 of the Rules. On 27 February 2001, Trial Chamber II directed the Prosecution to file the new Amended Indictment by 15 March 2001, and to abide by its undertaking as to disclosure. The Prosecution was warned that it would be sanctioned pursuant to Rule 46 if it continued to obstruct the proceedings. This Modified Amended Indictment was filed on 14 March 2001.

20. The Defence filed an Urgent Motion, on Consent, Seeking an Early Date for Pre-Trial Conference on 28 September 2001. By Defence Counsel's own count, the Defence made 15 attempts to have the case set down for trial.<sup>5</sup>

21. On 14 February 2002, the Prosecution filed a Request to Admit Facts. The Defence filed its Reply on 21 June 2002, admitting that:

- (i) Kibuye region is located on the shores of Lake Kivu in western Rwanda;
- (ii) The Forces Armées Rwandaises (FAR) were composed of the Rwandan Army (AR) and the Gendarmerie Nationale (GN);
- (iii) Rwanda was at the material time divided into 11 prefectures (one of which is Kibuye) which were subdivided into communes and secteurs;
- (iv) The Interim Government was sworn in on 9 April 1994;
- (v) The President of Rwanda and the Army Chief of Staff were both killed in the plane crash of 6 April 1994;
- (vi) The MRND retained its domination over the local administration under the second transitional government;
- (vii) On 1 October 1990, the RPF attacked Rwanda;
- (viii) On 5 July 1975, Habyarimana founded the MRND and assumed the position of Chairman.

22. On 25 February 2002, Trial Chamber II informed the parties that the trial would begin in June 2002, probably before another Trial Chamber. On 11 March 2002, the Prosecution filed its Pre-trial Brief.

23. Prosecution Witness GK was ordered on 27 May 2002 to be transferred temporarily to the Tribunal pursuant to Rule 90*bis*, in order to testify at the trial.

24. On 14 June 2002, a Pre-trial Conference was held and the trial began on 17 June

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<sup>5</sup> T. 17 June 2002 (Closed Session), pp. 81-82. See, e.g., paragraphs 31 and 32 of the Defence Motion Objecting to the Prosecutor's Request for Leave to File an Amended Indictment dated 20 May 2000, indicating that "the Accused was anxious that [the trial] should proceed with all due speed" and asserting that a trial date should have been set after the Accused's Initial Appearance. During the hearing of this motion on 1 June 2000, the Defence repeated these points (p. 18). See also the letter from the Defence to the Prosecution dated 14 March 2001, p. 7; T. 30 Apr. 2001, pp. 7-9; T. 19 June 2002, pp. 8-9.

2002 with the first Prosecution witness, GK.

25. On 19 June 2002, the Chamber issued its Decision to Adjourn Proceedings Due to the Unavailability of Witnesses, wherein it was noted that the Chamber was compelled to adjourn proceedings, after Prosecution Witness GK's testimony, to 24 June 2002. The Chamber drew the attention of the Rwandan authorities to their legal obligation to cooperate with the Tribunal and requested them to ensure that the travel of the witnesses scheduled for the case was facilitated so that the trial could resume without further delay on 24 June 2002.

26. The Prosecution sought reciprocal disclosure from the Defence on 20 June 2002. This request was subsequently withdrawn on 29 November 2002 as being moot since the trial had concluded by that date, although the Prosecution argued that the Defence never fully complied with its disclosure obligations.

27. The Chamber adjourned the proceedings on 24 June 2002 until 26 June 2002 due to the unavailability of Prosecution witnesses from Rwanda. The proceedings were further adjourned on 26 June 2002 to 13 August 2002 for the same reason. The trial recommenced on 13 August 2002, with the testimony of Prosecution witnesses.

28. A Defence motion filed on 3 July 2002 for protective measures for Defence witnesses was granted in part by the Chamber in its Decision dated 14 August 2002.

29. The Prosecution filed a Motion for Judicial Notice of Facts on 25 July 2002. The Chamber issued its Decision on the Prosecutor's Motion for Judicial Notice of Facts on 4 September 2002. The motion was allowed in part and judicial notice was taken of the following facts:

(i) In Rwanda, in 1994, including the period April to July 1994, attacks were suffered by civilians on the grounds of their perceived political affiliation or ethnic identification;

(ii) On 13 and 14 May 1994, a large-scale attack occurred on Muyira Hill against Tutsi refugees.

30. The Prosecution filed a motion for the subpoena of witnesses on 18 June 2002, but leave to withdraw the motion was granted by the Chamber on 3 September 2002, upon the Prosecution's request, as being moot since the witnesses had arrived from Rwanda to testify and the Prosecution's case had since closed.

31. On 4 October 2002, the Chamber denied a Prosecution Motion for the Testimony of Witness KJ to be taken by Deposition and urged the Prosecution to continue to seek the transfer of Witness KJ from Rwanda to the Tribunal. On 10 October 2002, the Chamber ordered the immediate transfer of Witness KJ to the United Nations Detention Facility in Arusha pursuant to Rule 90*bis* of the Rules, at the request of the Prosecution. Witness KJ was subsequently transferred to the Tribunal.

32. On 10 October 2002, the Chamber granted the Prosecution's Request to Contact



25 Defence Witnesses subject to certain conditions.

33. The Prosecution closed its case on 17 October 2002. The Defence commenced its case on 21 October 2002. On 5 November 2002, the Chamber issued a Decision granting the Defence's Motion for the Issuing of a Subpoena. On 7 November 2002, the Defence filed its Pre-defence Brief. The Defence closed its case on 15 November 2002.

34. The Prosecution filed a motion on 18 October 2002, upon the direction of the Chamber, to amend the Indictment in order to harmonize the English and French versions. An Order Granting Leave to File the Harmonized Modified Amended Indictment was issued by the Chamber on 12 December 2002. In total, the Indictment against the Accused was amended four times.

35. On 15 November 2002, the Trial Chamber directed the Prosecution to file its Final Trial Brief by 31 December 2002, and the Defence to file its Final Trial Brief by 17 February 2003. The Prosecution filed its Final Trial Brief on 13 December 2002. On 14 February 2003, the Defence sought an extension of time to file its Final Trial Brief, which was granted the same day, and the Defence filed its Final Trial Brief on 18 February 2003.

36. Closing arguments of both the Prosecution and the Defence were heard by the Chamber on 27 and 28 February 2003.

37. In summary, the Prosecution opened its case on 17 June 2002 and closed its case on 17 October 2002, after 13 Prosecution witnesses were heard. The Defence opened its case on 21 October 2002 and, after calling 11 Defence witnesses, closed its case on 15 November 2002. The trial proceedings lasted 33 days, including two days for Closing Arguments.

## 5. Evidentiary Matters

38. Pursuant to Rule 89(A) of the Rules, the Chamber is not bound by national rules of evidence, but by the Rules of the Tribunal. Where the Rules are silent, the Chamber is to apply rules of evidence which best favour a fair determination of the matter before it and which are consonant with the spirit of the Statute and the general principles of law, as provided in Rule 89(B). Any relevant evidence deemed to have probative value is admissible in accordance with Rule 89(C).

39. The Tribunal's jurisprudence has established general principles concerning the assessment of evidence, including those concerning the probative value of evidence; the use of witness statements; false testimony; the impact of trauma on the testimony of witnesses; problems of interpretation from Kinyarwanda into French and English; and cultural factors affecting the evidence of witnesses.<sup>6</sup>

40. The Defence made submissions as to the discrepancies between a witness's prior

<sup>6</sup> See, e.g., *Akayesu* (TC), paras. 130-156.

written statement and his testimony. The Chamber has considered all discrepancies raised and any explanations offered for the same in its deliberations. The Chamber considers that sworn testimony before the Chamber has considerably more probative value than the witness's declarations in prior written statements.

41. The Defence argued that in the interests of a fair trial, it was entitled to first-made records, or the handwritten notes, of Prosecution's investigators, taken during interviews with the Prosecution witnesses, in order to use such notes during cross-examination to challenge the credibility of the witness.<sup>7</sup> The Chamber ruled that such records are privileged documents that fall within Rule 70 and are not subject to disclosure.<sup>8</sup> As Prosecution witness statements were disclosed to the Defence, the Defence, based on these statements, could raise discrepancies and other issues of credibility in cross-examination for the Chamber's consideration. Finally, the Chamber notes that the Prosecution maintained that it did not have any handwritten notes of investigators in its possession.

42. The Defence asserted that some Prosecution witnesses fabricated their testimony or were influenced in the making of their statements. The Chamber considers that a distinction is to be made between credibility issues and false testimony. The Chamber also notes that the Defence has not moved an application under Rule 71 alleging false testimony of any witness, and that the onus is on the party pleading such a case to prove the falsehood alleged and the requisite intent or knowledge.

43. The Chamber notes that hearsay evidence is not inadmissible *per se*, even when it is not corroborated by direct evidence. The Chamber has considered hearsay evidence with caution, in accordance with Rule 89.

44. The Chamber recalls the recent Judgement in *Ntakirutimana*, following *Kupreskic*, wherein the degree of specificity required in Indictments was discussed.<sup>9</sup> It was decided that material facts ought to be pleaded in respect of specific acts, although a high degree of specificity would be impracticable in the case of large-scale crimes; however, where the Prosecution is able to provide details, it should do so. Disclosure of witness statements, the Pre-trial Brief or other materials, and knowledge acquired during the course of the trial, may have the effect of curing any lack of notice in the Indictment. A distinction was made between sufficient notice of an allegation and sufficient notice of the details of an allegation: a witness may provide previously undisclosed details during testimony. The issue of notice is to be assessed in respect of each allegation where it arises.

45. Bearing in mind the Defence's arguments with respect to the presumption of

<sup>7</sup> Defence Final Trial Brief, pp. 28-49.

<sup>8</sup> See T. 14 Aug. 2002, p. 60, wherein it was decided by the Chamber that such notes are privileged documents, and the Defence is able to draw the Chamber's attention to any discrepancies between the witness's statements and testimony. See also T. 17 June 2002, pp. 204-205, where a similar direction was given.

<sup>9</sup> *Ntakirutimana* (TC), paras. 49-63.

innocence and the burden of proof,<sup>10</sup> the Chamber notes that Article 20(3) guarantees that an Accused is presumed innocent until proven guilty. Therefore, the Prosecution has the burden of proving the Accused's guilt beyond reasonable doubt.

46. Rule 85(C) provides that the Accused may, if he so desires, appear as a witness in his own defence. Article 20(4)(g) guarantees that the Accused shall not be compelled to testify against himself or herself or to confess guilt. The Accused chose not to testify in his own defence in the present case. The Defence made submissions concerning the right to remain silent and the right not to testify.<sup>11</sup> The Chamber is mindful of the Accused's rights in this regard and has not drawn any adverse inference in the present case.<sup>12</sup>

47. The Defence argued that in light of prejudicial comments made by the Prosecution during the cross-examination of Defence Witness TEN-16 on the character of the Accused in circumstances where it was alleged that the Accused had implicated himself in the commission of rapes, the Chamber ought to have recused itself. Having refused to do so, the Chamber must acquit the Accused of all counts in order to protect the Accused's right to a fair trial, or else ensure that it is not influenced by the prejudicial comments made by the Prosecution in its deliberations.<sup>13</sup> The Chamber has not been influenced by the comments to which Defence Counsel makes reference, and has been mindful, in its deliberation and assessment of the evidence, of the burden on the Prosecution to prove its case beyond reasonable doubt.

48. The Defence submitted that Prosecution Witnesses GK and KJ fall into the category of accomplices and that therefore their evidence ought to be treated with circumspection, particularly if such evidence is uncorroborated.<sup>14</sup> The ordinary meaning of an accomplice is a partner or helper, especially in a crime or wrongdoing.<sup>15</sup> The Chamber will consider the Defence contention wherever applicable, but notes for the present that it has exercised caution in its deliberations on such evidence. However, the Chamber also notes that a similar argument was not adopted in *Delalic*, wherein the Trial Chamber, based on the facts of that case, declared itself unpersuaded by the Defence's assertion that Witness D was an accomplice and had a real motive for giving evidence helpful to the Prosecution and exculpatory of himself.<sup>16</sup> The Chamber further notes that in *Nahimana*, it was held to be a common procedure in criminal trials for an accomplice to turn state witness after entering a plea or receiving a pardon, and that it is open to the

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<sup>10</sup> Defence Final Trial Brief, pp. 23-25.

<sup>11</sup> *Id.*, pp. 26-27.

<sup>12</sup> Even if the Chamber decided not to do so in the present case, it is recalled that human rights case law does not contain a general prohibition against the drawing of adverse inferences from an accused's silence, see judgements in the cases of *John Murray v. UK* (1996) and *Condrón v. UK* (2000), delivered by the European Court of Human Rights.

<sup>13</sup> *Id.*, pp. 68-69.

<sup>14</sup> *Id.*, pp. 62-65.

<sup>15</sup> The Oxford English Dictionary.

<sup>16</sup> *Delalic* (TC), para. 759.

Defence to cross-examine and discredit such a witness in any manner the law permits.<sup>17</sup>

49. The Defence asserted that where Prosecution witnesses claim to identify the Accused at various scenes of crime, such identification evidence triggers a warning that judges must give themselves when assessing such evidence. It was submitted that this is especially so where alibi evidence is advanced by the Accused.<sup>18</sup> The Chamber accepts that identification evidence has inherent difficulties due to the vagaries of human perception and recollection. Therefore, the Chamber has carefully assessed and weighed the identification evidence adduced, taking into account the following factors: prior knowledge of the Accused, existence of adequate opportunity in which to observe the Accused, reliability of witness testimonies, conditions of observation of the Accused, discrepancies in the evidence or the identification, the possible influence of third parties, the existence of stressful conditions at the time the events took place, the passage of time between the events and the witness's testimony, and the general credibility of the witness.<sup>19</sup>

50. The Defence has adduced alibi evidence with respect to certain allegations against the Accused. Rule 67(A)(ii)(a) provides that the Defence shall notify the Prosecution of its intent to enter the defence of alibi as early as reasonably practicable, and in any event, prior to the commencement of the trial. Pursuant to Rule 67(B), failure to provide such notice does not limit the right of the Accused to rely on the defence, although in the absence of a showing of good cause for such failure, the Chamber may take this into account in weighing the credibility of the alibi.<sup>20</sup>

51. In *Musema*, it was held 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>21</sup>

52. The Accused does not bear the burden of proving his alibi - if the alibi raises a reasonable doubt, the Accused must be acquitted. Where the alibi is rejected, a finding of guilt does not automatically follow; the evidence must be assessed and a conviction entered only if the allegation has been proved beyond reasonable doubt.

<sup>17</sup> *Prosecutor v. Nahimana et al. ("Media case")*, Case No. ICTR-99-52-T, Decision on the Defence Motion Opposing the Hearing of the Ruggiu Testimony Against Jean Bosco Barayagwiza, 31 January 2002 (TC); see also T. 19 Sept. 2000, pp. 21-22.

<sup>18</sup> Defence Final Trial Brief, pp. 50-62.

<sup>19</sup> See *Kayishema* (TC), paras. 71-75; *Kupreskic* (AC), paras. 30-41; *Kunarac* (TC), paras. 558-563.

<sup>20</sup> *Kayishema* (TC), para. 237-239.

<sup>21</sup> *Musema* (TC), para. 108, confirmed in *Musema* (AC), paras. 205-206.

## CHAPTER II

### FACTUAL FINDINGS

#### 1. Introduction

53. This Chapter presents the factual findings of the Chamber on the evidence adduced by the Prosecution and the Defence. The findings are set out according to the crimes alleged against the Accused: participation in attacks, participation in meetings, incitement, murder, rape, and other inhumane acts.

#### 2. Participation in Attacks

##### 2.1 Distribution of Weapons on 10 April

##### 2.1.1 Testimony of Prosecution Witness GGH

54. On Sunday 10 April 1994, Witness GGH saw the Accused in Gisovu, aboard a white Hilux with three soldiers in the back. The witness was having a drink with a police brigadier called Jean Sebahire and others. The Hilux parked where the witness was, and the Accused asked Sebahire to follow them. The witness saw guns piled in the vehicle, together with a sack that was sewn. Sebahire left with the Accused and the soldiers. When the Accused returned to drop off Sebahire, the guns were no longer in the vehicle. The witness later learned that the guns had been used in attacks. The witness heard that Sebahire had distributed the guns to certain individuals named in Exhibit P11 (under seal) whom the witness saw with these weapons during attacks. The witness said that these individuals linked the distribution of these weapons to the Accused. He also said that four of these people were the Accused's relatives.<sup>22</sup>

55. Witness GGH knew the Accused when he was a radio journalist and when he was a member of parliament. He also knew the Accused was a member of the MDR Power Party, or what used to be called the MDR Parmehutu. He clarified later that he saw the Accused twice in 1993 but would see him often before 1994 because of their involvement in politics. The witness gave a description of the Accused that fits him: a large man of average height, dark-skinned, with spectacles and abundant hair. He identified the Accused in court.<sup>23</sup>

##### 2.1.2 Credibility Assessment

56. The Defence submits that Witness GGH's statements had been tampered with and that this tainted his credibility. It also submits that his evidence is full of inconsistencies

<sup>22</sup> T. 15 Aug. 2002, pp. 87-89; T. 16 Aug. 2002, pp. 61, 89-90.

<sup>23</sup> T. 15 Aug. 2002, pp. 84-86; T. 16 Aug. 2002, pp. 84-85, 93-94.

and should be rejected in its entirety.<sup>24</sup> The Chamber notes that the witness mentioned the Accused in his statements dated 13 October 1995 and 8 July 1999.

57. It was further suggested by the Defence that the reference to the Accused, in the statement dated 13 October 1995, was inserted by someone other than the witness.<sup>25</sup> This is not borne out by an examination of the statement as the handwriting is the same as the rest of the text and follows from the rest of the text. It does not appear to have been latterly inserted. There is merely an arrow inserted at that sentence to move it to another part of the statement, which would not alter the substance of the text.

58. The typed English version of the witness's statement dated 8 July 1999 is not signed and does not have an interpreter's certificate. Discrepancies between the two documents were raised by the Defence: in the handwritten version, for instance, it is written that the Accused brought soldiers, but in the typed version, it is written that the Accused brought guns.<sup>26</sup> The Prosecution explained that it only led evidence recorded in the witness's signed handwritten version, that is, it did not lead evidence that the Accused brought guns. It is noted that the witness confirmed his handwritten statement in court. The Defence argued that this discrepancy indicated that facts were being suggested to the witness, which taints his entire testimony, and sought to have the witness discharged. The Chamber denied this application and heard the witness. This discrepancy seems to have been a mistake on the part of the typist as later in the statement it refers to the "soldiers" whom the Accused brought. The other discrepancies were made to clarify matters, for instance, the insertion of "1994" before the word "genocide", and do not affect the substance of the witness's statement. The Defence's argument that the evidence was fabricated seems tenuous and speculative, and makes more of these discrepancies than they merit.<sup>27</sup>

59. Contradictions between the witness's statements and his testimony were raised by the Defence. In his statement dated 17 June 1995, the witness stated that he arrived in Bisesero on 20 May 1994; he testified in court to having arrived on 20 April instead. In *Musema*, he had also said that the statement was wrong and the date of 20 April was the correct date. He confirmed that the mistake was the interviewer's, not his. This was subsequently corrected in his statement dated 17 November 1998.<sup>28</sup>

60. The Defence suggested that the witness changed the date during testimony in *Musema* in order to place himself in a situation where he could identify Musema.<sup>29</sup> It was pointed out that he said in *Musema* that he stayed in the area near the tea plantation for two weeks; in this case, he testified to having stayed there for three days. It was suggested that he was changing the dates to enable himself to testify to having seen both Musema and the Accused allegedly committing crimes. The witness said he was there for

<sup>24</sup> Defence Final Trial Brief, p. 95, para. 4; p. 111, para. 74.

<sup>25</sup> Id., p. 95, para. 5.

<sup>26</sup> Id., p. 95, para. 7.

<sup>27</sup> T. 16 Aug. 2002, pp. 3, 11-15, 24-27.

<sup>28</sup> Id., pp. 68-70; Defence Final Trial Brief, p. 97, para. 13.

<sup>29</sup> T. 15-Aug. 2002, pp. 92-93, 107-110.

three days and he saw what he testified to. The Chamber notes that in *Musema*, the question related to the area around the tea plantation,<sup>30</sup> whereas in this case, the witness was talking about staying in the tea plantation itself, which may explain the discrepancy. The witness later referred to an extensive area around the plantation. However, it is further noted that even if he meant to refer to the area around the plantation, he would have been there for one week at the most, from 13 April to 20 April, as that is when he arrived in Bisesero.<sup>31</sup>

61. In the same statement, the witness also said he was in hiding from 8 April onwards, but he denied this in cross-examination and said there was no reason for him to be in hiding then as the massacres had not yet commenced. However, from a reading of his statement dated 13 October 1995, it appears he was saying killings started on 7 April 1994 in his locality. On re-examination, he clarified that when he talked about when killings started, he meant killings by Hutu against Tutsi on a large scale and in an organized manner involving leaders, but some people had already been killed before this date.<sup>32</sup>

62. Witness GGH's statement dated 8 July 1999 mentions a meeting in Kibuye attended by the Accused. The witness said he never attended the meeting but heard about it on the radio. This was not led in direct examination. It was suggested by the Defence that he was willing to insert evidence he had invented. The witness maintained that he had heard it on the radio although he had not been present.<sup>33</sup>

63. The witness could not say when the Accused became Minister of Information or if he was already in that position on 13 April 1994. He said the Accused was self-employed immediately before he became Minister of Information but could not say what that work was, other than that it was evident he was an important personality.<sup>34</sup> This lack of knowledge is noteworthy given that the witness maintained that they shared a mutual involvement in political life.

64. The Chamber notes that Witness GGH's evidence was considered "insufficiently reliable to be admitted as evidence" in *Musema*.<sup>35</sup> However, the finding as to credibility in *Musema* was based on the facts of that case. The Trial Chamber will make independent evaluations of the evidence before it, having regard to the facts of this case and the demeanour of the witness during his testimony.

65. The witness gave evidence of attacks on 13 April, 13 May, 14 May and during the end of May, which will be discussed in more detail in II.4.2, II.2.6, II.2.7 and II.2.8 below. The Chamber notes for the present that his evidence on the 13 April and end May attacks contains discrepancies between his testimony and his statement. In direct

<sup>30</sup> *Musema*, T. 11 March 1999, p. 126.

<sup>31</sup> T. 15 Aug. 2002, pp. 112-118, T. 16 Aug. 2002, pp. 28-29.

<sup>32</sup> T. 15 Aug. 2002, p. 118; T. 16 Aug. 2002, pp. 82-83.

<sup>33</sup> T. 16 Aug. 2002, pp. 77-78.

<sup>34</sup> *Id.*, pp. 93-94.

<sup>35</sup> *Musema* (TC), para. 665.

examination, he stated that the 13 April attack occurred in Rugarama, and during the end May attack, the Accused asked attackers to attack refugees coming out of their hiding places for food. In his statement dated 8 July 1999, the witness states that it was on 13 April at Rugarama that the Accused asked attackers to attack refugees looking for food; the end May attack was not mentioned. When questioned about this, the witness confirmed his testimony in court. It is noted that some of the confusion about these two events was generated by Defence Counsel's misrepresentation in cross-examination of the witness.

66. The Chamber has taken into account all the above matters in assessing the witness's credibility. Although the witness's testimony on the 13 April and end May attacks does not accord with his prior written statement, the Chamber notes that the witness's testimony in court relating to these two events was clear. The Chamber recalls that sworn testimony before the Chamber has considerably more probative value than the witness's declarations in prior written statements. The Chamber is not persuaded by the allegations of fabrication of evidence made by the Defence, and considers that other discrepancies detailed above have been adequately explained. Therefore, the Chamber finds that Witness GGH is a credible witness. As for the reliability of the witness's evidence relating to the 13 April and end May attacks, the Chamber has examined this part of the witness's evidence carefully, and considered the witness' demeanour and conduct during this part of his testimony. The Chamber is satisfied that the witness's testimony in court is reliable. Consequently, the Chamber will rely on his testimony in court on these two events, as having more probative value than his prior statement.

### 2.1.3 Alibi

67. During cross-examination, the Defence put it to the witness that the Accused was at a government council meeting in Kigali the entire day on 10 April, which resulted in a Radio Rwanda broadcast of the meeting at 7.00 p.m., and therefore he could not have been in Gisovu on 10 April as alleged by the witness. The witness confirmed that his testimony was accurate.<sup>36</sup> However, the Defence did not adduce any evidence of this meeting. Consequently, the Chamber considers that no alibi has been raised in respect of this event.

### 2.1.4 Factual Findings

68. Based on the totality of the evidence, the Chamber finds that on 10 April 1994, the Accused was transporting guns in Gisovu with three soldiers aboard a white Hilux. The Accused met with Sebahire, a police brigadier, and they left together. When they returned the guns were no longer in the vehicle. The Chamber notes that the evidence of the distribution of the guns is uncorroborated hearsay evidence, which is not inadmissible *per se*. However, in exercise of the necessary caution with respect to such evidence, the Chamber declines to rely on this evidence.

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<sup>36</sup> T. 16 Aug. 2002, p. 61; Defence Final Trial Brief, p. 104, para. 48.



## 2.2 Attack on Mubuga Church Around 16 April

### 2.2.1 Testimony of Prosecution Witness KJ

69. Witness KJ's testimony was largely given in closed session. Due to the risk that certain details may expose the witness's identity, the Chamber will not refer to certain places, names or other details explicitly.

70. Witness KJ stated that the Accused procured gendarmes from a named location under seal for an attack on Mubuga Church approximately ten days after 6 April 1994. Sometime before noon that day, the witness was at this location and saw the Accused in the company of two military police and a driver in a vehicle. The witness heard the Accused tell a named person that the Tutsi, whom he called the Inyenzi, were hiding in Mubuga School and Mubuga Church, and that he intended to launch an attack on them. The Accused then chose many gendarmes to participate in the attack, three of whom were named by the witness. According to Witness KJ, he saw that the gendarmes chosen by the Accused took ammunition, grenades and bullets with them as they left for the attack. The witness himself was not at the scene of the attack. A participant in the attack, named Nyagurundi, returned from the attack that evening at around 7.00 p.m., and told the witness about the attack. Nyagurundi said that he had not known how to attack Mubuga Church, and that the Accused had instructed him by telling him to climb onto the roof of the church, make an opening in the roof and throw grenades into the church, in order to kill the Tutsi hiding inside. Nyagurundi also told the witness that after the attack, the Accused had thanked the attackers by promising to buy them drinks as a reward if they continued to launch attacks in the same manner. Nyagurundi described it as a dangerous attack, during which he himself had been injured in the hand by grenade shrapnel.<sup>37</sup>

71. Witness KJ knew the Accused because of the witness's occupation at the time of these events. The witness first saw the Accused at the witness's workplace in April 1994 when the Accused came with identification that showed his name, photograph and occupation. KJ identified the Accused in court and stated that he would not forget the Accused as he had seen him several times before.<sup>38</sup>

### 2.2.2 Credibility Assessment

72. The Defence submitted that Witness KJ is an accomplice and that his evidence should be treated with suspicion.<sup>39</sup> At the same time, the Defence acknowledges that it is not clear whether his status is that of a suspect or a witness in protective custody.<sup>40</sup> The Prosecution submits that Witness KJ's testimony is not nullified by the fact that he is a detainee or suspect and his evidence should be given full weight.<sup>41</sup>

<sup>37</sup> T. 15 Oct. 2002, pp. 15-27; T. 16 Oct. 2002, p. 103.

<sup>38</sup> T. 15 Oct. 2002, pp. 8-11; T. 16 Oct. 2002, p. 46.

<sup>39</sup> Defence Final Trial Brief, p. 112, para. 4.

<sup>40</sup> Id.

<sup>41</sup> Prosecutor's Supplemental Submission, p. 3, paras. 6 and 7.

73. The witness admitted that he is under house arrest in a military camp, where he is held with other witnesses, and that he is in the custody of the military police as part of a disciplinary process. He said he was not there as a detainee, but acknowledged he was still a suspect. He has never been formally charged, and was detained to be a witness in February 1995 when it was discovered he was an eyewitness to events during the genocide. It was suggested by the Defence that he was testifying to help his own case but he said that that was not the case as he had testified twice before and has not been released yet. Since 1996, he has testified before Rwandan tribunals three times and been interviewed many times and it has not resulted in his release.<sup>42</sup> The Chamber notes that the witness has not been charged with any crime in Rwanda and appears to be held in a military camp among witnesses. Moreover, no evidence has been adduced of criminal involvement on his part in the events giving rise to the charges faced by the Accused. The Chamber concludes that the witness is not an accomplice as defined in paragraph 48 above, whose uncorroborated evidence is subject to special caution. Nevertheless, the Chamber has exercised caution in evaluating his testimony.

74. The Defence submitted that the witness is unreliable and not credible due to discrepancies between his prior written statement, testimony in this case, and testimony in previous cases.<sup>43</sup> The witness made one prior written statement dated 6, 7 and 11 August 1998.

75. It was pointed out by the Defence that the statement declares that he was detained from December 1994, not February 1995, as testified to. The witness clarified that in 1994, he was detained for a week over an incident concerning the taking over of a house. He was subsequently detained again on 24 February 1995.<sup>44</sup>

76. The Defence raised another apparent discrepancy: the witness had mentioned in his statement that Dr Gérard Ntakirumana said that the Mubuga Church was to be attacked in May; however, the witness testified to an attack on Mubuga Church in April. The Prosecution submits that the attack on the Tutsi in the church was in April, but the destruction of the church occurred in May.<sup>45</sup> The witness explained in court that there may have been many churches in Mubuga.<sup>46</sup> The Chamber is satisfied that these references relate to two different events.

77. It was asserted by the Defence that there are discrepancies between the witness's testimony in this case, and his testimonies in *Musema* and *Ntakirutimana*.<sup>47</sup> The Defence points out that in the present case he states that Major Jabo was not present during the attacks at Gatwaro and Home St Jean;<sup>48</sup> in *Musema*, he testified to Jabo's presence in

<sup>42</sup> T. 15 Oct. 2002, pp. 53-90.

<sup>43</sup> Defence Final Trial Brief, p. 118, para. 19.

<sup>44</sup> T. 15 Oct. 2002, pp. 75-76; Defence Final Trial Brief, p. 112, para. 4.

<sup>45</sup> Defence Final Trial Brief, pp. 113-114, paras. 6 and 8; Prosecutor's Supplemental Submission, p. 7, para. 23.

<sup>46</sup> T. 16 Oct. 2002, pp. 82-87.

<sup>47</sup> Defence Final Trial Brief, pp. 114, paras. 7-8.

<sup>48</sup> T. 16 Oct. 2002, pp. 89-92.

Kibuye town during attacks;<sup>49</sup> in *Ntakirutimana*, he stated that Jabo left before the attacks on Gatwaro and Home St Jean.<sup>50</sup> However, the Prosecution correctly points out that the witness's answers in *Musema* followed questions about the attacks in Kibuye town generally, not specifically those at Gatwaro and Home St Jean; whereas, the questions in *Ntakirutimana* and this case were specifically about these locations.<sup>51</sup> Therefore, it is possible that Jabo was present for some, but not other, attacks.

78. The Trial Chamber is satisfied that the witness knew and identified the Accused during the events alleged. Based on evidence led in closed session, the Chamber is also satisfied that the witness had knowledge of the activities at the camp. Although there are inconsistencies in the witness's evidence, the Chamber considers that these are minor and have been adequately explained by the witness, and do not affect the substance of the witness's testimony. The witness also testified to other alleged acts of the Accused, and these are discussed in detail in II.3.2, II.5.2 and II.7.2 below, together with the submissions relevant to these alleged acts. However, the Chamber has considered as a whole all submissions made as to the credibility of Witness KJ and finds that he is a credible witness.

### 2.2.3 Alibi

79. The Defence adduced alibi evidence from Witnesses TEN-10 and TEN-22 in rebuttal of Witness KJ's testimony.<sup>52</sup> The Prosecution submits that the Defence has not abided by the Rules concerning alibi notice. The Prosecution further submits that the evidence from the two witnesses covered such a broad period of time that it does not negate the ability of the Accused to have been at the scene of the attack as alleged.<sup>53</sup> The Defence asserts that the scope of alibi is wider than that suggested by the Prosecution, in that if the evidence might reasonably be true, and reasonably be probable, it ought to be accepted.<sup>54</sup>

#### *Witness TEN-10*

80. Witness TEN-10's office was within the same complex as the Accused's office, in Murambi, Gitarama. The Accused's office was in front of the witness's own office, so that he could see when the Accused would leave his office.<sup>55</sup> From 14 April to sometime between 20 and 30 May, Witness TEN-10 said he would see the Accused "on several occasions" within this complex. He later said that he would see the Accused "often" during working days. In response to a further question, he stated that he would see the Accused "almost every day". When questioned further, the witness responded that he would see the Accused once every working day.<sup>56</sup> He also testified to seeing the Accused

<sup>49</sup> *Musema*, T. 5 May 1999, pp. 62-63.

<sup>50</sup> *Ntakirutimana*, T. 2 Nov. 2001, p. 54.

<sup>51</sup> Prosecutor's Supplemental Submission, p. 8, paras. 25-27.

<sup>52</sup> Defence Final Trial Brief, p. 114, para. 9. The reference to TEN-9 is an error.

<sup>53</sup> Prosecutor's Supplemental Submission, p. 8, para. 28.

<sup>54</sup> Defence Response to Prosecutor's Supplemental Submission, p. 14, para. 29.

<sup>55</sup> T. 11 Nov. 2002, pp. 92, 102 and 106.

<sup>56</sup> *Id.*, pp. 12-13, 83-85.

in Murambi in the evening, generally during the week, in the restaurant where the ministers had dinner.<sup>57</sup> Witness TEN-10 also stated that cabinet meetings were held on Fridays at Murambi town centre, normally from 8.00 a.m. to 2.00 p.m. or longer if necessary, depending on the agenda, and that additional meetings would be held on other days. The witness knew about the schedule of the meetings because of his professional responsibilities. According to the witness, the Accused attended the meetings every Friday, as well as meetings held on other days, except when he was on mission.<sup>58</sup> The witness did not say how he knew of the Accused's attendance.<sup>59</sup> The witness had access to the agendas of the meetings but not the minutes, and could not give evidence as to the content of these meetings.<sup>60</sup> The witness himself did not attend the meetings.

81. The Chamber considers that the fact that the witness changed his evidence, as his testimony progressed, concerning the frequency with which he saw the Accused is a significant factor in assessing the reliability of this alibi evidence. Further, Witness TEN-10 did not claim to have seen the Accused throughout the day on those working days, or on non-working days. Therefore, even if his account of the Accused's presence in Murambi is accepted, it is not inconsistent with the possibility that the Accused could have been elsewhere unobserved by the witness during certain periods of time. In addition, if the witness had observed the Accused almost everyday, he ought to have been able to provide information regarding the Accused's activities, or the functions he performed during that time as Minister. Instead, the witness could not describe the Accused's tasks as Minister, nor remember any particular visits, except for those of General Dallaire and Bernard Kouchner, the former French Secretary of State for Humanitarian Affairs. However, he described Kouchner as a journalist and he could not remember when Kouchner visited Murambi. The witness told the court that he had been out that day, and that his colleagues had told him about the visit.<sup>61</sup> The witness also stated that there was a lack of resources at the time and the government was unable to function, and that its main task was to expedite routine matters.<sup>62</sup> The witness also said that he did not hear of any of the Accused's speeches being broadcast over Radio Rwanda, in contradiction of evidence before the Chamber of such broadcasts during this time, for example, of the Accused's speech at the 3 May meeting in Kibuye.<sup>63</sup> In addition, the Chamber notes that the Defence failed to provide the Prosecution with notice about the alibi evidence the witness would testify to.<sup>64</sup> The witness also testified to the Accused's presence on certain dates in June and the evidence relating to these dates will be discussed in more detail in II.2.9.3 below. However, the Chamber has taken all these matters into account in assessing the credibility of TEN-10, and finds that TEN-10 is not a credible witness. Therefore, TEN-10's evidence does not raise a reasonable doubt that

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<sup>57</sup> Id., p. 21.

<sup>58</sup> Id., pp. 13-14, 18.

<sup>59</sup> The witness himself did not attend the meetings, but as part of his professional responsibilities, he would sit outside the door of the meeting for the duration of the meeting to await instructions; Exhibit D42, p. 2.

<sup>60</sup> T. 11 Nov. 2002, p. 95.

<sup>61</sup> Id., pp. 23-25.

<sup>62</sup> Id., pp. 35-36, 94.

<sup>63</sup> Id., p. 82.

<sup>64</sup> Id., pp. 15-18.

the Accused was at the named location under seal or Mubuga Church approximately ten days after 6 April.

*Witness TEN-22*

82. Witness TEN-22 stayed and worked in Murambi from 11 or 12 April 1994 until around 20 May 1994. His workplace was near the Centre in Murambi where the Interim Government was located. He stated that, during that period of time, he would see the Accused pass by, and sometimes the Accused would drop in to greet TEN-22 and his colleagues. He also stated that the Accused went to the witness's workplace sometimes to give a report on behalf of the government. He often saw the Accused accompanying visitors to the witness's workplace. The witness said that during this period, he saw the Accused "often", "on several days", or "on several occasions". The witness could not provide the exact number of days he saw the Accused, or the frequency of his sightings of the Accused. TEN-22 provides no further details on the Accused's activities during this period. Even if this evidence is accepted, it is not inconsistent with the possibility that the Accused could have been elsewhere during that period of time. The Chamber notes that an alibi notice in respect of this witness was not provided by the Defence, partly because, as the Defence explains, the witness could not give specific dates.<sup>65</sup> Therefore, TEN-22's evidence does not raise a reasonable doubt that the Accused was present at the named location under seal or Mubuga Church approximately ten days after 6 April.

#### **2.2.4 Factual Findings**

83. Based on the totality of the evidence, the Chamber finds that approximately ten days after 6 April 1994, the Accused procured gendarmes from the a named location under seal for an attack on Mubuga Church against Tutsi, whom he called Inyenzi, hiding there. The gendarmes he chose took with them to the attack ammunition, grenades and bullets. The Chamber notes that the evidence of the attack that followed at Mubuga Church is uncorroborated hearsay evidence, which is not inadmissible *per se*. However, in exercise of the necessary caution with respect to such evidence, the Chamber declines to rely on this evidence.

### **2.3 Attack at Kizenga Hill Between 17 and 30 April**

#### **2.3.1 Testimony of Prosecution Witness GGD**

84. Witness GGD testified to an attack at Kizenga Hill in April, on a date after the 17<sup>th</sup>, which started between 1.00 p.m. and 2.00 p.m., and lasted until the evening. The attack was perpetrated by Hutu, in particular the Interahamwe and the ABA-Power, and was targeted at Tutsi refugees. About 5,000 to 10,000 Tutsi - men, women, children and people of all ages - had sought refuge at Kizenga Hill. As it was a high hill, the refugees could see from the hill if attackers were coming to attack them.

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<sup>65</sup> T. 29 October 2002 pp. 91-92, 97, 102-107.

85. On this particular day at Kizenga Hill, the witness saw the Accused arrive in a vehicle. The attack had started before the Accused's arrival. Those with him included Ruzindana, Interahamwe and gendarmes, in total about 2,000 and 3,000 attackers. The Accused was armed with a gun carried in a sling, and the Interahamwe were armed with grenades and traditional weapons like clubs, spears and pickaxes. The witness heard that there was an attack the day before which had not exterminated all the refugees. On this occasion, the attackers had surrounded the hill and the refugees had nowhere to go and decided to remain where they were to await death. The witness was close to the road at this time and about 20 metres from the Accused. He saw the Accused shooting at the crowd of refugees, who were praying and blaming the authorities for the attacks. He heard the Accused say that children should not be spared, that everyone should be killed. The witness said that the Accused was inciting members of the population to commit atrocities on others. The witness explained that the Accused's position and influence indicated that his mere presence was adequate incitement because his presence encouraged people. Furthermore, everywhere the Accused went, he used a megaphone to tell Hutu to kill the enemy, the Tutsi, and to spare no one. During this attack, the witness suffered injuries to his head, chest and fingers from a grenade. He also lost seven of his family members at this attack (others died elsewhere). He survived by remaining under the dead bodies until the night when he extracted himself from the bodies and left. The witness could not estimate the number of dead victims resulting from this attack, but he stated that people spent about ten days burying the dead. There were dead bodies everywhere and the witness could hear the cries of people dying and suffering.<sup>66</sup>

86. The witness gave a description of the Accused that corresponds with the way he looks: tall, dark, with thick hair, fat and with a potbelly. The witness identified the Accused in court.<sup>67</sup> The witness also testified to a meeting in Gatwaro Stadium in the middle of March 1994.

### 2.3.2 Notice

87. The Defence complained of late notice about this allegation.<sup>68</sup> The Chamber notes that this event is not mentioned in the Indictment, the Pre-trial Brief, or the witness's statement dated 31 January 1996. However, the Chamber notes that it was brought to the attention of the Defence on 10 June 2002, via a memorandum, five days before trial commenced and some two months before Witness GGD's testimony. The Chamber considers that this cures the lack of notice in the Indictment.

### 2.3.3 Credibility Assessment

88. The Defence submits that Witness GGD's testimony was vague and uncorroborated and should not be relied upon.<sup>69</sup> The witness could not confirm the date on which he fled and became a refugee, although he provided this date in his statement

<sup>66</sup> T. 29 Aug. 2002, pp. 114-123, 160, 174.

<sup>67</sup> Id., p. 111.

<sup>68</sup> Id., p. 114; Defence Final Trial Brief, p. 88, paras. 1 and 20.

<sup>69</sup> Defence Final Trial Brief, p. 94, para. 21.

dated 31 January 1996. Similarly, he could not provide the date on which he fled Rwanda for Zaire.<sup>70</sup>

89. At one point during cross-examination, Witness GGD exhibited signs of distress and agitation, and could not carry on with his testimony. He claimed that the manner of questioning was upsetting him and stirring up bad memories. He asserted that Defence Counsel was playing with him and it was a form of torture.<sup>71</sup> The Prosecution argued that this was due to the method of cross-examination by the Defence, in that the Defence refused to take the answer given by the witness to a question, and insisted on repeating the question over and over. The Prosecution further contends that this shows how traumatized the witness is by the events that occurred in 1994.<sup>72</sup> The Defence submits that the witness's traumatized state indicates that his testimony is unreliable.<sup>73</sup>

90. The Chamber notes that the witness mentioned that he was recuperating from a bout of typhoid fever and that he may have been unwell at the time of his testimony. However, the Chamber notes that the witness was cooperative in direct examination but became unresponsive under cross-examination. In response to questions from Defence Counsel about the date he fled and became a refugee, he pleaded that he not be asked such questions as they saddened him. He responded in this manner to a number of questions, and Defence Counsel asserted that if the witness continued to maintain that he could not answer questions because he was suffering, his testimony ought to be withdrawn. On another occasion, the witness replied that the Defence Counsel should return to the witness's home with him to talk about these events as the witness had so much to say that it would take several days for him to finish. He would also answer that Defence Counsel did not know about the circumstances of the genocide, nor about Rwanda and its history, as he was a foreigner. Given the traumatized state of the witness, the Defence terminated its cross-examination without putting its case as it would have liked to, for fear of upsetting the witness any further.<sup>74</sup>

91. The Chamber observes that the Defence was unable to conduct an effective cross-examination. Under these circumstances, the Chamber considers that it would not be fair to the Accused to rely on Witness GGD's evidence. Therefore, the Chamber finds that it has not been proven beyond reasonable doubt that the Accused participated in an attack at Kizenga Hill between 17 and 30 April 1994.

<sup>70</sup> T. 29 Aug. 2002, pp. 149-150, 153.

<sup>71</sup> Id., p. 145.

<sup>72</sup> Id., pp. 169-170; Prosecutor's Supplemental Submission, p. 5, para. 17.

<sup>73</sup> Defence Response to Prosecutor's Supplemental Submission, p. 12, para. 20.

<sup>74</sup> T. 29 Aug. 2002, pp. 128, 147-149, 157-159, 174-184.

## 2.4 Attack at Muyira Hill Between 17 and 30 April

### 2.4.1 Testimony of Prosecution Witness HR

92. Witness HR testified to a large-scale attack sometime between 17 and 30 April against the Tutsi refugees at Muyira Hill in Bisesero, when they were attacked three times on the same day.

93. On 10 April 1994, Witness HR left his home to seek refuge on Muyira Hill as the Hutu were killing the Tutsi in his locality, and burning their houses down. He was with his mother, his two sisters and their seven children. There were approximately 5,000 Tutsi refugees on the hill and more arrived everyday. There were Tutsi of all ages and both sexes, including the old, and infants being carried on their mothers' backs. Some were survivors from other attacks, such as in Ngoma Church, Mubuga Church and the Adventist Church in Kibuye, where many people were killed.<sup>75</sup> The refugees were subjected to attacks once they arrived at Muyira Hill. Sometimes they could repel the attacks and the attackers would leave. However, this particular attack testified to by Witness HR was unusual, according to the witness, in that it was three times larger than other attacks, and they were attacked three times that day.

94. Witness HR stated that the first attack that day occurred at 9.30 a.m. and lasted 25-30 minutes. The witness and other refugees were on the top of Muyira Hill and when the attackers came closer, they began to defend themselves by throwing stones at the attackers. When the attackers approached, they began to shoot at the refugees. As there was nowhere to seek refuge and they could not run away, the refugees confronted the attackers. Amongst the attackers, Witness HR recognized the Accused, Segatarama, who was the Conseiller of Gitabura, two communal police from Gisovu commune, Sebahire, Rukazamyambi, Minyotsi, who was a policeman, Ndimbati, who was the Bourgmestre of Gisovu, and Musema, who was the Director of Gisovu Tea Factory.<sup>76</sup> All of them, including the Accused, were armed with guns. The witness was about 20 metres from the Accused and saw the Accused shoot at the refugees with a medium-sized gun. The witness could not say if the Accused actually shot anyone, but said that since many people were killed by the bullets, the Accused must have shot someone. There were about 20-30 people with guns. He considered the Accused to be a leader of the attack, as the act of picking up a weapon and working with members of a population to kill other members of the population is evidence of leadership, according to the witness. The witness also said that the Accused was always in the front or middle of the attackers. In total, there were more than 6,000 attackers, who comprised soldiers, policemen and Interahamwe. They were armed with spears, clubs and other traditional weapons. During this attack, the refugees successfully defended themselves and the attackers fled.

<sup>75</sup> T. 19 Aug. 2002, pp. 9-10, 69, 74.

<sup>76</sup> T. 19 Aug. 2002, p. 15; T. 19 Aug. 2002, p. 27 (Fr.). The French spelling of "Rukazamyambi" and "Minyotsi" are favoured over the English ("Rukazamby" and "Myotsi") as the first translation from the original Kinyarwanda.



95. About an hour later, between 10.30 a.m. and noon, as the refugees were collecting the bodies of the dead Tutsi refugees for burial, the attackers returned to Muyira Hill from Nyakigugu to attack the Tutsi refugees. Witness HR stated that this was surprising, as the attackers who were successfully repelled would usually return another day, not the same day. This attack lasted between 40 minutes and an hour. The witness said that the same people as those listed above, including the Accused, were amongst the attackers. The witness identified others at this attack, like the prison guards from Muko in Gikongoro Prefecture.<sup>77</sup> There were more attackers this time, and they were armed with firearms, spears, machetes, and clubs. The witness was about 15-16 metres from the Accused who was armed with the same gun and was shooting at the refugees. Both of these attacks resulted in about 15-25 victims. This attack lasted longer than the first and the third attacks. The attackers subsequently left, and the witness said that the refugees thought the attackers would not return.

96. However, around 1.30 p.m., as the refugees were organizing the burial of the dead, they came under a third attack at Muyira Hill. The witness did not see the Accused during this attack. The fighting did not last long this time, and there were not too many victims, about two or three. The refugees killed some attackers and the attackers left early.<sup>78</sup>

97. Witness HR knew the Accused prior to these events. He had seen the Accused sometime before 1990, when the Accused was campaigning to be a member of parliament. At that time, the Gishyita commune authorities had introduced him to the people. His photograph was posted at the bureau communal at the time of the campaign. The witness identified the Accused in court and gave a description that fits the Accused, that is, that he was of average height and large in stature.<sup>79</sup>

#### 2.4.2 Credibility Assessment

98. The Defence submitted that because of the witness's conflicting prior statements, conflicting prior testimonies, and the inconsistencies in the totality of his evidence, together with the rejection of his evidence on this attack in *Musema*, the evidence of this witness should be entirely rejected on grounds of unreliability.<sup>80</sup>

99. The dates of the witness's three statements reflect that he met with investigators more than once. When confronted with this fact, he maintained that he met with investigators only once. He later explained that he had meant that he met them once in Rwanda, and had not included the meetings in Arusha. However, his third statement dated 13 December 1999 was taken in Rwanda, as was his first.<sup>81</sup> The witness could not

<sup>77</sup> T. 19 Aug. 2002, p. 21; T. 19 Aug. 2002, p. 37 (Fr.). The French transcripts indicate that the witness referred to Gikongoro Prefecture, while the English transcripts refer to Gikongoro secteur. The French version is favoured as the first translation from the original Kinyarwanda.

<sup>78</sup> T. 19 Aug. 2002, pp. 11-25, 105-107; T. 20 Aug. 2002, pp. 9-10, 26, 39-42.

<sup>79</sup> T. 19 Aug. 2002, pp. 16-18; T. 20 Aug. 2002, pp. 20, 39.

<sup>80</sup> Defence Final Trial Brief, p. 130, para. 39.

<sup>81</sup> T. 19 Aug. 2002, pp. 33, 48, 51-54.

remember details about his meetings with investigators. However, the Chamber notes that these meetings took place sometime ago, and such details would not make as significant an impact on the witness's memory as the events to which he was a witness and to which he testified. Therefore, the Chamber does not consider that his inability to remember these details affects his credibility.

100. The Defence argued that the use of military terminology in his 1998 statement, like "strategic position", "firepower" and "ammunition belts", pointed to military training on the witness's part. The witness did not think he was using military terms in his statement. He testified to having received primary school education.<sup>82</sup> Further, he stated that he has never been a member of the RPF and has never undergone military training.<sup>83</sup> The Chamber notes that the witness gave his statement in Kinyarwanda and the words complained of were those of the English translator. The witness was a member of the MRND in 1994, and was therefore not politically opposed to Hutus, as suggested by the Defence.<sup>84</sup>

101. The witness did not mention the Accused in relation to this attack until his second statement dated 14 and 16 February 1998; however, as he explained in the statement, this was because prior investigations appeared to be focused on Kayishema and Ruzindana.

102. Witness HR had originally stated in direct examination that there were 5,000 Tutsi refugees on Muyira Hill. However, he later said in cross-examination that this was not true and there were more than 5,000 refugees. In his statement dated 20 March 1996, he said there were 15,000 refugees.<sup>85</sup> He was unable to explain this discrepancy and denied that he had said the figure "5,000", despite the transcript record.<sup>86</sup> The Chamber notes that he specified during direct examination that the figure "5,000" was an estimate. The Chamber does not consider that this discrepancy affects his credibility.

103. It was mentioned in the witness's statement dated 20 March 1996 that the Accused was at a meeting in Kibuye in May 1994, which was presided over by the President of the Republic, wherein it was said that there was a hill in Bisesero at which Rwandan Patriotic Army ("RPA") soldiers were present because civilians would not be able to kill policemen. The Defence submitted that this was not true. The witness himself had not attended the meeting but he asserted that the meeting was well-known. He said that people who had heard the radio told him about this, and two weeks after the meeting, the people who attended the meeting participated in attacks, and it was clear from the scale and scope of the 13 May attack that they had obtained reinforcements. It was suggested by the Defence that Witness HR had mentioned the Accused in relation to the attacks only because of what he had heard about his comments at the meeting, and the witness felt that as a Minister, the Accused ought to be held responsible for those

<sup>82</sup> T. 20 Aug. 2002, pp. 3-7; Defence Final Trial Brief, p. 122, para. 14.

<sup>83</sup> T. 19 Aug. 2002, p. 38.

<sup>84</sup> T. 20 Aug. 2002, p. 34.

<sup>85</sup> Defence Final Trial Brief, p. 128, para. 30.

<sup>86</sup> T. 19 Aug. 2002, pp. 72-74.

actions.<sup>87</sup> The witness replied that he had placed the Accused at the end April attack, which was before this meeting.<sup>88</sup> Moreover, the Chamber notes that the witness did not indiscriminately place the Accused in all the attacks; he also mentioned attacks (like the third attack mentioned in paragraph 96 above and the 14 May attack) where he had not seen the Accused.

104. In its Closing Brief, the Defence states that the witness was rejected in paragraphs 689-691 of the *Musema* Judgement.<sup>89</sup> However, in the preceding paragraph 688, the Trial Chamber in *Musema* found the witness (Witness F in *Musema*) to be credible, contrary to the Defence's assertion. The Trial Chamber in that case did not find it established beyond reasonable doubt that Musema had participated in attacks between 17 and 30 April 1994 because of a lack of specificity in Witness F's evidence regarding the date of the attacks.

105. The Defence complained that it did not have the "first-made records", that is, the handwritten notes, taken by investigators during Witness HR's interviews with investigators.<sup>90</sup> The Chamber reiterates that investigators' notes and constitute privileged material, to which the Defence is not entitled, pursuant to Rule 70.

106. The Defence tendered a letter dated 30 June 1994 written by the Accused, wherein he denounced the conduct of Ndimbati (Exhibit D54), which it submits would show that the Accused could not have participated in attacks with Ndimbati.<sup>91</sup> The Chamber observes that the letter was written about 2 months after the attack at Muyira Hill, and dealt with offences allegedly committed by Ndimbati, such as pillages and orders to kill. The letter does not negate Witness HR's eyewitness evidence.

107. The Defence pointed to a discrepancy between the witness's prior statements. In his statement dated 20 March 1996, the witness mentions an incident involving Mika and Ruzindana as having taken place in mid-May; in his statement dated 14 and 16 February 1998, he places this incident in June. The Defence argued that this change was suggested to the witness by investigators in order to facilitate his testimony in *Kayishema and Ruzindana*. There is no evidence to support the Defence's contention. The witness denied the Defence's assertions and maintained that the incident took place sometime after 14 May.<sup>92</sup>

108. The witness also testified to other alleged acts of the Accused. These are discussed in detail in II.2.6 and II.2.7 below, together with the submissions relevant to these alleged acts. However, the Chamber has considered as a whole all submissions made as to the credibility of Witness HR. The witness was certain that he saw the Accused whom he knew prior to these events, and maintained this position throughout his testimony. Upon evaluation, the Chamber considers the witness to be an honest and

<sup>87</sup> Defence Final Trial Brief, pp. 125-126, para. 23.

<sup>88</sup> T. 19 Aug. 2002, pp. 90-92; Defence Final Trial Brief, p. 125, para. 23.

<sup>89</sup> Defence Final Trial Brief, p. 120, para. 2.

<sup>90</sup> Id., p. 121, para. 5.

<sup>91</sup> Id., p. 127, para. 26.

<sup>92</sup> T. 19 Aug. 2002, pp. 127-132; Defence Final Trial Brief, p. 129, para. 35.

careful witness who does not harbour any personal animosity towards the Accused. Therefore, the Chamber finds Witness HR to be a credible witness.

### 2.4.3 Alibi

109. The Defence adduced alibi evidence to rebut Witness HR's evidence with respect to this alleged attack at Muyira Hill.<sup>93</sup> The Prosecution contends that the alibi evidence is not inconsistent with the possibility that the Accused could have moved from one location to another within the same day.<sup>94</sup>

#### *Witness TEN-22*

110. The alibi evidence of TEN-22 relating to this time period was examined in II.2.2.3 above, and rejected by the Chamber.

#### *Witness TEN-10*

111. The alibi evidence of TEN-10 relating to this time period was examined in II.2.2.3 above and rejected by the Chamber.

#### *Witnesses TEN-8 and TEN-16*

112. Witness TEN-8 testified that during the month of April, he did not see the Accused, nor hear of the Accused's presence, in the Kibuye region. Similarly, the witness never heard that the Accused was involved in any killing or rape in Kibuye during this time, and the witness stated that if those acts had been committed by the Accused, he would have heard about it.<sup>95</sup>

113. Witness TEN-16 resided in Kibuye Prefecture, not far from Bisesero, at the time of these events. According to the witness, if the Accused had been in Bisesero and in Kibuye Prefecture at any time during the period between April and the middle of July 1994, she would have seen him or she would have heard about him, particularly if he had committed the crimes alleged. However, it is not disputed that the Accused attended a meeting in Kibuye on 3 May 1994. Further, the witness acknowledged on cross-examination that she had never personally visited the Bisesero region during the period in question.<sup>96</sup> For these reasons, the Chamber does not consider this evidence to be credible.

114. Neither of these witnesses testified to the Accused's presence elsewhere at the time of the attack at Muyira Hill. Their testimony that they did not see the Accused, nor hear about his presence, in the Bisesero region does not amount to alibi evidence and does not raise a reasonable doubt that the Accused was present at Muyira Hill between 17 and 30 April.

<sup>93</sup> Defence Final Trial Brief, p. 124, para. 18.

<sup>94</sup> Prosecutor's Supplemental Submission, p. 11, para. 36.

<sup>95</sup> T. 29 Oct. 2002, pp. 31-32; 42-43.

<sup>96</sup> T. 24 Oct. 2002 pp. 68-70; 81-84.

#### 2.4.4 Factual Findings

115. Based on the totality of the evidence, the Chamber finds that on a day sometime between 17 and 30 April 1994, at 9.30 a.m., the Accused, together with others, led more than 6,000 armed attackers, comprising soldiers, policemen and Interahamwe, in a large-scale attack at Muyira Hill against Tutsi refugees. The Accused was in front of or in the middle of the group of attackers. The Accused was armed with a gun and shot at refugees during this attack, which lasted 25-30 minutes. There were approximately 5,000 Tutsi of all ages and both sexes at the hill, including old people and infants.

116. About an hour later, sometime between 10.30 a.m. and noon that same day, the Accused returned to Muyira Hill with others, and led more armed attackers in another large-scale attack against the Tutsi refugees at the hill. The Accused was armed with a gun and personally shot at Tutsi refugees during this attack as well. As a result of both attacks, between 15-25 Tutsi refugees died.

### 2.5 End April/Early May Attack at Kivumu

#### 2.5.1 Testimony of Prosecution Witness GGY

117. Witness GGY testified to a particularly devastating attack sometime between the end of April and the beginning of May 1994 at Kivumu in Bisesero, which he said involved more attackers who were better-equipped, and which resulted in far more victims.<sup>97</sup> The witness had fled to the Bisesero Hills, first from his home, then from Mugonero Hospital, to escape massacres perpetrated by Hutu against Tutsi. He chose the Bisesero hills as it was the only place left where there were still Tutsi refugees. When he arrived, he found "very many" other refugees scattered about on the hills. It was exclusively Tutsi men and women, boys and girls who were being targeted in the Bisesero hills. Some refugees were suffering more than others, some had been shot at or cut up by machetes, and some had ordinary illnesses that could not be attended to. There were children, elderly persons and women. He testified that attacks occurred in Bisesero everyday.<sup>98</sup>

118. With respect to the attack at Kivumu, Witness GGY stated that at the time, he was in the hills at Kazirandimwe cellule near Gitwe Primary School. He first saw the attackers from the top of Gitwe Hill between 8.30 a.m. and 9.30 a.m., but had a better

<sup>97</sup> T. 14 Aug. 2002, p. 20. According to the French transcripts, at pp. 32-33, the witness specifies that this attack took place on the 16<sup>th</sup>, but he does not say of which month ("le 16 de ce mois-là" – "the 16 of that month"). In the original Kinyarwanda (14 Aug. 2002 AM, FLOOR/FRENCH #1, Track 01, Min. 46, between Sec. 27 and 42), the witness said: "Sinavuga cyane ko ari ikidasanzwe, kuko icyabaye ni igitero cyahateye gikomeye cyane, kandi ubundi ibitero byari bimaze iminsi biza ariko icyo cyari gifite ingufu kurenza ibyari byakurikiye icyo kuri 16", which, translated, means "I can't really say it was an unusual attack. The attack against that location was a very big one; besides, attacks had been carried out for some days, but that one was more serious than those that had followed the one launched on 16<sup>th</sup>." However, in all the transcripts, the witness dates the attack as being between the end of April and the beginning of May.

<sup>98</sup> T. 14 Aug. 2002, pp. 15-20, 96; T. 15 August 2002, pp. 65-66.

view of them when they were at Kidashya. In order to allow the wounded and elderly to have time to find hiding places, and because there was nowhere else to run away to, the able-bodied refugees ran towards the attackers and met them at Kivumu. There were about 300 attackers, armed with guns, explosives and traditional weapons like machetes, spears, clubs and sharpened bamboo sticks. Amongst these attackers, he recognized as leaders the following: the Accused; Bourgmestre Charles Sikubwabo; Conseiller Mika Muhimana; Ndimbati, the Bourgmestre of Gisovu; Segatarama, the Conseiller of Gitabura; Kanayira, the Assistant Bourgmestre of Gishyita; Mathias Nginshuti; Kagaba and one named Vincent who was the Conseiller of Mubuga. From a distance of not more than 100 metres, the witness saw the Accused armed with a gun between 80 centimetres and one metre long on a strap, and shooting at the refugees. He saw the Accused several times during the attack from varying distances, the closest being 80-90 metres. The refugees defended themselves for a short time with stones and sticks but the attackers were heavily armed and attacked the refugees from many directions. The refugees were pursued by the attackers to the top of Gitwe Hill where the refugees then spent the night. The attack lasted until 3.00 p.m. The witness could not place a number on the victims that day.<sup>99</sup>

119. Witness GGY knew the Accused as they were from the same region and the Accused was a high-level authority. He had previously seen the Accused at the end of 1993 at a political meeting in Kizenga in Ngoma secteur. He identified the Accused in court.<sup>100</sup>

### 2.5.2 Notice

120. The Defence does not complain of lack of notice with respect to the attack at Kivumu.<sup>101</sup> The Chamber notes that the witness stated that the location of the attack mentioned in his statement dated 25 October 1999 was Kivumu, which constitutes notice to the Defence of this allegation. The witness also testified to attacks on 13 and 14 May but these are not reflected in his statements. The issue of notice relating to these two events will be discussed in II.2.6 and II.2.7 below.

### 2.5.3 Credibility Assessment

121. The Defence submitted that Witness GGY was mistaken in his identification of the Accused during this attack, and that the witness's evidence is unsafe and should not be relied upon.<sup>102</sup>

122. On the issue of mistaken identity, the Chamber notes that the witness knew the Accused prior to this event and had previously seen the Accused at the end of 1993 as detailed in paragraph 119 above. The witness also stated that he observed the Accused

<sup>99</sup> T. 14 Aug. 2002, pp. 19-31, 122; T. 15 Aug. 2002, pp. 74-75.

<sup>100</sup> Id., pp. 23-25; 114.

<sup>101</sup> Defence Final Trial Brief, pp. 176, para. 2.

<sup>102</sup> Id., pp. 181-182, paras. 22-24.

many times during the attack, from a distance of 80-90 or 100 metres. For these reasons, the Chamber considers that he had not mistakenly identified the Accused.

123. According to the French transcripts, the witness specified that the date of this attack was the 16<sup>th</sup>, although he did not specify which month.<sup>103</sup> The Defence assumes that this refers to 16 April, and submits that in *Ntakirutimana*, he testified to leaving Mugonero Complex for the Bisesero hills on 16 April sometime between 10.00 p.m. and 11.00 p.m., which would make it impossible for him to have witnessed this alleged attack at Kivumu on the morning of 16 April.<sup>104</sup> Upon an examination of the original Kinyarwanda transcripts, the Chamber considers that the Defence's assumption is not well-founded, as there is no evidence that the witness meant to refer to the month of April.<sup>105</sup> Even if the Defence's assumption is correct, that the witness was referring to the 16<sup>th</sup> of April, the Chamber notes that this discrepancy was not put to the witness during cross-examination for his explanation. In addition, this discrepancy was not raised in the main Defence Final Trial Brief either; the Defence makes this submission for the first time in its Response to Prosecutor's Supplemental Submission.<sup>106</sup> As a result, the Prosecution did not have an opportunity to reply to this submission. The Chamber cannot rely on the Defence's assertions, which may not be accurate and additionally, have not been tested under cross-examination.

124. The Defence submitted that Witness GGY was not a humble refugee, but a highly trained RPF fighter.<sup>107</sup> According to the Defence, this was supported by the witness's knowledge of people whom the Defence claims are RPF members, and by his current occupation in a government-appointed position in Rwanda. The Defence concluded that the witness is therefore politically opposed to the Accused. It was further suggested that he acted as one in battle at the time. The witness stated that he was not a member of any political party, or the military branch of the RPF, or any local defence force.<sup>108</sup> No evidence was adduced to support the Defence's speculations.

125. The Defence made the same submissions with respect to the Accused's relationship with Ndimbati (and Segatarama) as those examined, and rejected, in paragraph 106 above.

126. The witness was asked by the Defence why he had said in *Ntakirutimana* that his statement was not read back to him and that if it had been, he would not have signed it with the obvious errors it contained. He said the only error related to the languages he spoke. It was suggested by the Defence that the statement dated 25 October 1999 was never read back to him and he never mentioned the Accused in his statement.<sup>109</sup> There is no evidence to support these claims.

<sup>103</sup> T. 14 Aug. 2002, p. 33 (Fr.).

<sup>104</sup> *Ntakirutimana*, T. 2 Oct. 2001, p. 30 (Witness YY).

<sup>105</sup> See supra note 76.

<sup>106</sup> Defence Response to Prosecutor's Supplemental Submission, p. 21, para. 52.

<sup>107</sup> Defence Final Trial Brief, pp. 178, para. 9.

<sup>108</sup> T. 14 Aug. 2002, pp. 127-128; T. 15 Aug. 2002, pp. 67-68.

<sup>109</sup> T. 14 August 2002, pp. 83-87.

127. The witness was asked by Defence Counsel about a preliminary report of the government commission into the genocide (Exhibit D15), where the Accused's name does not appear in the list of 13 persons held responsible for killings in the Kibuye region.<sup>110</sup> The witness maintained that the Accused was responsible for killings and doubted the source of the information in the report, who, according to the witness, is a person presently accused of having killed Tutsi in Kibuye. He later clarified on re-examination that there were others not on the list who had participated in attacks and the Accused was one of those.<sup>111</sup>

128. Upon evaluation of the evidence, the Chamber finds that Witness GGY is a credible witness.

#### 2.5.4 Alibi

129. The alibi evidence relevant to this allegation was examined and rejected in II.2.2.3 and II.2.4.3 above.

#### 2.5.5 Factual Findings

130. Based on the totality of the evidence, the Chamber finds that sometime between the end of April and beginning of May 1994, from between 8.30 a.m. and 9.30 a.m. to 3.00 p.m., the Accused and others were leaders in a large-scale attack by armed attackers against Tutsi refugees at Kivumu in Bisesero. The Accused was armed with a gun and personally shot at Tutsi refugees.

### 2.6 13 May Attack at Muyira Hill

#### 2.6.1 Testimonies of Prosecution Witnesses GGY, HR, GGR, DAF, GGM and GGH

##### *Witness GGY*

131. Witness GGY stated that on 13 May 1994, he saw the Accused amongst many attackers at a large-scale attack against Tutsi refugees at Muyira Hill in Bisesero, which caused many deaths among the Tutsi refugees. The witness's evidence as to the large numbers of Tutsi of all age and both sexes at Bisesero is detailed in paragraph 117 above. On 13 May, the attackers, which included Interahamwe, soldiers and civilians, arrived between 8.00 and 9.00 a.m. The attackers had parked their vehicles at Kucyapa between the Gisovu and Gishyita border. Among these vehicles were ONATRACOM buses,

<sup>110</sup> Rapport préliminaire d'identification des sites du génocide et des massacres d'avril-juillet 1994 au Rwanda, une publication du Ministère de l'enseignement supérieur, de la recherche scientifique et de la culture (commission pour le mémorial du génocide et des massacres au Rwanda, B.P. 624 Kigali) – Preliminary Report Identifying the Sites of Genocide and Massacres in April-July 1994 in Rwanda, a publication of the Ministry of Higher Education, and Scientific and Cultural Research (Commission for the Rwandan Genocide and Massacre Memorial).

<sup>111</sup> T. 15 August 2002, pp. 9, 68.



lorries owned by COLAS, and other commandeered vehicles which belonged to Tutsi who had been killed. For example, he saw a vehicle belonging to a Tutsi trader at the Gishyita commercial center, which had been seized by Obed Ruzindana, and a vehicle belonging to another Tutsi trader called Rulinda from Mubuga. The attackers' vehicles plied the Kibuye/Cyangugu route. At the time, Witness GGY was on a road which goes through the secteur, on the side facing Gitwe hill. He and others were trying to cross the road to go to Muyira Hill. There were many attackers but the witness could not estimate the number, although he said that there were many more attackers than refugees.<sup>112</sup>

132. The witness first saw the Accused at about 9.30 a.m. and the distance between them was not more than 90 metres. He saw the Accused for not more than a minute before the attackers started shooting at the refugees.<sup>113</sup> Witness GGY stated that the Accused was with others by the vehicles, and shooting at refugees coming from the bushes. He was carrying a medium-sized gun on a strap. The attackers were armed with guns, machetes, spears, sharpened bamboo sticks and clubs. The witness said that he recognized others participating in this attack: the bourgmestres of Gishyita and Gisovu communes, the conseiller and prefet of Gishyita commune, Ruzindana, his younger brother Joseph, Pastor Ntakirutimana, Dr. Gérard Ntakirutimana, Alfred Musema and those named in paragraph 118 above. As they were being shot at, the refugees ran to the side where there were no attackers and proceeded towards Muyira Hill.<sup>114</sup>

133. Witness GGY saw the Accused again that same day at 10.00 a.m. at Muyira Hill, shooting at the refugees. The distance between the witness and the Accused was not more than 100 metres. The attackers were shouting "Tuba Tsemba Tsembe", which he said means "Let's exterminate them". The witness stated that this attack lasted until 5:30 p.m. After the attack, the attackers assembled at Kucyapa for a meeting. He said that there were so many refugees killed that day that he would compare them to "leaves which were falling from trees". Some survivors recognized their kith and kin amongst the dead bodies and buried them in shallow graves; however, other dead bodies were eaten by wild animals and dogs on the hill. As for the method of attack, the witness stated that the attackers would shoot at the refugees first, then the attackers armed with clubs and machetes would finish them off. The Accused was in the front row of attackers with about 20 other people. He was wearing an overcoat, and the witness indicated his height was between 1.60 to 2 metres. He described him as fat and tall, with a full head of hair.<sup>115</sup> The witness's prior knowledge of the Accused was detailed in paragraph 119 above.

#### *Witness HR*

134. Witness HR saw the Accused on 13 May 1994 shooting at Tutsi refugees in an attack at Muyira Hill. The witness's evidence as to the large numbers of Tutsi of all ages and both sexes seeking refuge at Muyira Hill was detailed in paragraph 93 above. On 13 May, at around 10.00 a.m., the Tutsi refugees were attacked when they were at the top of Muyira Hill by several groups of attackers who had surrounded the hill. The witness

<sup>112</sup> T. 14 August 2002, pp. 31, 37-39, 40; T. 15 August 2002, pp. 71-72.

<sup>113</sup> T. 15 August 2002, pp. 76-77.

<sup>114</sup> T. 14 August 2002, pp. 39-40.

<sup>115</sup> Id., pp. 41-42; T. 15 August 2002, pp. 56-57, 61-62, 77.

named as leaders of this attack the Accused, Kayishema, Ruzindana, Ndimbati, Sikubwabo, and communal policemen. The witness first saw the attackers from the top of Muyira Hill at Kucyapa where they alighted from their vehicles. There were buses and MINITRAP vehicles transporting the Interahamwe, in total not less than 20 vehicles. The Interahamwe were accompanied by soldiers and communal policemen. The witness stated that there were many attackers, between 100,000 and 150,000. The attackers were climbing the hill and attacking the refugees from all sides. Some were armed with guns, like the Accused, Kayishema, Musema, Ruzindana, Ndimbati and Mika. The Interahamwe were armed with sharpened bamboos, machetes, clubs and spears.

135. The witness saw the Accused shooting at the refugees with a black gun from a distance of about 22 metres. Many refugees did not have the strength to defend themselves or to flee and as a result, many of them died. All the witness's five children, his mother and his sister were killed. He estimated that 90% of the Tutsi refugees died that day.<sup>116</sup> After this attack, the Accused participated in a meeting at Kucyapa. The attackers blew their whistles and they assembled for this meeting. There were two speakers but the witness could not hear what they were saying. The attackers then left.<sup>117</sup> Witness HR's prior knowledge of the Accused was detailed in paragraph 97 above.

*Witness GGR*

136. On or about 13 May 1994, Witness GGR saw Interahamwe dressed in white, beating drums and blowing whistles, and understood the massacres would resume after the lull period.<sup>118</sup> Therefore, in order to escape from massacres he described as being against Tutsi by the Abatabazi government, he hid in a bush near the border between Gishyita and Gisovu communes at Kucyapa. The witness was on the lower side of the road leading from Gishyita to Gisovu, at Dege Hill. He estimated that he was 40-50 metres from the road. The witness had been shot and injured in his arm about two weeks earlier. He and other Tutsi hid with their families in Bisesero from April to the end of the war, to escape from the attackers. The witness said that all Tutsi from Rwamatamu, Gishyita, Gisovu and Gitesi had gathered at Bisesero.

137. On 13 May, vehicles with Interahamwe and soldiers on board arrived by the witness's hiding place. The witness heard them start to plan their attacks at Muyira and other hills. They were further than 40-50 metres away but the witness could hear them as they used loudspeakers. The witness said that these attackers were armed Hutu who were trying to exterminate Tutsi. He saw the Accused with Musema and Ndimbati about 80 metres away. The witness said that the Accused seemed to be the leader of a group of attackers because he was in front of these attackers who followed him, and because he was carrying a gun. Witness GGR saw the Accused fire the gun when the Accused was going towards Muyira.<sup>119</sup> At this point, the Accused was about 40-50 metres away from him. The attacks began around 8.00 a.m. and 8.30 a.m., and ended in the evening. The witness saw the Accused on several occasions throughout the attack. In the evening, he

<sup>116</sup> T. 19 Aug. 2002, pp. 25-30, 57.

<sup>117</sup> T. 20 Aug. 2002, p. 36.

<sup>118</sup> Id., p. 107.

<sup>119</sup> Id., pp. 57-61, 113, 125, 127.

heard the attackers singing “Tubatsembatsembe” which he said means “they should exterminate all Tutsis because the Tutsis were a dirty race”. The Accused was in front of the attackers from Gisovu as this was being sung.<sup>120</sup> There were so many attackers that the witness wondered if any Hutu stayed home that day and did not go to the attacks. Many of the Tutsi refugees died that day as a result of the attack.<sup>121</sup>

138. Witness GGR said that he had known the Accused for a long time as someone in central government. The witness saw him at election campaigns although he never spoke to him. The first time the witness saw the Accused was during the legislative elections campaign in the period of multiparty politics sometime after 1980 and before April 1994. He observed the Accused for less than ten minutes. The next time he saw the Accused within the same time period, he was trying to recruit members for the new MDR Party. He observed the Accused for 20-30 minutes at around 5.00 p.m. and 5.20 p.m. when it was still light. He also said he would see the Accused every six months when the Accused would visit his parents near Gisovu and use the road from Kibuye through Mubuga, which went by the witness’s house. After the Accused became a member of parliament, the witness saw him very frequently on the road from Mugonero Hospital. The witness identified the Accused in court.<sup>122</sup>

*Witness DAF*

139. Witness DAF was at Muyira Hill, in Bisesero, on 13 May 1994, during a large-scale attack aimed at exterminating Tutsi who were in Bisesero. The witness saw the Accused from a distance of 50 to 100 metres, in the early afternoon of 13 May at Kucyapa, on the border between Gishyita and Gisovu communes. The attack had begun between 7.00 a.m. and 8.00 a.m. The persons attacked were Tutsi in Bisesero and included old people, young men and women, and babies. The Accused was one of the leaders whom he knew and recognized, which included Kayishema, Prefet of Kibuye Prefecture; Ruzindana, a well-known trader; Musema, Manager of Gisovu Tea Factory; Sikubwabo, the former bourgmestre of Gishyita; Ndimbati, the bourgmestre of Gisovu; and Mika. The attackers comprised Interahamwe, soldiers, policemen and Hutu members of the population. The witness saw the Accused when the attackers were pursuing him and others, and killing the Tutsi. The Accused was shooting at the fleeing Tutsi, including the witness himself. The attackers carried weapons, including firearms, spears, machetes and clubs and were chanting “let’s exterminate them, let’s flush them out of the forest” and “Power, Power”. They came in vehicles, including buses, pick-ups and other vehicles from the Gisovu Tea Factory, which parked at Kucyapa. The leaders, including the Accused, carried firearms. They were well-known persons in authority, or traders, acknowledged as leaders by the attackers. These leaders expressed joy and approval for the acts of killings carried out by the attackers.<sup>123</sup>

140. The witness knew the Accused prior to these events because they came from the same area, and he had heard the Accused speak as a journalist on Radio Rwanda and had

<sup>120</sup> Id., pp. 66-68, 133.

<sup>121</sup> Id., pp. 104, 110.

<sup>122</sup> Id., pp. 54-58, 128-131.

<sup>123</sup> T. 26 Aug. 2002, pp. 83-88, 96, 102-103.

heard others speak of him. He saw the Accused for the first time before 1990. At that time, the Accused was no longer a journalist at Radio Rwanda and he himself was a secondary school student. He and his older brother were at a petrol station in Kigali that he was told belonged to the Accused, when his brother pointed the Accused out to him. From then on he was able to put a face to the name he knew. He described the Accused at the time he saw him as “quite stocky and with a thick neck” and identified him in court. The witness learned subsequently in 1993 that the Accused was a member of MDR Power which was against the Arusha Accords and which advocated hatred and violence against Tutsis. He heard that the Accused was in charge of information within MDR Power.<sup>124</sup>

*Witness GGM*

141. Witness GGM saw the Accused at Kucyapa at the border between Gisovu and Gishyita communes in the evening of 13 May 1994 at a meeting held after the attack.<sup>125</sup> The attackers had been pursuing the Tutsi refugees throughout the day and the witness was tired and had decided to hide and rest in a sorghum field on Uwingabo Hill. One other man was with him in the field.<sup>126</sup> Buses had transported the attackers, including soldiers, to Kucyapa, and many vehicles arrived in the morning.<sup>127</sup> The attackers had surrounded Bisesero hills and there were violent confrontations. The Interahamwe far outweighed the refugees during the attack. Between 40,000 and 50,000 people were killed that day.<sup>128</sup> There were many bodies strewn everywhere around Muyira and Kagari, and all over the hills.<sup>129</sup>

142. At this meeting, the Accused was about 30 metres from the witness. He could not recall what the Accused was wearing except that he was not wearing a jacket. The Accused was not armed. The Accused was holding a meeting in the evening after the killings to decide the programme for the next day and organize the killings. Kayishema and the Accused both spoke using loudspeakers at this meeting, after which the attackers returned home. The witness did not hear everything that was said at the meeting but he heard Kayishema thank the attackers for participating. He also heard the Accused thank the attackers for their participation and commend them for “a good work”. The Accused told them to share the people’s property and cattle, and eat meat so that they would be strong to return the next day to continue the work. The witness said that “work” meant “killing”. The next day, 14 May, the witness and others were pursued and spent the day fleeing from attackers. The witness watched this meeting for not more than 30 minutes. There were many people attending this meeting, possibly 5,000. On this day, the witness lost his whole family and he said that he would never forget this day.<sup>130</sup>

<sup>124</sup> Id., pp. 80-83, 94, 119, 123-124.

<sup>125</sup> T. 23 Aug. 2002, pp. 11, 14, 44

<sup>126</sup> This person was Witness KK in *Kayishema*.

<sup>127</sup> T. 23 Aug. 2002, pp. 46-47, 55, 82.

<sup>128</sup> Id., p. 51.

<sup>129</sup> T. 26 Aug. 2002, p. 28.

<sup>130</sup> T. 23 Aug. 2002, pp. 14-15; T. 26 Aug. 2002, pp. 4-5, 13, 28, 67-68.

143. During May 1994, the witness was hiding in Bisesero with others who were being pursued. These people were Tutsi from Rubengera, Rutsiro, Rwamatamu, Gisovu and Gikongoro. There were about 60,000 Tutsi in Bisesero and by the time the French arrived, only 1,000 Tutsi had survived.<sup>131</sup> The witness himself sustained a knife wound on his ribs between 13 May 1994 and the middle of June.<sup>132</sup> By 13 May, his entire family had been killed.<sup>133</sup>

144. Witness GGM first heard about the Accused as someone who had campaigned to be a member of parliament and subsequently became one. He came to know him from the ceremony of the inauguration of Bourgmestre Sikubwabo sometime before 6 April 1994. This ceremony began at around 10.00 a.m. and ended at about 2.00 p.m. The witness saw the Accused for 2-4 hours at the meeting. It was held in Kibande in Gishyita commune. Many people attended, possibly thousands. Sikubwabo, Kayishema and the Accused all spoke at the meeting. The Accused spoke for about 30-40 minutes during the meeting. The witness identified the Accused in court.<sup>134</sup>

*Witness GGH*

145. Witness GGH saw the Accused on 13 May 1994 participating in massacres. The witness was hiding at a Sakufe's house at the foot of Rwirambo Hill, at a place known as Sakufe Hill, which was quite close to the road. He hid in the bushes in a small wood. He saw vehicles transporting attackers and Interahamwe on the road from Kibuye to Gisovu. They stopped at Kucyapa at the border between Gishyita and Gisovu. There were various leaders, including the Accused, giving instructions to the attackers. The other leaders were Alfred Musema, Uwimana, Obed Ruzindana, and conseillers of secteurs, Sikubwabo, who was the bourgmestre of the commune, and Aloys Ndimbati. They were showing the attackers where to go and what to do in order to carry out the attack. The leaders arrived in their own vehicles. The Accused's vehicle was double-cabin and white, and Musema's was a red Pajero. There were also three Daihatsu's belonging to the factory, one red, one white and one blue; a white Hilux belonging to the Gisovu commune; and ONATRACOM buses, which transported Interahamwe and soldiers. The Accused showed the attackers where to go to find the Tutsi who had scattered all over Bisesero Hills. The witness was no more than 100 metres from the Accused, who was wearing a loose-fitting white shirt and white trousers. He was not armed at the time.<sup>135</sup> The witness saw the attackers shooting at people and cutting them up.

146. There were many persons attacking Tutsi of all ages, including new-born babies, old men and old women. He said he remembered the date of 13 May 1994 for two reasons: firstly, many of his family members died there on that day; and secondly, after the massacre, while they were burying the bodies the next day at Kagare in Bisesero, he came across a piece of paper with a message written on it, saying that the act committed on this date of the 13<sup>th</sup> would never be forgotten until the war against the enemy is

<sup>131</sup> T. 23 Aug. 2002, pp. 12-14.

<sup>132</sup> T. 23 Aug. 2002, pp. 50, 52; T. 26 Aug. 2002, p. 33.

<sup>133</sup> T. 26 Aug. 2002, p. 13.

<sup>134</sup> T. 23 Aug. 2002, pp. 10-12; T. 26 Aug. 2002, pp. 69-71.

<sup>135</sup> T. 15 Aug. 2002, pp. 93-97; T. 16 Aug. 2002, p. 86.

completed. Before they could finish burying the dead victims of this attack, a bus carrying Interahamwe and soldiers arrived and started attacking them. The refugees dispersed and hid in the bushes.<sup>136</sup> Witness GGH's prior knowledge of the Accused was detailed in paragraph 55 above.

## 2.6.2 Notice

### *Witness GGY*

147. The Defence objected to Witness GGY's evidence of this attack on the basis that it had no prior notice that the witness would testify to this attack.<sup>137</sup> Although this allegation is not mentioned in the Indictment nor in the witness's prior statements, the Chamber notes that the 13 May attack is mentioned as being Witness GGY's anticipated testimony in the Prosecutor's Pre-trial Brief filed on 11 March 2002, about 3 months before the commencement of trial and 5 months before the witness's testimony. The Chamber considers that this constitutes sufficient notice to the Defence.

### *Witness GGR*

148. The Defence complained of inadequate notice of the details Witness GGR would provide about the 13 May attack.<sup>138</sup> The Chamber notes that the Defence does not complain that it had no notice of this attack, but that it had no notice of its details. Notice of this attack was provided in the Prosecutor's Pre-trial Brief, and the witness subsequently provided supplementary details during his testimony in court. The Chamber considers that this constitutes sufficient notice to the Defence.

### *Witness DAF*

149. The Defence argued that it was prejudiced by a lack of notice that Witness DAF would testify to a description of the Accused, and to his prior knowledge of the Accused from a sighting at a petrol station in Kigali.<sup>139</sup> The Chamber notes that the Defence does not complain that it had no notice of the allegations against the Accused to be testified to by the witness. In *Ntakirutimana*, the Chamber stated that details of this nature arising in the course of testimony, are not matters for disclosure. The Chamber has adopted this position.

### *Witness GGM*

150. The Defence complained that it had no notice that Witness GGM would testify to having seen the Accused at the inauguration ceremony.<sup>140</sup> The Chamber notes that the Defence does not complain that it had no notice of the allegations against the Accused to be testified to by the witness. In *Ntakirutimana*, the Chamber stated that details of this nature arising in the course of testimony, are not matters for disclosure. The Chamber has adopted this position.

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<sup>136</sup> T. 15 Aug. 2002, pp. 95-97.

<sup>137</sup> Defence Final Trial Brief, p. 176, para. 2.

<sup>138</sup> Id., p. 141, para. 4.

<sup>139</sup> Id., p. 149, para. 3.

<sup>140</sup> Id., p. 159, para. 4.

### 2.6.3 Credibility Assessments

#### *Witness GGY*

151. The Chamber refers to the discussion on Witness GGY's credibility in II.2.5.3 above. In relation to the 13 May attack, the Defence submits that the witness's inability to identify Muyira Hill in a photograph in court undermines his evidence relating to this attack.<sup>141</sup> The Chamber considers that the witness's difficulty with reading photographs does not affect the witness's credibility.

152. The Defence also submits that the witness was mistaken in his identification of the Accused during the 13 May attack.<sup>142</sup> The Chamber notes the witness's prior knowledge of the Accused as detailed in paragraph 119 above. In addition, the Chamber observes that the witness saw the Accused from a distance of 90 metres the first time on 13 May, and a second time from not more than 100 metres away. The witness also provided an accurate description of the Accused during this attack. The Chamber considers that the witness had the opportunity to observe the Accused during this attack and did not mistakenly identify him.

153. After consideration of the totality of the evidence, including that discussed here and in II.2.5.3 above, Witness GGY was found to be a credible witness.

#### *Witness HR*

154. The Chamber refers to the discussion on Witness HR's credibility in II.2.4.2 above. In relation to the 13 May attack, the Defence pointed out that the witness had not mentioned the Accused as being one of those involved in the 13 May attack in *Kayishema*.<sup>143</sup> Witness HR insisted that he had mentioned the Accused, but the transcripts from *Kayishema* do not reflect this. The Defence suggested that Prosecution investigators had told him about the Accused's involvement on 14 and 16 February 1998, a few days after his testimony in *Kayishema*. The witness disagreed and reiterated that he had seen the Accused.<sup>144</sup> Given that he mentioned this in his statement dated 20 March 1996 (as well as that dated 14 and 16 February 1998), the Defence's suggestion is not well-founded. It was wrongly suggested by the Defence that he had not mentioned the Accused in *Musema* either. During that trial, the witness mentioned the Accused as having participated in attacks at Muyira Hill together with Musema and others.<sup>145</sup> The Defence had therefore unfairly misrepresented the record to the witness. The Defence sought to assert that these alleged omissions indicated that the Accused was not present at the attack.

155. After consideration of the totality of the evidence, including that discussed here and in II.2.4.2 above, Witness HR was found to be a credible witness.

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<sup>141</sup> Id., p. 179, para. 13.

<sup>142</sup> Id., p. 181, para. 23.

<sup>143</sup> Id., p. 128, para. 32.

<sup>144</sup> T. 19 Aug. 2002, p. 117-124; *Kayishema*, T. 11 Feb. 1998, pp. 43-44.

<sup>145</sup> *Musema*, T. 3 Feb. 1999, p. 15.

*Witness GGR*

156. The Defence submits generally that the inconsistencies in the witness's evidence and his mistaken identification of the Accused indicates that the witness should not be relied upon.<sup>146</sup>

157. Regarding the issue of mistaken identity, the Defence suggested that the witness must have faced the Accused's back during the attack. The witness said he saw the Accused's profile. The Chamber notes that the witness saw the Accused on several occasions throughout the day of the attack, from a distance of 40-50 metres. The Chamber further notes that the witness knew the Accused prior to this event and in particular, sometime between 1980 and April 1990, the witness had the opportunity to observe the Accused once for 20-30 minutes when the Accused was recruiting members of the new MDR Party.<sup>147</sup> In light of this, the Chamber considers that the witness was not mistaken in his identification of the Accused during this attack.

158. The Defence also submitted that as the witness had not mentioned the Accused in his first two statements, nor in the *Kayishema* case, it casts doubt on his testimony.<sup>148</sup> The witness explained that he could not have listed all the names as he saw many people.<sup>149</sup> The Chamber accepts this explanation and observes that the first written statement mainly dealt with Kayishema, whereas the second focused on Gatete. In his third statement, the witness included the Accused among several leaders of the attacks.

159. The Defence pointed out discrepancies in this case, *Kayishema* and *Musema* relating to the date he was injured and the treatment he received for that injury.<sup>150</sup> The Chamber notes that the dates he testified to in all three cases fall within a range of dates he indicated in *Musema*, and that there is therefore no discrepancy in this regard. As for the treatment of his injury, the Chamber considers that it is conceivable that he received more than one form of treatment for his injury.

160. The Defence asserted that the evidence of the witness was rejected as unreliable by the Chamber in *Musema*.<sup>151</sup> The Chamber notes that the witness was found to be credible in *Musema*.<sup>152</sup>

161. Upon evaluation of the totality of the evidence, the Chamber considers that apart from minor discrepancies, Witness GGR's testimony was clear and consistent and the Chamber finds him to be a credible witness.

<sup>146</sup> Defence Final Trial Brief, p. 149, para. 25.

<sup>147</sup> T. 20 Aug. 2002, pp. 54-56, 128-134.

<sup>148</sup> Defence Final Trial Brief, p. 145, para. 12.

<sup>149</sup> T. 20 Aug. 2002, pp. 88-89, 121-123.

<sup>150</sup> Defence Final Trial Brief, p. 146, para. 16.

<sup>151</sup> Id., p. 141, para. 3.

<sup>152</sup> *Musema* (TC), para. 682-684.



*Witness DAF*

162. The Defence submits generally that the inconsistencies in Witness DAF's evidence, and the mistaken identification of the Accused, demonstrate that the witness should not be relied upon.<sup>153</sup>

163. The Defence put it to Witness DAF that he was mistaken in his identification of the Accused during the 13 May attack. The witness confirmed that he had known the Accused prior to this attack and was not mistaken.<sup>154</sup> The Chamber notes that the witness saw the Accused at the attack from a distance of 50 to 100 metres, and that the witness knew the Accused prior to the attack. The Chamber notes the witness's prior knowledge of the Accused, and the fact that he furnished an accurate description of the Accused as he saw him sometime before 1990. Considering that the witness knew the Accused prior to this event, the Chamber considers that the witness was not mistaken in his identification of the Accused during this attack.

164. The Defence raised the issue of a finding of unreliability relating to the witness's testimony in *Musema*.<sup>155</sup> However, the Chamber notes that the finding was in relation to an incident of the capture of a woman on the instructions of Musema, and Musema's particular actions or words during the 13 May attack. Therefore, the finding does not relate to the witness's testimony in this case. The Chamber has examined the testimony and observed the witness's demeanour in this case carefully in considering the reliability of the witness.

165. The witness testified to having been 50 to 100 metres from the Accused and other leaders when he saw them on 13 May 1994. The estimate he gave in his reconfirmation statement dated 20 January 1997 was 100 to 150 metres. It was suggested by the Defence that he could not have recognized the leaders from that distance. The witness said that these were people he already knew and he recognized them immediately. The Chamber accepts his explanation. In the same 1997 statement, the witness also stated that he did not know Ruzindana before the war; yet during his testimony, he claimed to know him and to be able to recognize him. The witness explained that he had told the investigators that he knew Ruzindana before the war.<sup>156</sup> The Chamber does not consider this discrepancy to be significant.

166. The Defence pointed out that the witness had mentioned the Accused as one of the leaders of the Bisesero attacks in his testimony in the *Kayishema* trial,<sup>157</sup> but had not done so in the later *Musema* trial.<sup>158</sup> The witness explained that his focus was the Accused in that case and that he had not been asked anything about the Accused.<sup>159</sup>

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<sup>153</sup> Defence Final Trial Brief, p. 158, paras. 28-29.

<sup>154</sup> T. 26 Aug. 2002, pp. 110, 119.

<sup>155</sup> Defence Final Trial Brief, p. 149, para. 2.

<sup>156</sup> T. 26 Aug. 2002, pp. 99-103.

<sup>157</sup> *Kayishema*, T. 3 Mar. 1998, p. 38.

<sup>158</sup> *Musema*, T. 4 May 1999, pp. 18-23.

<sup>159</sup> T. 26 Aug. 2002, pp. 117-119.

167. The Defence highlighted another discrepancy: the witness testified to having been at Kucyapa before 13 May; however, in *Musema*, he said that the first time he was at Kucyapa was on 13 May.<sup>160</sup> He explained that in *Musema*, he had meant that 13 May was the first time he was at Kucyapa for the purpose of hiding from attackers.<sup>161</sup>

168. Witness DAF also testified to an alleged rape and murder by the Accused, which is examined in more detail in II.6 below. However, the Chamber has considered as a whole submissions made as to the credibility of the witness. The Chamber notes that the witness's account of the sighting of the Accused on 13 May, and the alleged rape and murder of the young girl by the Accused on 20 May, are consistent with his prior statements. The witness was consistent during cross-examination. Based on an evaluation of the totality of the evidence, the Chamber finds Witness DAF to be a credible witness.

#### *Witness GGM*

169. The Defence submits that the witness's evidence contained inconsistencies and that the witness mistakenly identified the Accused. In light of these factors, the Defence asserts that there would be a serious risk of a miscarriage of justice if the witness were to be relied upon.<sup>162</sup>

170. The Defence submits that the witness was too young at the time of events to provide a reliable account of what he witnessed.<sup>163</sup> The Chamber notes that he was 17 years old in 1994, and therefore old enough to understand the events to which he claims to have been an eyewitness.

171. The Defence put to the witness that the inauguration took place at a time when the witness would have been in school. The witness was a secondary school student at the time. The witness said that he had stayed at home in Gitwa a long time as he could not resume his studies until November. A week later, he sat for his exams. It was also put to him that the Accused did not attend that meeting. The witness reiterated that he was present at the meeting and saw the Accused. The Defence suggested that he was mistaken as to the identity of the person he saw, but the witness said that the person introduced himself as Eliézer Niyitegeka.<sup>164</sup>

172. It was suggested by the Defence to the witness that he had named the Accused because he felt a minister ought to be responsible for the killings. The witness indicated that he had not mentioned other ministers like Karemera, as he had not seen him.<sup>165</sup> Further, when the witness had not seen something himself, he would state that he had merely heard about it.

<sup>160</sup> *Musema*, T. 4 May 1999, p. 69.

<sup>161</sup> T. 26 Aug. 2002, p. 117.

<sup>162</sup> Defence Final Trial Brief, pp. 168-169, paras. 36-38.

<sup>163</sup> *Id.*, p. 161, paras. 9-11.

<sup>164</sup> T. 23 Aug. 2002, pp. 22-25; T. 26 Aug. 2002, p. 60.

<sup>165</sup> T. 26 Aug. 2002, p. 17.

173. The Defence contended that since the person Witness GGM was with in the sorghum field on 13 May did not confirm the witness's account when he testified in *Kayishema* under the pseudonym KK, it casts doubt on the witness's evidence.<sup>166</sup> The Defence claimed that Witness KK said that this meeting took place on 14 May and that Witness KK did not mention seeing the Accused from the sorghum field.<sup>167</sup> The Chamber consulted the relevant testimony of Witness KK in *Kayishema* and concludes that he was referring to a different meeting that took place on 14 May, as Witness KK refers to a meeting that occurred from 9 a.m. to noon, during which the attackers were told to go home as it was the last day of attacks.<sup>168</sup> The Chamber notes that Witness GGM's testimony in *Kayishema* relating to the Accused's involvement is consistent with the account he gave in this case.<sup>169</sup>

174. The Defence erroneously states that the witness did not deny that his brother died fighting as an RPF soldier.<sup>170</sup> In fact, the witness, when asked by the Defence if he had any family members who died fighting for the RPF, clearly said "No." When asked more specifically about his brother, he said there were no RPF soldiers in Bisesero, and he did not know how his brother had died.<sup>171</sup> The Defence's assertion is therefore misleading. Similarly, the Defence's assertion that Witness GGM's evidence regarding the absence of RPF soldiers contradicts Witness GK's testimony on this issue is misleading, as it is clear from Witness GK's evidence that he did not believe people who had told him that there were RPF soldiers present (see II.4.3 below).

175. Witness GGM corroborates the evidence as to a large-scale attack at Muyira Hill on 13 May, but he does not say that he saw the Accused during the attack. Witness GGM also testified to other events, which are detailed in II.5.3 and II.5.4 below. However, the Chamber has considered as a whole submissions made as to the credibility of the witness. The witness gave a clear eyewitness account of incidents personally observed by him and his testimony on this attack was consistent. Upon evaluation of the totality of the evidence, the Chamber finds Witness GGM to be a credible witness.

#### *Witness GGH*

176. The Chamber refers to the discussion on Witness GGH's credibility in II.2.1.2 above, and recalls that the Chamber found that the witness was credible.

#### **2.6.4 Alibi**

177. The Chamber considered and rejected the relevant alibi evidence in II.2.2.3 and II.2.4.3 above.

<sup>166</sup> Defence Final Trial Brief, p. 162, para. 15.

<sup>167</sup> T. 26 Aug. 2002, pp. 12-15, 22.

<sup>168</sup> *Kayishema*, T. 26 Feb. 1998, pp. 47-49, 91-92.

<sup>169</sup> Id., T. 10 Nov. 1997, pp. 91-92, 97-100.

<sup>170</sup> Defence Final Trial Brief, p. 168, para. 33.

<sup>171</sup> T. 23 Aug. 2002, pp. 40-42.

## 2.6.5 Factual Findings

178. Judicial notice was taken of the fact that on 13 May, a large-scale attack took place at Muyira Hill against Tutsi refugees.<sup>172</sup> Based on the totality of the evidence, the Chamber finds that on 13 May, sometime between 7.00 a.m. and 10.00 a.m., the Accused was one of the leaders in a large-scale attack by armed attackers against Tutsi refugees at Muyira Hill. The Accused was armed with a gun and was shooting at the Tutsi refugees at the hill. In addition, the Accused instructed the attackers during the attack, showing the attackers where to go and how to attack the refugees. There were a large number of Tutsi refugees, of all ages and both sexes, at Muyira Hill. The attackers comprised thousands of Interahamwe, soldiers, policemen and Hutu civilians. The attackers were armed with guns, machetes, spears, sharpened bamboo sticks and clubs. They were transported in ONATRACOM buses, lorries belonging to COLAS, MINITRAP vehicles, buses, pick-ups, vehicles from the Gisovu Tea Factory and vehicles commandeered from Tutsi. These vehicles parked at Kucyapa. The attackers were chanting "Tuba Tsembe Tsembe", which means "Let's exterminate them", a reference to the Tutsi. The Accused was in the front row leading attackers, together with other leaders. Thousands of Tutsi were killed as a result of this attack.

## 2.7 14 May Attack at Muyira Hill

### 2.7.1 Testimonies of Prosecution Witnesses GGY, GGH and HR

#### *Witness GGY*

179. Witness GGY testified to having seen the Accused on the morning of 14 May 1994 shooting at refugees at Muyira Hill. The Accused and the other attackers had parked their vehicles at Kucyapa. He saw the Accused at a signpost along the road at Kucyapa, from less than 100 metres away. The Accused was with Kayishema, the former Kibuye Prefet; Alfred Musema; Sikubwabo, the Bourgmestre of Gishyita; Ndimbati, the Bourgmestre of Gisovu; Ruzindana; Mika; Gérard and Elizaphan Ntakirutimana; Enos Kagaba; Kanyabungo Augustin; a young man called Victoire; Gasha Kabuhakwe, the former bourgmestre of Gishyita; Segatarama, the conseiller of Gitarama; Vincent Rutaganira, the conseiller of Mubuga, amongst others. The group of attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen. They were carrying guns, spears, clubs, machetes and sharpened objects. The Accused was carrying a medium-sized gun, between 80 and 100 centimetres in length. Upon seeing the attackers, the refugees fled to Muyira Hill where the witness saw the Accused shoot at the refugees there. The attack lasted until 4.30 p.m. or 5.00 p.m. They were chased to Kiraro river where another group of attackers were waiting and "they slayed many, many people to the extent that the river became red with blood."<sup>173</sup> Witness GGY's testimony as to Tutsi being targeted at the Bisesero hills, and his prior knowledge of the Accused was recounted in II.2.5.1 above.

<sup>172</sup> Decision on the Prosecutor's Motion for Judicial Notice of Facts, dated 4 September 2002.

<sup>173</sup> T. 14 Aug. 2002, pp. 47-53; T. 15 Aug. 2002, p. 79; T. 14 Aug. 2002, pp. 79-81 (Fr.).

*Witness GGH*

180. Witness GGH saw the Accused on 14 May 1994, when he had fled to Nyabushyoshyo Forest with an Alex Gumiza.<sup>174</sup> He saw the Accused aboard a vehicle going towards Kucyapa, but he did not see the Accused do anything.

*Witness HR*

181. On 14 May, Witness HR and the refugees saw the same vehicles as those used during the 13 May attack, approach and stop at Kucyapa. The refugees had not been able to sleep the night before. When they saw the attackers, they fled in various directions and were pursued by the attackers who shot at them. Some were killed with machetes, others who were hiding were found and killed. The refugees spent that day running around the hills trying to save their lives. The witness stated that many refugees died that day. Witness HR said that he did not see the Accused on that occasion.<sup>175</sup>

**2.7.2 Notice***Witness GGY*

182. The Defence objected to Witness GGY's evidence of this attack on the basis that it had no prior notice that he would give such evidence.<sup>176</sup> The Chamber notes that attacks in Bisesero are alleged in the Indictment but the specific dates of these attacks, including those of 13 and 14 May, are not specified. The 14 May attack is not specified in the Prosecutor's Pre-trial Brief or the witness's prior statements. However, in his statement dated 25 October 1999, Witness GGY mentioned that attackers used to come everyday to the Bisesero hills, and indicated that the Accused was one of the participants involved in one of these attacks at Kivumu in Bisesero. Further, Prosecution witnesses have testified to large-scale attacks almost daily in various areas in the Bisesero Hills.

183. Witness GGY gave evidence as to the large-scale attack at Muyira Hill on 13 May, of which the 14 May attack is a continuation. There is evidence that the 13 May and 14 May attacks were in fact one continuous attack. Judicial notice was taken of the fact that a large-scale attack against Tutsi refugees took place at Muyira Hill on 13 and 14 May 1994.<sup>177</sup> Witness HR testified to the same vehicles as those used on 13 May arriving in Kucyapa on 14 May.

184. The Chamber considers that the Indictment provided notice to the Defence that it would be alleged that the Accused participated in attacks in Bisesero, and views the 14 May attack as a continuation of the 13 May attack, of which the Defence had notice, through the Prosecutor's Pre-trial Brief, that Witness GGY would testify to.

<sup>174</sup> T. 15 Aug. 2002, pp. 97-99; T. 16 Aug. 2002, p. 76; T. 15 Aug. 2002, p. 178 (Fr.).

<sup>175</sup> T. 19 Aug. 2002, p. 31.

<sup>176</sup> Defence Final Trial Brief, p. 176, para. 2.

<sup>177</sup> Decision on the Prosecutor's Motion for Judicial Notice of Facts, dated 4 September 2002.

### 2.7.3 Credibility Assessments

#### *Witness GGY*

185. The Chamber refers to the discussion on Witness GGY's credibility in II.2.5.3 and II.2.6.3 above. In addition, the Defence submits that the witness was mistaken in his identification of the Accused.<sup>178</sup> The Chamber notes the witness's prior knowledge of the Accused as detailed in paragraph 119 above. In addition, the Chamber notes that the witness observed the Accused from a distance of less than 100 metres away during this attack and could name the other leaders who were with the Accused. The witness was able also to describe the gun used by the Accused in the attack. In light of this, the Chamber considers that the witness had the opportunity to observe the Accused during this attack and did not mistakenly identify him.

186. After consideration of the totality of the evidence, including that discussed here and in II.2.5.3 and II.2.6.3 above, the Chamber found that Witness GGY is a credible witness.

#### *Witness GGH*

187. Witness GGH provides limited corroboration for the Accused's presence in the area of Kucyapa on 14 May. The Chamber refers to the discussion on the witness's credibility in II.2.1.2 and II.2.6.3 above, wherein he was found to be a credible witness.

#### *Witness HR*

188. Witness HR corroborates evidence that a large-scale attack took place on 14 May when the attackers' vehicles parked at Kucyapa. The Chamber refers to the discussion on Witness HR's credibility in II.2.4.2 and II.2.6.3 above, wherein he was found to be a credible witness.

### 2.7.4 Alibi

189. The Defence adduced alibi evidence to rebut the Prosecution's allegations relating to the 14 May attack.

#### *Witness TEN-22*

190. The Chamber refers to the discussion of Witness TEN-22's alibi evidence in II.2.2.3 above. Witness TEN-22 testified to Bernard Kouchner's visit to Murambi in Gitarama in mid-May, at which the Accused was present. He could not recall the exact date of the visit and stated that he thought it was on 14 May; however, he could only state with certainty that it was sometime in mid-May. Kouchner came to the witness's workplace with the Accused, where Kouchner spent a few minutes and the Accused greeted the witness and his colleagues. The witness explained that he recalled the visit because Kouchner was escorted by bodyguards, which he declared was unusual. One of the bodyguards told the witness that the RPF army had shot at them when they left

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<sup>178</sup> Defence Final Trial Brief, p. 181, para. 22.

Kigali. The witness testified that Kouchner paid only one visit to Murambi, and stayed for a few hours in that place.<sup>179</sup>

191. The Prosecution suggested to the witness that Bernard Kouchner did not come to Gitarama on Saturday 14 May 1994, as Kouchner was in Kigali on that date, and only travelled to Gitarama on Sunday 15 May 1994. The witness answered that he could not remember the exact dates, and that he did not remember what day of the week Kouchner's visit to Gitarama had taken place.<sup>180</sup> No evidence was led to support the Prosecution's suggestion regarding the date of Kouchner's visit.

192. The Chamber considers that the witness's uncertainty as to the date of Kouchner's visit weakens the alibi evidence significantly. There is no evidence as to whether this visit took place in the morning of 14 May, at the time of the attack. Even if it is accepted that the visit was on 14 May, the witness only saw the Accused for a few minutes on that day, which is not inconsistent with the possibility that the Accused could have left Murambi for Bisesero, and returned the same day, unobserved by the witness. The Chamber finds that Witness TEN-22's evidence does not raise a reasonable doubt that the Accused was at Muyira Hill on 14 May.

*Witness TEN-9*

193. Witness TEN-9 stated that on 14 May, Bernard Kouchner came to Murambi, Gitarama Prefecture, with a considerable escort in an armed car. Mr Kouchner went to the centre in which the Interim Government had its offices. At the center, he met with the Accused, and together, they met journalists who were to interview Kouchner at Radio Rwanda's mobile studio in the centre of Murambi. The witness passed by and saw the Accused.<sup>181</sup> He added that, upon their arrival, he heard that Kouchner's convoy had been shot at during their journey from Kigali.

194. The Prosecution suggested to the witness, on cross-examination, that Bernard Kouchner was in Kigali on Saturday 14 May 1994, and that he arrived in Gitarama only on 15 May 1994. The witness disagreed and stated that Kouchner arrived on 14 May. The Prosecution then put to him that Mr. Kouchner's convoy was shot at not on the way from Kigali to Gitarama, but on the way back from Gitarama to Kigali, on 15 May 1994. The witness maintained his testimony. The Prosecution relied on a press article by Journalist Mark Huband of the Guardian Newspaper in London, who travelled in the same vehicle as Bernard Kouchner and published an account of the delegation's visit to Rwanda, to show that Kouchner was in Murambi on 15 May, not 14 May. The witness reiterated his testimony and explained that perhaps Kouchner had stayed a night in Gitarama and was still there on 15 May.<sup>182</sup>

195. There is no evidence as to whether this visit took place in the morning of 14 May, at the time of the attack. There is no evidence as to the length of time for which the

<sup>179</sup> T. 29 Oct. 2002, pp. 98-99; 112-113.

<sup>180</sup> Id., pp. 110-111.

<sup>181</sup> Id., pp. 136-137.

<sup>182</sup> T. 30 Oct. 2002, pp. 35-38.

witness observed the Accused, but the witness's testimony indicates that it was for a short time. This is not inconsistent with the possibility that the Accused could have left Murambi for Bisesero, and returned the same day, unobserved by the witness. Therefore, TEN-9's evidence does not raise a reasonable doubt that the Accused was present at Muyira Hill on 14 May.

*Witness TEN-10*

196. The Chamber refers to the discussion of the alibi evidence given by the Witness TEN-10 in II.2.2.3 above. In addition, TEN-10 testified to a mission the Accused undertook to Goma in mid-May, sometime between 10 to 20 May. Due to his occupation at the time, the witness saw the mission warrant intended for the Accused, but he did not verify whether the Accused actually went on this mission, although he said that once a warrant is issued, the mission would be undertaken. However, the witness said that he could not remember the length of the missions, and had not seen a mission report containing more details of the mission.<sup>183</sup>

197. The Prosecution pointed out in cross-examination that the witness was not aware of the missions of the other ministers, only those of the Accused. The witness replied that this was because he had come to testify for the Accused specifically, and given time, he would be able to remember the missions of the other ministers.<sup>184</sup>

198. The witness's selective memory regarding the Accused's missions undermines the reliability of his evidence. In any event, as the witness is uncertain about the exact dates and duration of the mission, and did not verify that the Accused in fact went on the mission, this is not inconsistent with the possibility that the Accused could have left for Bisesero on 14 May as alleged by the Prosecution. TEN-22 and TEN-9 testified to the Accused's presence in Murambi, not Goma, on 14 May. The Chamber does not consider this alibi evidence to be reliable, and recalls that TEN-10 was not found to be a credible witness in II.2.2.3 above. Therefore, TEN-10's evidence does not raise a reasonable doubt that the Accused was present at Muyira Hill on 14 May.

*Witness TEN-23*

199. Witness TEN-23 travelled to Gitarama at the beginning of May 1994. Witness TEN-23 noted that he met Witness TEN-19 by chance in the street, and that Witness TEN-19 agreed to provide him with accommodation. The witness testified that he had met Witness TEN-19 once before, some time between 1991 and 1992, when one of his fellow students at the military school had introduced them. Witness TEN-23 testified that he found other people at Witness TEN-19's house, and that more individuals arrived after he did. He testified that, in total, there were approximately 15 to 20 people at the house, including men, women and children, looking for protection. The witness stated that he could not be certain of the ethnicity of the other people at the house, but he guessed that they were a mixed group. He explained that he, like the other refugees, was fearful of encountering Interahamwe outside the compound, therefore, he left the compound only once. Witness TEN-23 testified that on one day, sometime between 10 and 15 May 1994,

<sup>183</sup> T. 11 Nov. 2002, pp. 19, 82-83, 99-100.

<sup>184</sup> T. 11 Nov. 2002, pp. 82, 105-106.





during his stay at the house a group of Interahamwe armed with “big sticks” came to the door looking for Tutsi, specifically supporters of the Inkotanyi. According to the witness, the Interahamwe were not too numerous to count. He testified that Witness TEN-19 talked to the Interahamwe and said the people inside the house were people he knew.<sup>185</sup>

200. Witness TEN-23 stated that the Interahamwe wanted to break down the door and were knocking very hard on the door using clubs and big sticks, but that the owner of the house was able to resist them. He stated that, although Witness TEN-19 was unarmed, he was able to prevent the Interahamwe from entering the house, and when he managed to repel them, he shut the door.<sup>186</sup>

201. Witness TEN-23 said that Witness TEN-19 then left the house and returned ten minutes later, accompanied by the Accused. The Interahamwe continued to knock on the door after Witness TEN-19 had left but were unable to enter the house. He said that, when Witness TEN-19 returned to the house, he unlocked the door with a key, and those inside unfastened the latch and opened the door for him. The witness said that the Interahamwe were still nearby.<sup>187</sup>

202. Witness TEN-23 stated that Witness TEN-19 explained to the Accused that the Interahamwe were threatening the people inside his house, and requested his assistance to make these people leave. The witness said that the Accused then instructed the Interahamwe to depart, and used a Rwandan proverb which says that in Rwandan culture, when the hunter flushes out an animal and the animal finds a refuge in a house it is prohibited to chase out the animal and give the animal to the hunter. Subsequently, the Interahamwe left. The conversation lasted for approximately ten minutes. The witness heard the conversation between the Accused and the Interahamwe because he was standing inside the house near the door. Witness TEN-23 said that the Accused then calmed the people in the house down and told Witness TEN-19 that he should contact the Accused if any more problems arose.<sup>188</sup>

203. Witness TEN-23 described the Accused as being of medium height but stout. The Accused was wearing a suit and spectacles, and had greying hair. He further stated that the Accused was unarmed.<sup>189</sup>

204. The Chamber notes that the witness does not provide a certain date for this incident, only that it occurred between 10 and 15 May, which is not inconsistent with the possibility that the Accused was present in Bisesero on 14 May as alleged. The Chamber does not consider that this evidence provides an alibi for the Accused.

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<sup>185</sup> T. 22 Oct. 2002 pp. 61-68, 71; T. 23 Oct. 2002 pp. 12, 26, 30-36. Witness TEN-19 was a witness for the Defence, but he was not called.

<sup>186</sup> T. 22 Oct. 2002 pp. 66-68; T. 23 Oct. 2002 pp. 12-14.

<sup>187</sup> T. 22 Oct. 2002 pp. 66-68; T. 23 Oct. 2002 pp. 13-15.

<sup>188</sup> T. 22 Oct. 2002 pp. 66-69; T. 23 Oct. 2002 pp. 10-12.

<sup>189</sup> T. 23 Oct. 2002 p. 11.

## 2.7.5 Factual Findings

205. Judicial notice was taken of the fact that on 14 May, a large-scale attack took place at Muyira Hill against Tutsi refugees.<sup>190</sup> Based on the totality of the evidence, the Chamber finds that on the morning of 14 May, the Accused and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kucyapa. The attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen. They were carrying guns, spears, clubs, machetes and sharpened objects, and launched a large-scale attack against the Tutsi refugees at Muyira Hill. The Accused was armed with a gun and shot at Tutsi refugees at Muyira Hill.

## 2.8 End May Attack at Rugarama

### 2.8.1 Testimony of Prosecution Witness GGH

206. Witness GGH saw the Accused at the end of May when the Accused pursued the witness and other refugees the entire day, until they managed to escape to Cyamaraba in Kazirandimwe and hid in a bush there.<sup>191</sup> At about 4.00 p.m., the Accused parked his vehicle at Rugarama and instructed attackers to return at 6.00 p.m. to continue the killing, in particular, to attack and kill the refugees when they left their hiding places to look for food. The witness heard the Accused's instructions as he was hiding in a small forest. The Accused was wearing a khaki long coat and a hat at the time. The attackers then went back and killed those who had started to leave the bushes, in which they were hiding, to search for food.<sup>192</sup> Although the Accused was about 250 metres away, the witness said he could hear the Accused because the witness was in a valley, looking upwards at the Accused who was on a mount, and the witness could hear the echoes of the Accused's voice.<sup>193</sup>

### 2.8.2 Credibility Assessment

207. The Chamber refers to the discussion of Witness GGH's credibility in II.2.1.2 above, wherein he was found to be a credible witness. The Chamber recalls that the witness's evidence on this event in particular was accepted, despite discrepancies with his statement. However, given the conditions in which the witness heard this instruction, in particular, the distance of 250 metres between the Accused and the witness, the witness's evidence of this incident is not reliable and the Chamber will not rely on this evidence.

<sup>190</sup> Decision on the Prosecutor's Motion for Judicial Notice of Facts, dated 4 September 2002.

<sup>191</sup> T. 15 Aug. 2002, p. 99; T. 15 Aug. 2002, p. 180 (Fr.). The place named by the witness in Kazirandimwe is spelt "Kamarapa" in the English transcripts; in the French transcripts, it is spelt "Cyamaraba". The French version is favoured as the first translation from the original Kinyarwanda.

<sup>192</sup> T. 15 Aug. 2002, pp. 99-101; T. 16 Aug. 2002, p. 93.

<sup>193</sup> T. 16 Aug. 2002, pp. 86-87; T. 16 Aug. 2002, pp. 144-145 (Fr.). See in particular, p. 145 (Fr.): "Lorsqu'on est près de la vallée, il y a toujours des échos quand on parle, et quand il parlait, j'entendais sa voix et les échos."

## 2.9 Attack in Kiziba Around 18 June

### 2.9.1 Testimony of Prosecution Witness GGV

208. Witness GGV saw the Accused participating in an attack at Kiziba at about 11.00 a.m. around 18 June. The witness, a Tutsi, was among the attackers, disguised as one of them, with Interahamwe friends of his who were protecting him. They had persuaded him that being with them would be safer than staying at home, at a time when the Interahamwe were searching houses for Tutsi and killing any Tutsi found. The attackers at Kiziba were armed with traditional weapons. The witness arrived at the attack between 9.30 a.m. and 10.00 a.m., by which time the attacks had already begun. The witness stayed behind to watch over the buses used as transport for the attackers. The Accused arrived later in his vehicle with a high-ranking lieutenant; Ruzindana arrived with Kayishema. After parking their vehicles, all of them proceeded to the scene of the attack, armed with guns and pistols, including the Accused. The witness saw them exit their vehicles and load their weapons. He did not follow them towards the scene of the attack, but he could see them as he was using binoculars. In the middle of the attack, the Accused ran back, without his gun, to the place where the buses were parked. His civilian trousers were torn and he was breathless. He said they were able to kill Tutsi in Bisesero but some of these Tutsi escaped and were able to identify the Accused and the lieutenant. They both began to fire their guns, and when they were running out of ammunition, the lieutenant continued shooting to provide cover for the Accused to flee. While the Accused was resting, one person found Inyenzi in the bushes and said he had found his victim for the day. The Accused told him not to kill them, an old man and a young boy, but to bring them to the Accused. The Accused then said to them: “[Y]our relatives almost killed me”. He loaded his gun and shot the old man in the chest. He shot the young boy in the head and the body, and told the attackers to “remove the filth”, being a reference to the corpses of the old man and young boy. This attack lasted until around 3.00 p.m. or 4.00 p.m. and resulted in a large number of victims among the Tutsi refugees.<sup>194</sup>

209. After the attack, some left and others, transported in buses, went to the prefecture offices in Kibuye town. Some were in the Kibuye Prefectural Office, while others were in the canteen. The witness was outside in the open air close by the windows of the canteen with his Interahamwe friend. From his position he could hear what was going on in the canteen despite the fact that people were coming and going and there was quite a lot of noise. The meeting was held to provide refreshments to the attackers and to discuss the attack and its shortcomings, and to plan for the future. Many lamented the fact that they could not “finish off” the refugees in Bisesero and said the attacks should continue the next day. The witness said the Accused spoke as the government’s representative and promised gendarmes for the next day’s attack. He also told the bourgmestres and others present to do everything they could to ensure they participated in the attacks in order to end the Tutsi problem in Bisesero. Others also spoke while refreshments were served. The meeting only lasted about one to two hours, as it was already dark. Everyone then

<sup>194</sup> T. 27 Aug. 2002, pp. 29-38, 44, 75-76, 79, 117; T. 28 Aug. 2002, pp. 60-62.



returned home. The witness heard from one of his friends that an attack did take place the next day although he did not witness it.<sup>195</sup>

210. Witness GGV knew the Accused before 1994 as the Accused visited the witness's house once with his younger brother, who was friends with the witness's older brother and would visit often. The Accused's brother was an officer and was armed with a pistol whenever he visited, although he was in civilian clothes. The Accused's brother was of an average skin colour, not too dark or too fair, and was stocky and not very tall. He also knew the Accused from Nyirambo Adventist Church, and from the construction of the Gisovu-Gishyita road, which passes the witness's house. During the construction, the Accused would visit the site. In addition, he knew him from having attended an MDR Power meeting held near the Esapan School, over which the Accused presided. After 6 April 1994, he would also see the Accused passing in Kibuye town in his vehicle. The witness identified the Accused in court.<sup>196</sup>

### 2.9.2 Credibility Assessment

211. The Defence submitted that the witness's evidence was fantastical and incredible.<sup>197</sup> In particular, the Defence suggested that his account in his statement dated 8, 9 and 10 November 1999 of having narrowly escaped death twice is extraordinary. The witness offered a plausible explanation: on both occasions, friends intervened and saved him.<sup>198</sup>

212. Another indication of unreliability, according to the Defence, is the witness's testimony that the Accused's brother visited his house once with the Accused – the Defence suggested to the witness that the Accused had no brothers living at the time.<sup>199</sup> The witness explained in court that the term “brother” included the son of a paternal uncle or a person one is very close to.<sup>200</sup>

213. The Defence suggested that he was giving testimony to save himself from prosecution, and questioned the motives of the witness, given that he himself approached the ICTR to give information.<sup>201</sup> The Defence also asserted that the witness had ties with the RPF.<sup>202</sup> The Defence has not adduced any evidence to support its assertions. The witness was clear and consistent about the substance of his eyewitness testimony. The witness also testified to other incidents (see II.3.1.1 below). Having considered all the evidence, the Chamber finds Witness GGV to be a credible witness.

<sup>195</sup> T. 27 Aug. 2002, pp. 39-44; T. 28 Aug. 2002, pp. 17-18.

<sup>196</sup> T. 27 Aug. 2002, pp. 3-7, 19; T. 28 Aug. 2002, p. 63.

<sup>197</sup> Defence Final Trial Brief, p. 182-183, paras. 3-4, p. 191, para. 30.

<sup>198</sup> T. 27 Aug. 2002, pp. 92-97, 100-105; Defence Final Trial Brief, p. 185, para. 8.

<sup>199</sup> Defence Final Trial Brief, p. 185, para. 9; T. 27 Aug. 2002, pp. 62-63; T. 28 Aug. 2002, pp. 58, 78.

<sup>200</sup> T. 28 Aug. 2002, pp. 83-84.

<sup>201</sup> *Id.*, pp. 26-27.

<sup>202</sup> Defence Final Trial Brief, p. 191, para. 29.



### 2.9.3 Alibi

#### *Witness TEN-10*

214. Witness TEN-10 testified to three meetings of the Interim Government chaired by the Prime Minister at Muramba on Friday 10 June, Friday 17 June and sometime between 20 and 30 June, which were attended by the Accused. The third meeting took place about a week after the second. The first two meetings lasted from 10.00 a.m. or 11.00 a.m. to 5.00 p.m. or 7.00 p.m. The witness did not say that he personally attended these meetings. He did not see the minutes of the meetings; he saw only the agendas issued prior to the meetings. He was not able to provide information on the content of the discussions at the meetings, or any other details concerning the meetings, other than that they fell on the Fridays to which he attached the dates stated. He was also uncertain about the attendance of other ministers. In cross-examination, some dates were put to the witness at random and he was asked to say on which day of the week those dates fell, including 10 and 17 June, but he was unable to say on which days of the week any of the dates fell.<sup>203</sup> Therefore, his evidence that there were meetings on 10 and 17 June is questionable. In light of this, and the reasons detailed in II.2.2.3 above, the Chamber finds that Witness TEN-10 is not credible and his evidence does not raise a reasonable doubt that the Accused was at Kiziba around 18 June.

### 2.9.4 Factual Findings

215. Based on the totality of the evidence, the Chamber finds that around 18 June, at about 11.00 a.m., the Accused was at Kiziba with the attackers who were armed with traditional weapons. The Accused was armed with a gun and he shot at Tutsi refugees. The findings of the Chamber in relation to the alleged murder of the old man and the young boy will be set out in II.5.1.3 below. The findings of the Chamber in relation to the meeting after the attack will be set out in II.3.2.4 above.

## 3. Participation in Meetings

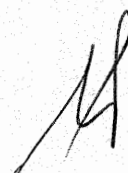
### 3.1 Meetings in Kibuye Prefectural Office on 10 June and One Week Later

#### 3.1.1 Testimony of Prosecution Witness GGV

216. On or about 10 June, Witness GGV saw the Accused at a meeting at Kibuye Prefecture Hall, which began sometime between 9.00 a.m. and 10.00 a.m. His Interahamwe friends had told him to attend the meeting to prevent being found and killed by Interahamwe searching for Tutsi in their homes.<sup>204</sup> They gave him clothes with which to disguise himself at the meeting, which was attended by Hutu members of the Kibuye population. He arrived before the meeting began, and sat at the back of the hall, and saw Ruzindana, Kayishema, the Accused and Musema arrive. These leaders, including the Accused, sat on a podium in the front of the hall facing the audience, about 20 metres from the witness. Other people sitting with the leaders included Dr. Gérard

<sup>203</sup> T. 11 Nov. 2002, pp. 26-28, 62-63, 95, 103-104.

<sup>204</sup> T. 27 Aug. 2002, pp. 8-9; T. 28 Aug. 2002, pp. 65-68.



Ntakirutimana, Joseph Mpambara, Enos Kagaba, Mathias, the Conseiller of Gishyita, Mika, the Conseiller of Mubuga and the Bourgmestres of Rwamatamu, Gisovu, Gishyita and Mabanza. Ruzindana spoke about the objective of the meeting, which was to find ways of killing all Tutsi in Bisesero. The audience responded with applause. The witness heard the Accused speak using a microphone. He promised that he and Ruzindana would provide material support in terms of weapons for "finishing off" the problem of the Tutsi in Bisesero. The witness stayed until the end of the meeting, about three hours later, between 2.00 p.m. and 3.00 p.m.<sup>205</sup>

217. The following week, Witness GGV attended a second meeting at the same venue. He arrived at the meeting at about 10.00 a.m. in the same disguise. Gendarmes and others were already there and the officials, including the Accused, Musema, Ruzindana, Kayishema, a high-ranking official who was a lieutenant, and the same officials as at the previous meeting, arrived later. They sat in the same places, as did the witness. The objective of the meeting was for the Accused to provide answers to the questions he had been asked at the first meeting, the most important concerning the lack of weapons, which the Accused had promised, at the last meeting, to supply. During the meeting, the Accused distributed weapons to representatives of groups of people. These weapons were to be used in killings in Bisesero. After the distribution, the Accused said that the attacks would take place the next day in Bisesero. He presented the attack plan on a blackboard and said no one should be spared. The Accused first drew a circle on the blackboard and wrote the word "Bisesero" inside the circle. Around the circle were the points of departure for each group of attackers and the designation of the leader of each group with the name in full or in initials. The Accused would read out the names of the leaders as he wrote them down. The five points of departure outside the circle with "Bisesero" written in it were Karongi, Rushishi, Kiziba, Gisiza and Murambi. The Accused's group would leave from Kiziba. No one opposed the plan. The witness said that the Accused incited people to participate in the attack. He told bourgmestres to tell able-bodied men in the population to participate in the killing of Tutsi, and said he would be present personally at the attack. The leaders incited people to participate in the attack. The leaders, including the Accused, encouraged people to go to the attack. All the leaders said they would bring people to the attacks. Sikubwabo and others expressed support for the attack by stating that they would be there, and incited everyone to go. The witness said that they were saying this in anger but were joyful as they spoke. At the end of the presentation, the witness got close to the board and could see what was written on it. The witness stayed until the end of the meeting at about 3.00 p.m.<sup>206</sup>

218. The witness testified to the Accused's participation in an attack the next day at Kiziba against Tutsi in Bisesero, as planned (see II.2.9 above). This attack resulted in a large number of victims among the Tutsi refugees.<sup>207</sup>

<sup>205</sup> T. 27 Aug. 2002, pp. 11-19, 114; T. 28 Aug. 2002, pp. 10-11, 70; T. 27 Aug. 2002, p. 24 (Fr.).

<sup>206</sup> T. 27 Aug. 2002, pp. 19-29, 117, 122.

<sup>207</sup> T. 27 Aug. 2002, pp. 29-38, 44, 75-76, 79, 117; T. 28 Aug. 2002, pp. 60-62.

### 3.1.2 Credibility Assessment

219. It was suggested by the Defence to the witness that it was extraordinary that he would find himself in all the places where the leaders were, and be able to relate, from memory alone, these details five years after the events. It was also suggested that he was merely implicating everyone he felt ought to be responsible. The witness responded that the events were unforgettable.<sup>208</sup> The Chamber finds that it is not incredible that the witness would have been at such meetings, given that his friends from whom he was seeking protection were Interahamwe, and the witness had been advised by them to attend these meetings in order to save himself from being killed by Interahamwe looking for Tutsi in their homes.

220. The Defence also suggested that it was extraordinary that in his travels from Kigali to Taba with a falsified identity card through many roadblocks, the witness was never identified as a Tutsi, given his Tutsi features. The witness disagreed.<sup>209</sup> The Chamber finds no merit in this suggestion.

221. The Chamber recalls that Witness GGV was found to be a credible witness in II.2.9.2 above.

### 3.1.3 Alibi

#### *Witness TEN-6*

222. The Defence adduced alibi evidence in relation to these events. Witness TEN-6 stated that he did not hear of the Accused's presence at the Kibuye Prefectural Office from 7 April to 22 June 1994. However, it is not disputed that the Accused attended a meeting there on 3 May 1994. Witness TEN-6 disavowed paragraph 5 of his prior statement dated 27 September 1995, wherein he stated he had seen the Accused and Edouard Karemera regularly in Kibuye Prefecture from 6 April to July 1994. He claimed that he had signed it under pressure from his superior and out of fear for his life. However, on cross-examination and in response to questions from the Chamber, the witness was evasive as to the specifics of the falsehood and the pressure. Moreover, the Chamber notes that paragraph 5 does not in itself incriminate the Accused and would not have served those who allegedly pressured him into making the statement.<sup>210</sup> Paragraph 5 would have supported Prosecution witnesses who have testified to his presence in the Kibuye area; the disavowal of this paragraph and subsequent testimony that he saw the Accused in Kibuye only once, sometime after 22 June 1994, supports the Defence assertion that the Accused was not in the area of Kibuye as alleged. Even without regard to the disavowed paragraph, Witness TEN-6's testimony is not inconsistent with the possibility that the Accused was present in Kibuye unobserved by the witness. As the witness claimed that he had made a false statement, the Chamber finds that Witness TEN-6's evidence is of questionable veracity.

<sup>208</sup> T. 27 Aug. 2002, pp. 67-70.

<sup>209</sup> Id., pp. 84-87.

<sup>210</sup> T. 21 Oct. 2002, p. 122-124, 162.

223. The witness stated that he did not know about two meetings in Kibuye on 10 and 17 June.<sup>211</sup> He does not offer direct evidence of the Accused's presence elsewhere on or around 10 and 17 June 1994. This does not amount to alibi evidence, and does not raise a reasonable doubt that the Accused was present at the meetings as alleged.

*Witness TEN-10*

224. Witness TEN-10's alibi evidence on these dates was examined and rejected in II.2.9.3 above.

### **3.1.4 Factual Findings**

225. Based on the totality of the evidence, the Chamber finds that on or about 10 June 1994, between 9.00 a.m. and 10.00 a.m., the Accused attended a meeting at Kibuye Prefectural Hall as one of the leaders, together with Ruzindana, Kayishema and others. The objective of the meeting was to find ways to kill all Tutsi in Bisesero. The Accused promised to provide weapons for the killing of the Tutsi in Bisesero. The following week, the Accused attended another meeting at Kibuye Prefectural Hall, with, amongst others, Ruzindana and Kayishema. The meeting was held to permit the Accused to answer questions posed at the previous meeting, including in relation to the promise of weapons made at the previous meeting. At that meeting, the Accused distributed the weapons to group representatives for use in killings in Bisesero. The Accused stated that the attack would take place the next day in Bisesero. The Accused presented the attack plan on a blackboard: a circle with "Bisesero" written in the circle. Around this circle were written the names of the designated leaders of each group of attackers and the points of departure for the five groups of attackers, which were Karongi, Rushishi, Kiziba, Gisiza and Murambi. The Accused encouraged people to participate in the attack, and was himself a leader for the Kiziba group. This plan was carried out in the attack at Kiziba the next day against Tutsi in Bisesero, which attack was led by the Accused and resulted in many victims amongst the Tutsi refugees. The findings relating to the alleged incitement by the Accused will be set out in II.4.6.4 below.

## **3.2 Meeting in Kibuye Prefectural Office Around 18 June**

### **3.2.1 Testimony of Prosecution Witness GGV**

226. The Chamber refers to II.2.9.1 above where Witness GGV's testimony of this meeting is set out.

### **3.2.2 Credibility Assessment**

227. The Chamber refers to II.2.9.2 and II.3.1.2 above, wherein Witness GGV was found to be a credible witness.

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<sup>211</sup> Id., p. 26.



### 3.2.3 Alibi

228. The Chamber refers to II.2.9.3 and II.3.1.3 above, wherein the alibi evidence adduced by the Defence was examined and rejected.

### 3.2.4 Factual Findings

229. Based on the totality of the evidence, the Chamber finds that on one evening on or about 18 June, the Accused attended a meeting in the canteen of Kibuye Prefectural Office where he promised to supply gendarmes for the next day's attack and urged bourgmestres and others to do all they could to ensure participation in the attacks so that all the Tutsi in Bisesero could be killed. Another attack took place the next day as planned.

## 3.3 Meeting in Kibuye Prefectural Office Sometime in June

### 3.3.1 Testimony of Prosecution Witness KJ

230. Witness KJ testified to seeing the Accused sometime in June at Kibuye Prefectural Office. At approximately 5.00 p.m. that day, he saw several ONATRACOM buses transporting Interahamwe to the Prefectural Office. They were chanting: "Exterminate them, flush them out of the forest." The Accused then arrived with Gérard Ntakirutimana and Ruzindana, and spoke to the people in the Prefectural Office. He said he had come so they could pool their efforts in overcoming the enemy, and promised they would get his contribution in due course. He said he had asked Kajuga to assist him with Interahamwe and that not less than a hundred would come. The Interahamwe were happy to see the Accused present because it meant that problems they faced would now be resolved. The people reacted to his speech by shouting and applauding him. Kayishema and Musema were present at the meeting as well. The witness stayed for the duration of the Accused's speech.<sup>212</sup>

### 3.3.2 Credibility Assessment

231. The Chamber refers to II.2.2.2 above, wherein Witness KJ was found to be a credible witness.

### 3.3.3 Alibi

232. The Chamber refers to II.2.9.3 and II.3.1.3 above, wherein the alibi evidence adduced by the Defence was examined and rejected.

### 3.3.4 Factual Findings

232. Based on the totality of the evidence, the Chamber finds that sometime in June, at approximately 5.00 p.m., the Accused spoke at a meeting at Kibuye Prefectural Office,

<sup>212</sup> T. 15 Oct. 2002, pp. 29-30, 33-38.

which was attended by Kayishema, Ruzindana, many Interahamwe, and others. The Interahamwe were chanting: "Exterminate them, flush them out of the forest", meaning the Tutsi. The Accused told the audience that he had come so they could pool their efforts in overcoming the enemy, that is, the Tutsi, and promised they would get his contribution in due course. He promised that not less than a hundred Interahamwe would assist in the attacks against the Tutsi.

#### **4. Acts of Incitement**

##### **4.1 Mid-March Meeting in Gatwaro Stadium**

###### **4.1.1 Testimony of Prosecution Witness GGD**

233. Witness GGD testified to a meeting organized by the MDR officials in Kibuye in the middle of March 1994 in Gatwaro Stadium in Kibuye, wherein the Accused, as guest of honour, spoke about the causes of unrest in Kibuye at the time. The witness arrived at the meeting shortly before noon when the meeting had already started. There were more than 200 people present. Kayishema was present as well. The Accused was in front of the witness on a podium, with about four rows of seats between them, about 4-6 metres away, under the same covered stand of the stadium. He could see the Accused clearly. Using a microphone, the Accused said the troubles in Nyarutovu, Gishyita and elsewhere were due to the Inyenzi, and the young people would be mobilized to fight against, and neutralize, the Inyenzi. In Rwanda at the time, according to the witness, there was no doubt "Inyenzi" meant "Tutsi". All Tutsi present, including the witness, were frightened and left for fear of violence erupting at the meeting. The witness was at the meeting for about 15-20 minutes.<sup>213</sup>

###### **4.1.2 Credibility Assessment**

234. The Chamber refers to II.2.3.3 above, wherein the Chamber declined to rely on Witness GGD's evidence. Therefore, the Chamber finds that the allegation that the Accused incited people at Gatwaro Stadium in mid-March 1994 to fight against the Tutsi has not been proved beyond reasonable doubt.

##### **4.2 13 April Attack in Rugarama**

###### **4.2.1 Testimony of Prosecution Witness GGH**

235. On 13 April 1994, Witness GGH saw the Accused at Rugarama in Bisesero, where the witness was seeking refuge in a bush close by the road, about 100 metres from the Accused. The secteur conseiller had asked civilians to take guns, machetes and spears to attack the Tutsi population. The civilians burnt the houses of the Tutsi and attacked them using those weapons. Sebahire was present, and he was speaking with the Accused – the witness heard the Accused tell them to go to work. Subsequently, an attack was launched from that location. The witness stated that he was hiding because Tutsi were

<sup>213</sup> T. 29 Aug. 2002, pp. 103-113, 126, 138-139, 142.

being attacked by Hutu, some of whom were his neighbours, and others who came from various locations.<sup>214</sup>

#### **4.2.2 Credibility Assessment**

236. The Chamber refers to the discussion of Witness GGH's credibility in II.2.1.2 above, wherein he was found to be a credible witness. The Chamber recalls that the witness's evidence on this event in particular, was accepted, despite discrepancies with his statement.

#### **4.2.3 Alibi**

237. The Defence adduced alibi evidence from Witness TEN-22 to rebut this allegation. This alibi evidence was examined and rejected in II.2.2.3 above.

#### **4.2.4 Factual Findings**

238. Based on the totality of the evidence, the Chamber finds that on 13 April 1994, the Accused was in Rugarama in Bisesero with armed attackers. The Accused told the attackers to go back to "work". The Chamber is satisfied that "work" refers to killings of Tutsi. Pursuant to his instructions, the attackers launched an attack against Tutsi from that location.

### **4.3 3 May Meeting in Kibuye Prefectural Office**

#### **4.3.1 Testimony of Prosecution Witness GK**

239. Witness GK testified to the Accused's speech at a meeting in Kibuye Prefectural Office on 3 May, which he attended. The Prime Minister Jean Kambanda, Kayishema, and officials and representatives of political parties, churches and civil society, including the Accused; Emmanuel Ndindabahizi, the Minister for Finance; Donat Murego, the Secretary-General of the MDR; and Edouard Karemera, Vice-Chairman of the MRND were present. Many people, about 300-400, attended the meeting. It started around noon and ended around 4.00-5.00 p.m. The witness stayed for the duration of the meeting. The Accused was sitting, with the others mentioned above, on a podium at one end of the room, facing the audience, which the witness did not think included any Tutsi. Kayishema first spoke about the deteriorating security situation in Kibuye and stated that Kibuye Prefecture supported the interim government. Then the Prime Minister, Jean Kambanda, read his speech. He spoke about the need to review the Arusha Accords, and increase the influence of the Rwandan Government in the Arusha Accords. He mentioned that his government would face up to the Inkotanyi, unlike the previous government, which was made up of Inkotanyi accomplices. He asked the people to be vigilant against the enemy, the Inkotanyi, which had infiltrators everywhere in the country who had to be

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<sup>214</sup> T. 15 Aug. 2002, pp. 90-91.



rooted out. The witness understood the words "Inkotanyi", "accomplice" and "enemy" to cover the Tutsi in general.<sup>215</sup>

240. However, Kambanda also said that it was not necessary to mistreat an ordinary citizen, as the enemy was not one's neighbour, but the Inkotanyi. He said a Tutsi seeking refuge with his cattle and children was not the enemy. Kambanda talked about the need for each Rwandan to know how to defend himself, and the need for weapons for each Rwandan. He said that it was necessary to re-distribute illegally obtained weapons through the proper administrative authorities, and to have proof that people were Inkotanyi before they were attacked. However, the witness maintained that that was not the essence of his message.<sup>216</sup> He agreed the ostensible object of the meeting was a call for peace, but he said the problem was the words used. These weapons Kambanda talked about were used for the killings. Kambanda knew the people would interpret "Inkotanyi" or "enemy" as "Tutsi", as there were no Inkotanyi in Kibuye, and the people understood that what he meant to say was "Tutsi". He said the words were used here "in a political context, but the people are speaking the same language". The words were a "pretext", similar to the language used on RTLM to talk about the enemy without saying "Tutsi". It had nothing to do with the security of people. The witness said "in Kinyarwanda we do not deal with issues in a direct manner". Complaints about attacks from RPF were often used as pretexts to attack people. The witness had never seen any RPF members/soldiers in Kibuye. Kambanda, in making that speech, was aware of the killings in Kibuye, at the church, in the stadium and elsewhere, and that these killings involved the gendarmes and armed forces. The witness stated that the meeting that was supposed to be aimed at restoring security did not do so. The killings did not cease in Kibuye after the meeting; instead, the situation deteriorated. He stated that the government did not protect people before or after 3 May. The government did nothing to stop the killings. He confirmed that the government did not provide any assistance to any refugees or orphans in Kibuye after 3 May.<sup>217</sup>

241. The witness testified to the Accused's speech at the meeting, during which he spoke about a split within the MDR party. He welcomed Kambanda as Prime Minister and gave MDR's support to Kambanda's government, stating further that it was necessary to have a strong government not comprised of members from the previous government. The director of the hospital in Kibuye, Léonard Hitimana, asked why the MDR had not instructed its youth to stop participating in the killings, as the MRND had done with its youth, the Interahamwe. He also asked about the security of survivors, including children, at the hospital. Regarding the first question, the Accused commented that the question should not have been put in the first place and the director was living in the past. Murego answered in the form of a Kinyarwanda poem, to chastise the director for having asked both questions. The MDR were saying that they did not need instructions, they had come to an agreement amongst themselves and understood themselves without speaking. The audience laughed at the replies and the witness interpreted the laughter as an expression of support of the answer and mockery of the

<sup>215</sup> T. 17 June 2002, pp. 221-231; T. 20 June 2002, pp. 174-176, 225-241.

<sup>216</sup> T. 20 June 2002, pp. 49-62.

<sup>217</sup> T. 19 June 2002, pp. 58-74; T. 20 June 2002, pp. 101-107, 167, 173, 180-181, 190, 225-231.

person who had asked the question. As for the children at the hospital, the witness understood the Accused to be saying that they should be killed. The witness felt the answers were “offensive” and “frightened” the listeners.<sup>218</sup>

242. The witness said that the words were “pregnant with meaning”. He said the words spoken had to be interpreted “by bearing in mind where those statements were made, and to whom they were addressed. [The Accused] did not say clearly ‘kill the children’, but such a response given to a question regarding children should be understood by whoever wanted to understand...Whoever wanted to protect the children is a RPF supporter. That is what that sentence wanted to get across”. He stated that “the people who listen to these words were afraid”. He added: “[T]hat was a meeting which was not ordinary. When you got into the meeting room, you were afraid. These are not words which were funny. They were laughing, but they were mocking the person who was saying things which did not go with the period. These are not words which should call for any laughter. They were not laughing because they were happy; it was a way of expressing their support to the answer.” That was his understanding as a Rwandan and he believed that any honest Rwandan would understand it the same way.<sup>219</sup>

243. The people at the hospital in Kibuye were Tutsi survivors from the massacres against Tutsi at the Catholic Church and the Home St Jean on 17 April. These survivors were killed immediately after the meeting. A census conducted at the time placed the number of people at the Church and Home at 3112. The witness tried to protect these people, but gendarmes were not supplied for this purpose, and a group of young people, called “Power”, were finally employed to maintain safety and security at the hospital, although there were problems with this group as well. The witness received a report, the day after the meeting, saying that the children had been killed. The witness personally saw corpses in the town, too many to count. At the time of the 3 May meeting, there were no corpses in visible areas, but the stench of decomposed bodies was everywhere, and near the church there were still dead bodies. Yet, nobody at the meeting mentioned dead bodies. At the meeting, one Tharcisse Kabasha asked Kambanda how the massacres should be stopped. He said the Prime Minister should encourage the people to stop the massacres as it was inconceivable for a leader to watch with folded arms the perpetration of such massacres. He was the only person who dared to ask such a question. The question was not answered.<sup>220</sup>

244. The witness testified to having known the Accused well before 1994, when the Accused was working at Radio Rwanda. He knew that the Accused was from Gisovu commune in Kibuye, and was the MDR Chairman in Kibuye Prefecture from 1991-1994, although he did not have any official dealings with the Accused. The witness identified the Accused in court.<sup>221</sup>

<sup>218</sup> T. 17 June 2002, pp. 233-240; T. 20 June 2002, pp. 122-123, 162-165, 203-206.

<sup>219</sup> T. 20 June 2002, pp. 117-118, 122-123, 203-206, 225-231.

<sup>220</sup> T. 17 June 2002, pp. 241-250; T. 19 June 2002, pp. 83-96.

<sup>221</sup> T. 17 June 2002, pp. 222-225.

### 4.3.2 Credibility Assessment

245. The Defence submitted that the witness is an accomplice whose evidence ought to be treated with caution. The Chamber notes that even before his arrest, the witness had been talking to many people, including officials and journalists. The Defence did not adduce evidence of criminal involvement on his part in the events giving rise to the charges faced by the Accused, but submitted that Witness GGV named Witness GK as a leader of attacks.<sup>222</sup> It is noted that the names on the sketch drawn by Witness GGV are Witness GGV's report of persons whom the Accused described as leaders; it is not Witness GGV's testimony that these people, including Witness GK, were actually leaders of the attacks.<sup>223</sup> The Chamber concludes that the witness is not an accomplice as defined in paragraph 48 above, whose uncorroborated evidence is subject to special caution. Nevertheless, the Trial Chamber has exercised caution in evaluating his testimony.

246. There were some minor discrepancies between the witness's prior written statement dated 15 and 16 May 1996 and his testimony, and in his testimony itself, for example, concerning the date of death of the children at the hospital, but they do not substantially affect his credibility.<sup>224</sup>

247. The Defence asserts that in the absence of expert testimony on the interpretation of the words used at the meeting, Witness GK's interpretation should be discarded in favour of the literal interpretation of the words.<sup>225</sup> Witness GK was testifying to his personal understanding of the words used in their context and his impression as a member of the audience how that audience would have understood those words. As a Rwandan, and someone who was present at the meeting and personally heard those words, he would be in a better position than an expert to understand the nuances and hidden meanings of the words used, and to assess the reaction of the audience at the meeting.

248. The Defence used the transcripts of a radio broadcast of the meeting (Exhibits P4 and P5) during cross-examination to question the witness on his memory of what was said at the meeting.<sup>226</sup> The witness could remember some, but not all, of what was said at the meeting. The Chamber notes that it was the atmosphere and tension at the meeting that made an impact on the witness. The witness did not present a one-sided version of events; he remembered comments that were both beneficial and detrimental to the Prosecution's case. He was careful to explain that the words spoken were not intended to be understood literally, but that the words had a hidden meaning. This was his position throughout his testimony. The Chamber does not consider that his inability to remember everything recorded as having been said at the meeting affects his credibility.

249. It was suggested to the witness by the Defence on cross-examination that Prosecution investigators had prompted the witness during the interview, and that the

<sup>222</sup> Defence Final Trial Brief, p. 71, para. 6.

<sup>223</sup> T. 27 Aug. 2002, pp. 57-61.

<sup>224</sup> T. 20 June 2002, pp. 225-231.

<sup>225</sup> Defence Final Trial Brief, p. 85, paras. 66-69.

<sup>226</sup> T. 20 June 2002, pp. 53-62; Defence Final Trial Brief, pp. 76-81, paras. 23-48.



witness's statement is therefore not his own. The witness denied this and the Chamber accepts that the witness did not merely confirm what the investigators said, but recounted what he knew. The witness maintained his testimony throughout cross-examination and was very clear in his opinion that the words used camouflaged the real meaning, and he was not shaken from this position by cross-examination. The Chamber finds Witness GK to be a credible witness.

#### 4.3.3 The "Lull" in Killings

250. The Prosecution contends that the two-week lull in killings after this meeting was spent organizing attacks to implement the plan for such attacks made on 3 May. The Defence submitted that the two-week lull indicated that the meeting's message for peace had had an effect in stopping the killings, at least for a short time.<sup>227</sup> The Chamber notes that immediately after the 3 May meeting, the Tutsi survivors at the hospital were killed. By 4 May, the children at the hospital had been killed. However, there was no evidence to show that these killings occurred as a direct result of the meeting. The Chamber further notes that approximately two weeks after this meeting, large-scale attacks took place at Muyira Hill on 13 and 14 May, in which a number of persons who had attended the meeting were present. The attackers were provided with transportation to the killing site. Their vehicles were parked at Kucyapa, from which meeting point the attackers set off to kill the Tutsi refugees, as a result of which a large number of Tutsi refugees were killed. However, no evidence was adduced to show that during this two-week period, the Accused and others were organizing the attacks in implementation of a plan made on 3 May.

#### 4.3.4 Factual Findings

251. Based on the totality of the evidence, the Chamber finds that on 3 May 1994, from around noon to between 4.00 p.m. and 5.00 p.m., the Accused attended and spoke at a large meeting at Kibuye Prefectural Office held at the initiative of the Interim Government, which was also attended by officials and representatives of political parties, churches and civil society. The meeting was called ostensibly for pacification purposes; however, the killings and deteriorating security situation in Kibuye were not condemned. At the meeting, the Prime Minister, Jean Kambanda, referred to Tutsi as "Inkotanyi" and "accomplices", and asked for the crowd to be vigilant against them as they were the enemy. He also said that they had infiltrators everywhere in the country who had to be rooted out. He denounced the previous government as being made up of Inkotanyi accomplices.<sup>228</sup>

252. The Accused addressed the meeting and supported the calling of the meeting. He expressed support for the Interim Government and Jean Kambanda. The Chamber finds, from the content of the discussions and the Accused's conduct and words spoken at the meeting, that the Accused supported actions or inaction in failing to protect the Tutsi population, which resulted in the deaths of many Tutsi victims.

<sup>227</sup> Defence Final Trial Brief, p. 86, para. 73.

<sup>228</sup> Kambanda pleaded guilty to genocide before the Tribunal and was convicted on 4 September 1998.

#### 4.4 13 May Meeting at Kucyapa

##### 4.4.1 Testimony of Prosecution Witness GGM

253. The Chamber refers to the discussion of Witness GGM's testimony of this event at Kucyapa in Bisesero in II.2.6.1 above.

##### 4.4.2 Credibility Assessment

254. The Chamber refers to the discussion on the witness's credibility in II.2.6.3 above. The Defence submits that the witness incorrectly identified the Accused as his view was blocked by the sorghum and it was getting dark at the time. The Defence submits that in such conditions, the witness could not have seen anything from the sorghum field. The Defence raised the dangers inherent in identification evidence.<sup>229</sup> The witness was clear that he could see events as they unfolded although he could not see everything.<sup>230</sup> The witness was within close range, that is, 30 metres of the Accused, whom he knew prior to these events, and had the opportunity to observe the meeting for 30 minutes.

255. The Chamber notes that this meeting is mentioned in the witness's statement dated 20 March 1996, wherein he mentions the same words used by the Accused and also mentions that he used a loudspeaker to address the people. His testimony on this event is largely consistent with this statement. The witness gave a clear eyewitness account of incidents personally observed by him, and the Chamber finds him to be a credible witness.

##### 4.4.3 Alibi

256. The Chamber refers to the discussion of the alibi evidence adduced by Witnesses TEN-16, TEN-8 and TEN-22 in II.2.2.3 and II.2.4.3 above, wherein the alibi evidence was examined and rejected.

##### 4.4.4 Factual Findings

257. Based on the totality of the evidence, the Chamber finds that in the evening of 13 May 1994, the Accused held a meeting at Kucyapa after the 13 May attack against Tutsi refugees at Muyira Hill, for the purpose of deciding on the programme of killings for the next day and to organize these killings against the Tutsi in Bisesero, who numbered approximately 60,000. The meeting was attended by about 5,000 people. Using a loudspeaker, the Accused thanked attackers for their participation in attacks and commended them for "a good work", which phrase the Chamber is satisfied refers to the killing of Tutsi civilians. The Accused told them to share the people's property and cattle, and eat meat so that they would be strong to return the next day to continue the work, that

<sup>229</sup> Defence Final Trial Brief, pp. 163-164, paras. 17-19, p. 168, para. 36

<sup>230</sup> T. 26 Aug. 2002, p. 7.



is, the killing. The next day, the witness and other Tutsi were pursued and attacked throughout the day.

#### **4.5 Attack in Bisesero Sometime in May**

##### **4.5.1 Testimony of Prosecution Witness GHA**

258. Sometime in May 1994, Witness GHA saw the Accused once in Bisesero, where the witness was seeking refuge from the attacks in Mugonero Hospital. He said there were so many people seeking refuge in Bisesero that they were like the grass on a hill. These people were Tutsi who were targeted for massacres and seeking refuge from these attacks. He heard from others that the Accused used to go to Bisesero regularly. On this particular day, in the afternoon, he was hiding in a bush near the road that led to Bisesero, when he saw the Accused, wearing an overall and carrying a long gun, arrive to participate in the killings in Bisesero. He came in a vehicle full of soldiers who were dressed in military camouflage uniforms and carrying firearms. The vehicle was red with an open back part, without railings, where the soldiers were.<sup>231</sup> These soldiers were members of the national armed forces. Using a megaphone, the Accused called upon Interahamwe, who had been killing during the day and were about to leave, to return to continue to kill the Tutsi in Bisesero. The Interahamwe had firearms and grenades, and they were working with members of the population who had nail-studded clubs and machetes and sharpened bamboo poles. The Accused said there were too many fugitives and the RPF was about to reach the area, and they had to continue the killings so that when the RPF arrived, they would find no refugees alive. In his vehicle he traversed the entire Bisesero area, including Gakuta and Gitwe. In the same vehicle with the Accused was Mika from Gishyita secteur and the Mubuga secteur conseiller. They were both also armed and moved on with the Accused. The attackers consequently returned and continued killing until nightfall, thereby killing an “unbelievable” number of people. According to the witness, “all that was due to Niyitegeka”. However, the witness never saw the Accused shoot anyone. He saw the Accused in Bisesero for a total of less than ten minutes.<sup>232</sup>

259. Describing his hiding place, Witness GHA said that there was a pine forest in the area, on the left in the direction of Kibuye. There were many vehicles parked on the right-hand side on the way up. Other vehicles carrying Interahamwe would park there before going to kill, and subsequently take the vehicles back home at night. He went there because he was tired and the bush was so situated that if he were killed it would be with guns by soldiers, and not by being “clobbered to death”. The witness remained in the area until after nightfall and left when the attackers left. He estimated the distance between himself and the Accused as being about 6 metres. From his hiding-place, he heard gunshots and explosions. Many were killed near his hiding place. When he left it the following morning, he saw many bodies, some of whom he knew. According to the witness, no one survived. There were too many bodies to count; he had to move around them and he became accustomed to the odour. He had never seen Inkotanyi in the area.

<sup>231</sup> T. 13 Aug. 2002, pp. 47-50.

<sup>232</sup> Id., pp. 6-12, 47-50, 111, 123-127.

After that day he never saw the Accused again as he continued to flee on the hills. There were very few survivors of this event in Bisesero.<sup>233</sup>

#### 4.5.2 Credibility Assessment

260. The Defence submits that the witness was vague and imprecise in giving his testimony.<sup>234</sup>

261. During cross-examination, the Defence pointed out that in *Kayishema*, the witness could furnish detailed information about his time in Bisesero, including the date and precise time at which he arrived in Gitwe; he could not furnish the same information in this case. It was suggested by the Defence that the reason the witness did not want to furnish such details was because he did not want to open himself up to potential contradictions. For instance, the Defence suggested that he was in Gitwe until June, nursing his wound, and could not have seen the Accused as claimed. There is no evidence to support the Defence's speculations.

262. The witness had been shot and injured while he was seeking refuge in Bisesero. In his testimony in this case, the witness identified the person who shot him when he had previously maintained in other testimony that he did not know who shot him. This was the first time he was telling the Tribunal that he knew the identity of the person who shot him. It was suggested that he claimed, wrongly, in *Kayishema* that Ruzindana shot him but a close reading of the transcripts reveals that the witness does clarify later in that case that it was not Ruzindana, but rather, one of the *Interahamwe* with Ruzindana, who had shot him.<sup>235</sup>

263. The witness claimed to be able to see, from his hiding-place in the bush, the movement of the Accused's vehicle to Gitwe. He explained that he could see the opposite hill from his hiding place, as there was nothing obstructing his view. He also stated that the Accused traversed the entire Bisesero area in his vehicle. The Chamber considers that it is unlikely he could have seen this from his hiding place, and that it could not have occurred within ten minutes, which was the length of time for which he observed the Accused.

264. In light of the inconsistencies, the Chamber considers that Witness GHA is not a credible witness and that his testimony of having seen the Accused sometime in May in Bisesero is unreliable.

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<sup>233</sup> Id., p. 12-17, 31-38, 110, 127.

<sup>234</sup> Defence Final Trial Brief, p. 140, para. 26.

<sup>235</sup> T. 13 Aug. 2002, pp. 68-69; *Kayishema*, T. 16 Oct. 1997, pp. 60-61 (Fr.).

#### **4.6 Meeting in Kibuye Prefectural Office Around 17 June**

##### **4.6.1 Testimony of Prosecution Witness GGV**

265. The Chamber refers to II.3.1.1 above, wherein the testimony relating to this incident was set out.

##### **4.6.2 Credibility Assessment**

266. The Chamber found Witness GGV to be a credible witness in II.2.9.2 above.

##### **4.6.3 Alibi**

267. The alibi evidence was examined and rejected in II.3.1.3 above.

##### **4.6.4 Factual Findings**

268. Based on the totality of the evidence, the Chamber finds that sometime around 17 June 1994, the Accused and others attended a meeting in Kibuye Prefectural Office. During that meeting, the Accused distributed weapons to representatives of groups of people to be used in attacks against the Tutsi in Bisesero, and sketched a plan for the next day's attack. The Accused encouraged people to participate in the attack and told bourgmestres to tell able-bodied men in the population to participate in the killing of Tutsi. He said he would be personally present at the attack.

#### **5. Murder**

##### **5.1 Attack in Kiziba Around 18 June**

###### **5.1.1 Testimony of Prosecution Witness GGV**

269. Witness GGV's account of the Accused's killing of an old man and young boy in Kiziba in Bisesero was set out in II.2.9.1 above.

###### **5.1.2 Credibility Assessment**

270. The Chamber recalls that Witness GGV was found credible in II.2.9.2 above.

###### **5.1.3 Alibi**

271. The Chamber recalls that the alibi evidence was examined and rejected in II.2.9.3 above.

#### 5.1.4 Factual Findings

272. Based on the totality of the evidence, the Chamber finds that on or about 18 June 1994, sometime between 11.00 a.m. and 3.00 p.m. or 4.00 p.m., the Accused was involved in an attack against Tutsi refugees, at Kiziba in Bisesero, together with many attackers, when one of the attackers claimed to have found Inyenzi, an old man and a young boy. The Accused told him not to kill them but to bring them to him. The Accused told them that their relatives had almost killed him, then loaded his gun and shot the old man in the chest. He shot the young boy in the head and the body, and told the attackers to "remove the filth", being a reference to their corpses. From the Accused's comment about the two persons' relatives, and considering that the attack the Accused was referring to targeted Tutsi, and from other evidence, it is reasonable to infer that the two persons were Tutsi.<sup>236</sup>

### 5.2 Killing of Man and Woman on 28 June near Ecole Normale Technique

#### 5.2.1 Testimony of Prosecution Witness KJ

273. Witness KJ saw the Accused on 28 June on his way from Charroi Naval to Kibuye for breakfast.<sup>237</sup> Close to the Ecole Normale Technique ("ENT"), the Technical Training College, he saw the Accused pass by in his vehicle on the road from Charroi Naval to the camp. When the vehicle was some distance away, it passed a chocolate-coloured Renault sedan coming from the opposite direction. The witness heard a gunshot, and saw the other vehicle flip over below the road, approximately 15 metres away from the witness. The witness stated that the car had flipped over because the driver had been shot. When he was five metres away, he saw a man and a woman, both dead, inside the vehicle. He saw bullet marks on the bodies and there was blood. One of the bullet holes had gone through the neck and exited from the throat of one of the victims. The Accused was standing next to the vehicle with two "Power" persons, "Power" being the name the *Interahamwe* gave themselves. The Accused instructed one of them to undress the woman and to fetch a piece of wood. That person brought a branch from the tree, which the Accused asked him to sharpen to a point. He then asked them to bring the bodies from the vehicle, and ordered that the piece of wood be inserted in the genitalia of the woman. This was done by the *Interahamwe* pursuant to the Accused's instructions. When the witness returned from the camp that same day, he saw the corpse of the woman still lying there, and a piece of wood in her genitalia. The woman's body remained there for three days with flies all over it; the vehicle had been removed. He did not know what happened to the man's body. He did not know the ethnic identity of the two dead persons but the Accused referred to the woman as an Inyenzi. At the time, "Inyenzi" was used to refer to the Tutsi, or anyone opposed to the government at that time.<sup>238</sup>

<sup>236</sup> See II.2.2.1 above, wherein Witness KJ testified to the Accused calling Tutsi "Inyenzi".

<sup>237</sup> T. 15 Oct. 2002, pp. 40-43; T. 16 Oct. 2002, pp. 43; 103-104.

<sup>238</sup> T. 15 Oct. 2002, pp. 41-48; T. 16 Oct. 2002, pp. 43, 57-63, 66-67.



## 5.2.2 Credibility Assessment

274. The Chamber refers to the discussion of Witness KJ's credibility in II.2.2.2 above.

275. With respect to this incident, the Defence suggested that if there was a body lying on the road for three days as the witness testifies, given the French troops were in the region, there would have been a report about it and it would not have remained there for three days. Defence Witness TEN-6 stated that, by 28 June, security had been restored in Kibuye and people could move about freely thanks to the French presence in that zone.<sup>239</sup> TEN-6 further said that there were no more killings after the French arrived on 22 June and that by the month of June bodies could no longer be seen in the streets of Kibuye town.<sup>240</sup> In particular, Witness TEN-6 testified to a reception held in honour of the Pope's envoy, Cardinal Etchegaray, at the Kibuye prefecture hall on 28 June from 11.00 a.m. until 1.00 p.m., which was attended by approximately 100 people, who would all have had to pass the ENT to get to the reception. In addition, all the people working at the prefectural buildings would have had to pass the ENT on their way home. TEN-6 said that he would pass the ENT on his way to work at 8.00 a.m. On 28 June, he walked past the ENT again at 3.00 p.m., when he left work to walk home. He did not notice anything abnormal and confirmed that he did not hear of any accidents on the road in question or of any shooting or of any dead bodies along the roadway.<sup>241</sup> The witness did not see the body of the dead woman and said that if such an incident had occurred, the population would have talked about it.<sup>242</sup> He said it was unbelievable that killers would be in the area since the French troops were stationed there.<sup>243</sup> Witness KJ disagreed with the Defence proposition and said that in any event, the French did not do anything to stop the genocidal events occurring at the time. The witness himself did not report this incident as senior officials were not opposed to the events at the time and the civilian Interahamwe were stronger than they were.<sup>244</sup> The witness later said that there were numerous decomposing bodies lying on the road at the time, not just that of the woman's, so much so that it was difficult for vehicles to manoeuvre around them.<sup>245</sup>

276. The Chamber notes that Witness TEN-5 contradicts TEN-6's evidence to the extent that TEN-5 stated that until 9 July 1994, wounded patients were being brought into the medical center in which he worked for treatment.<sup>246</sup> No other evidence has been adduced to show that the French troops arrived on 22 June. In addition, the Chamber refers to II.3.1.3 above, wherein it was decided that in light of the fact that TEN-6 testified to having given false information in a prior statement, the witness's evidence is of questionable veracity. For these reasons, the Chamber will not rely on TEN-6's evidence.

<sup>239</sup> T. 21 Oct.2002 p. 20.

<sup>240</sup> T. 21 Oct.2002 p. 101; T. 22 Oct.2002 p. 38.

<sup>241</sup> T. 21 Oct.2002, pp. 20-23.

<sup>242</sup> Id., pp.23-24

<sup>243</sup> Id., p. 68.

<sup>244</sup> T. 16 Oct. 2002, pp. 48-54.

<sup>245</sup> Id., p. 104.

<sup>246</sup> T. 23 Oct. 2002, pp. 69-70.

277. Witness KJ did not mention the bullet holes and the make of the victims' car (Renault) until cross-examination and the Defence suggested he was making things up as he went. The Chamber notes that these details were elicited by specific questions. In addition, his statement mentions a red car having turned over, not a chocolate-coloured one as mentioned during testimony. The Defence suggested he had difficulty differentiating between colours. The Chamber does not consider that this affects the witness's credibility.

278. The witness added in cross-examination that the Accused told the Interahamwe to undress the woman first. This detail is mentioned in his statement but not in direct examination.<sup>247</sup> As for the Accused's vehicle, he said it was red with MININFOR inscribed on it, and was his usual car.<sup>248</sup> However, he later said it was inscribed with the word "ORINFOR" in white. The witness explained that ORINFOR was a subsidiary organ of MININFOR, the Ministry of Information.<sup>249</sup> The Chamber does not consider that this discrepancy affects the witness' credibility.

279. Regarding the instruction from the Accused to the Interahamwe to sharpen a piece of wood and insert it into the woman's genitalia, the witness clarified that he had been frightened and had left the scene before seeing the act carried out, and he had only noticed the piece of wood in the woman's genitalia after he returned from the camp. Therefore, he did not see the act itself being committed.<sup>250</sup>

280. Although there are inconsistencies in the witness's evidence, they do not affect the substance of his testimony. The discrepancies relating to the colour or make of the cars do not detract from the substance of his testimony regarding this incident. The Trial Chamber is satisfied that the witness knew and identified the Accused during the events alleged.

281. The witness's credibility was considered as a whole in II.2.2.2 above, including submissions relating to this incident, and Witness KJ was found to be a credible witness.

### 5.2.3 Alibi

282. The Defence adduced alibi evidence from TEN-10 and TEN-22 to rebut this allegation.

#### *Witness TEN-10*

283. Witness TEN-10's alibi evidence on these dates was examined and rejected in II.2.9.3 above.

<sup>247</sup> T. 16 Oct. 2002, pp. 46-48, 60-63.

<sup>248</sup> Id., p. 119; T. 16 Oct. 2002, p. 119 (Fr.). In the English transcripts, the witness is recorded as having said "MINAFOR"; in the French, "MININFOR" is used. The French is favoured as the first translation from the original Kinyarwanda.

<sup>249</sup> T. 16 Oct. 2002, pp. 98-99.

<sup>250</sup> Id., pp. 101-102.

*Witness TEN-22*

284. Witness TEN-22 said that he stayed for three days in mid-June 1994 in Muramba, where the Interim Government was located. He testified to seeing the Accused during his stay in Muramba, when the latter gave an interview that was broadcast.<sup>251</sup> The witness did not provide further detail and he could not narrow the date of the sighting of the Accused further.

285. After this three-day stay in Muramba in mid-June 1994, the witness returned to Gisenyi where he stayed until 13 or 14 July. The witness saw the Accused during this stay in Gisenyi, but he did not know why the Accused was there.<sup>252</sup> The witness did not provide further detail in respect of his sightings of the Accused in Gisenyi from mid-June 1994 to 13 or 14 July 1994.

286. The Chamber considers that Witness TEN-22's evidence does not provide the Accused with an alibi, given the uncertainty of the dates of the witness's sightings of the Accused. Therefore, the evidence does not raise a reasonable doubt that the Accused was in the vicinity of ENT on 28 June.

**5.2.4 Factual Findings**

287. Based on the totality of the evidence, the Chamber notes that the witness did not see who fired the gun, or the direction the gunshot came from. His evidence is that at the time he heard the gunshot, he was 15 metres away from the vehicle in which the two people were. He did not see who killed these two people. Consequently, the Chamber finds that there is insufficient evidence in support of the allegation that the Accused killed the man and woman. The Chamber's findings with respect to the alleged sexual violence committed on the body of the dead woman will be set out in II.7.2.4 below.

**5.3 June Attack in Jurwe Cellule****5.3.1 Testimony of Prosecution Witness GGM**

288. Witness GGM saw the Accused at the border between Jurwe and Nyarutovu cellules in the morning around the middle of June, after the 12<sup>th</sup>. He was hiding in a bush on the upper side of the road from Mubuga to Gisovu, at Bisesero School, close to Kinibaga Hill. He had earlier returned home and proceeded to the top of Gitwe Hill to observe the attackers who were coming from everywhere – the refugees were surrounded. The Accused, who was always accompanied by soldiers, was with about 30 soldiers and civilians. There was a vehicle parked next to them. They were waiting for refugees to come out so that they could shoot them. Some children were flushed out from the lower side of the road by soldiers searching in the bushes. These children were brought to the Accused. They were asked where the adults were hiding, and they replied that they would rather be killed than answer that question. The Accused ordered them to be killed and

<sup>251</sup> T. 29 Oct. 2002, pp. 99-100.

<sup>252</sup> Id., p. 100.

personally clubbed one child on the back, who then fell. The attackers used machetes to cut up the children. He did not know the names of those children but the one that was clubbed was the daughter of a farmer called Gasarasi. There were four children about 6-7 years old. The Accused was about 15 metres away from the witness.<sup>253</sup> The witness testified to approximately 70 attacks in June.<sup>254</sup>

### 5.3.2 Notice

289. The Chamber notes that this incident is not specified in the Indictment, nor is there mention of it in the Pre-trial Brief, or in either of the witness's statements; it was disclosed in court just before the witness began his testimony. The Chamber notes that this was a specific act of murder of individuals and as such, should have been specifically alleged in the Indictment. This defect was not cured by additional disclosure, like witness statements. As a result, the Defence had little or no notice of this alleged act of killing. Consequently, applying the reasoning adopted by this Chamber in *Ntakirutimana*, the Chamber will disregard this evidence.

## 5.4 June Attack in Uwingabo Cellule

### 5.4.1 Testimony of Prosecution Witness GGM

290. Witness GGM saw the Accused on the border between Uwingabo and Gitwe cellules in June, two or three days after his brothers and sisters had died. The Accused was wearing ordinary clothing, without a vest. The witness was on Nyabushyoshyo Hill,<sup>255</sup> hiding in the woods in a small bush. The witness stated that although he could not see clearly who the people were on the road, he was close enough to be able to see the road and could see the Accused.<sup>256</sup> A young man from Gatiti, who had been flushed out and had fallen, was brought to the Accused and questioned. However, the witness could not hear everything that was said. He was about 40-50 metres away. He explained that in a valley the sound of a voice travels far and that the attackers did not speak in low voices. The soldiers addressed the Accused as "Chief" and asked him what he wanted to do with the man. The Accused ordered the soldiers to kill him.<sup>257</sup> The soldiers then shot this man.<sup>258</sup>

### 5.4.2 Notice

291. This incident is not mentioned in the Indictment, the Pre-trial Brief, or either of the witness's statements. It emerged in court during the witness's testimony. The Chamber notes that this was a specific act of murder of individuals and as such, should

<sup>253</sup> T. 23 Aug. 2002, pp. 15-17, 63; T. 26 Aug. 2002, pp. 30, 32, 35, 39-40, 42-44, 72, 75.

<sup>254</sup> T. 26 Aug. 2002, p. 30.

<sup>255</sup> The spelling in the French transcripts is favoured over the English ("Nyabushushu Hill") as the first translation from the original Kinyarwanda - T. 26 Aug. 2002, p. 76 (Fr.); T. 26 Aug. 2002, p. 46.

<sup>256</sup> T. 26 Aug. 2002, pp. 47, 69.

<sup>257</sup> T. 23 Aug. 2002, pp. 17-18; T. 26 Aug. 2002, pp. 46-47, 50.

<sup>258</sup> T. 26 Aug. 2002, p. 69.



have been specifically alleged in the Indictment. This defect was not cured by additional disclosure, like witness statements. As a result, the Defence had little or no notice of this alleged act of killing. Consequently, applying the reasoning adopted by this Chamber in *Ntakirutimana*, the Chamber will disregard this evidence.

## 6. Rape and Murder on 20 May

### 6.1 Testimony of Prosecution Witness DAF

292. On 20 May, Witness DAF was hiding in a bush on a hill at a place close to the house of Kabanda who was a very well-known trader. It was not far from the Gisovu-Kibuye road. At this time, he saw Interahamwe, who were accompanying the Accused, looking for people in hiding. They caught a young girl whose age he estimated at 13-15 years. They took this girl to the Accused and put her in his vehicle. The Accused was seated in his vehicle, a red jeep, with the door open. The distance between the witness and the car was about 37 metres. The Accused shut the door and was alone with the girl in his vehicle for about 30 minutes. The witness could not see what the Accused did to the girl in the vehicle because the door was closed. However, the witness stated that the Accused raped the girl and subsequently threw her in front of the vehicle and shot her with a big gun, killing her. He knew that the girl had died because as soon as the Accused shot her, she fell to the ground. She was wearing a skirt and a T-shirt. At the time that he shot the girl, the Accused was seated in his vehicle with the door open, and one leg out. His head was visible to the witness but his other leg was not. The witness reaffirmed under cross-examination that it was indeed the Accused whom he had seen in the vehicle and who had shot the girl.<sup>259</sup> Later, he overheard the Interahamwe talking about the girl having been raped. When the witness came out of the bush after the Interahamwe had left the area, he found the girl in that place spread out on the ground and she was dead.<sup>260</sup>

### 6.2. Credibility Assessment

293. The Defence suggested that Witness DAF was mistaken in his identification of the Accused. At the time that he shot the girl, the Accused was seated in his vehicle with the door open, and one leg out. His head was visible to the witness but his other leg was not. The witness reaffirmed under cross-examination that it was indeed the Accused whom he had seen in the vehicle and who had shot the girl.<sup>261</sup> The witness's account of this rape and killing of the young girl by the Accused is consistent with his prior statement dated 6 February 1997. The Chamber refers to II.2.6.3 above wherein Witness DAF was found to be a credible witness.

### 6.3 Alibi

294. The Defence adduced alibi evidence to rebut this allegation.

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<sup>259</sup> Id., pp. 92, 119.

<sup>260</sup> Id., pp. 89-91, 107-109, 112-113, 123, 125.

<sup>261</sup> Id., pp. 92, 119.

*Witness TEN-16*

295. Witness TEN-16 said the Accused did not commit this crime and if he had, she would have been aware of it.<sup>262</sup> This evidence does not provide the Accused with an alibi and does not raise a reasonable doubt that the Accused was at the scene of the alleged rape on 20 May.

*Witness TEN-8*

296. Witness TEN-8 stated that, during the month of April, he did not see the Accused in the region.<sup>263</sup> Nor did the witness ever hear that the Accused was involved in any killing or rape, whether personally or by inciting others, during this period in Kibuye.<sup>264</sup> This evidence does not provide the Accused with an alibi and does not raise a reasonable doubt that the Accused was at the scene of the alleged rape on 20 May.

*Witness TEN-9*

297. As part of his functions, Witness TEN-9 signed a document to authorize the disbursement of allowances for an official mission entrusted to the Accused and another official by the President of the Republic. The two were to travel to Goma and Gisenyi to negotiate with the Zairean authorities for a new fuel route from Goma to Gisenyi. The mission was supposed to extend from 15 May until 2 or 3 June 1994.<sup>265</sup> The witness declared that he did not accompany the officials on mission. He stated that when a mission order was issued, it was executed; however, he was not in a position to confirm that this mission was in fact carried out.<sup>266</sup> He stated that he did not see the Accused in Gitarama where the Accused usually was, and where he himself was staying at the time, during the period of this mission.<sup>267</sup>

298. The Chamber notes that the witness did not know if the Accused actually went on this mission. He cannot say that he knew that the Accused was in Goma at this time. In addition, the witness does not say that the Accused stayed in Goma everyday from 15 May to 2 or 3 June, even if the Accused did go on mission. The Accused could have left Goma and returned subsequently, without the witness's knowledge. The Chamber does not consider that this evidence provides the Accused with an alibi and does not raise a reasonable doubt that the Accused was at the alleged rape.

*Witness TEN-10*

299. The Chamber refers to the examination of TEN-10's alibi evidence for this period of time in II.2.2.3 above. In addition, Witness TEN-10 testified to a mission the Accused

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<sup>262</sup> Id.

<sup>263</sup> T. 29 Oct. 2002, pp. 30-31.

<sup>264</sup> Id., p. 42.

<sup>265</sup> T. 30 Oct. 2002, pp. 23-33 (closed session).

<sup>266</sup> Id., p. 25 (closed session).

<sup>267</sup> Id., pp. 23-33 (closed session).

undertook to Goma in mid-May, from 10 to 20 May 1994.<sup>268</sup> The witness had seen the mission warrant intended for Niyitegeka, but he could not remember the length of the mission, nor had he seen a mission report containing more details of the mission.<sup>269</sup>

300. The Chamber notes that the witness did not know if the Accused actually went on this mission. He cannot say that he knew that the Accused was in Goma at this time. In addition, the witness did not state the exact dates of the mission and did not know the length of the mission. The Chamber does not consider that this evidence provides the Accused with an alibi and the Chamber therefore finds that the evidence does not raise a reasonable doubt that the Accused was at the scene of the alleged rape and murder of the young girl. In addition, the Chamber recalls that TEN-10 was found not to be a credible witness in II.2.2.3 above.

#### **6.4 Factual Findings**

301. The witness did not see the Accused rape the young girl. He surmised that the girl had been raped by the Accused in light of the circumstances, and because he had later heard the Interahamwe talk of the girl having been raped. The Interahamwe could not have seen the act either, since it allegedly occurred in a closed vehicle and there is no evidence that the Interahamwe had peered into the vehicle. Nor did the witness state that their reported conversation named the Accused as the perpetrator. There is insufficient evidence for a factual finding that the girl had been raped, or that the alleged rape was perpetrated by the Accused. Therefore, the Chamber finds that there is insufficient evidence to support the allegation that the Accused raped the young girl.

302. However, the Chamber accepts the eyewitness testimony as to the killing of the girl. Therefore, the Chamber finds that on 20 May 1994, the Accused shot and killed a girl of 13-15 years of age in Bisesero by the Gisovu-Kibuye road.

### **7. Inhumane Acts**

#### **7.1 Mutilation of Kabanda on 22 June in Kazirandimwe Hill**

##### **7.1.1 Testimony of Prosecution Witness GGO**

303. On 22 June 1994, Witness GGO saw the Accused from the woods by a ravine close to a cassiterite quarry at Cyamaraba<sup>270</sup> on Kazirandimwe Hill, opposite the Accused's residence. He saw the Accused with Mika, Sikubwabo and Ndimbati, whom

<sup>268</sup> T. 11 Nov. 2002, pp. 19, 82-83. The witness described the role he played in regard to the two missions on a piece of paper, in Kinyarwanda, T. 11 November 2002, p. 20. This piece was marked as Defence Exhibit 40 (A), (B) and (C), p. 53.

<sup>269</sup> T. 11 Nov. 2002, pp. 99-100. The witness had the opportunity to see mission requests in the course of his work. He could not immediately recall requests from other ministers, but he said he might remember if he was given some time, T. 11 November 2002, pp. 105-106.

<sup>270</sup> The French spelling is favoured over the English ("Cyanaraba") as the first translation from the original Kinyarwanda – T. 28 Aug. 2002, pp.177-178 (Fr.); T. 28 Aug. 2002, pp. 111-112.

he identified as leaders. They wanted to surround the Tutsi in the pine forest. The Accused was about 50 metres away from the witness. The Accused told the attackers who were tired of killing, to work seriously. Therefore, the attackers remained and it was then that Assiel Kabanda was found. The attackers rejoiced at his capture - they had been looking for Kabanda for several days because he was an influential trader and well-liked. They shouted out that they had found Kabanda and were so happy that they stopped killing that day and returned home. Kabanda was killed after his capture but the witness could not see who shot Kabanda as all the attackers there had guns and there was a series of bullet shots. However, the witness stated that the Accused did not commit the killing. At this time, the Accused was about 70 metres from Kabanda. The witness then saw Mika cut off Kabanda's head with a machete, and castrate him. Kabanda's skull was pierced through the ears with a spike and carried away by two men, each holding one end of the spike with the skull in the middle. The Accused was standing close by throughout this incident and was jubilant and rejoicing while the acts were being perpetrated. Mika, Ruzindana, Sikubwabo and others left with the skull. The entire incident lasted 30 minutes to an hour. The witness heard Kabanda's head was subsequently displayed at Mika's shop in Gishyita. The genitals were hung on a spike until the witness and others found them and buried them. The witness saw his body without his genitals.<sup>271</sup>

304. The witness knew the Accused when the Accused was a journalist, and also knew that he came from the same area as himself. He saw the Accused during the legislative election campaigns, and during the project of construction of a road from 1981-1983, of which the Accused was a leader. The Accused also arranged for the financing of this project from Adra-SOS. This road branched off from the Cyangugu road, passed by Mugonero Hospital and the Accused's residence, and led to the Rushishi Centre. The witness was a paid labourer employed on the project for six months, during which time he would see the Accused often when he came to the site.<sup>272</sup> He also saw the Accused during Sikubwabo's investiture as the bourgmestre of Gishyita commune, which he attended as an inhabitant of the commune.<sup>273</sup> The Accused attended as the representative of the "Power" wing of the MDR Party. Sikubwabo was also a representative of the MDR. Kayishema was present as well.<sup>274</sup> The witness said that the MDR "Power" wing was the wing of the MDR that participated in the massacres against Tutsi. MDR used to be one party but had split into two and this wing was said to be the new MDR.<sup>275</sup> He did not know why the party had split.<sup>276</sup> The witness described the Accused as a stocky man, relatively tall, whose hairline started not far from his eyes, with hairy arms and a potbelly.<sup>277</sup> The witness identified the Accused in court.<sup>278</sup>

<sup>271</sup> T. 28 Aug. 2002, pp. 106-119; T. 29 Aug. 2002, pp. 40-47, 80-93, 98-99.

<sup>272</sup> T. 28 Aug. 2002, pp. 93-94.

<sup>273</sup> *Id.*, p. 94.

<sup>274</sup> *Id.*, pp. 100-101.

<sup>275</sup> *Id.*, pp. 102-103.

<sup>276</sup> T. 29 Aug. 2002, pp. 82-83.

<sup>277</sup> *Id.*, p. 104.

<sup>278</sup> *Id.*, p. 106.

### 7.1.2 Notice

305. The Defence argues that the evidence relating to the Accused's alleged exhortation to the attackers to work seriously late in the day should not be taken into account as it had had no prior notification that this evidence was forthcoming.<sup>279</sup> The Accused's alleged exhortation to the attackers to work seriously was not mentioned in any of the witness's prior statements, the Indictment, or the Pre-trial Brief. Therefore, the Defence had no notice of this allegation. The Chamber considers that this allegation is not a mere detail provided during testimony; it is a material allegation against the Accused, of which notice should have been provided to the Defence. Consequently, the Chamber will disregard evidence relating to this alleged act for lack of notice.

### 7.1.3 Credibility Assessment

306. Discrepancies exist between Witness GGO's prior written statements as to the date on which he had fled to Bisesero. He explained that a distinction had to be made between Bisesero, the region, and Bisesero, the hill, as he lived on the edge of Bisesero.<sup>280</sup> In his statement dated 6 November 1999, he stated that Kabanda was taken away to Gitwa Hill; yet he testified in the present case to having seen Kabanda being shot and decapitated at the place in which he was found. He explained that he meant that Kabanda's head was taken away as he felt the head represented the individual. The witness confirmed that his testimony in court was accurate.<sup>281</sup>

307. His testimony in *Musema* mentions that he woke up after being shot but he claims in this case that he was conscious throughout and merely pretended to be dead. When the attackers left he got up and escaped. He was asked how he could have seen François being shot when he was pretending to be dead, but he stated that François was shot before he was. He had his eyes open and could observe the attackers pursuing his cousin and subsequently leaving the scene. This was a different François from that mentioned in his November 1999 statement.<sup>282</sup>

308. The Defence put it to the witness that the Accused was at a Council of Ministers meeting in Muramba in Gisenyi during the entire day of 22 June 1994, and had made a press announcement during the 7.00 p.m. evening news. This meeting continued until the 24 June 1994. The witness confirmed that he had seen the Accused as testified. He also suggested that the Accused could have absented himself for periods of time during the meeting.<sup>283</sup>

309. The Defence submits that the Chamber should note that Prosecution Witness GGM, who was closely related to Kabanda, did not mention the Accused's involvement

<sup>279</sup> Defence Final Trial Brief, p. 175, para. 17.

<sup>280</sup> T. 29 Aug. 2002, pp. 28-32.

<sup>281</sup> Id., pp. 48-52.

<sup>282</sup> T. 29 Aug. 2002, pp. 62-67.

<sup>283</sup> Id., pp. 68-70.



in his gruesome death, and that this casts doubt on Witness GGO's evidence.<sup>284</sup> The Prosecution pointed to the reference in Witness GGM's statement to a Kabanda who was killed by gun and machete. The Chamber does not believe that Witness GGM's omission to volunteer evidence of Kabanda's death, particularly since he had not been asked specifically to relate what he knew, should be taken as consideration to discredit Witness GGO.

310. There were minor discrepancies in the witness's evidence, but the Chamber notes his explanation that he answered questions asked by investigators and that his experience of fleeing and being without food for three months meant one did not always have the presence of mind to provide details. The Chamber notes that Witness GGO took care to testify to that which he saw, without exaggeration. He does not allege that the Accused was a perpetrator of the act of killing and mutilation of Kabanda, merely that he was present and observed the event. The Chamber finds that Witness GGO is a credible witness.

#### **7.1.4 Alibi**

##### *Witness TEN-10*

311. The Chamber refers to II.2.9.3 above where TEN-10's alibi evidence in respect of this time period was examined and rejected.

#### **7.1.5 Factual Findings**

312. Based on the totality of the evidence, the Chamber finds that on 22 June 1994, sometime in the afternoon after 3.00 p.m., at Kazirandimwe Hill, the Accused was with others leading an attack against Tutsi refugees. The attackers found a prominent Tutsi trader, Assiel Kabanda, for whom attackers had been looking several days. The Accused and the others rejoiced when they found him. The Accused and others were jubilating when Kabanda was killed and subsequently decapitated and castrated, and his skull pierced through the ears with a spike. His genitals were hung on a spike, and visible to the public. Although the Accused did not personally kill Kabanda, the Chamber finds that he was part of the group that perpetrated these crimes, and rejoiced at the commission of these acts.

## **7.2 Mutilation of Woman on 28 June near Ecole Normale Technique**

### **7.2.1 Testimony of Prosecution Witness KJ**

313. The Chamber refers to Witness KJ's evidence of the sexual assault on the body of a dead woman on 28 June near ENT set out in II.5.2.1 above.

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<sup>284</sup> Defence Final Trial Brief, p. 172, para. 10; Witness GGM's statement dated 20 March 1996.

## 7.2.2 Credibility Assessment

314. The Chamber refers to II.5.2.2 above, wherein Witness KJ was found to be a credible witness.

## 7.2.3 Alibi

315. The Chamber refers to II.5.2.3 above, wherein the alibi evidence relating to this incident was examined and rejected.

## 7.2.4 Factual Findings

316. Although the witness did not see the act of inserting the piece of wood into the woman's genitalia, he heard the order being issued by the Accused and later saw the woman lying on the road with wood sticking out of her genitalia. Based on the totality of the evidence, the Chamber finds that on 28 June 1994, near the Technical Training College, on a public road, the Accused ordered Interahamwe to undress the body of a woman who had just been shot dead, to fetch and sharpen a piece of wood, which he then instructed them to insert into her genitalia. This act was then carried out by the Interahamwe, in accordance with his instructions. The body of the woman, with the piece of wood protruding from it, was left on the roadside for some three days thereafter. The Accused referred to the woman as "Inyenzi" which the Chamber is satisfied was meant to refer to Tutsi.

## 8. Other Submissions

### 8.1 Introduction

317. Evidence of other issues was raised by the Prosecution and the Defence. These relate to the Accused's political affiliations, the condition of the roads in Bisesero at the material time, the fact that the Accused is overweight, the good character of the Accused, the denial of genocide in Rwanda, and the allegation of influence or pressure exerted upon Prosecution witnesses. The Chamber will now present its findings in respect of these issues.

### 8.2 The Accused's Political Affiliations

318. The Prosecution and the Defence made submissions as to the Accused's involvement in the MDR Party and the Interim Government.

#### 8.2.1 Prosecution Submissions

##### *MDR Party*

319. The Prosecution submits that due to internal conflicts within the MDR Party, it had split into two factions. One faction was a moderate faction under the leadership of Faustin Twagiramungu, which supported the Arusha Accords. The other faction was

termed “MDR Power”. This second faction, the Prosecution argues, was against the Arusha Accords and advocated hatred and violence against the Tutsi, according to a Hutu-based ideology aligned with that of the former MDR Parmehutu. The Prosecution contends that the Accused was a member of the “bigoted POWER wing”. In addition, the Prosecution submits that MDR’s participation in the Interim Government together with the MRND, which was anti-Tutsi, shows that the MDR’s platform was not one of democracy. Although the Statute of the Party advocates democracy, the Prosecution submits that that does not mean that the Accused himself possessed those ideals.

#### *Interim Government*

320. The Accused’s participation as Minister of Information in the Interim Government, which had no Tutsi members and advocated a policy of violence against the Inkotanyi and their accomplices, the Prosecution contends, shows his ethnic bias. The Prosecution points out that the Accused did not resign from his post, nor publicly condemn the atrocities in Rwanda; instead, he participated in cabinet meetings, issued government reports on Radio Rwanda, and personally participated in crimes in the Kibuye Prefecture. According to the Prosecution, by doing nothing, the Accused tacitly approved of the government’s actions, and failed to abide by his duties set out in the Constitution.<sup>285</sup>

### **8.2.2 Defence Submissions**

#### *MDR Party*

321. The Defence denies that there was a formal split of the MDR Party into two factions. It contends that some members, including Faustin Twagiramungu, were removed from the party, and it was these former members who subsequently used the term “MDR Power” to refer to the members who had remained within the MDR Party. Therefore, there was no party called “MDR Power”.

322. The Defence submits that the MDR Party promoted democratic ideals and was not ethnically biased. It pointed to Defence witnesses who testified to having joined the MDR Party as they were attracted to its democratic ideals. The Defence asserts that the Accused continued to support a democratic MDR Party.

#### *Interim Government*

323. In response to the Prosecution’s submissions that the Interim Government had no Tutsi representatives, the Defence pointed out that the Tutsi supported the RPF. It asserts that the Accused supported the Arusha Accords and democracy in Rwanda. The Defence submits that the Accused joined the Interim Government in order to ensure peace and democracy for Rwanda and the implementation of the Arusha Accords.<sup>286</sup>

### **8.2.3 Testimony of Prosecution Witness GK**

324. Witness GK stated that in 1993, the MDR Party split into two: the “Power” wing

<sup>285</sup> Prosecution Final Trial Brief, paras. 7-23.

<sup>286</sup> Defence Final Trial Brief, pp. 206-227.



and the “MDR” wing. According to the witness, the Accused belonged to the extremist one, the “Power” faction, which was not in favour of the Arusha Accords. Regarding the split of the MDR Party, it was said that the leadership of the party was causing problems with the smooth functioning of the party; it was known to outsiders that there were problems, which caused people to follow the leader of one wing or the other. As for the “Power” wing’s platform, the witness testified that they believed that the Accords were signed by Inkotanyi, and they were not willing to review the Accords. The majority of both wings of the MDR Party was Hutu. However, the witness said that the problem in MDR was not ethnic in nature, but political.<sup>287</sup>

325. Witness GK was not a member of the MDR; he was a member of the MRND Party from 1990 to 1992, and from 1993, of the PSD (“Parti Social Démocrate”) Party. Therefore, his information is not that of an insider to the functioning of the MDR Party. The Chamber refers to its finding in II.4.3.2 above that Witness GK is a credible witness.

#### 8.2.4 Testimony of Defence Witnesses

##### *Witness André Sebatware*

326. André Sebatware held the positions of Minister of Post and Telecommunications, Minister of the Interior and Justice, and Prefect of Kigali Prefecture twice. On 31 January 1981, Sebatware was dismissed from his position as Prefect of Kigali prefecture and worked as an independent businessman, until 6 April 1994.<sup>288</sup> The witness was a member of the MDR political bureau, and its vice-chairman for Ruhengeri Prefecture. After 7 April 1994, he remained as a nominal member of the political bureau.<sup>289</sup>

327. Sebatware first knew the Accused in 1975, when the Accused was a journalist and reported on MRND or prefectural meetings. Later a close relationship developed, based on their common MRND membership at that time.<sup>290</sup>

328. The witness stated that the Accused was the MDR chairman in Kibuye and a member of its political bureau. The witness supported the Accused’s nomination by the MDR as a member of the Broad-Based Transitional Government. According to the witness, in conformity with MDR policy, the Accused supported the rapid implementation of the Arusha Accords. The Accused wanted peace to be restored in the country, and he strived for a democratically elected government.<sup>291</sup>

329. Sebatware was among those who re-launched the MDR-Parmehutu, a party established in 1959 and dedicated to “defend people, especially the Hutus who had no rights in their country.” He said that the word “Parmehutu” was deleted from the name of the new party because it referred to the emancipation of the Hutu, a goal which had been achieved, and because the law on political parties prohibited ethnicism. The party was

<sup>287</sup> T. 18 June 2002, pp. 14-25; T. 20 June 2002, pp. 119-121, 151-155.

<sup>288</sup> See, in general, T. 12 Nov. 2002 pp. 4-13.

<sup>289</sup> T. 13 Nov. 2002 pp. 15-17.

<sup>290</sup> T. 12 Nov. 2002 pp. 16-17.

<sup>291</sup> Id. pp. 24-26. For the support of the MDR to the Arusha Accords, see also Id. p. 69.

then called "MDR Party".<sup>292</sup>

330. According to Sebatware, the MDR did not split into two factions, and he denied that there was a faction called "MDR Power". The witness further denied that the word "Power" was used in respect of an alliance of the majority (the Hutu) against the minority (the Tutsi). He first heard the word being used by Froduald Karamira. He said that when Karamira used the word, he was referring to those who were in combat or who were attacking Rwanda. Karamira had not suggested that everyone was to unite against the Tutsi. Further, on subsequent meetings with the witness, Karamira never expressed such views to the witness. Like Defence Witness Nkezabera, Sebatware stressed that there were no documents showing that the party was called "MDR Power".<sup>293</sup>

331. Sebatware stated that Twagiramungu was expelled from the MDR because he had made decisions without confirmation from the party. He had taken the unilateral decision of appointing himself Prime Minister in the Broad-Based Transitional Government, without nomination by the MDR Party, after the Prime Minister of Rwanda, Agathe Uwilingiyimana's, death on 7 April 1994. His expulsion was confirmed by the Tribunal of First Instance of Kigali. A few people followed Twagiramungu, but the majority of the members of MDR remained in the party. As a result of this, the MDR lost three ministerial posts in the Broad-Based Transitional Government during the Arusha Accords negotiations and it could not accomplish its objectives.<sup>294</sup>

332. Regarding the relations between the MRND Party and the MDR Party, Sebatware declared that members of the MRND were attacking members of opposition parties in Rwanda in 1992. The witness testified that the Accused and others were victims of such political violence. As an example, he referred to the destruction of the Accused's house. Although MRND members had attacked MDR members, the MDR participated in the Interim Government to work for democracy, to organize elections and to stop the war. The witness denied that the MDR joined the MRND-dominated Government to achieve the common objective of defeating the enemy. He asserted that the draft constitution of the MDR (Defence Exhibit D43) contained key articles showing that membership was open to all ethnic groups. Sebatware said that the MDR advocated the swift implementation of the Arusha Accords. Sebatware stated that the Accused could not have had any relationship with the MRND since the MRND party was in contravention of the principles in its Statute, notably, when it pursued acts of violence.<sup>295</sup>

333. Sebatware stated that the non-Twagiramungu faction of the MDR proposed the MDR candidates for the new government of 9 April 1994: Kambanda (Prime Minister), Bicamumpaka (Minister of Foreign Affairs), the Accused (Minister of Information), and Rwamabuka (Minister of Education). He knew of no Tutsi participating in the Interim Government. Sebatware testified that the MDR struggled to have the RPF stop fighting in

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<sup>292</sup> Id. pp. 7, 14-15.

<sup>293</sup> Id. pp. 102-104; 113-115; and T. 14 Nov. 2002 pp. 19-20.

<sup>294</sup> T. 12 Nov. 2002 p. 36-38, 44, 104-106.

<sup>295</sup> Id. pp. 18-20, 93-95, 124-126; T. 14 Nov. 2002 pp. 7-10.

order to have a government comprised of Hutu and Tutsi.<sup>296</sup> Sebataware stated that this government was a democratic government. However, Sebataware explained that the Interim Government could not achieve its objective, to restore peace in Rwanda, because it was not respected by the international community.<sup>297</sup>

334. According to Sebataware, the MDR did its best to achieve its objectives and remained true to its fundamental principles. The MDR chose representatives for the Interim Government who were committed to these principles. According to Sebataware, Kambanda was such a person, and if he committed genocide, he betrayed the party, as did Twagiramungu. Sebataware did not accept the proposition that Kambanda had committed genocide. He emphasized that Kambanda was not ordered by the party to commit genocide.<sup>298</sup>

335. The witness denied that one of the ideals of the MDR was to form an alliance against anti-democratic Tutsi, and he denied that there was a plan to kill Tutsi, including women and children. He stated that those who had taken up arms against Rwanda were opponents of the MDR, whether Hutu, Tutsi or Twa. However, the witness acknowledged that women and children were killed at the time. The witness emphasized that many people had already died when the government was set up on 9 April 1994 and noted that the government immediately took measures.<sup>299</sup>

336. Sebataware testified that Kambanda's government issued pacification messages. He did not remember dates, but that he had heard many pacification messages of the Interim Government broadcast on Radio Rwanda by the Accused as the Minister of Information. In these messages, the witness never heard the Accused express the view that Tutsi men, women and children should be specifically targeted and killed. He added that this would have been against the nature of the Accused.<sup>300</sup>

337. The witness recalled one specific speech made by the Accused as a Minister of the Interim Government, in Butare, which he heard on the radio (Defence Exhibit D44). According to Sebataware, the Accused's general message was that people should not kill each other, but that they should rather work together, that killing would not resolve the problems of Rwanda, and that people should not be victims on the basis of their ethnic origins.<sup>301</sup> Sebataware further explained that the word "enemy" was "a military term" which referred to the accomplices of the RPF. The witness denied that there had been a genocide in Rwanda.<sup>302</sup>

#### Credibility Assessment

338. The Chamber observes that the witness was a high-level member of the MDR

<sup>296</sup> T. 12 Nov. 2002 pp. 34-35, 126-130.

<sup>297</sup> T. 14 Nov. 2002 pp. 20-21, 60-62.

<sup>298</sup> Id. pp. 21-22, 33-34.

<sup>299</sup> Id. pp. 12, 14, 24-25.

<sup>300</sup> T. 12 Nov. 2002 pp. 50-51, 72.

<sup>301</sup> Id. pp. 51-55.

<sup>302</sup> T. 13 Nov. 2002 pp. 18-23.

Party and offered an insider's perspective of the politics within the MDR Party. However, the Chamber notes that there are some inconsistencies in the witness's testimony in some crucial respects. The evidence is unclear as to whether there were two factions within the MDR Party, one called "MDR-Power", and as to what its platform was. The witness did not adequately explain how the Accused could have joined the MRND-dominated Interim Government given that he stated that the Accused could not have had any relationship with the MRND as the Accused was averse to its violent actions, and given that the MRND had committed violent acts against the Accused himself by destroying his property. In addition, the witness stated that Kambanda was one of those committed to the democratic principles of the MDR. His opinion was that Kambanda had betrayed the MDR if he had committed genocide. The witness was reluctant to say that there were no Tutsi in the Interim Government.

*Jean-Marie Vianney Nkezabera*

339. The witness was among the founding members of the MDR. Prior to and during the events, he was vice-chairman of the party in Kigali-ville and a parliamentary candidate for the Broad-Based Transitional Government.

340. The witness knew of the Accused in the early 1980s when the Accused was a journalist. He used to hear the Accused on Radio Rwanda. Once in a while they would see each other on the road in Kigali. However, the first time that the witness actually met the Accused was in 1991, when they became involved in politics together. He and the Accused were among the founders of the MDR in 1991.<sup>303</sup> Both thereafter assumed high positions within the MDR on the national level.<sup>304</sup>

341. In the course of the democratization process, following a speech by President Habyarimana on 5 July 1990, the MDR-Parmehutu was re-established and officially launched on 31 July 1991 with the name MDR.

342. According to Nkezabera, there were substantial differences between the MDR and its predecessor, the MDR-Parmehutu, in their respective economic, political and social programs.<sup>305</sup> The witness suggested that the MDR-Parmehutu had been solely dedicated to protecting the interests of the Hutu and emancipating the Hutu from the oppression of the Tutsi, but he also declared that the MDR-Parmehutu's message was not only directed at the Hutus but also at emancipating the masses.<sup>306</sup> The founders of the MDR Party, among them the Accused and the witness, dropped the term "Parmehutu" as they wanted to create a party without any ethnic ideology and the word "Parmehutu" was no longer necessary because democracy in Rwanda concerned everyone.

343. The witness testified to the platform of this new MDR: it advocated democracy, individual freedoms, the reunion of Rwandans regardless of ethnic considerations, and the end of violence. Its motto, as shown in the party's Statute, was: "Liberty, Justice,

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<sup>303</sup> Id., p. 77.

<sup>304</sup> Id., p. 118.

<sup>305</sup> Id., pp. 77-81.

<sup>306</sup> Id., pp. 80-81.

Work". The new MDR respected its principal objectives and the notion of non-discrimination.<sup>307</sup> The witness indicated that there were Tutsi members in the MDR. However, he acknowledged that none of the MDR representatives in the governments prior to the events was Tutsi.<sup>308</sup>

344. Nkezabera said that there was no split in the MDR; rather, it was a fringe that had broken away from the party. This fringe, however, did have the power to continue the Arusha negotiations.<sup>309</sup>

345. According to the witness, the first reference to the term "Power" was made by Twagiramungu in a radio broadcast.<sup>310</sup> However, he admitted that Karamira used the term "Power" during a speech held in the Nyamirambo stadium on 23 October 1993 after President Ndadaye's assassination in Burundi. The witness maintained that the MDR did not approve of this speech. He emphasized that, in a subsequent meeting, Karamira was blamed for statements that went counter to the MDR ideology.<sup>311</sup> The witness disagreed that each party in Rwanda, including the MDR, had an extremist Power-branch. He referred to the headings used on official MDR-documents, where the word "Power" did not appear.<sup>312</sup> He stated that Twagiramungu had been expelled from the party for taking unilateral actions without consulting the party.<sup>313</sup>

346. The witness testified to attacks by the MRND against the Accused. According to the witness, the Accused was the object of attacks because of his opinions and his position within the MDR. In March 1992, grenades were thrown at the Accused at Gitega, as he was passing in his vehicle. After the signing of the Arusha power-sharing protocols, in January 1993, the Accused's garage and petrol station in Nyabugogo, Gatsata, were pillaged during protests organised by the MRND. In the second half of 1993, the Accused was assaulted after chairing a political rally in Kibuye, when passing through Birambo.<sup>314</sup>

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<sup>307</sup> Id., pp. 79, 82-83.

<sup>308</sup> T. 14 Nov. 2002, pp. 137-139.

<sup>309</sup> Id., pp. 92-93.

<sup>310</sup> T. 13 Nov. 2002, p. 110, see also T. 14 Nov. 2002, p. 105.

<sup>311</sup> T. 14 Nov. 2002, pp. 97-98, see also p. 143.

<sup>312</sup> Id., p. 104.

<sup>313</sup> T. 13 Nov. 2002, pp. 85-93. See also T. 14 Nov. 2002, pp. 91-92.

<sup>314</sup> T. 13 Nov. 2002, pp. 115-119.

347. The witness agreed with the contents of a letter dated 13 April 1994 from the Permanent Representative of Rwanda to the UN, Jean-Damascène Bizimana, to the Security Council,<sup>315</sup> wherein it is stated that the government is pursuing negotiations with the RPF, that it is seeking to provide security for the population and that it has regained control of the situation in Rwanda.<sup>316</sup>

Credibility Assessment

348. Witness Nkezabera also offers an insider's perspective on the internal political tensions within the MDR Party. The Chamber finds that there is insufficient evidence as to whether there was a faction called "MDR-Power", and even if there was, what its platform was. He did not explain why the Accused or the MDR joined the MRND-dominated Interim Government despite their violent actions against the Accused and members of opposition parties. In addition, as he was not in Rwanda at the material time, his evidence as to events at the time is of limited value.

Witness TEN-23

349. The witness said that he had heard the Accused on the radio both when the Accused was a journalist, and later when he was a Minister and excerpts from his speeches were broadcast. The Accused said the MDR was a democratic party, which provided everyone with the necessary liberties and the opportunity of expressing himself. He said that the party was different from other parties. It was a party that did not practice ethnic or religious discrimination.<sup>317</sup> TEN-23's testimony is not direct evidence about the Accused himself.

Witness TEN-9

350. The witness declared that MDR Chairman Faustin Twagiramungu had been expelled from the party because of his failure to comply with instructions from the party. Among other problems, Twagiramungu would take unilateral decisions instead of consulting other leaders of the party. Specifically, Twagiramungu nominated himself for the position of Prime Minister in the Broad-Based Transitional Government without seeking the approval of the appropriate committee. The MDR National Committee therefore excluded him and the decision was confirmed by the Nyamirambo Tribunal of First Instance in Kigali.<sup>318</sup>

351. The witness denied the existence of factions within the MDR. He added that there was only one MDR, and that Twagiramungu and his followers, dismissed from the party, referred to those remaining in the party as the MDR-Power. He then declared that the Accused was among those who remained in the MDR.<sup>319</sup>

352. The Chamber refers to its findings as to the reliability of TEN-9's alibi evidence

<sup>315</sup> Exhibit D51, including annex of letter from Foreign Affairs Minister, Jérôme-Clément Bicamumpaka.

<sup>316</sup> T. 13 Nov. 2002, pp. 121-123.

<sup>317</sup> T. 22 Oct. 2002 pp. 72-73.

<sup>318</sup> T. 30 Oct. 2002 p. 15-18.

<sup>319</sup> Id. p. 43.

above in II.6.1.3 and II.2.7.4. The Chamber finds that there is insufficient evidence as to whether there was a faction called “MDR-Power”, and even if there was, what its platform was, and therefore makes no finding in this regard.

*Witness TEN-5*

353. Witness TEN-5 stated that he joined the MDR in 1991 because it was against dictatorship and for democracy. The party wanted transparency in elections, and the party did not practice ethnic, religious or regional discrimination. The witness further stated that he supported the Arusha Accords. In response to a question regarding the Accused’s role in the MDR, the witness stated that the Accused was a member and activist, but he did not think the Accused occupied any post within the MDR.<sup>320</sup>

354. The witness does not address the Accused’s political affiliations. Further, considering the lack of knowledge the witness had about the Accused’s role in the MDR, the Chamber finds his evidence to be of little value.

*Witness TEN-10*

355. The witness became a member of the MDR. He found the MDR’s objectives, namely reconciliation and development without distinction in terms of region or group membership, appealing. He never held any post of responsibility within the MDR. He could not recount the party’s view on the Arusha Accords, as he had been a member of the MDR for four months only.<sup>321</sup>

356. The Chamber recalls that Witness TEN-10 was found not to be a credible witness in II.2.2.3 above. Given his brief time as a member of the MDR, and his lack of knowledge about the MDR Party, the Chamber considers that the witness’s evidence is of limited value in this regard.

### 8.2.5 Factual Findings

357. There is insufficient evidence to enable the Chamber to make findings on the politics and ideologies followed by the various groups and individuals in Rwanda at the material time, or on the internal politics of the MDR Party in particular. It is not disputed that the Accused was a member of the MDR Party and that the Interim Government was formed on 9 April 1994, which comprised MDR Party members, including the Prime Minister Jean Kambanda and the Accused, as Minister of Information. The Interim Government comprised solely members of the Hutu ethnic group.

358. Contrary to the Defence’s assertions, the Accused was invited to join the Interim Government and did so of his own volition.<sup>322</sup> The Accused’s own words during a

<sup>320</sup> T. 23 Oct. 2002 p. 64-65, 91.

<sup>321</sup> T. 11 Nov. 2002, pp. 8-10.

<sup>322</sup> Defence Counsel, during her Opening Arguments, stated that there was no prior consultation with the Accused as to whether he would join the government. According to the Defence, on the morning of 9 April, an armoured vehicle manned by armed soldiers turned up at the Accused’s house where his wife and

meeting in Butare (Exhibit D44) do not indicate he was coerced or forced into joining the government: "As far as I am concerned, I was doing rounds when I was contacted. At the time, I did not know that I was going to become a minister. I was doing rounds to ensure my own security...When they [the RPF] attacked, the army intervened to defend the country and we were asked to do rounds. It was necessary given the gravity of the situation. Why then was I taking part in the rounds? Was I doing so while waiting for a post within the government of killers? Other members of the government were called upon while they were carrying out other duties."<sup>323</sup> The Chamber finds that the Accused was an active participant in the government and supported its policies and activities. He attended government meetings at cabinet level, represented the government's point of view in disseminating information as Minister of Information. In particular, he supported the Prime Minister Jean Kambanda<sup>324</sup> and spread his message on Radio Rwanda and at public meetings like that held on 3 May 1994 at Kibuye Prefectural Office.

### 8.3 Condition of Roads in Bisesero

359. The Defence adduced evidence that the condition of the roads in Bisesero at the time of the events alleged were so bad due to the rainy season that heavy vehicles would not have been able to access the roads, for example, vehicles like the buses and lorries that the Prosecution claims transported attackers to sites of attacks in Bisesero.

360. Both Prosecution Witness Lucassen and Defence Witness Nzeyimana, who photographed various areas in Bisesero and whose reports were admitted as exhibits, were not in Bisesero at the material time and were not able to testify to the condition of the roads in April-July 1994.

361. Defence Witness TEN-8 testified to the bad condition of the road from Mubuga to Bisesero so that ONATRACOM buses could not have used the road.<sup>325</sup> However, the Chamber notes that Nzeyimana testified to more than one route that one could take from various locations within Rwanda to Bisesero.<sup>326</sup>

362. There is therefore insufficient evidence to support the Defence contention that the roads were impassable at that time.

### 8.4 The Weight of the Accused

363. The Defence adduced evidence to the effect that the Accused could not be found to have participated personally in attacks as alleged by the Prosecution, because his

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children were cowering in fear, and they told him he was now a Minister and had to leave with them; T. 17 Oct. 2002, p. 12.

<sup>323</sup> Exhibit D44, p. K0238741.

<sup>324</sup> Kambanda was convicted by the Tribunal of genocide and other crimes on 4 September 1998 after he pleaded guilty to various acts of genocide and other crimes committed in his ex officio capacity against Tutsi and moderate Hutu who did not support the government.

<sup>325</sup> T. 29 Oct. 2002, pp. 43-44.

<sup>326</sup> T. 13 Nov. 2002, p. 64.



obesity hampered his ability to run about the hills, chasing after and killing Tutsi refugees, as alleged.

364. Defence Witness TEN-22 described the Accused in 1994 as fat (110-130 kilos) and of medium height, someone who moved around with difficulty and who could not play a game of football. Defence Witness TEN-9 described the Accused in the first months of 1994 as “a fat person”, “a giant” weighing about 120 kilograms. He said that he always saw the Accused out of breath after climbing the stairs to the second floor of the Kigali building where the MDR-Kibuye Section held their regular Monday meetings. He added that, as a result, he usually needed “a little break” before the meeting started.<sup>327</sup> However, TEN-23 stated that the Accused was not so fat that he could not move around, and that he was in good health.<sup>328</sup>

365. The Chamber notes that it is alleged that the Accused drove to the attacks in Bisesero in a vehicle, and did not arrive on foot. He was able to climb the stairs to the MDR meetings in Kibuye, as testified to by TEN-9. For these reasons, the Chamber considers that this defence is without merit. For the record, the Chamber observed during the trial that the Accused was not noticeably overweight.

#### **8.5 Good Character of the Accused**

366. The Defence adduced evidence of the good character of the Accused, of his commitment to democratic principles and of his standing as a good Christian who would not have committed the crimes alleged.

367. Defence Witness Sebatware knew the Accused to be an intellectual person, who loved truth and opposed ethnicism. Sebatware was surprised to hear of the charges against the Accused. He stated that the crimes the Accused was charged with contravened the MDR objectives and the Accused’s religious convictions; he further stressed that the Accused’s father was a pastor.<sup>329</sup> He also stated that the Accused was the victim of attacks by MRND members against members of opposition parties (see paragraph 16 above).

368. Defence Witness TEN-22 recalled a few communiqués about the results of government meetings delivered by the Accused over the radio. In those communiqués, the Accused did not call for killings or say anything against the Tutsi. The witness testified that from the few broadcasts which he heard, he could not discern the Accused’s political interests.<sup>330</sup>

369. Defence Witness TEN-23 testified to an incident when the Accused saved him and others from Interahamwe who were trying to break into the place in which they were sheltering (see II.2.7.4 above).

<sup>327</sup> T. 29 Oct. 2002 pp. 90, 147-148.

<sup>328</sup> T. 22 Oct. 2002, pp. 77-78.

<sup>329</sup> T. 12 Nov. 2002 pp. 24-27.

<sup>330</sup> T. 29 Oct. 2002 pp. 108-109.

370. Defence Witness TEN-9 testified to the Accused's speeches at MDR rallies and meetings. The Accused spoke of respect for others' rights, whether they be Hutu, Tutsi or Twa. He said that even if Hutus were in the majority they should understand that Tutsi and Twas also had rights. He was against discrimination amongst Rwandans, and was a moderate person who defended human rights. The witness testified about the fundamental principles of the MDR, stressing that, in his opinion, the Accused respected these principles in all that he did: (i) respect for individual rights, which applied to all Rwandans whether Hutu, Tutsi or Twa, and (ii) sound management of public property.<sup>331</sup> He added that the Accused was "of high morality" and "a man of moral rectitude".<sup>332</sup>

371. The witness explained that, during the meeting he had with the Accused and other representatives of Rwandan political parties, in Washington DC in September 1990, in regard to power sharing, a representative of the Liberal Party (which was, according to the witness, mainly comprised of Tutsis) declared that he did not understand how a Hutu could join a Tutsi party. The witness testified to the Accused's reaction to this statement as being that each person had a right to join the party of that person's choice, whether the party is comprised of Hutus or Tutsis. The Accused said that the important thing is that that party should speak on behalf of Rwandans and everybody should be allowed to take part.<sup>333</sup>

372. The witness referred to an MDR rally held in Kivumu Commune, Kibuye Prefecture, in 1993 at the Nyamitanga Stadium, where the audience comprised the Hutu, Tutsi and Twa. The Accused called on the bourgmestre of Kivumu and told him that the MDR wanted to see all ethnic groups in his commune live in harmony just like the trees are living in harmony in the forest. The participants applauded and shouted merrily. At the end of the meeting, the witness met Tutsi from his area who expressed their happiness at hearing the Accused's speech and added that they thought that the MDR was a good and peaceful party that brought all the people together.<sup>334</sup>

373. Witness TEN-8 stated that he never heard any member of the Interim Government tell the population to kill the Tutsi.<sup>335</sup>

374. Defence Witness Nkezabera knew the Accused to be someone who loved dialogue. He had never heard the Accused express extremist anti-Tutsi views.<sup>336</sup>

375. The evidence given by Defence witnesses of the good character and democratic ideals of the Accused are mainly based on their knowledge of him prior to the events of 6 April 1994. The Chamber notes that jurisprudence has established that character evidence is rarely of probative value in showing the Accused's propensity to act in conformity

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<sup>331</sup> Id. pp. 146-147.

<sup>332</sup> T. 30 Oct. 2002 p. 19.

<sup>333</sup> T. 29 Oct. 2002 p. 145.

<sup>334</sup> T. 30 Oct. 2002 pp. 4-14.

<sup>335</sup> T. 29 Oct. 2002, p. 43.

<sup>336</sup> T. 13 Nov. 2002, pp. 115-116.

therewith.<sup>337</sup>

## 8.6 Denial of Genocide in Rwanda

### 8.6.1 Defence

376. The Defence adduced evidence to show that there was no genocide at the time in Rwanda, but that Rwanda was in a state of war, presumably indicating that the people killed were casualties of an ongoing war.

#### *Witness André Sebatware*

377. Defence Witness Sebatware stated that Hutu, Tutsi and Twa killed each other. He stated it was not true that people from one ethnic group were killed solely because they belonged to that ethnic group, and that the number of Hutu killed was greater than the number of Tutsi killed. Sebatware stated that he did not know about massacre sites in Kigali-rural in which women and children were slaughtered because he did not go out.<sup>338</sup> As Sebatware had no personal knowledge of these events occurring at the time, the Chamber accords limited weight to this part of his testimony.

#### *Witness TEN-10*

378. Defence Witness TEN-10 did not believe that genocide had occurred in Rwanda and, more specifically, he denied having ever heard about a massacre in Gatwaro Stadium, let alone a massacre of Tutsi, or about the massacre in Mubuga Church. The Chamber notes that both events took place in Kibuye, the witness's native region. In the witness's view, people were killing each other during the war and the authorities could not put an end to it. The witness denied that Tutsi children were killed from 7 April and 17 July, and stated that nobody verified the ethnicity of those killed. The witness further denied that people were divided into ethnic groups during the period from 7 April and 17 July.<sup>339</sup> He attributed the killings to RPF soldiers who were standing at a roadblock, disguised as FAR soldiers. The witness's lack of knowledge about large-scale massacres in his area, such as in Gatwaro Stadium and Mubuga Church, casts doubt on his credibility and indicates a bias. The Chamber also recalls that TEN-10 was found not to be credible in II.2.2.3 above.

#### *Witness TEN-16*

379. Defence Witness TEN-16 testified to the movement of people from her secteur to West Kivumi, to defend their cattle and their own lives from bandits. She stated that the inhabitants of her secteur were mostly Tutsi, except for two Hutu, who were the witness's brother and cousin. According to the witness, Tutsi from outside the vicinity sought refuge with the group. Witness TEN-16 noted that at the time, everybody was afraid, and Hutu and Tutsi alike slept outside of their houses at night. The witness said that she understood at that time that there was a war, but she did not understand why the war had

<sup>337</sup> *Ntakirutimana* (TC), para. 729, citing *Kupreskic*, Decision on Evidence of the Good Character of the Accused and the Defence of *Tu Quoque*, dated 17 February 1990.

<sup>338</sup> *Id.* pp. 18-23.

<sup>339</sup> T. 11 Nov. 2002, p. 56-59, 63-65.

started. In this area where she had taken refuge the witness observed groups of people attacking others, using sharp objects, and chasing them over long distances.<sup>340</sup>

380. On cross-examination, Witness TEN-16 stated that, between April and July 1994, she never personally travelled to the Bisesero region. She also never travelled to the Mubuga region while she lived in Rushushi. The witness further acknowledged, on cross-examination, that she had not witnessed what had occurred at the sites in Bisesero or at the Mubuga Church. She stated, "I am unable to talk about those events, but I can talk about what I heard regarding those events."<sup>341</sup> As the witness was never personally at the scene of the alleged crimes in Bisesero, her testimony is of limited value.

*Witness TEN-23*

381. During cross-examination, Witness TEN-23 testified that he had not heard of any killings having occurred at Gatwaro Stadium, or at a church in Kibuye, and stated that, although he had heard that people had been killed in the hills of Bisesero, he did not know the ethnicity of those people. "I heard that people were killed there, but I don't know their ethnic group ... All I know is that Tutsis and Hutus died. I cannot identify either the Tutsis, or the Hutus".<sup>342</sup> Asked why he thought Tutsi women and children had died after 7 April 1994, Witness TEN-23 responded: "They died because it was war time. Many people were killed by guns, others were killed by criminals. Tutsis who were killed were killed because they were accomplices of the Inkotanyi. Men, women and children, and the Hutus who were accomplices of the Inkotanyi were also killed during that time, because there were accomplices in the two groups".<sup>343</sup> The witness's evidence that women and children were killed as they were accomplices of the Inkotanyi indicates a bias in the witness's view of events in Rwanda at the time. Yet the witness himself testified to Tutsi being sought in Witness TEN-19's house, where he was sheltering (see II.2.7.4 above), thereby acknowledging that Tutsi were being targeted at the time. Considering the witness's evident bias, the Chamber does not find him to be a credible witness in this respect.

*Witness TEN-8*

382. Defence Witness TEN-8 stated that Tutsi and some Hutu moved toward Mugonero Hospital and Bisesero because a broadcast by the radio station Muhabura called on them to do so. The witness understood that the RPF army would provide for the security of the refugees. According to Witness TEN-8, another reason for the flight of the Tutsi to Bisesero was that parents, who had sent their children to join the RPF, had decided to flee once they understood that the RPF had not complied with the Arusha Accords.<sup>344</sup>

383. As for the attacks on Tutsi, the witness explained that there were two groups of people who attacked and killed the refugees who gathered at the Mugonero complex: a

<sup>340</sup> T. 24 Oct. 2002, pp. 58-65, 75-77.

<sup>341</sup> Id. pp. 80-83.

<sup>342</sup> T. 22 Oct. 2002, pp. 83-85.

<sup>343</sup> T. 23 Oct. 2002, p. 23.

<sup>344</sup> T. 29 Oct. 2002, pp. 4-5, 10-13.

group of bandits, and a group of persons who were angry about the theft and destruction of their crops by Tutsi, as well as about the RPF's violation of the terms of the Arusha Accords.<sup>345</sup> However, Witness TEN-8 was never personally at Mugonero or Bisesero, although he said that he saw the bandits move toward the area of the Mugonero Hospital and proceed on to Bisesero.<sup>346</sup>

384. Witness TEN-8 admitted that he never saw RPF soldiers during the period from 7 April to mid-July 1994 and he did not believe that the RPF were protecting the Tutsi in Mugonero. Moreover, the witness acknowledged that he never heard on the radio that the RPF were protecting Tutsi at Gatawaro Stadium. Nevertheless, Witness TEN-8 claimed that he believed the RPF had protected the Tutsi on the hills of Bisesero.<sup>347</sup>

385. The witness attributes killings to bandits, and people angry about the theft of crops and about the RPF's activities. He acknowledges that he never saw RPF soldiers from 7 April to mid-July 1994. In addition, the witness was never personally present at Mugonero and Bisesero and his testimony as to the events occurring in those places at the time is therefore of limited value.

*Witness TEN-9*

386. Witness TEN-9 testified to the resumption of the war between the RPF and the government in Kigali on 7 April 1994. He was an eyewitness to fighting between the RPF stationed in the CND building and the gendarmerie stationed in a camp on Kicukiro Hill. According to the witness, the RPF opened fire, and the gendarmerie shot back at the CND.

387. He specified that the two exit roads were blocked by the RPF and that "the RPF was killing Hutus".<sup>348</sup> At one roadblock, on the Nyabarongo river, he saw both Hutu and Tutsi being detained because they did not have an identity card. He did not see any killings at the roadblocks.

388. Witness TEN-9 testified to RPF opening fire and gendarmes returning fire in Kigali; it is not his testimony that the RPF were killing civilians. He mentioned the resumption of war in Kigali, but not in the area of Bisesero. The witness's testimony does not address the evidence of genocide in Bisesero.

*Witness TEN-22*

389. Defence Witness TEN-22 testified to a specific attack by "bandits" on the house of a Tutsi in his neighbourhood. He could not specify the attackers' ethnic identity. One day, a bandit went to his house with another person and asked him for cigarettes. The witness gave them money, because otherwise he feared they would harm him. The witness defined this incident as a threat rather than an attack.<sup>349</sup> The witness's testimony

<sup>345</sup> Id., pp. 17, 19-22

<sup>346</sup> Id., pp. 23-24, 27-30, 45, 49, 67-69.

<sup>347</sup> Id., pp. 47-48.

<sup>348</sup> Id., p. 121-125, 128.

<sup>349</sup> T. 29 Oct. 2002, pp. 86-89.

does not address the evidence of genocide in Bisesero.

*Witness TEN-5*

390. Witness TEN-5 did not think that there was genocide.<sup>350</sup> However, the witness testified to individuals attacking his house, looking for people hiding inside and for his wife, who was suspected of being a Tutsi, or “an accomplice”. He further declared that on 16 April 1994 five Tutsi patients were abducted from the medical clinic and murdered.<sup>351</sup> Witness TEN-5 testified to his wife being sought, on the suspicion that she was Tutsi, thereby confirming that the Tutsi were being targeted at the time. His statement that there was no genocide has little weight as he was in the hospital at the time, and was not in a position to know the events taking place outside; all his information in this regard was obtained from the patients in the hospital.

### 8.6.2 Prosecution

391. The Prosecution contends that the Defence’s submissions are flawed as evidence shows Tutsi civilians and non-combatants were killed. Further, it submits that there is no evidence that the RPF were in Kibuye at the time or that the Tutsi were an armed force constituting combatants. In addition, even if Hutu were killed, the Prosecution argues that that does not justify the killing of Tutsi civilians.<sup>352</sup> Prosecution Witness GK testified to the absence of RPF in Kibuye and said that people would claim that the RPF were present as an excuse to attack Tutsi (see II.4.3.4 above).

### 8.6.3 Factual Findings

392. The Chamber took judicial notice of the fact that in Rwanda, in 1994, including the period April to July 1994, attacks were suffered by civilians on the grounds of their perceived political affiliation or ethnic identification.<sup>353</sup>

393. The evidence does not point to the presence of RPF forces in Kibuye at this time. The Chamber notes that the letter of Jérôme-Clément Bicamumpaka, Foreign Affairs Minister, to the UN Security Council dated 13 April 1994, reported that the Government had gradually been regaining control and that murder and looting had decreased across the nation.<sup>354</sup> The letter mentions that the RPF were in the north of Rwanda only. There is evidence from Defence witnesses as well that the RPF were not present at the time in the areas covered by their testimony, mainly Kibuye. Witness TEN-9 testified to the resumption of war in Kigali, not in other parts of Rwanda, like Bisesero. The Chamber accepts that there was a war between the Rwandan government and RPF forces at the time, but there is no evidence of the presence of RPF forces in Kibuye during that period. In any event, that there was an ongoing war at the time does not negate the occurrence of genocide in Rwanda.

<sup>350</sup> T. 24 Oct. 2002 p. 8.

<sup>351</sup> T. 23 Oct. 2002 pp. 90-93; T. 24 Oct. 2002 p. 34.

<sup>352</sup> Prosecution Final Trial Brief, paras. 116-120.

<sup>353</sup> Decision on the Prosecutor’s Motion for Judicial Notice of Facts dated 4 September 2002.

<sup>354</sup> UN Doc. S/1994/428 (Exhibit D51), p. 2.

394. Regarding the denial of genocide specifically, the Chamber notes that there is overwhelming evidence of massacres targeting Tutsi civilians, from both Prosecution and Defence witnesses (TEN-23, TEN-8 and TEN-5), to adopt the Defence's position would be so contrary to the evidence as to be perverse. The Chamber further notes that the Prime Minister, Jean Kambanda, pleaded guilty to genocide before the Tribunal and was convicted on 4 September 1998.

395. During a speech at a meeting in Butare to a Hutu audience, which was broadcast over Radio Rwanda on 30 April 1994 (Exhibit D44C), the Accused said that foreign media were calling the Interim Government a "government of killers", thereby acknowledging that there was criticism in the international community of the government's actions. The Accused defended himself and the government in his speech, and said the government was seeking peace. Both the Accused and Kambanda admitted the people were "tear[ing] each other to pieces". Both referred to "people", that is, civilians, engaging in this violence, not armies or soldiers, as would be the case in a war. The Accused was aware that there was some resistance to his message ("You, President of the Court of First Instance, you say you are not involved in politics. You are not being asked to play politics."), and in reaction to this, he resorted to threatening the President and the Bishop who was also present: "We will no longer tolerate people talking about a government of killers, if you fold your arms even when we have told you how to help us combat crime. We have a shared responsibility. If we are found guilty of mass killing, we will say that we are not the only killers."<sup>355</sup>

396. The Accused made this speech voluntarily and had joined the government of his own volition as well – his speech does not indicate he was coerced or forced into joining the government. He says that "As far as I am concerned, I was doing rounds when I was contacted. At the time, I did not know that I was going to become a minister. I was doing rounds to ensure my own security...When they [the RPF] attacked, the army intervened to defend the country and we were asked to do rounds. It was necessary given the gravity of the situation. Why then was I taking part in the rounds? Was I doing so while waiting for a post within the government of killers? Other members of the government were called upon while they were carrying out other duties."<sup>356</sup> Sebataware stated that the Accused was nominated by his own MDR Party to join the Interim Government. The anti-Tutsi propaganda of the Accused does not bear out the Defence's arguments that there was a war, not genocide, in Rwanda at the time. Consequently, the Chamber finds that there was a genocide in Rwanda at the time, when massacres were committed by Hutu against the Tutsi. The Accused was aware of this and actively supported these killings.

<sup>355</sup> Defence Exhibit D44, pp. K0238741-748.

<sup>356</sup> Id. p. K0238741.

## 8.7 Influence/Pressure on Witnesses

### 8.7.1 Defence

397. The Defence submits that the testimony of Prosecution witnesses may have been influenced by RPF, IBUKA, African Rights or others, and that such a possibility should be taken into account by the Chamber when deliberating upon the credibility of witnesses.<sup>357</sup>

398. Defence Witness TEN-6 testified to having been influenced and pressured by one Assiel Kabera to insert the names of important dignitaries into his statement dated 27 September 1995. The falsehood in TEN-6's statement is discussed in II.3.1.3 above. The witness stated that paragraph 5 of the statement, wherein he stated he had seen the Accused and Edouard Karemera regularly in Kibuye Prefecture from 6 April to July 1994, was not true and he had signed it under pressure from his superior and out of fear for his life. However, paragraph 5 does not in itself incriminate the Accused and would not have served those who allegedly pressured him into making the statement.<sup>358</sup> The Chamber is not persuaded by the witness's evidence on this issue. In any event, as the witness claimed that he had made a false statement, the Chamber finds that TEN-6's evidence is of questionable veracity.

399. Defence Witness TEN-5 also testified to having been influenced by Kabera, and having heard about the other people who had been similarly influenced.

### 8.7.2 Prosecution

400. The Prosecution denies the allegation and asserts that the Defence has failed to substantiate its claim by showing that there was a campaign to falsely incriminate the Accused, and that said campaign influenced the Prosecution Witnesses.<sup>359</sup>

### 8.7.3 Factual Findings

401. The cross-examination of Prosecution witnesses by the Defence does not show that the Prosecution witnesses had been influenced or pressured to testify in the manner in they have, nor was this shown by any evidence adduced by the Defence.

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<sup>357</sup> Defence Final Trial Brief, pp. 192-198.

<sup>358</sup> T. 21 Oct. 2002, pp. 122-124, 162.

<sup>359</sup> Prosecution Final Trial Brief, paras. 62-63.



## CHAPTER III

### LEGAL FINDINGS

#### 1. Introduction

402. In this Chapter, the Chamber will present its legal findings on the charges alleged against the Accused in the order of the Counts as they appear in the Indictment.

#### 2. Preliminary Issues

403. The Chamber took judicial notice of the fact that in Rwanda, in 1994, including the period April to July 1994, attacks were suffered by civilians on the grounds of their perceived political affiliation or ethnic identification. The Chamber also took judicial notice of the fact that on 13 and 14 May 1994, a large-scale attack occurred on Muyira Hill against Tutsi refugees.<sup>360</sup>

404. It is admitted by the Defence that the Interim Government was sworn in on 9 April 1994, and that the Accused became a Minister of the Interim Government that day.<sup>361</sup>

405. It was further admitted that the President of Rwanda, Juvénal Habyarimana, and Chief of Staff of the Rwandan Army, Major-General Déogratias Nsabimana, were both killed in the plane crash of 6 April 1994.<sup>362</sup>

406. It was not disputed that killings were carried out in Kibuye Prefecture from 13 or 14 April to after 3 May 1994.<sup>363</sup>

407. The Chamber recalls its findings that the alibi evidence adduced by the Defence did not raise a reasonable doubt that the Accused was present during the events alleged in the Indictment.

#### 3. Legal Findings

##### 3.1 Count 1 – Genocide

408. Count 1 of the Indictment charges the Accused with genocide pursuant to Article 2(3)(a) of the Statute, in that on or between the dates of 6 April 1994 and 17 July 1994, notably, though not exclusively, in Kibuye Prefecture, Rwanda, the Accused did kill and cause serious bodily or mental harm to members of the Tutsi population with the

<sup>360</sup> Decision on the Prosecutor's Motion for Judicial Notice of Facts dated 4 September 2002.

<sup>361</sup> Defence's Reply to Prosecutor's Request to Admit Facts dated 21 June 2002; T. 17 Oct. 2002, p. 12.

<sup>362</sup> Defence's Reply to Prosecutor's Request to Admit Facts dated 21 June 2002.

<sup>363</sup> T. 20 June 2002, pp. 151-153.

intent to destroy, in whole or in part, a racial or ethnic group.

409. Article 2(2) of the Statute defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

410. The Trial Chamber in *Akayesu* interpreted “as such” to mean that the act must be committed against an individual because the individual was a member of a specific group and specifically because he belonged to this group, so that the victim is the group itself, not merely the individual.<sup>364</sup>

411. The Chamber found, in II.2.1.4 above, that on 10 April 1994, in Gisovu, the Accused and three soldiers transported guns. Approximately ten days after 6 April 1994, the Accused procured gendarmes for an attack on Mubuga Church against Tutsi, whom he called “Inyenzi”, sheltering inside. These gendarmes took ammunition, grenades and bullets with them to the attack (see II.2.2.4 above).

412. In II.2.4.4 above, the Chamber found that on a day sometime between 17 and 30 April 1994, at 9.30 a.m. and later, between 10.30 a.m. and noon, the Accused was one of the leaders of two large-scale attacks by more than 6,000 armed attackers, comprising soldiers, policemen and Interahamwe, against Tutsi refugees at Muyira Hill. The Accused was armed with a gun at the time, and he shot at Tutsi refugees during the attacks. In II.2.5.5 above, the Chamber found that sometime between the end of April and beginning of May 1994, from between 8.30 a.m. and 9.30 a.m. to 3.00 p.m., the Accused was one of the leaders of a large-scale attack by armed attackers against Tutsi refugees at Kivumu in Bisesero. The Accused was armed with a gun during the attack, in the course of which he shot at Tutsi refugees.

413. In addition, the Chamber found that on 13 May 1994, sometime between 7.00 a.m. and 10.00 a.m., the Accused was one of the leaders of a large-scale attack by thousands of armed attackers against Tutsi refugees at Muyira Hill. The attackers, comprising Interahamwe, soldiers, policemen and Hutu civilians, were chanting “Tuba Tsembe Tsembe”, which means “Let’s exterminate them”, a reference to the Tutsi. The Accused was armed with a gun during the attack, in the course of which he shot at Tutsi refugees. Thousands of Tutsi died as a result of the attack. During the attack, the Accused also instructed the attackers, showing them where to go and how to attack the refugees

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<sup>364</sup> *Akayesu* (TC) para. 521.

(see II.2.6.4 above).

414. As a continuation of the 13 May attack, the Chamber found that on the morning of 14 May, the Accused and many armed attackers, comprising civilians, soldiers, Interahamwe, gendarmes and communal policemen, launched a large-scale attack against the Tutsi refugees at Muyira Hill. The Accused was armed with a gun and shot at Tutsi refugees at Muyira Hill (see II.2.7.5 above).

415. The Chamber found that around 18 June 1994, the Accused led armed attackers in an attack at Kiziba in Bisesero against Tutsi refugees, in the course of which he shot at Tutsi refugees (see II.2.9.4 above).

416. In ascertaining the intent of the Accused, the Chamber has also taken into account incidents charged elsewhere, in addition to his acts relevant to this charge. The Chamber has considered the Accused's act of ordering Interahamwe to undress a Tutsi woman, and to insert a sharpened piece of wood into her genitalia, after ascertaining that she was of the Tutsi ethnic group (see II.7.2.4 above). The body was then left, with the piece of wood protruding from it, in plain view on a public road for some three days thereafter. Further, the Chamber has taken into account the murder of an old man and young boy, both Tutsi, by the Accused (see II.5.1.4 above).

417. The Chamber has also considered the Accused's jubilation at the killing of Assiel Kabanda and his subsequent decapitation and castration, and the piercing of his skull through the ears with a spike. Kabanda was a prominent Tutsi whose capture was met with rejoicing by the Accused and others (see II.7.1.4 above).

418. In this regard, the Chamber has also taken into consideration the Accused's attendance and participation at meetings held to plan and organize the killing of Tutsi in Bisesero (see II.3.1.3 above), his acts of incitement (see II.4.2.4, and II.4.4.4. above), and his expression of support at the 3 May meeting of the Prime Minister, Jean Kambanda, and the Interim Government, and actions or inactions in failing to protect the Tutsi population (see II.4.3.4 above).

419. Based on the above, together with the Accused's leadership role and personal participation in attacks in Bisesero, where the Interahamwe were chanting "Let's exterminate them", being a reference to the Tutsi; the Accused's association with officials and prominent figures at these attacks; his acts of shooting at Tutsi during these attacks; his act of killing the old man and young boy, both Tutsi, his transportation of weapons and procurement of gendarmes for an attack on Mubuga Church against the Tutsi hiding inside, the Chamber finds that the Accused perpetrated these acts with the requisite intent to destroy, in whole or in part, the Tutsi ethnic group.

420. The Chamber finds that in leading and participating in attacks against Tutsi, in shooting at Tutsi refugees, the Accused is individually criminally responsible pursuant to Article 6(1) of the Statute for the killings and serious bodily and mental harm inflicted on Tutsi refugees in Bisesero, as provided in Article 2(2)(a) and (b). Accordingly, the

Chamber finds that the Accused is guilty of genocide as charged in Count 1 of the Indictment.

### 3.2 Count 2 – Complicity in Genocide

421. In light of the finding above in relation to Count 1, the Chamber finds the Accused not guilty of Complicity in Genocide as charged in the alternative Count 2 of the Indictment.

### 3.3 Count 3 – Conspiracy to Commit Genocide

422. Count 3 of the Indictment charges the Accused with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute, in that on or between the dates of 1 January 1994 and 17 July 1994, the Accused did conspire with others, including, but not limited to, local administrative officials, such as the *prefet* of Kibuye, Clément Kayishema, and various *conseillers de secteur*, Interahamwe leaders, communal police, and the political leadership of the MRND or the MDR-Power at the national levels, including, though not limited to, members of the Interim Government of 8 April 1994, to kill or cause serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group.

423. In *Musema*, the Trial Chamber held that “conspiracy to commit genocide is to be defined as an agreement between two or more persons to commit the crime of genocide”. The *mens rea* is the specific intent to commit genocide. As it is an inchoate offence, the act of conspiracy itself is punishable, even if the substantive offence has not actually been perpetrated.<sup>365</sup>

424. In II.3.1.3 above, the Chamber found that on or about 10 June 1994, the Accused was one of the leaders, together with Kayishema, Ruzindana and others, at a meeting at Kibuye Prefectural Office to plan the killing of the Tutsi in Bisesero, wherein the Accused promised to supply weapons for the killing of the Tutsi in Bisesero. The next week, a follow-up meeting was held by the Accused to distribute the weapons the Accused had promised at the last meeting. Kayishema and Ruzindana were present as well. After the distribution of the weapons, the Accused sketched a plan for the next day’s attack against the Tutsi hiding in Bisesero. He designated leaders for five attacks involving five groups of attackers departing from five different locations. The Accused was the leader for one of those attacks, at Kiziba, and he encouraged people to participate in the attacks. The attack took place the day after the meeting as planned.

425. The Chamber found that the Accused attended a meeting in the canteen of Kibuye Prefectural Office on or about 18 June 1994, and promised to supply gendarmes for the next day’s attack. He urged *bourgmestres* and others to do all they could to ensure participation in the attacks so that all the Tutsi in Bisesero could be killed. The next day’s attack took place as planned (see II.3.2.4 above).

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<sup>365</sup> *Musema* (TC) paras. 191-194.

426. The Chamber found that the Accused attended a meeting at Kibuye Prefectural Office sometime in June 1994, at approximately 5.00 p.m., where Kayishema, Ruzindana, Interahamwe and others were also present. The Interahamwe were chanting: "Exterminate them, flush them out of the forest", referring to the Tutsi. The Accused told the audience that he had come so they could pool their efforts in overcoming the enemy, that is, the Tutsi, and promised they would get his contribution in due course. He promised that not less than a hundred Interahamwe would assist in the attacks against the Tutsi (see II.3.3.4 above).

427. Considering the Accused's participation and attendance at meetings with, amongst others, Kayishema and Ruzindana, to discuss the killing of Tutsi in Bisesero, his planning of attacks against Tutsi in Bisesero, his promise and distribution of weapons to attackers to be used in attacks against Tutsi, his expression of support at the 3 May meeting of the Prime Minister, Jean Kambanda, and the Interim Government, and actions or inactions in failing to protect the Tutsi population, and his leadership role in conducting and speaking at the meetings, together with the evidence discussed in paragraphs 416, 418 and 419 above, the Chamber finds that the Accused had the requisite intent, together with his co-conspirators, to destroy, in whole or in part, the Tutsi ethnic group.

428. Bearing in mind that the Accused and others acted together as leaders of attacks against Tutsi as detailed in III.3.1 above, taking into account the organized manner in which the attacks were carried out, which presupposes the existence of a plan, and noting, in particular, that the Accused sketched a plan for an attack in Bisesero at a meeting on or about 10 June, to which the people in attendance, including Kayishema and Ruzindana, agreed, the Chamber finds that the above facts evidence the existence of an agreement between the Accused and others, including Kayishema and Ruzindana, to commit genocide.<sup>366</sup>

429. The Chamber finds that in attending and speaking at meetings with, amongst others, Kayishema and Ruzindana, and planning, leading and participating in attacks against Tutsi, the Accused is individually criminally responsible, pursuant to Article 6(1) of the Statute, for conspiring to cause the death and serious bodily and mental harm of the Tutsi refugees in Bisesero, as provided in Article 2(3)(b). Accordingly, the Chamber finds that the Accused is guilty of conspiracy to commit genocide as charged in Count 3 of the Indictment.

### 3.4 Count 4 – Direct and Public Incitement to Commit Genocide

430. Count 4 of the Indictment charges the Accused with Direct and Public Incitement to Commit Genocide pursuant to Article 2(3)(c) of the Statute, in that on or between the dates of 1 January 1994 and 17 July 1994 throughout Rwanda, particularly in Kibuye

<sup>366</sup> Kayishema and Ruzindana were convicted of, *inter alia*, genocide, for crimes committed in the Bisesero region and in Kibuye Prefecture. However, the Indictment against Kayishema and Ruzindana was amended on 6 May 1996 to withdraw the conspiracy charges.

Prefecture, the Accused did directly and publicly incite persons, including, but not limited to, soldiers, local administrative officials, communal police, civilian militias and local residents, to kill or cause serious bodily or mental harm to members of the Tutsi population with intent to destroy, in whole or in part, a racial or ethnic group.

431. The elements of this crime were discussed in *Akayesu*.<sup>367</sup> Regarding the “public” element of the crime, the Trial Chamber in *Akayesu* stated that “[it] may be better appreciated in light of two factors: the place where the incitement occurred and whether or not assistance was selective or limited.”<sup>368</sup> This element includes words spoken aloud in public places, as well as broadcasts to members of the general public by such means as the mass media. The Trial Chamber held that the “direct” element “should be viewed in the light of its cultural and linguistic content”, noting that “a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the audience.” The Trial Chamber in that case further recalled that “incitement may be direct, and nonetheless implicit.”<sup>369</sup> The *mens rea* required for this crime is the intent to directly prompt or provoke another to commit genocide, and the perpetrator must have the specific intent to commit genocide.<sup>370</sup> As it is an inchoate offence, the crime is punishable even where the incitement failed to produce the result expected by the perpetrator.<sup>371</sup>

432. The Chamber found in II.4.2.4 above, that the Accused was in Rugarama in Biseseero on 13 April 1994 with armed attackers when he told the attackers to go back “to work”, a reference to the killing of Tutsi, which led to an attack being launched against Tutsi at Rugarama.

433. The Chamber found in II.4.4.4 above that the Accused held a meeting at Kucyapa after the large-scale attack on 13 May at Muyira Hill, for the purpose of deciding on the programme of killings for the next day and to organize these killings of Tutsi in Biseseero. The Accused thanked attackers for their participation in attacks and commended them for “a good work”, that is, the killing of Tutsi civilians. The Accused told them to share the people’s property and cattle, and eat meat so that they would be strong to return the next day to continue the “work”, that is, the killing. The next day, the Tutsi in Biseseero were pursued and attacked throughout the day.

434. The Chamber found that on or about 17 June 1994, the Accused held a meeting in which he told bourgmestres to tell able-bodied men in the population to participate in the killing of Tutsi and said he would be personally present at the attack (see II.4.7.4 above).

435. The Chamber is satisfied that the Accused’s words, including the call to “work”,

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<sup>367</sup> *Akayesu* (TC) paras. 549-562.

<sup>368</sup> *Id.* para. 556.

<sup>369</sup> *Id.* para. 557.

<sup>370</sup> *Id.* para. 560.

<sup>371</sup> *Id.* para. 562.

were understood by his audience as a call to kill the Tutsi, and that the Accused knew his words would be interpreted as such.

436. Considering the Accused's spoken words, urging the attackers to work, thanking, encouraging and commending them for the "work" they had done, "work" being a reference to killing Tutsi, together with the evidence discussed in paragraphs 416-419 above, the Chamber finds that the Accused had the requisite intent to destroy, in whole or in part, the Tutsi ethnic group.

437. The Chamber finds that in urging attackers to work, and to eat meat so that they would be strong to return the next day to continue the "work", the Accused is individually criminally responsible, pursuant to Article 6(1) of the Statute, for inciting attackers to cause the death and serious bodily and mental harm of Tutsi refugees in Bisesero, as provided in Article 2(3)(c). Accordingly, the Chamber finds that the Accused is guilty of direct and public incitement to commit genocide as charged in Count 4 of the Indictment.

### 3.5 Crimes Against Humanity

438. Before examining the individual crimes against humanity charged, the Chamber will first consider an element common to all crimes against humanity, that is, the existence of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds (Article 3).

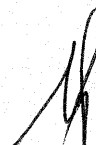
439. The crime must be committed as part of a widespread or systematic attack, and need not be a part of both. "Widespread" is defined as massive or large-scale, involving many victims; "systematic" refers to an organized pattern of conduct, not a mere random occurrence.<sup>372</sup>

440. The Chamber heard testimony about massacres by Hutu against Tutsi in various parts of Kibuye Prefecture. There is evidence of daily attacks in Bisesero against the Tutsi seeking shelter there, leading to thousands of Tutsi being killed, and of a large number of corpses in Kibuye town at the relevant time, the corpses being that of Tutsi refugees. The evidence further shows that the Tutsi being targeted were of all ages and both sexes. The attacks were methodical, organized and on a large scale, involving many armed attackers, especially those on 13 and 14 May 1994. Therefore, the Chamber finds that there was a widespread and systematic attack against the civilian Tutsi population on ethnic grounds in Kibuye Prefecture, in particular, in Bisesero, from April to July 1994.

### 3.6 Count 5 – Crimes Against Humanity (Murder)

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<sup>372</sup> *Id.*, paras. 579-580.



441. Count 5 of the Indictment charges the Accused with Murder as a Crime Against Humanity pursuant to Article 3(a) of the Statute, in that on or between the dates of 6 April 1994 and 17 July 1994, notably, though not exclusively, in Kibuye Prefecture, Rwanda, the Accused did kill persons, or cause persons to be killed, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

442. Article 3 of the Statute provides that the crime must be committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds. The Accused need not act with discriminatory intent, but he must know that his act is part of this widespread or systematic attack.<sup>373</sup> In respect of this count, the Accused must be found to have murdered one or more civilians.

443. In II.5.1.4 above, the Chamber found that on or about 18 June 1994, during an attack at Kiziba in Bisesero, the Accused shot and killed two civilian Tutsi, an old man and a young boy, whom he called "Inyenzi", which he meant to be a reference to the Tutsi.

444. The Chamber found in II.6.4 above that on 20 May near the Gisovu-Kibuye road, the Accused shot and killed a young civilian girl of 13-15 years of age.

445. The Chamber finds that the conduct of the Accused formed part of the widespread and systematic attack found in paragraph 440 above.

446. Given the Accused's characterization of the old man and young boy as "Inyenzi" or "Tutsi", participation in and leadership of attacks against Tutsi, his shooting of Tutsi refugees, his procurement of weapons and gendarmes for attacks against Tutsi, and the evidence discussed in paragraphs 416-418 above, the Chamber finds that in killing the old man, the young boy and the young girl, the Accused had the requisite intent to kill them and knew that it was part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

447. The Chamber finds the Accused individually criminally responsible, pursuant to Article 6(1) of the Statute, for killing the old man, the young boy and the teenage girl, and finds that such acts constitute murder committed as part of a widespread and systematic attack on the civilian Tutsi population on ethnic grounds and as such constitute a crime against humanity, as provided in Article 3(a) of the Statute. Accordingly, the Chamber finds that the Accused is guilty of Crime Against Humanity (Murder) as charged in Count 5 of the Indictment.

### 3.7 Count 6 – Crime Against Humanity (Extermination)

448. Count 6 of the Indictment charges the Accused with extermination as a crime

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<sup>373</sup> Akayesu (AC) paras. 460-469.



against humanity pursuant to Article 3(b) of the Statute, in that on or between the dates of 6 April 1994 and 17 July 1994, notably, though not exclusively, in Kibuye Prefecture, Rwanda, the Accused did kill persons, or cause persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

449. Article 3 of the Statute provides that this crime must be committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds. The Accused need not act with discriminatory intent, but he must know that his act is part of this widespread or systematic attack.<sup>374</sup> In respect of this count, the Accused must be found to have participated in the extermination of individuals.

450. The Chamber notes that in *Akayesu*, extermination was defined as “a crime which by its very nature is directed against a group of individuals”. The Trial Chamber in *Akayesu* noted that extermination “differs from murder in that it requires an element of mass destruction, which is not required for murder”. Two of the essential elements of extermination mentioned were that the Accused participated in the killing of certain named or described persons, and his act of participation was unlawful or intentional.<sup>375</sup> The Trial Chamber in *Vasiljevic* held that the material element of extermination “consists of any one act or combination of acts which contributes to the killing of a large number of individuals”.<sup>376</sup>

451. The Chamber refers to the findings above in paragraphs 411-415 regarding the Accused’s participation as one of the leaders in large-scale attacks against Tutsi, and his acts of shooting at Tutsi refugees during the attacks. The Chamber recalls the factual findings as to the large numbers of Tutsi killed as a result of these attacks. The Chamber also found that the Accused killed an old man, a young man and a teenage girl (II.5.1.4 and II.6.4). Based on these facts, the Chamber finds that the Accused’s acts contributed to the mass killing of Tutsi civilians.

452. The Chamber finds that the conduct of the Accused formed part of the widespread and systematic attack found in paragraph 440 above.

453. Taking into consideration the Accused’s leadership role in attacks against Tutsi, his acts of shooting at Tutsi refugees, his procurement of weapons and gendarmes for attacks against Tutsi, his characterization of the old man and young boy as “Inyenzi” or “Tutsi”, and the evidence discussed in paragraphs 416-418 above, the Chamber finds that the Accused intended to kill Tutsi civilians and knew that his acts were part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

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<sup>374</sup> *Akayesu* (AC) paras. 460-469.

<sup>375</sup> *Akayesu* (TC) paras. 591-592.

<sup>376</sup> *Vasiljevic* (TC) para. 229.

454. The Chamber finds that by his participation in attacks against Tutsi, and his acts of shooting at Tutsi refugees, which contributed to the killing of a large number of individuals, and his killing of the three persons, the Accused is individually criminally responsible, pursuant to Article 6(1) of the Statute, for extermination committed as part of a widespread and systematic attack on the civilian Tutsi population on ethnic grounds, and that such acts constitute a crime against humanity, as provided in Article 3(b) of the Statute. Accordingly, the Chamber finds that the Accused is guilty of Crime Against Humanity (Extermination) as charged in Count 6 of the Indictment.

### 3.8 Count 7 – Crime Against Humanity (Rape)

455. Count 7 of the Indictment charges the Accused with rape as a crime against humanity pursuant to Article 3(g) of the Statute, in that on or between the dates of 6 April 1994 and 17 July 1994, notably, though not exclusively, in Kibuye Prefecture, Rwanda, the Accused did cause women to be raped as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

456. Article 3 of the Statute provides that the crime must be committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds. The Accused need not act with discriminatory intent, but he must know that his act is part of this widespread or systematic attack.<sup>377</sup> In respect of this count, the Accused must have raped one or more persons, rape being “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”<sup>378</sup>

457. In II.6.4 above, the Chamber found that there was insufficient evidence to find that the Accused raped a young girl on 20 May 1994 near the Gisovu-Kibuye road. Apart from this, the Prosecution led no evidence in support of its allegation that the Accused “did cause women to be raped”.

458. Accordingly, the Chamber finds that the Accused is not guilty of Crime Against Humanity (Rape) as charged in Count 7 of the Indictment.

### 3.9 Count 8 - Crime Against Humanity (Other Inhumane Acts)

459. Count 8 of the Indictment charges the Accused with inhumane acts as a crime against humanity pursuant to Article 3(i) of the Statute, in that on or between the dates of 6 April 1994 and 17 July 1994, notably, though not exclusively, in Kibuye Prefecture, Rwanda, the Accused did commit inhumane acts upon persons as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

460. Article 3 of the Statute provides that the crime must be committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds. The Accused need not act with discriminatory intent, but he

<sup>377</sup> Akayesu (AC) paras. 460-469.

<sup>378</sup> Akayesu (TC) para. 688.

must know that his act is part of this widespread or systematic attack.<sup>379</sup> In respect of this count, the Accused must be found to have participated in the commission of inhumane acts on individuals, being acts of similar gravity to the other acts enumerated in the Article, such as would cause serious physical or mental suffering or constitute a serious attack on human dignity.<sup>380</sup>

461. In a discussion of aiding and abetting under Article 6(1) in *Bagilishema*, it was held that presence, when combined with authority, may constitute assistance, in the form of moral support. An approving spectator, who is held in such respect by other perpetrators that his presence encourages them in their conduct, may be guilty in a crime against humanity.<sup>381</sup>

462. In II.7.1.4 above, the Chamber found that on 22 June 1994, at Kazirandimwe Hill, the Accused was participating in an attack when Assiel Kabanda was found. The Accused and the attackers were jubilant at this capture as Kabanda was a prominent Tutsi who was influential and well-liked. The Accused was rejoicing when Kabanda was killed, decapitated, castrated and his skull pierced through the ears with a spike. The skull was carried away by two men each holding one end of the spike with the skull in the middle. Kabanda's genitals were hung on a spike, and visible to the public. The Chamber finds that the jubilation of the Accused, particularly in light of his leadership role in the attack, at the decapitation and castration of Kabanda, and the piercing of Kabanda's skull, supported and encouraged the attackers, and thereby aided and abetted the commission of these crimes.

463. In II.7.2.4 above, the Chamber found that on 28 June 1994, near the Technical Training College, the Accused ordered Interahamwe to undress the body of a Tutsi woman, whom he called "Inyenzi", who had just been shot dead, to fetch and sharpen a piece of wood, which he then instructed them to insert into her genitalia. This act was then carried out by the Interahamwe, in accordance with his instructions.

464. The Chamber finds that the conduct of the Accused formed part of the widespread and systematic attack found in paragraph 440 above.

465. The Chamber finds that the acts committed with respect to Kabanda and the sexual violence to the dead woman's body are acts of seriousness comparable to other acts enumerated in the Article, and would cause mental suffering to civilians, in particular, Tutsi civilians, and constitute a serious attack on the human dignity of the Tutsi community as a whole.

466. Given the Accused's leadership role in attacks against Tutsi, his acts of shooting at Tutsi refugees, his act of procurement of weapons and gendarmes for attacks against Tutsi, his planning of attacks against Tutsi during meetings, his acts of incitement against Tutsi, and his characterization of the old man and young boy as "Inyenzi" or "Tutsi", the

<sup>379</sup> *Akayesu* (AC) paras. 460-469.

<sup>380</sup> See *Bagilishema* (TC) paras. 91-92.

<sup>381</sup> *Id.* para. 34, *Furundzija* (TC) para. 207.

fact that Kabanda was generally regarded as a prominent Tutsi, and the characterization of the dead woman by the Accused as "Inyenzi" or Tutsi, and the evidence discussed in paragraphs 416-418 above, the Chamber finds that the Accused intended these acts to be perpetrated on the bodies of Kabanda and the dead woman, and knew that these acts were part of a widespread and systematic attack against the civilian Tutsi population on ethnic grounds.

467. The Chamber finds that by his act of encouragement during the killing, decapitation and castration of Kabanda, and the piercing of his skull, and his association with the attackers who carried out these acts, and his ordering of Interahamwe to perpetrate the sexual violence on the body of the dead woman, the Accused is individually criminally responsible, pursuant to Article 6(1) of the Statute, for inhumane acts committed as part of a widespread and systematic attack on the civilian Tutsi population on ethnic grounds and as such constitute a crime against humanity, as provided in Article 3(i) of the Statute. Accordingly, the Chamber finds that the Accused is guilty of Crime against Humanity (Other Inhumane Acts) as charged in Count 8 of the Indictment.

### **3.10 Count 9 – Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II**

468. The Prosecutor withdrew this Count in its Closing Brief.<sup>382</sup> Consequently, the Chamber finds the Accused not guilty of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II as charged in Count 9 of the Indictment.

### **3.11 Count 10 – Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II**

469. The Prosecutor withdrew this Count in its Closing Brief.<sup>383</sup> Consequently, the Chamber finds the Accused not guilty of Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II as charged in Count 10 of the Indictment.

### **3.12 Charges Of Individual Criminal Responsibility As A Superior**

470. The Accused is charged pursuant to Article 6(3) of the Statute with individual criminal responsibility as a superior in Counts 1, 2, 4, 5, 6, 7, 8, 9 and 10 of the Indictment, by virtue of his actual and constructive knowledge of the acts and omissions of his subordinates, and his failure to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crimes charged.

471. Article 6(3) provides that "[t]he fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take

<sup>382</sup> Prosecution Final Trial Brief, para. 230.

<sup>383</sup> Id.

the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

472. In *Musema*, it was held that “a civilian superior may be charged with superior responsibility only where he has effective control, be it *de jure* or merely *de facto*, over the persons committing violations of international humanitarian law.”<sup>384</sup> The Appeals Chamber in *Delalic* held that “[a]s long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.”<sup>385</sup>

473. The Prosecution submitted that the Accused’s subordinates were local authorities like bourgmestres and conseillers, Interahamwe, gendarmes, soldiers, communal police and armed civilians in Kibuye Prefecture.<sup>386</sup> It argued that the Accused incurs superior responsibility by virtue of his position as Minister of Information in the Interim Government, his influence in the Kibuye prefecture community, his leadership role in attacks and meetings, his issuing of orders to attackers, and his planning of attacks. The Prosecution further submitted that the Accused’s authority over attackers is borne out by Defence Witness TEN-23’s testimony. Witness TEN-23 testified to an incident when the Accused told Interahamwe, who were searching for Tutsi in a house, to leave the people in the house alone. The Interahamwe subsequently left (see II.2.7.4 above).

474. The Chamber notes that the Prosecution does not contend that the Accused incurs superior responsibility solely by virtue of his position as a Minister.<sup>387</sup> The Chamber further notes that Defence Witness Nkezabera stated that the Minister of Information in the Interim Government, had no *de jure* or *de facto* control over prefets or bourgmestres.<sup>388</sup> The Chamber finds that there is no evidence to show that a Minister of Information in Rwanda, by virtue of his position alone, would have effective control over the subordinates named by the Prosecution, like bourgmestres or Interahamwe. The Chamber also notes that influence in the community is not indicative of a superior-subordinate relationship, as discussed above.

475. With regard to the acts cited by the Prosecution as evidence of superior responsibility, the Chamber recalls that it found in II.2 above that the Accused led attacks in various areas in Bisesero. The evidence is that the Accused was one of the leaders of the attacks, and was usually in the front or middle of the attacking party and carrying a gun. However, there is no evidence to indicate that the Accused, rather than the other leaders present, were in a superior-subordinate relationship with the attackers. The evidence does not show that he had the ability to prevent or punish the crimes committed

<sup>384</sup> *Musema* (TC) para. 141; see also, *Bagilishema* (TC) paras. 37-50, *Bagilishema* (AC) paras. 24-62; *Delalic* (TC) paras. 330-400, *Delalic* (AC) paras. 182-314, *Kvocka* (TC) paras. 2-7.

<sup>385</sup> *Delalic* (AC) para. 198.

<sup>386</sup> Prosecution Final Trial Brief, para. 265.

<sup>387</sup> T. 27 Feb. 2003 pp. 19-20; Prosecution Final Trial Brief, para. 263.

<sup>388</sup> T. 14 November 2002 pp. 140-142.

by the attackers.<sup>389</sup>

476. Turning to the Accused's participation in meetings, such as was found in II.3.1.3, II.3.2.4 and II.3.3.4 above, the Chamber finds that the evidence adduced may indicate that the Accused had a leadership role, but is insufficient to show that he was in a superior-subordinate relationship with the people in attendance at the meetings, in that he could prevent or punish the people at the meeting for their crimes.

477. In respect of his issuance of orders, the Chamber recalls that the Accused told an attacker to bring him an old man and young boy so that he could kill them and subsequently told them to remove their corpses (see II.2.9.4 and II.5.1.4 above). The Chamber also found that the Accused told attackers to go to work at Rugarama on 13 April (see II.4.2.4 above). In II.7.2.4 above, the Chamber found that the Accused instructed Interahamwe to insert a piece of wood into the genitalia of a dead woman. Defence Witness TEN-23 testified to an incident when the Accused ordered the Interahamwe to leave a house. The Chamber considers that while these acts show that the attackers carried out the Accused's orders, there is no evidence that they did so in a superior-subordinate hierarchy, or that the Accused had the ability to prevent or punish them for crimes committed. In respect of Witness TEN-23's evidence, the Chamber notes that the Accused persuaded the Interahamwe to leave after quoting a Rwandan proverb, and talking to them for approximately ten minutes; this exchange between the Accused and the Interahamwe is not that of a superior commanding his subordinate. The Chamber finds that the Prosecution has not adduced evidence of effective control by the Accused of the people he ordered to commit crimes, in that it has not been shown that the Accused could prevent or punish them for the crimes committed.

478. Therefore, the Chamber is not convinced of the existence of a superior-subordinate relationship. As a result, it is unnecessary to examine the other elements of superior responsibility. Accordingly, the Chamber finds that the Accused did not incur individual criminal responsibility as a superior under Article 6(3) as charged in Counts 1, 2, 4, 5, 6, 7, and 8 of the Indictment.

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<sup>389</sup> *Delalic* (TC) paras. 251-252.

**CHAPTER IV****VERDICT**

479. **FOR THE FOREGOING REASONS**, having considered all of the evidence and the arguments,

480. **THE CHAMBER** unanimously finds Eliézer Niyitegeka:

Count 1: Guilty of Genocide

Count 2: Not Guilty of Complicity in Genocide

Count 3: Guilty of Conspiracy to Commit Genocide

Count 4: Guilty of Direct and Public Incitement to Commit Genocide

Count 5: Guilty of Crimes Against Humanity (Murder)

Count 6: Guilty of Crimes Against Humanity (Extermination)

Count 7: Not Guilty of Crimes Against Humanity (Rape)

Count 8: Guilty of Crimes Against Humanity (Other Inhumane Acts)

Count 9: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

Count 10: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

## CHAPTER V

## SENTENCE

## 1. Applicable Provisions and General Principles of Sentencing

481. The provisions of the Statute and the Rules relevant to the Chamber's consideration of an appropriate sentence for the Accused are Articles 22, 23 and 26 of the Statute and Rules 101 to 104 of the Rules.

482. Pursuant to Article 23 of the Statute and Rule 101(A) of the Rules, the Tribunal may impose a term of imprisonment upon the person convicted up to and including imprisonment for the remainder of that person's life.

483. In the case of an accused convicted of multiple crimes, as in the present case, the Chamber may, in its discretion, impose a single sentence or one sentence for each of the crimes. The imposition of a single sentence will usually be appropriate in cases in which the offences may be recognized as belonging to a single criminal transaction.<sup>390</sup> In the case of multiple sentences, the Chamber will determine whether the sentences shall be served consecutively or concurrently.

484. In reaching its decision on an appropriate sentence to be imposed on the Accused, the Chamber has taken due consideration of the well-established principles of retribution, deterrence, and protection of society.<sup>391</sup> Specific emphasis is placed on general deterrence, so as to demonstrate "that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights".<sup>392</sup> The Chamber has also considered the likelihood of the Accused's rehabilitation.<sup>393</sup>

485. The Chamber has taken due notice of the intrinsic gravity of the crimes in consideration; genocide and crimes against humanity being offences which are particularly shocking to the conscience of mankind.

486. On the other hand, the Chamber has considered the principle of gradation in sentencing, according to which the highest penalties are to be imposed upon those at the upper end of the sentencing scale, such as those who planned or ordered atrocities, or those who committed crimes with especial zeal or sadism. Whether an accused is found guilty of genocide, of crimes against humanity or of violations of the Geneva

<sup>390</sup> *Blaskic* (TC) para. 807; *Krstic* (TC) para. 725.

<sup>391</sup> *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66; *Ntakirutimana* (TC) para. 882.

<sup>392</sup> *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66. See also *Kayishema* Sentence (TC) para. 2; *Ntakirutimana* (TC) para. 882.

<sup>393</sup> *Blaskic* (TC) para. 761; *Kunarac* (TC) para. 836; *Serushago* (TC) para. 39; *Kayishema* (TC) para. 2, upheld in *Kayishema* (AC) paras. 389 and 390; *Ntakirutimana* (TC) para. 887.



Conventions or Additional Protocol II thereto, the principle of gradation enables the Chamber to punish, deter, and consequently stigmatize the crimes considered at a level that corresponds to their overall magnitude and reflects the extent of the suffering inflicted upon the victims.<sup>394</sup>

487. The Chamber has also found guidance in the practice of sentencing in Rwanda, as referred to in previous judgements of the Tribunal.<sup>395</sup>

488. Finally, the Chamber has taken into consideration the totality of the circumstances of the case and the individual circumstances of the Accused, in mitigation as well as in aggravation. It has borne in mind that the principle according to which only matters proved beyond a reasonable doubt are to be considered at the sentencing stage extends to the assessment of any aggravating factors, while mitigating factors are to be taken into consideration if established on a balance of probabilities. This Chamber reiterates that a particular circumstance shall not be retained as aggravating if it is included as an element of the crime in consideration.<sup>396</sup>

## 2. Submissions

### *Prosecution*

489. Relying on the gravity of the crimes committed, the Prosecution requests the Chamber to impose the most severe sentence upon the Accused, that is, imprisonment for the remainder of his life. The Prosecution contends that particularly aggravating circumstances exist in the present case. Particularly, the Prosecution emphasizes that the Accused was a well-known personality in the Kibuye Prefecture, his home prefecture, and that, at the time of the events, he was Minister of Information in the Interim Government. In such public office, claims the Prosecutor, the Accused was under an obligation to espouse the principles laid down in the Rwandan Constitution and to uphold a degree of morality. Instead, he supported the *Abatabazi* campaign against the Tutsi while actively engaging himself in the killings of the Tutsi and inciting others to kill. Finally, the Prosecution stresses the absence of mitigating evidence and the Accused's lack of remorse for the events in Rwanda from April to July 1994.<sup>397</sup>

### *Defence*

490. The Defence prays the Chamber, in the event the Accused is found guilty, to consider the length of time the Accused has spent on remand with little or no prospect of being released on bail while awaiting trial. The Defence submits as a mitigating factor the fact that the trial was completed in record time due to the Accused's cooperation in the

<sup>394</sup> On the individualization of the sentence and the principle of gradation in sentencing, see *Ntakirutimana* (TC) paras. 883-886 and caselaw therein cited in support.

<sup>395</sup> See particularly the developments on the applicable law and the practice of sentencing in Rwanda in *Kayishema* Sentence (TC) paras. 5-7 and *Ntakirutimana* (TC) para. 885.

<sup>396</sup> See *Ntakirutimana* (TC) para. 893, and supporting case law quoted in footnotes 1183 to 1187.

<sup>397</sup> Prosecution Final Trial Brief paras. 292-299, T. 27 February 2003 pp. 28-29.

proceedings. The Defence emphasizes that at all times the Accused conducted a respectful defence and that the instructions given by the Accused to his legal representatives took into account a desire to expedite his trial and to avoid where possible, the expenditure of court time and resources, including financial resources. Also in this respect, the Defence emphasizes that the Chamber commended the parties for their professionalism. The Defence finds support in the *Krnojelac* Judgement at para. 520, wherein the ICTY Trial Chamber gave credit to the Accused for the extent to which his Counsel co-operated with it and the Prosecution.

491. The Defence further prays that the Chamber consider that the Accused has a wife, children and grandchildren, and that he is unlikely to be afforded any real opportunity to have regular contact with them and to maintain and develop any meaningful relationship with them. The Defence submits that, if found guilty, the Accused should be held as capable of being reformed. According to the Defence, excessively long sentences can amount to cruel and inhumane punishment. The heavier the sentence imposed upon him, the more difficult his reintegration into society will be, especially considering that there is little or no prospect that the Accused will be able to return to his home and country of birth.<sup>398</sup>

492. The Defence also submits that the Accused exercised his right not to testify and that, in this respect, he has not aggravated any alleged wrongdoing by, for example, undertaking to tell the truth and then not doing so.<sup>399</sup>

### 3. Deliberations

#### *Individual, Mitigating and Aggravating Circumstances*

493. Eliézer Niyitegeka was born on 12 March 1952 in Gitabura Secteur, Gisovu Commune, Kibuye Prefecture, Rwanda. At the date of sentencing, the Accused was 51 years old. A married man, he has five children, and grandchildren. The Accused is a former newscaster and journalist at Radio Rwanda. In 1991, at the time when multi-party politics were inaugurated in Rwanda, the Accused was among the founding members of the opposition MDR Party. He assumed Chairmanship of the MDR for the Kibuye Prefecture, from 1991 to 1994. On 9 April 1994, the Accused became Minister of Information within the Interim Government. He remained in that position until the second half of July 1994 and his exile from Rwanda.

494. In mitigation of the Accused's sentence, the Chamber has considered evidence that the Accused intervened and saved a group of refugees from Interahamwe who accused them of being Inkotanyi. It is reasonable to infer from the circumstances of this episode that the Accused thus saved these refugees' lives.

495. However, the Accused also took the lives of others, and deliberately committed crimes of a heinous nature against civilians prior to and after this episode. The fact that

<sup>398</sup> Defence Final Trial Brief, pp. 200-203.

<sup>399</sup> Id., p. 201, para. 5.

he helped save some persons therefore carries limited weight.

496. The Chamber has also considered in mitigation the fact that the Accused was a person of good character prior to the events. As a public figure and a member of the MDR, he advocated democracy and opposed ethnic discrimination. As such, he proved courageous, despite threats to his life and property.

497. However, after 6 April 1994, when faced with the choice between participating in massacres of civilians or holding fast to his principles, he chose the path of ethnic bias and participated in the massacres committed in Rwanda at the time. The fact that he was formerly a good man is accordingly of little weight.

498. Finally, the Chamber has given credit to the Accused for the extent to which his Counsel co-operated with it and with the Prosecution in the efficient conduct of the trial.

499. The Chamber considers as aggravating, in the Accused's case, the following circumstances:

(i) That the Accused was a well-known and influential figure in his native prefecture of Kibuye, where his crimes were committed. As such, the Accused abused the trust placed in him by the population;

(ii) That, at the time of the events, the Accused held an official position at the national level, as a member of the Interim Government. The Chamber considers it particularly aggravating that instead of promoting peace and reconciliation in his capacity as Minister of Information, he turned to violence and actively participated in the commission of the massacres in Bisesero and influenced others to commit crimes while, in some instances, he gave instructions to attackers or acted as one of their leaders;

(iii) The callous nature of the murders of a girl of 13-15 years of age in Bisesero by the Gisovu-Kibuye road on 20 May 1994, of an old man and a young boy on 18 June 1994 at Kiziba;

(iv) The fact that the Accused joined in the jubilation over the killing, decapitation and castration of Kabanda, and the piercing of his skull through the ears with a spike;

(v) The cruel and insensitive disregard for human life and dignity shown by the order given by the Accused to Interahamwe to insert a sharpened piece of wood into the genitalia of the dead Tutsi woman on the road in Kibuye near the ENT on, and after, 28 June 1994;

(vi) The prolonged nature of his participation in widespread and systematic attacks against defenceless civilians.

500. Having reviewed both mitigating and aggravating circumstances, the Chamber finds that the aggravating circumstances outweigh the mitigating circumstances in the Accused's case.



#### 4. Imposition of Sentence

501. **FOR THE FOREGOING REASONS**, having considered all of the evidence and the arguments of the Parties, the Statute, and the Rules, the Chamber imposes sentence as follows, delivering its decision in public, *inter partes* and in the first instance, and noting the general practice regarding sentencing in Rwanda.

502. For the crimes of which the Accused was found guilty, the Chamber **SENTENCES** Eliézer Niyitegeka to:

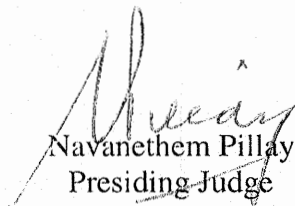
#### Imprisonment for the remainder of his life

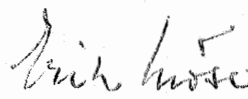
503. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

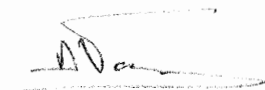
504. Until his transfer to his designated place of imprisonment, Eliézer Niyitegeka shall be kept in detention under the present conditions.

505. Pursuant to Rule 102(B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 16 May 2003

  
Navanethem Pillay  
Presiding Judge

  
Erik Møse  
Judge

  
Andréia Vaz  
Judge

(Seal of the Tribunal)



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