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UNITED NATIONS NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Trial Chamber I

OR: FR.

ICTR-96-3-T
06-DEC-1999
(1723-1549)

Before: **Judge Laïty Kama, Presiding**
Judge Lennart Aspegren
Judge Navanethem Pillay

Registrar: **Mr. Agwu Okali**

Judgement of: **6 December 1999**

THE PROSECUTOR
VERSUS
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

Case No. ICTR-96-3-T

JUDGEMENT AND SENTENCE

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. James Stewart
Mr. Udo Herbert Gehring
Ms. Holo Makwaia

Defence Counsel:

Ms. Tiphaine Dickson

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1. INTRODUCTION

1.1 The International Tribunal

1. This Judgement is rendered by Trial Chamber I of the International Criminal Tribunal for Rwanda (the "Tribunal") composed of Judge Laïty Kama, presiding, Judge Lennart Aspegren, and Judge Navanethem Pillay, in the case of *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda.*

2. The Tribunal was established by the United Nations Security Council, pursuant to resolution 955 of 8 November 1994, after it had considered United Nations Reports[1] which indicated that genocide and systematic, widespread and flagrant violations of international humanitarian law had been committed in Rwanda. 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. The Security Council established the Tribunal, under Chapter VII of the United Nations Charter.

3. The Tribunal is governed by its Statute (the "Statute") annexed to Security Council Resolution 955, and by its Rules of Procedure and Evidence (the "Rules"), which were adopted by the Judges, on 5 July 1995 and subsequently amended.[2]

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[1] 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) (Document S/1994/1405) and Reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (Document S/1994/1157, annexes I and II).

[2] The Rules were successively amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997, 8 June 1998, and 4 June 1999.

1.2 The Indictment

4. The Indictment (the "Indictment") against Georges Anderson Nderubumwe Rutaganda (the "Accused") was submitted by the Prosecutor on 13 February 1996 and was confirmed on 16 February 1996. The Indictment is set out here in full:

> "The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the Tribunal charges:
>
> **GEORGES ANDERSON NDERUBUMWE RUTAGANDA**
>
> with **GENOCIDE, CRIMES AGAINST HUMANITY**and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS,** as set forth below:
>
> Background
>
> 1. On April 6, 1994, a plane carrying President Juvenal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi crashed at Kigali airport, killing all on board. Following the deaths of the two Presidents, widespread killings, having both political and ethnic dimensions, began in Kigali and spread to other parts of Rwanda.
>
> The Accused
>
> 2. Georges RUTAGANDA, born in 1958 in Masango commune, Gitarama prefecture, was an agricultural engineer and businessman; he was general manager and proprietor of Rutaganda SARL. Georges RUTAGANDA was also a member of the National and Prefectoral Committees of the *Mouvement Républicain National pour le Développement et la Démocratie* (hereinafter,"MRND")and a shareholder of *Radio Télévision Libre des Mille Collines.* On April 6, 1994, he was serving as the second vice president of the National Committee of the

Interahamwe, the youth militia of the MRND.

General Allegations

3. Unless otherwise specified, all acts set forth in this indictment took place between 1 January 1994 and 31 December 1994 in the prefectures of Kigali and Gitarama, territory of Rwanda.

4. In each paragraph charging genocide, a crime recognized by Article 2 of the Statute of the Tribunal, the alleged acts were committed with intent to destroy, in whole or in part, a national, ethnical or racial group.

5. The victims in each paragraph charging genocide were members of a national, ethnical, racial or religious group.

6. In each paragraph charging crimes against humanity, crimes punishable by Article 3 of the Statute of the Tribunal, the alleged acts were committed as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds.

7. At all times relevant to this indictment, a state of internal armed conflict existed in Rwanda.

8. The victims referred to in this indictment were, at all relevant times, persons taking no active part in the hostilities.

9. The accused is individually responsible for the crimes alleged in this indictment. Under Article 6(l) of the Statute of the Tribunal, individual criminal responsibility is attributable to one who plans, instigates, orders, commits or otherwise aids and abets in the planning, preparation or execution of any of the crimes referred to in Articles 2 to 4 of the Statute of the Tribunal.

Charges

10. On or about April 6, 1994, Georges RUTAGANDA distributed guns and other weapons to Interahamwe members in Nyarugenge commune, Kigali.

11. On or about April 10, 1994, Georges RUTAGANDA stationed Interahamwe members at a roadblock near his office at the "Amgar" garage in Kigali. Shortly after he left the area, the Interahamwe members started checking identity cards of people passing the roadblock. The Interahamwe members ordered persons with Tutsi identity cards to stand on one side of the road. Eight of the Tutsis were then killed. The victims included men, women and an infant who had been carried on the back of one of the women.

12. In April 1994, on a date unknown, Tutsis who had been separated at a roadblock in front of the Amgar garage were taken to Georges RUTAGANDA and questioned by him. He thereafter directed that these Tutsis be detained with others at a nearby building. Later, Georges RUTAGANDA directed men under his control to take 10 Tutsi detainees to a deep, open hole near the Amgar garage. On Georges RUTAGANDA's orders, his men killed the 10 Tutsis with machetes and threw their bodies into the hole.

13. From April 7 to April 11, 1994, thousands of unarmed Tutsi men, women and children and some unarmed Hutus sought refuge at the Ecole Technique Officielle ("ETO school") in Kicukiro sector, Kicukiro commune. The ETO school was considered a safe haven because Belgian soldiers, part of the United Nations Assistance Mission for Rwanda forces, were stationed there.

14. On or about April 11, 1994, immediately after the Belgians withdrew from the ETO school, members of the Rwandan armed forces, the gendarmerie and militia, including the Interahamwe, attacked the ETO school and, using machetes, grenades and guns, killed the people who had sought refuge there. The Interahamwe separated Hutus from Tutsis during the attack, killing the

Tutsis. Georges RUTAGANDA participated in the attack at the ETO school, which resulted in the deaths of a large number of Tutsis.

15. The men, women and children who survived the ETO school attack were forcibly transferred by Georges RUTAGANDA, members of the Interahamwe and soldiers to a gravel pit near the primary school of Nyanza. Presidential Guard members awaited their arrival. More Interahamwe members converged upon Nyanza from many directions and surrounded the group of survivors.

16. On or about April 12, 1994, the survivors who were able to show that they were Hutu were permitted to leave the gravel pit. Tutsis who presented altered identity cards were immediately killed. Most of the remainder of the group were attacked and killed by grenades or shot to death. Those who tried to escape were attacked with machetes. Georges RUTAGANDA, among others, directed and participated in these attacks.

17. In April of 1994, on dates unknown, in Masango commune, Georges RUTAGANDA and others known to the Prosecutor conducted house-to-house searches for Tutsis and their families. Throughout these searches, Tutsis were separated from Hutus and taken to a river. Georges RUTAGANDA instructed the Interahamwe to track all the Tutsis and throw them into the river.

18. On or about April 28, 1994, Georges RUTAGANDA, together with Interahamwe members, collected residents from Kigali and detained them near the Amgar garage. Georges RUTAGANDA and the Interahamwe demanded identity cards from the detainees. A number of persons, including Emmanuel Kayitare, were forcibly separated from the group. Later that day, Emmanuel Kayitare attempted to flee from where he was being detained and Georges RUTAGANDA pursued him, caught him and struck him on the head with a machete and killed him.

19. In June 1994, on a date unknown, Georges RUTAGANDA ordered people to bury the bodies of victims in order to conceal his crimes from the international community.

Counts 1-2

(Genocide)

(Crimes Against Humanity)

By his acts in relation to the events described in paragraphs 10-19 Georges RUTAGANDA committed:

COUNT 1: **GENOCIDE,** punishable by Article 2(3)(a) of the Statute of the Tribunal; and

COUNT 2: **CRIMES AGAINST HUMANITY** (extermination) punishable by Article 3(b) of the Statute of the Tribunal.

Counts 3-4

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the killings at the ETO school, as described in paragraph 14, Georges RUTAGANDA committed:

COUNT 3: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 4: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS,** as incorporated by Article 4(a) (murder) of the Statute of the Tribunal.

Counts 5-6

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the killings at the gravel pit in Nyanza, as described in paragraphs 15 and 16, Georges RUTAGANDA committed:

COUNT 5: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 6: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a) (murder) of the Statute of the Tribunal.

Counts 7-8

(Crime Against Humanity)

(Violation of Article 3 common to the Geneva Conventions)

By killing Emmanuel Kayitare, as described in paragraph 18, Georges RUTAGANDA committed:

COUNT 7: **CRIME AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 8: **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS,** as incorporated by Article 4(a) (murder) of the Statute of the Tribunal.

(Signed)

Richard J. Goldstone

Prosecutor; Kigali

12 February 1996"

1.3 Procedural Background

5. On 13 February 1996 the Prosecutor submitted an Indictment against Georges Rutaganda for confirmation, pursuant to Article 17 of the Statute of the Tribunal.

6. On 16 February 1996, Judge William H. Sekule, after having reviewed the Indictment and accompanying supporting material, confirmed the Indictment against the Accused, pursuant to Articles 18 of the Statute and Rule 47 of the Rules. On the same day the learned Judge issued a Warrant of Arrest for the Accused, which requested the Republic of Zambia to transfer the Accused to the custody of the Tribunal. The Accused was subsequently transferred to the Tribunal detention facility in Arusha, Tanzania, on 26 May 1996.

7. The Accused made his initial appearance before the Tribunal on 30 May 1996, pursuant to Rule 62 of the Rules, and he was formally charged. At this hearing the Accused was represented by Counsel, and he pleaded not guilty to all the counts in the Indictment.

8. On 8 September 1996, the Defence filed an extremely urgent motion requesting the postponement of all criminal proceedings against the Accused and the provisional release of the Accused, due to his state of health. The Chamber subsequently held that the Defence had not satisfied the provisions of Rule 65 of the Rules and denied this motion. Due to the ill health of the Accused, the Chamber adjourned the commencement of trial to 6 March 1997.[3]

9. On 6 December 1996, the Defence filed another motion requesting the provisional release of the Accused, on the grounds of the Accused's state of ill health and his need for medical treatment. The Chamber denied this motion and held that the Tribunal was able to provide adequate medical care to the Accused, and that there had been neither serious regression in his

[3] Decision on the Request Submitted by the Defence, *The Prosecutor v. Georges Rutaganda,* Case No. ICTR-96-3-T, 25 September 1996.

medical condition nor had other exceptional circumstances arisen which justified his provisional release.

10. The Accused requested the assignment of Counsel to represent him. The Registrar, after having established that the Accused was indigent, assigned Counsels Luc De Temmerman and Tiphaine Dickson to represent him. However, on 25 August 1997, the Accused requested the withdrawal of Mr. Luc De Temmerman, stating that he had lost confidence in the said Counsel because he had failed to provide sufficient legal and strategic support to his defence. Mr. De Temmerman subsequently withdrew and the Accused was represented by Ms Tiphaine Dickson throughout the trial. The Prosecutor was represented during the trial by Mr. James Stewart, Mr. Udo Herbert Gehring and Ms Holo Makwaia.

11. On 6 March 1997, the Chamber adjourned the trial for two weeks, following a request to this effect from the Prosecutor. The trial commenced on 18 March 1997. Twenty seven prosecution witnesses, including five experts, testified before the Prosecutor closed her case on 29 May 1998. The Defence case commenced on 8 February 1999. Fourteen witnesses, including three experts, testified on behalf of the Defence. The Defence closed its case on 23 April 1999. The Parties presented their closing submissions on 16 and 17 June 1999.

12. During the course of the pre-trial and trial stages of the criminal proceeding, the Parties filed many motions on various procedural and substantive issues, including motions for disclosure of witness statements, a motion requesting that the deposition of sixteen witnesses be given by means of a video conference, pursuant to Rule 71 of the Rules, and a motion pertaining to the false testimony of a witness.

13. Both Parties filed motions, requesting protective measures for their witnesses, pursuant to Article 19 and 21 of the Statute and Rule 69 an 75 of the Rules. The Chamber granted these motions and ordered *inter alia* that the names, addresses and other identifying information of the witnesses shall not be disclosed to the media and public, the witnesses will be assigned

pseudonyms and they will be referred to by these pseudonyms in all criminal proceedings before the Chamber and in discussions with the Parties. Therefore, most of the witnesses referred to in this Judgement are referred to by their assigned pseudonyms.

14. In her closing arguments, the Prosecutor requested an amendment of the time periods alleged in paragraphs 10, 16 and 19 of the Indictment. The Chamber finds the Prosecutor's request inadmissable.

1.4 Evidentiary Matters

15. The Chamber finds that it is necessary to address certain issues relevant to the assessment of the evidence presented at trial.

16. The Chamber notes that Rule 89(A) of the Rules provides that it is not bound by the rules of procedure and evidence of any particular national jurisdiction and concurs with the finding in the Judgement in *The Prosecutor v. Jean-Paul Akayesu* (the "*Akayesu Judgement*") which held:

> "[...] the Chamber [...] is not restricted under the Statute of the Tribunal to apply any particular legal system and is not bound by any national rules of evidence"[4].

17. In all pre-trial and trial proceedings and in the admission and evaluation of all evidence and exhibits presented at the trial, the Chamber has applied the Rules in a manner best favoured to a fair determination of the matter before it, and which is consonant with the spirit of the Statute and the general principles of law.

18. The Chamber notes that, pursuant to Rule 96(i) of the Rules, no corroboration of the victim's testimony is required in the case of rape and sexual violence. The Chamber concurs with both the *Akayesu Judgement*[5] and the judgement of the International Criminal Tribunal for the former Yugoslavia in *The Prosecutor v. Dusko Tadic,* (the *"Tadic Judgement"*)[6], judgements which held that the fact that Rules stipulate that corroboration of the victims testimony is not required for crimes of sexual assault, does not justify the inference that corroboration of witnesses' testimony is, in fact, required, for other crimes. The Chamber's approach is that it will

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[4] *The Prosecutor v. Jean-Paul Akayesu* (Case No. ICTR-96-4-T), Judgement of 2 September 1998, para. 131.

[5] *Akayesu Judgement*, para. 134.

[6] *The Prosecutor v. Dusko Tadic* (Case No. IT-94-1-T) Judgement of 7 May 1997, para. 535 to 539.

rely on the evidence of a single witness, provided such evidence is relevant, admissible and credible. Pursuant to Rule 89 of the Rules, the Chamber may assess all relevant evidence which it deems to have probative value. The Rules do not exclude hearsay evidence, and the Chamber has the discretion to consider such evidence. Where the Chamber decides to consider such evidence, it is inclined to do so with caution.

19. The Chamber notes that during the trial, the Prosecutor and the Defence relied on pre-trial statements from witnesses for the purposes of direct and cross-examination. In many instances, inconsistencies and contradictions between the pre-trial statements of witnesses and their testimonies at trial were pointed out by the Defence. The Chamber concurs with the reasoning in the *Akayesu Judgement*, which held:

> "[...] these pre-trial statements were composed following interviews with witnesses by investigators of the Office of the Prosecutor. These interviews were mostly conducted in Kinyarwanda, and the Chamber did not have access to transcripts of the interviews, but only translations thereof. It was therefore unable to consider the nature and form of the questions put to the witnesses, or the accuracy of interpretation at the time. The Chamber has considered inconsistencies and contradictions between these statements and testimony at trial with caution for these reasons, and in the light of the time lapse between the statements and the presentation of evidence at trial, the difficulties of recollecting precise details several years after the occurrence of the events, the difficulties of translation, and the fact that several witnesses were illiterate and stated that they had not read their written statements. Moreover, the statements were not made under solemn declaration and were not taken by judicial officers. In the circumstances, the probative value attached to the statements is, in the Chamber's view, considerably less than direct sworn testimony before the Chamber, the truth of which has been subjected to the test of

cross-examination."[7]

20. During the trial proceedings, the Defence filed motions requesting investigations of alleged false testimony against two of the Prosecutor's witnesses. These motions were dismissed by the Chamber and this decision was appealed by the Defence. The Appeals Chamber dismissed these appeals. This Chamber reaffirms its position that false testimony is a deliberate offence which requires wilful intent on the part of the perpetrator to mislead the Judge and thus to cause harm[8]. The onus is on the party pleading a case of false testimony to prove the falsehood of the witness' statements and to establish that they were made with harmful intent, or, at least, that they were made by a witness who was fully aware that they were false. To only raise doubt as to the credibility of the statements made by the witness is not sufficient to reasonably demonstrate that the witness may have knowingly and wilfully given false testimony. In the Chamber's view, false testimony cannot be based solely on inaccurate statements made by the witness, but rather requires wilful intent to give false testimony. The Appeals Chamber pointed out that there is a clear distinction between the credibility of witness testimony and false testimony of a witness. The testimony of a witness may lack credibility, but this does not necessarily mean that it amounts to false testimony falling within the ambit of Rule 91[9].

21. The Chamber notes the Defence submission that some of the Prosecution witnesses are unreliable because they testified to events that they previously heard other people talk about, and that therefore the Prosecution's case is marred by "contamination". The Defence also submitted

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[7] *Akayesu Judgement*, para. 134.

[8] *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, (Case No. ICTR-96-3-T) Decision on the Defence Motion to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness E.

[9] *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, (Case No. ICTR-96-3-T) Decision on Appeals against the Decisions by Trial Chamber I Rejecting the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by witnesses "E" and "CC", 8 June 1998, para. 28.

that some of the evidence was obtained by illegal means, which rendered it inadmissible[10]. The Chamber finds that this is neither a matter of "contamination", nor of "illegal means of collecting information", but of hearsay.

22. Many of the witnesses who testified before the Chamber in this case have seen atrocities committed against members of their families and close friends and/or have themselves been the victims of such atrocities. Some of these witnesses became very emotional and cried in the witness box, when they were questioned about certain events. A few witnesses displayed physical signs of fear and pain when they were asked about certain atrocities of which they were victims. The Chamber has taken into consideration these factors in assessing the evidence of such witnesses.

23. The Chamber has also taken into consideration various social and cultural factors in assessing the testimony of some of the witnesses. Some of these witnesses were farmers and people who did not have a high standard of education, and they had difficulty in identifying and testifying to some of the exhibits, such as photographs of various locations, maps etc. These witnesses also experienced difficulty in testifying as to dates, times, distances, colours and motor vehicles. In this regard, the Chamber also notes that many of the witnesses testified in Kinyarwanda and as such their testimonies were simultaneously translated into French and English. As a result, the essence of the witnesses' testimonies was at times lost. Counsel questioned witnesses in either English or French, and these questions were simultaneously translated to the witnesses in Kinyarwanda. In some instances it was evident, after translation, that the witnesses had not understood the questions.

[10] See the Defence submissions, transcripts of 17 June 1996.

1.5 The Accused

24. On 8 April 1999, the Accused testified that he was born on 28 November 1958 in Ngoma, in Gishyita *Commune*, Kibuye *Préfecture* in Rwanda. He grew up in Gitarama and Kibuye *Préfecture*, before studying and working in Butare and Kigali *Préfectures*.

25. The Accused testified that his father, Esdras Mpamo, held many civil, public and political offices and government appointments, such as the Prefect of Kibuye, Cyangugu, and Butare *Préfectures*, the Rwandese Ambassador to Uganda and Germany and the Bourgmestre of Masango *Commune*, in the Gitarama *Préfecture*. The Accused testified that although he traveled a lot he considered his origin to be Masango *Commune* in the Gitarama *Préfecture* because his father was the Bourgmestre in this *Commune*, and he returned there throughout his youth. The Accused also testified that his father was a devout Seventh Day Adventist, and that his father's religious and political beliefs significantly influenced his upbringing and subsequent political decisions.

26. The Accused testified that he is married and he is a father of three children. He stated that he received a degree in agricultural engineering in 1985, from National University of Rwanda and thereafter he was appointed agricultural engineer. He stated that as an agricultural engineer, he conducted agricultural research and he managed a farm which served as a model farm to the farmers of Huye *Commune*. According to the Accused, he was allowed to purchase this farm by virtue of a Presidential decree.

27. The Accused testified that he applied to the Agricultural Ministry to be transferred from Butare in 1991, because of threats he had received from certain people in the Huye *Commune*, following his purchase of the farm that he managed. He stated that he was subsequently transferred to a post with the Rwandese Ministry of Agriculture in Kigali, although his family remained in Butare.

28. The Accused testified that, in June 1991, he commenced work as a business man in Kigali, dealing with import, under the name of Rutuganda SARL. He stated that Rutaganda SARL was a highly profitable enterprise, and maintained exclusive imports and distribution agreements with a number of European food and beverage producers, as well as exclusive supply agreements with smaller bars, distributors, and organizations in Rwanda.

29. The Accused testified that he joined the MRND on or about September or October 1991. He stated that various political parties offered him membership, but he joined the MRND because he believed that this political party was in a position to provide the best economic and military protection, both of which were significant concerns for him as a business proprietor in Rwanda.

30. The Accused testified that, after he joined the MRND party in 1991, he became the second vice president of its youth wing, the Interahamwe za MRND. He stated that he was involved in the creation of the Interahamwe za MRND and met regularly with its other leaders.

2. THE APPLICABLE LAW

2.1 Individual Criminal Responsibility

31. The Accused is charged under Article 6(1) of the Statute with individual criminal responsibility for the crimes alleged in the Indictment. Article 6(1) provides that:

> "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute shall be individually responsible for the crime".

32. In the *Akayesu Judgement* findings were made on the principle of individual criminal responsibility under Article 6(1) of the Statute. The Chamber notes that these findings are, in the main, the same as those made in the *Tadic Judgement* and in the judgements in *The Prosecutor v. Clément Kayishema and Obed Ruzindana* (the "*Kayishema and Ruzindana Judgement*")[11] and *The Prosecutor versus Zejnil Delalic, Zdravko Mucic, Hazim Delic, Esad Landzo*: '*The Celebici Case*', (the "*Celebici Judgement*")[12]. The Chamber is of the view that the position as derived from the afore-mentioned case law, with respect to the principle of individual criminal responsibility, and as articulated, notably, in the *Akayesu Judgement* is sufficiently established and is applicable in the instant case.

33. The Chamber notes, that under Article 6 (1), an accused person may incur individual criminal responsibility as a result of five forms of participation in the commission of one of the three crimes referred to in the Statute. Article 6 (1) covers various stages in the commission of

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[11] Judgement of the International Criminal Tribunal for Rwanda, Trial Chamber II, *Prosecutor v. Clément Kayishema and Obed Ruzindana*, (Case No. ICTR 95-1-T) 21 May 1999.

[12] Judgement of the International Criminal Tribunal for the Former Yugoslavia, (Case No. IT-96-21-T) *The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, Esad Landzo, "The Celebici Case"*, 16 November 1998.

a crime, ranging from its initial planning to its execution.

34. The Chamber observes that the principle of individual criminal responsibility under Article 6 (1) implies that the planning or preparation of a crime actually leads to its commission. However, the Chamber notes that Article 2 (3) of the Statute, on the crime of genocide, provides for prosecution for attempted genocide, among other acts. However, attempt is by definition an inchoate crime, inherent in the criminal conduct *per se* irrespective of its result. Consequently, the Chamber holds that an accused may incur individual criminal responsibility for inchoate offences under Article 2 (3) of the Statute and that, conversely, a person engaging in any form of participation in other crimes falling within the jurisdiction of the Tribunal, such as those covered in Articles 3 and 4 of the Statute, could incur criminal responsibility only if the offence were consummated.

35. The Chamber finds that in addition to incurring responsibility as a principal offender, the Accused may also be held criminally liable for criminal acts committed by others if, for example, he planned such acts, instigated another to commit them, ordered that they be committed or aided and abetted another in the commission of such acts.

36. The Chamber defines the five forms of criminal participation under Article 6(1) as follows:

37. Firstly, in the view of the Chamber, "planning" of a crime implies that one or more persons contemplate designing the commission of a crime at both its preparatory and execution phases.

38. In the opinion of the Chamber, the second form of participation, that is, incitement to commit an offence, under Article 6(1), involves instigating another, directly and publicly, to commit an offence. Instigation is punishable only where it leads to the actual commission of an

offence desired by the instigator, except with genocide, where an accused may be held individually criminally liable for incitement to commit genocide under Article 2(3)(c) of the Statute, even where such incitement fails to produce a result.[13]

39. In the opinion of the Chamber, ordering, which is a third form of participation, implies a superior-subordinate relationship between the person giving the order and the one executing it, with the person in a position of authority using such position to persuade another to commit an offence.

40. Fourthly, an accused incurs criminal responsibility for the commission of a crime, under Article 6(1), where he actually "commits" one of the crimes within the jurisdiction *rationae materiae* of the Tribunal.

41. The Chamber holds that an accused may participate in the commission of a crime either through direct commission of an unlawful act or by omission, where he has a duty to act.

42. A fifth and last form of participation where individual criminal responsibility arises under Article 6(1), is "[...] otherwise aid[ing] and abett[ing] in the planning or execution of a crime referred to in Articles 2 to 4".

43. The Chamber finds that aiding and abetting alone is sufficient to render the accused criminally liable. In both instances, it is not necessary that the person aiding and abetting another to commit an offence be present during the commission of the crime. The relevant act of assistance may be geographically and temporally unconnected to the actual commission of the offence. The Chamber holds that aiding and abetting include all acts of assistance in either physical form or in the form of moral support; nevertheless, it emphasizes that any act of

[13] *Akayesu Judgement*, para. 562

participation must substantially contribute to the commission of the crime. The aider and abettor assists or facilitates another in the accomplishment of a substantive offence.

2.2 Genocide (Article 2 of the Statute)

44. In accordance with the provisions of Article 2(3)(a) of the Statute, which stipulate that the Tribunal shall have the power to prosecute persons responsible for genocide, the Prosecutor has charged the Accused with genocide, Count 1 of the Indictment.

45. The definition of genocide, as given in Article 2 of the Tribunal's Statute, is taken verbatim from Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention")[14]. It reads as follows:

> "Genocide means 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."

[14] The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on 9 December 1948.

46. The Genocide Convention is undeniably considered part of customary international law, as reflected in the advisory opinion issued in 1951 by the International Court of Justice on reservations to the Genocide Convention, and as noted by the United Nations Secretary-General in his Report on the establishment of the International Criminal Tribunal for the Former Yugoslavia[15].

47. The Chamber notes that Rwanda acceded, by legislative decree, to the Convention on Genocide on 12 February 1975[16]. Therefore the crime of genocide was punishable in Rwanda in 1994.

48. The Chamber adheres to the definition of the crime of genocide as it was defined in the *Akayesu Judgement*.

49. The Chamber accepts that the crime of genocide involves, firstly, that one of the acts listed under Article 2(2) of the Statute be committed; secondly, that such an act be committed against a national, ethnical, racial or religious group, specifically targeted as such; and, thirdly, that the "act be committed with the intent to destroy, in whole or in part, the targeted group".

The Acts Enumerated under Article 2(2)(a) to (e) of the Statute

50. Article 2(2)(a) of the Statute, like the corresponding provisions of the Genocide Convention, refers to "meurtre" in the French version and to "killing" in the English version. In the opinion of the Chamber, the term "killing" includes both intentional and unintentional

[15] Secretary-General's Report pursuant to para. 2 of Resolution 808 (1993) of the Security Council, 3 May 1993, S/25704.

[16] Legislative Decree of 12 February 1975, Official Gazette of the Republic of Rwanda, 1975, p.230. Rwanda acceded to the Genocide Convention but stated that it shall not be bound by Article 9 of this Convention.

homicides, whereas the word "meurtre" covers homicide committed with the intent to cause death. Given the presumption of innocence, and pursuant to the general principles of criminal law, the Chamber holds that the version more favourable to the Accused should be adopted, and finds that Article 2(2)(a) of the Statute must be interpreted in accordance with the definition of murder in the Criminal Code of Rwanda, which provides, under Article 311, that "Homicide committed with intent to cause death shall be treated as murder".

51. For the purposes of interpreting Article 2(2)(b) of the Statute, the Chamber understands the words "serious bodily or mental harm" to include acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution. The Chamber is of the opinion that "serious harm" need not entail permanent or irremediable harm.

52. In the opinion of the Chamber, the words "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part", as indicated in Article 2(2)(c) of the Statute, are to be construed "as methods of destruction by which the perpetrator does not necessarily intend to immediately kill the members of the group", but which are, ultimately, aimed at their physical destruction. The Chamber holds that the means of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part, include subjecting a group of people to a subsistence diet, systematic expulsion from their homes and deprivation of essential medical supplies below a minimum vital standard.

53. For the purposes of interpreting Article 2(2)(d) of the Statute, the Chamber holds that the words "measures intended to prevent births within the group" should be construed as including sexual mutilation, enforced sterilization, forced birth control, forced separation of males and females, and prohibition of marriages. The Chamber notes that measures intended to prevent births within the group may be not only physical, but also mental.

54. The Chamber is of the opinion that the provisions of Article 2(2)(e) of the Statute, on the forcible transfer of children from one group to another, are aimed at sanctioning not only any direct act of forcible physical transfer, but also any acts of threats or trauma which would lead to the forcible transfer of children from one group to another group.

Potential Groups of Victims of the Crime of Genocide

55. The Chamber is of the view that it is necessary to consider the issue of the potential groups of victims of genocide in light of the provisions of the Statute and the Genocide Convention, which stipulate that genocide aims at "destroy[ing], in whole or in part, a national, ethnical, racial or religious group, as such."

56. The Chamber notes that the concepts of national, ethnical, racial and religious groups have been researched extensively and that, at present, there are no generally and internationally accepted precise definitions thereof. Each of these concepts must be assessed in the light of a particular political, social and cultural context. Moreover, the Chamber notes that for the purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself/herself as belonging to the said group.

57. Nevertheless, the Chamber is of the view that a subjective definition alone is not enough to determine victim groups, as provided for in the Genocide Convention. It appears, from a reading of the *travaux préparatoires* of the Genocide Convention[17], that certain groups, such as political and economic groups, have been excluded from the protected groups, because they are considered to be "mobile groups" which one joins through individual, political commitment.

[17]Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly.

That would seem to suggest *a contrario* that the Convention was presumably intended to cover relatively stable and permanent groups.

58. Therefore, the Chamber holds that in assessing whether a particular group may be considered as protected from the crime of genocide, it will proceed on a case-by-case basis, taking into account both the relevant evidence proffered and the political and cultural context as indicated *supra*.

The Special Intent of the Crime of Genocide.

59. Genocide is distinct from other crimes because it requires *dolus specialis*, a special intent. Special intent of a crime is the specific intention which, as an element of the crime, requires that the perpetrator clearly intended the result charged. The *dolus specialis* of the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". A person may be convicted of genocide only where it is established that he committed one of the acts referred to under Article 2(2) of the Statute with the specific intent to destroy, in whole or in part, a particular group.

60. In concrete terms, for any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group. The victim of the act is, therefore, a member of a given group selected as such, which, ultimately, means the victim of the crime of genocide is the group itself and not the individual alone. The perpetration of the act charged, therefore, extends beyond its actual commission, for example, the murder of a particular person, to encompass the realization of the ulterior purpose to destroy, in whole or in part, the group of which the person is only a member.

61. The *dolus specialis* is a key element of an intentional offence, which offence is characterized by a psychological nexus between the physical result and the mental state of the perpetrator. With regard to the issue of determining the offender's specific intent, the Chamber applies the following reasoning, as held in the *Akayesu Judgement*:

> " [...] intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber is of the view that the genocidal intent inherent in a particular act charged can be inferred from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act."[18]

62. Similarly, in the *Kayishema and Ruzindana Judgement*, Trial Chamber II held that :

> "[...] The Chamber finds that the intent can be inferred either from words or deeds and may be determined by a pattern of purposeful action. In particular, the Chamber considers evidence such as [...] the methodical way of planning, the systematic manner of killing. [...]"[19]

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[18] *Akayesu Judgement*, para. 523

[19] *Kayishema and Ruzindana Judgement*, para. 93.

63. Therefore, the Chamber is of the view that, in practice, intent can be, on a case-by-case basis, inferred from the material evidence submitted to the Chamber, including the evidence which demonstrates a consistent pattern of conduct by the Accused .

2.3 Crimes against Humanity (Article 3 of the Statute)

64. The Chamber notes that the *Akayesu Judgement* traced the historical development and evolution of crimes against humanity, as far back as the Charter of the International Military Tribunal of Nuremberg. The *Akayesu Judgement* also considered the gradual evolution of crimes against humanity in the cases of *Eichmann*, *Barbie*, *Touvier* and *Papon*[20]. The Chamber concurs with the historical development of crimes against humanity, as set forth in the *Akayesu Judgement*.

65. The Chamber notes that Article 7 of the Statute of the International Criminal Court defines a crime against humanity as any of the enumerated acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. These enumerated acts are murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any other crime within the jurisdiction of the court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or mental or physical health.[21]

[20] *Akayesu Judgement* para. 563 to 576

[21] Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Court on 17 July 1998.

Crimes against Humanity pursuant to Article 3 of the Statute of the Tribunal

66. Article 3 of the Statute confers on the Tribunal the jurisdiction to prosecute persons for various inhumane acts which constitute crimes against humanity. The Chamber concurs with the reasoning in the *Akayesu Judgement* that offences falling within the ambit of crimes against humanity may be broadly broken down into four essential elements, namely:

(a) the *actus reus* must be inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health

(b) the *actus reus* must be committed as part of a widespread or systematic attack

(c) the *actus reus* must be committed against members of the civilian population

(d) the *actus reus* must be committed on one or more discriminatory grounds, namely, national, political, ethnic, racial or religious grounds.[22]

The *Actus Reus* Must be Committed as Part of a Widespread or Systematic Attack

67. The Chamber is of the opinion that the *actus reus* cannot be a random inhumane act, but rather an act committed as part of an attack. With regard to the nature of this attack, the Chamber notes that Article 3 of the English version of the Statute reads "[...] as part of a widespread or systematic attack. [...]" whilst the French version of the Statute reads "[...] dans le cadre d'une attaque généralisée et systématique [...]". The French version requires that the attack be both of a widespread *and* systematic nature, whilst the English version requires that the attack be of a widespread *or* systematic nature and need not be both.

[22] *Akayesu Judgement*, para. 578.

68. The Chamber notes that customary international law requires that the attack be either of a widespread *or* systematic nature and need not be both. The English version of the Statute conforms more closely with customary international law and the Chamber therefore accepts the elements as set forth in Article 3 of the English version of the Statute and follows the interpretation in other ICTR judgements namely: that the "attack" under Article 3 of the Statute, must be either of a widespread or systematic nature and need not be both.[23]

69. The Chamber notes that "widespread", as an element of crimes against humanity, was defined in the *Akayesu Judgement*, as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims, whilst "systematic" was defined as thoroughly organised action, following a regular pattern on the basis of a common policy and involving substantial public or private resources[24]. The Chamber concurs with these definitions and finds that it is not essential for this policy to be adopted formally as a policy of a State. There must, however, be some kind of preconceived plan or policy.[25]

70. The Chamber notes that "attack", as an element of crimes against humanity, was defined in the *Akayesu Judgement*, as an unlawful act of the kind enumerated in Article 3(a) to (i) of the Statute, such as murder, extermination, enslavement etc. An attack may also be non-violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in

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[23] *Akayesu Judgement*, p. 235, fn 144; *Kayishema and Ruzindana Judgement*, p. 51, fn 63.

[24] *Akayesu Judgement* para. 580.

[25] Report on the International Law Commission to the General Assembly, 51 U.N. GAOR Supp. (No 10) at 94 U.N.Doc. A/51/10 (1996)

a particular manner may also come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner[26]. The Chamber concurs with this definition.

71. The Chamber considers that the perpetrator must have:

> "[...]actual or constructive knowledge of the broader context of the attack, meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some kind of policy or plan."[27]

The *Actus Reus* Must be Directed against the Civilian Population

72. The Chamber notes that the *actus reus* must be directed against the civilian population, if it is to constitute a crime against humanity. In the *Akayesu Judgement*, the civilian population was defined as people who were not taking any active part in the hostilities[28]. The fact that there are certain individuals among the civilian population who are not civilians does not deprive the population of its civilian character[29]. The Chamber concurs with this definition.

The *Actus Reus* Must be Committed on Discriminatory Grounds

73. The Statute stipulates that inhumane acts committed against the civilian population must be committed on "national, political, ethnic, racial or religious grounds." Discrimination on the

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[26] *Akayesu Judgement* para. 581.

[27] *Kayishema and Ruzindana Judgement* para. 134

[28] *Akayesu Judgement*, para. 582. Note that this definition assimilates the definition of "civilian" to the categories of person protected by Common Article 3 of the Geneva Conventions.

[29] *Ibid* para. 582, Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict; Article 50.

basis of a person's political ideology satisfies the requirement of 'political' grounds as envisaged in Article 3 of the Statute.

74. Inhumane acts committed against persons not falling within any one of the discriminatory categories may constitute crimes against humanity if the perpetrator's intention in committing these acts, is to further his attack on the group discriminated against on one of the grounds specified in Article 3 of the Statute. The perpetrator must have the requisite intent for the commission of crimes against humanity.[30]

75. The Chamber notes that the Appeals Chamber in the *Tadic* Appeal ruled that the Trial Chamber erred in finding that all crimes against humanity require a discriminatory intent. The Appeals Chamber stated that a discriminatory intent is an indispensable element of the offence only with regard to those crimes for which this is expressly required, that is the offence of persecution, pursuant to Article 5(h) of the Statute of the International Criminal Tribunal for the former Yugoslavia (the "ICTY").[31]

76. The Chamber considers the provisions of Article 5 of the ICTY Statute, as compared to the provisions of Article 3 of the ICTR, Statute and notes that, although the provisions of both the aforementioned Articles pertain to crimes against humanity, except for persecution, there is a material and substantial difference in the elements of the offence that constitute crimes against humanity. This stems from the fact that Article 3 of the ICTR Statute expressly provides the enumerated discriminatory grounds of "national, political, ethnic, racial or religious", in respect of the offences of Murder; Extermination; Deportation; Imprisonment; Torture; Rape; and; Other Inhumane Acts, whilst the ICTY Statute does not stipulate any discriminatory grounds in respect of these offences..

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[30] *Akayesu Judgement*, para. 584.

[31] *The Prosecutor v. Dusko Tadic*; Appeals Judgment of 15 July 1999; para. 305; p. 55.

The Enumerated Acts

77. Article 3 of the Statute sets out various acts that constitute crimes against humanity, namely: murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political, racial and religious grounds; and; other inhumane acts. Although the category of acts that constitute crimes against humanity are set out in Article 3, this category is not exhaustive. Any act which is inhumane in nature and character may constitute a crime against humanity, provided the other elements are satisfied. This is evident in (i) which caters for all other inhumane acts not stipulated in (a) to (h) of Article 3.

78. The Chamber notes that in respect of crimes against humanity, the Accused is indicted for murder and extermination. The Chamber, in interpreting Article 3 of the Statute, will focus its discussion on these offences only.

Murder

79. Pursuant to Article 3(a) of the Statute, murder constitutes a crime against humanity. The Chamber notes that Article 3(a) of the English version of the Statute refers to "Murder", whilst the French version of the Statute refers to "Assassinat". Customary International Law dictates that it is the offence of "Murder" that constitutes a crime against humanity and not "Assassinat".

80. The *Akayesu Judgement* defined Murder as the unlawful, intentional killing of a human being. The requisite elements of murder are:

(a) The victim is dead;

(b) The death resulted from an unlawful act or omission of the accused or a subordinate;

(c) At the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless as to whether or not death ensures;

(d) The victim was discriminated against on any one of the enumerated discriminatory grounds;

(e) The victim was a member of the civilian population; and

(f) The act or omission was part of a widespread or systematic attack on the civilian population.[32]

81. The Chamber concurs with this definition of murder and is of the opinion that the act or omission that constitutes murder must be discriminatory in nature and directed against a member of the civilian population.

Extermination

82. Pursuant to Article 3(c) of the Statute, extermination constitutes a crime against humanity. By its very nature, extermination is a crime which is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction which is not a pre-requisite for murder.

[32] *Akayesu Judgement*, para. 589 and 590.

83. The *Akayesu Judgement*, defined the essential elements of extermination as follows:

(a) the accused or his subordinate participated in the killing of certain named or described persons;

(b) the act or omission was unlawful and intentional;

(c) the unlawful act or omission must be part of a widespread or systematic attack;

(d) the attack must be against the civilian population; and

(e) the attack must be on discriminatory grounds, namely: national, political, ethnic, racial, or religious grounds.

84. The Chamber concurs with this definition of extermination and is of the opinion that the act or omission that constitutes extermination must be discriminatory in nature and directed against members of the civilian population. Further, this act or omission includes, but is not limited to the direct act of killing. It can be any act or omission, or cumulative acts or omissions, that cause the death of the targeted group of individuals.

2.4 Serious Violations of Common Article 3 of the Geneva Conventions and Additional Protocol II

Article 4 of the Statute

85. Pursuant to Article 4 of the Statute, the Chamber shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

> (a) violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
>
> (b) collective punishments;
>
> (c) taking of hostages;
>
> (d) acts of terrorism;
>
> (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
>
> (f) pillage;

(g) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples;

(h) threats to commit any of the foregoing acts.

Applicability of Common Article 3 and Additional Protocol II

86. In applying Article 4 of the Statute, the Chamber must be satisfied that the principle of *nullum crimen sine lege* is not violated. Indeed, the creation of the Tribunal, in response to the alleged crimes perpetrated in Rwanda in 1994, raised the question all too familiar to the Nuremberg Tribunal and the ICTY, that of jurisdictions applying *ex post facto laws* in violation of this principle. In establishing the ICTY, the Secretary-General dealt with this issue by asserting that in the application of the principle of *nullum crimen sine lege* the International Tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law. However, in the case of this Tribunal, it was incumbent on the Chambers to decide whether or not the said principle had been adhered to[33], and whether individuals incurred individual criminal responsibility for violations of these international instruments.

87. In the *Akayesu Judgement*, the Chamber expressed its opinion that the "norms of Common Article 3 had acquired the status of customary law in that most States, by their domestic penal codes, have criminalized acts which, if committed during internal armed conflict, would constitute violations of Common Article 3". The finding of the Trial Chamber in this regard followed the precedents set by the ICTY[34], which established the customary nature of

[33] See *Akayesu Judgement*, para. 603 to 605.

[34] See *Tadic Judgement* and Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995.

Common Article 3. Moreover, the Chamber in the *Akayesu Judgement* held that, although not all of Additional Protocol II could be said to be customary law, the guarantees contained in Article 4(2) (Fundamental Guarantees) thereof, which reaffirm and supplement Common Article 3, form part of existing international law. All of the norms reproduced in Article 4 of the Statute are covered by Article 4(2) of Additional Protocol II.

88. Furthermore, the Trial Chamber in the *Akayesu Judgement* concluded that violations of these norms would entail, as a matter of customary international law, individual responsibility for the perpetrator. It was also recalled that as Rwanda had become a party to the 1949 Geneva Conventions and their 1977 Additional Protocols, on 5 May 1964 and 19 November 1984, respectively, these instruments were in any case in force in the territory of Rwanda in 1994, and formed part of Rwandan law. Thus, Rwandan nationals who violated these international instruments incorporated into national law, including those offences as incorporated in Article 4 of the Statute, could be tried before the Rwandan national courts[35].

89. In the *Kayishema and Ruzindana Judgement*, Trial Chamber II deemed it unnecessary to delve into the question as to whether the instruments incorporated in Article 4 of the Statute should be considered as customary international law. Rather the Trial Chamber found that the instruments were in force in the territory of Rwanda in 1994 and that persons could be prosecuted for breaches thereof on the basis that Rwanda had become a party to the Geneva Conventions and their Additional Protocols. The offences enumerated in Article 4 of the Statute, said the Trial Chamber, also constituted offences under Rwandan law[36].

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[35] See *Akayesu Judgement*, para. 616 and 617.

[36] See *Kayishema and Ruzindana Judgement*, para. 156 and 157.

90. Thus it is clear that, at the time the crimes alleged in the Indictment were perpetrated, persons were bound to respect the guarantees provided for by the 1949 Geneva Conventions and their 1977 Additional Protocols, as incorporated in Article 4 of the Statute. Violations thereof, as a matter of custom and convention, incurred individual responsibility, and could result in the prosecution of the authors of the offences.

The Nature of the Conflict

91. The 1949 Geneva Conventions and Additional Protocol I generally apply to international armed conflicts, whereas Common Article 3 extends a minimum threshold of humanitarian protection to persons affected by non-international armed conflicts. This protection has been enhanced and developed in the 1977 Additional Protocol II. Offences alleged to be covered by Article 4 of the Statute must, as a preliminary matter, have been committed in the context of a conflict of a non-international character satisfying the requirements of Common Article 3, which applies to "armed conflict not of an international character" and Additional Protocol II, applicable to conflicts which "take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

92. First to be addressed is the question of what constitutes an armed conflict under Common Article 3. This issue was dealt with extensively during the 1949 Diplomatic Conference of Geneva leading to the adoption of the Conventions. Of concern to many participating States was the ambiguous and vague nature of the term "armed conflict". Although the Conference failed to provide a precise minimum threshold as to what constitutes an "armed conflict", it is clear that mere acts of banditry, internal disturbances and tensions, and unorganized and short-lived insurrections are to be ruled out. The International Committee of the Red Cross (the "ICRC"),

specifies further that conflicts referred to in Common Article 3 are armed conflicts with armed forces on either side engaged in hostilities: conflicts, in short, which are in many respects similar to an international conflict, but take place within the confines of a single country[37]. The ICTY Appeals Chamber offered guidance on the matter by holding "that an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is reached"[38].

93. It can thence be seen that the definition of an armed conflict *per se* is termed in the abstract, and whether or not a situation can be described as an "armed conflict", meeting the criteria of Common Article 3, is to be decided upon on a case-by-case basis. Hence, in dealing with this issue, the *Akayesu Judgement* suggested an "evaluation test", whereby it is necessary to evaluate the intensity and the organization of the parties to the conflict to make a finding on the existence of an armed conflict. This approach also finds favour with the Trial Chamber in this instance.

94. In addition to armed conflicts of a non-international character, satisfying the requirements of Common Article 3, under Article 4 of the Statute, the Tribunal has the power to prosecute persons responsible for serious violations of the 1977 Additional Protocol II, a legal instrument whose overall purpose is to afford protection to persons affected by non-international armed conflicts. As aforesaid, this instrument develops and supplements the rules contained in Common Article 3, without modifying its existing conditions of applicability. Additional Protocol II reaffirms Common Article 3, which, although it objectively characterized internal armed

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[37] See generally ICRC Commentary IV Geneva Convention, para. 1 - Applicable Provisions.

[38] *Ibid.* 34

conflicts, lacked clarity and enabled the States to have a wide area of discretion in its application. Thus the impetus behind the Conference of Government Experts and the Diplomatic Conference[39] in this regard was to improve the protection afforded to victims in non-international armed conflicts and to develop objective criteria which would not be dependent on the subjective judgements of the parties. The result is, on the one hand, that conflicts covered by Additional Protocol II have a higher intensity threshold than Common Article 3, and on the other, that Additional Protocol II is immediately applicable once the defined material conditions have been fulfilled. If an internal armed conflict meets the material conditions of Additional Protocol II, it then also automatically satisfies the threshold requirements of the broader Common Article 3.

95. Pursuant to Article 1(1) of Additional Protocol II the material requirements to be satisfied for the applicability of Additional Protocol II are as follows:

(i) an armed conflict takes place in the territory of a High Contracting Party, between its armed forces and dissident armed forces or other organized armed groups;

(ii) the dissident armed forces or other organized armed groups are under responsible command;

(iii) the dissident armed forces or other organized armed groups are able to exercise such control over a part of their territory as to enable them to carry out sustained and concerted military operations; and

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[39] Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 24 May to 12 June 1971, and 3 May to 3 June 1972; Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 20 February to 29 March 1974, 3 February to 18 April 1975, 21 April to 11 June 1976 and 17 March to 10 June 1977.

(iv) the dissident armed forces or other organized armed groups are able to implement Additional Protocol II.

Ratione Personae

The Class of Perpetrator

96. Under Common Article 3 of the Geneva Conventions, the perpetrator must belong to a "Party" to the conflict, whereas under Additional Protocol II[40] the perpetrator must be a member of the "armed forces" of either the Government or of the dissidents. There has been much discussion on the exact definition of "armed forces" and "Party", discussion, which in the opinion of the Chamber detracts from the overall protective purpose of these instruments. A too restrictive definition of these terms would likewise dilute the protection afforded by these instruments to the victims and potential victims of armed conflicts. Hence, the category of persons covered by these terms should not be limited to commanders and combatants but should be interpreted in their broadest sense.

97. Moreover, it is well established from the jurisprudence of International Tribunals that civilians can be held as accountable as members of the armed forces or of a Party to the conflict. In this regard, reference should be made to the *Akayesu Judgement*, where it was held that:

> "It is, in fact, well-established, at least since the Tokyo trials, that civilians may be held responsible for violations of international humanitarian law. Hirota, the former Foreign Minister of Japan, was convicted at Tokyo for crimes committed during the rape of Nanking. Other post-World War II trials unequivocally support the imposition of

[40] See Article 1(1) of Additional Protocol II

individual criminal liability for war crimes on civilians where they have a link or connection with a Party to the conflict. The principle of holding civilians liable for breaches of the laws of war is, moreover, favored by a consideration of the humanitarian object and purpose of the Geneva Conventions and the Additional Protocols, which is to protect war victims from atrocities."[41]

98. Consequently, the duties and responsibilities of the Geneva Conventions and the Additional Protocols will normally apply to individuals of all ranks belonging to the armed forces under the military command of either of the belligerent parties, or to individuals who were legitimately mandated and expected, as public officials or agents or persons otherwise holding public authority or *de facto* representing the Government, to support or fulfil the war efforts. It will be a matter of evidence to establish if the accused falls into the category of persons who can be held individually criminally responsible for serious violations of these international instruments, and in this case, of the provisions of Article 4 of the Statute.

The Class of Victims

99. Paragraph 8 of the Indictment states that the victims referred to in this Indictment were persons taking no active part in the hostilities. This wording stems from the definition to be found in Common Article 3(1) of the Geneva Conventions, which affords protection to "persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat", and is synonymous to Article 4 of Additional Protocol which refers to "all persons who do not take a direct part in the hostilities or who have ceased to take part in the hostilities".

[41] *Akayesu Judgement*, para. 633

100. From a reading of the Indictment, it can be adduced that the victims were all allegedly civilians. There is no concise definition of "civilian" in the Protocols. As such, a definition has evolved through a process of elimination, whereby the civilian population[42] is made up of persons who are not combatants or persons placed hors de combat, in other words, who are not members of the armed forces[43]. Pursuant to Article 13(2) of the Additional Protocol II, the civilian population, as well as individual civilians, shall not be the object of attack. However, if civilians take a direct part in the hostilities, they then lose their right to protection as civilians *per se* and could fall within the class of combatant. To take a "direct" part in the hostilities means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces[44].

101. It would be beyond the scope of the matter at hand for the Chamber to attempt to provide an exhaustive list of all categories of persons who are not considered civilians under the Geneva Conventions and their Additional Protocols. Rather the Chamber considers that a civilian is anyone who falls outside the category of "perpetrator" developed *supra,* "perpetrators" being individuals of all ranks belonging to the armed forces under the military command of either of the belligerent parties, or to individuals who were legitimately mandated and expected, as public officials or agents or persons otherwise holding public authority or *de facto* representing the Government, to support or fulfil the war efforts. The class of civilians thus broadly defined, it will be a matter of evidence on a case-by-case basis to determine whether a victim has the status of civilian.

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[42] It should be noted that the civilian population comprises all persons who are civilians. (Article 50 (2) of Additional Protocol II)

[43] See ICRC Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, commentary on Protocol I, Article 50.

[44] *Ibid.*, Commentary on Additional Protocol II, Article 13.

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102. The protection afforded to individuals under the Geneva Conventions and the Additional Protocols, extends throughout the territory of the State where the hostilities are occurring, once the objective material conditions for applicability of the said instruments have been satisfied.

103. This was affirmed in the *Akayesu Judgement*[45] and by the ICTY[46] (with regard in particular to Common Article 3), where it has been determined that the requirements of Common Article 3 and Additional Protocol II apply in the whole territory where the conflict is occurring and are not limited to the "war front" or to the "narrow geographical context of the actual theater of combat operations".

The Nexus between the Crime and the Armed Conflict

104. In addition to the offence being committed in the context of an armed conflict not of an international character satisfying the material requirements of Common Article 3 and Additional Protocol II, there must be a nexus between the offence and the armed conflict for Article 4 of the Statute to apply. By this it should be understood that the offence must be closely related to the hostilities or committed in conjunction with the armed conflict[47].

105. The Chamber notes the finding made in the *Kayishema and Ruzindana Judgement*, whereby the term nexus should not be defined *in abstracto*[48]. Rather, the evidence adduced in

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[45] See *Akayesu Judgement* para. 635-636.

[46] See ICTY *Tadic* decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, para. 69.

[47] See *Akayesu Judgement* para. 643 and *ibid*, para. 70.

[48] See *Kayishema and Ruzindana Judgement* para. 188.

support of the charges against the accused must satisfy the Chamber that such a nexus exists. Thus, the burden rests on the Prosecutor to prove beyond a reasonable doubt that, on the basis of the facts, such a nexus exists between the crime committed and the armed conflict.

The Specific Violation

106. The crime committed must represent a serious violation of Common Article 3 and Additional Protocol II, as incorporated in Article 4 of the Statute. A "serious violation" is one which breaches a rule protecting important values with grave consequences for the victim. The fundamental guarantees included in Article 4 of the Statute represent elementary considerations of humanity. Violations thereof would, by their very nature, be deemed serious.

107. The Accused is charged under Counts 4, 6 and 8 of the Indictment for violations of Article 3 common to the Geneva Conventions, as incorporated by Article 4(a) (murder) of the Statute of the Tribunal. If all the requirements of applicability of Article 4, as developed *supra,* are met, the onus is on the Prosecutor to then prove that the alleged acts of the Accused constituted murder. The specific elements of murder are stated in Section 2.3 on Crimes against Humanity in the Applicable law.

2.5 Cumulative Charges

108. In the indictment, the Accused, by his alleged acts in relation to the events described in paragraphs 10-19, is cumulatively charged with genocide (count 1) and crimes against humanity (extermination) (count 2). Moreover, by his alleged acts in relation to the killings at the *École Technique Officielle* described in paragraph 14, his acts at the gravel pit in Nyanza described in paragraphs 15 and 16, and for the alleged murder of Emmanuel Kayitare described in paragraph 18, Rutaganda is charged cumulatively with crimes against humanity (murder) (counts 3, 5 and 7) and violations of Article 3 common to the Geneva Conventions (murder) (counts 4, 6 and 8).

109. Therefore, the issue before the Chamber is whether, assuming that it is satisfied beyond a reasonable doubt that a particular act alleged in the indictment and given several legal characterizations under different counts has been established, it may adopt only one of the legal characterizations given to such act or whether it may find the Accused guilty on all the counts arising from the said act.

110. The Chamber notes, first of all, that the principle of cumulative charges was applied by the Nuremberg Tribunal, especially regarding war crimes and crimes against humanity.[49]

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49. The indictment against the major German War Criminals presented to the International Military Tribunal stated that "the prosecution will rely upon the facts pleaded under Count Three (violations of the laws and customs of war) as also constituting crimes against humanity(Count Four)". Several accused persons were convicted of both war crimes and crimes against humanity. The judgement of the International Military Tribunal delivered at Nuremberg on 30 September and 1 October 1946 ruled that "[...]from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity." The commentary on *Justice* case held the same view: "It is clear that war crimes may also constitute crimes against humanity; the same offences may amount to both types of crimes." The trials on the basis of Control Council Law No. 10 followed the same approach. *Pohl, Heinz Karl Franslau, Hans Loerner,* and *Erwin Tschentscher* were all found to have committed war crimes and crimes against humanity. National cases, such as *Quinn v. Robinson*, the *Eichmann* case and the *Barbie* case also support this finding. In the *Tadic* case, the Trial Chamber II of ICTY, based on the above reasoning, ruled that "acts which are enumerated elsewhere in the Statute may also entail additional culpability if they meet the requirements of persecution." Thus, the same acts, which meet the requirements of other crimes--grave breaches of Geneva Conventions,

111. Regarding especially the concurrence of the various crimes covered under the Statute, the Chamber, in the *Akayesu Judgement*, the first case brought before this Tribunal, considered the matter and held that:

> "[...]it is acceptable to convict the accused of two offences in relation to the same set of facts in the following circumstances: (1) where the offences have different elements; or (2) where the previous creating the offences protect different interests; or (3) where it is necessary to record a conviction for both offences in order fully to describe what the accused did. However, the Chamber finds that it is not justifiable to convict an accused of two offences in relation to the same set of facts where (a) one offence is a lesser included offence of the other, [...]or (b) where one offence charges accomplice liability and the other offence charges liability as [...]"[50].

112. Trial Chamber II of the Tribunal, in its *Kayishema and Ruzindana Judgement*, endorsed the afore-mentioned test of concurrence of crimes and found that it is only acceptable:

> "(1) where offences have differing elements, or (2) where the laws in question protect differing social interests."[51]

113. Trial Chamber II ruled that the cumulative charges in the *Kayishema and Ruzindana Judgement* in particular were legally improper and untenable. It found that all elements including the *mens rea* element requisite to show genocide, "extermination" and "murder" in the particular case were the same, and the evidence relied upon to prove the crimes were the same.

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violation of the laws or customs of war and genocide, may also constitute the crimes against humanity for persecution.

[50] *Akayesu Judgement*, para.468.

[51] *Kayishema and Ruzindana Judgement*, para. 627.

Furthermore, in the opinion of Trial Chamber II, the protected social interests were also the same. Therefore, it held that the Prosecutor should have charged the Accused in the alternative.[52]

114. Judge Tafazzal H. Khan, one of the Judges sitting in Trial Chamber II to consider the said case, dissented on the issue of cumulative charges. Relying on consistent jurisprudence he pointed out that the Chamber should have placed less emphasis on the overlapping elements of the cumulative crimes.

> "What must be punished is culpable conduct; this principle applies to situations where the conduct offends two or more crimes, whether or not the factual situation also satisfies the distinct elements of the two or more crimes, as proven."[53]

115. In his dissenting opinion, the Judge goes on to emphasized that the full assessment of charges and the pronouncement of guilty verdicts are important in order to reflect the totality of the accused's culpable conduct.

> "[...]where the culpable conduct was part of a widespread and systematic attack specifically against civilians, to record a conviction for genocide alone does not reflect the totality of the accused's culpable conduct. Similarly, if the Majority had chosen to convict for extermination alone instead of genocide, the verdict would still fail to adequately capture the totality of the accused's conduct."[54]

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[52] *Kayishema and Ruzindana Judgement*, para. 645, 646 and 650.

[53] *Kayishema and Ruzindana Judgement*, Separate and Dissenting Opinion of Judge Tafazzal Hossain Khan Regarding the Verdicts Under the Charges of Crimes Against Humanity/Murder and Crimes Against Humanity/Extermination, para. 13.

[54] *Ibid.* para.33.

116. This Chamber fully concurs with the dissenting opinion thus entered. It notes that this position, which endorses the principle of cumulative charges, also finds support in various decisions rendered by the ICTY. In the case of the *Prosecutor v. Zoran Kupreskic and others*, the Trial Chamber of ICTY in its decision on Defence challenges to form of the indictment held that:

> "The Prosecutor may be justified in bringing cumulative charges when the articles of the Statute referred to are designed to protect different values and when each article requires proof of a legal element not required by the others."[55]

117. Furthermore, the Chamber holds that offences covered under the Statute - genocide, crimes against humanity and violations of Article 3 common to Geneva Conventions and of Additional Protocol II - have disparate ingredients and, especially, that their punishment is aimed at protecting discrete interests. As a result, multiple offenses may be charged on the basis of the same acts, in order to capture the full extent of the crimes committed by an accused.

118. Finally, the Chamber notes that in Civil Law systems, including that of Rwanda, there exists a so called doctrine of *concours idéal d'infractions* which allows multiple charges for the same act under certain circumstances. Rwandan law allows multiple charges in the following circumstances:

> "Penal Code of Rwanda: Chapter VI - Concurrent offences:
>
> Article 92: Where a person has committed several offences prior to a conviction on any such charges, such offences shall be concurrent.

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[55] *The Prosecutor v. Zoran Kupreskic and others*, Decision on Defence Challenges to Form of the Indictment, IT-95-16-PT, 15 May 1998.

Article 93: Notional plurality of offences occurs:

1. Where a single conduct may be characterized as constituting several offences;

2. Where a conduct includes acts which, though constituting separate offences, are interrelated as deriving from the same criminal intent or as constituting lesser included offences of one another.

In the former case, only the sentence prescribed for the most serious offence shall be passed while, in the latter case, only the sentence provided for the most severely punished offence shall be passed, the maximum of which may be exceeded by half".[56]

119. Consequently, in light of the foregoing, the Chamber maintains that it is justified to convict an accused of two or more offences for the same act under certain circumstances and reiterates the above findings made in the *Akayesu Judgement*.

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[56] The English text quoted is an unofficial translation of the following "Code pénal du Rwanda : Chapitre VI - Du concours d'infractions" :

Article 92 - Il y a concours d'infractions lorsque plusieurs infractions ont été commises par le même auteur sans qu'une condamnation soit intervenue entre ces infractions.

Article 93 - Il y a concours idéal :

1. Lorsque le fait unique au point de vue matériel est susceptible de plusieurs qualifications ;

2. Lorsque l'action comprend des faits qui, constituant des infractions distinctes, sont unis entre eux comme procédant d'une intention délictueuse unique ou comme étant les uns des circonstances aggravantes des autres.

Seront seules pronocées dans le premier cas les peines déterminées par la qualification la plus sévère, dans le second cas les peines prévues pour la répression de l'infraction la plus grave, mais dont le maximum pourra être alors élevé de moitié".

3. THE DEFENCE CASE

120. The Accused pleaded not guilty to all counts of the Indictment at his initial appearance on 30 May 1996. The Defence case consisted of two main arguments. The first of these was a general defence. The second was a defence of alibi.

3.1 The Arguments of General Defence

121. The Defence developed several main lines of argument. The Defence argued that the political activity of the Accused was minimal. The Accused testified and, his Counsel argued, that his involvement in the *Interahamwe za MRND* was limited to participation in meetings of this organization in its earliest stage, which it was argued was as a "think tank" or "group of reflection"[57]. The Defence also argued that the meaning of *Interahamwe* changed significantly between 1991 and 1994. The Defence argued that the Accused was a member of the *Interahamwe za MRND* at its embryonic stage, and that the term *Interahamwe* later included people who were not all members of the *Interahamwe za MRND*.

122. The Defence Counsel questioned the credibility and reliability of several Prosecution witnesses. Counsel for the Defence submitted that the case file was "contaminated"[58] by virtue of testimony given concerning the "Hindi Mandal" building in the Amgar garage complex. The Defence further submitted that certain evidence gathered by Captain Luc Lemaire was illegally collected and thus could not be tendered as evidence by the Prosecutor. The Defence argued that

[57] See Testimony of Georges Rutaganda, transcript of 08, 09, 22 April 1999.

[58] See Closing Argument of the Defence, transcript of 17 June 1999.

the United Nations Assistance Mission for Rwanda ("UNAMIR") contingent, of which Captain Lemaire was a part, had been prohibited from gathering intelligence[59].

123. The Defence called fourteen witnesses, including the Accused, who testified at length about the role of the Accused as second Vice-President of the *Interahamwe*. The Chamber notes that a number of Defence witnesses testified that the Accused took action to help others, including Tutsi refugees. The Defence further argued that, contrary to the allegations that the Accused detained Tutsi civilians in the "Hindi Mandal" building at the Amgar garage, that Tutsis actually sought refuge there and that the Accused permitted this and that he provided them with basic foodstuffs and medicine.

124. The Accused testified before the Chamber that prior to the advent of multiparty politics in Rwanda in 1991, he was a businessman with no interest in political participation. After being released from a presidentially assigned post in June 1991, he stated, he worked for himself, operating an import and distribution business registered as "Rutaganda SARL." The Accused testified that he focused on his business to the exclusion of any other civic, political, or administrative activities.

125. The Accused stated that he joined the MRND party in September or October 1991, in an atmosphere of increasing political tension in order to benefit from its protection and to safeguard his business interests. This tension was as a result of increasing competition between President Habyarimana's ruling MRND party and new opposition parties as they vied for members. It was in this context, the Accused testified, that he chose to join the MRND party because of the specific protections it afforded. He further submitted that although his father had been a member of the MDR, the strong regional affiliations which the MDR was reputed to have did not seem to him to be beneficial in light of the political climate in Kigali in 1991. It was at his father's

[59] *Ibid.*

urging, he stated, that he joined the MRND party in 1991. The Accused was, he claimed, simply a member of the MRND party – with no time for, or interest in, wielding political influence within the party or among the general population.

126. Nonetheless, in November 1991,the Accused was invited to attend an initial meeting of intellectuals who sought to find ways to recruit for and promote the MRND party. The Accused told the Chamber that he was also to become an elected representative in the national committee of the MRND in April 1993, as a representative of Gitarama *Préfecture*.[60] As such, he was one among fifty-five representatives, five from each *Préfecture*, who met at National Assemblies and voted on party decisions and actions.

127. A select group of persons, whom the Accused referred to as intellectuals, convened in order to devise strategies for attracting new members and for furthering the MRND party's objectives in the new, multiparty political environment. This group was known as the *Interahamwe za MRND*. The Accused indicated to the court that this was an embryonic "think tank" for the MRND. The Accused testified that he did not know when this initial "think tank" was organized, but that he was nonetheless involved in the initial impetus behind the creation of this committee. He participated in meetings of this group, he testified, in order to contribute his own ideas to the party. He stated that although more people joined this core group, they were all personally invited rather than publicly recruited. He stated that he attended one of their meetings for the first time in November 1991, at the invitation of Pheneas Ruhumuriza, who was later to become first Vice-President of the *Interahamwe za MRND*.[61]

128. According to the testimony given by the Accused, *Interahamwe* is a Kinyarwanda word that was used frequently by persons in political parties or other associations, which indicated a

[60] See *Testimony of Georges Rutaganda, transcript of 22 April 1999.*

[61] See *Testimony of Georges Rutaganda, transcript of 08 April 1999.*

close relationship between people who did something together. This name was drawn, he explained, from a popular and patriotic song from the 1960s, which was associated with the MDR. Witness DNN gave a similar description of the source of the term Interahamwe.[62]

129. The Accused testified that the *Interahamwe za MRND* quickly grew from its embryonic form and gained both senior members and young recruits. The five members who were to compose the National Committee of the *Interahamwe za MRND* were selected by a larger assembly. The Accused was appointed as second vice president even though he declined to be a candidate in elections. He testified, however, that the five official positions comprising the National Committee, as those of ensuing committee heads and organizers were really only formalities, with no attached responsibility or authority.

130. The Accused stated that although the Committee had a clear structure and its members had titles which suggested a hierarchy of responsibility and authority, his position as second vice-president was a mere formality, and he did not act in a capacity commensurate with the responsibility such a title might suggest. The Accused testified that there was no real leadership structure, budget, or autonomy - but that the titles, communiques, and meetings simply reflected a hope for future actions of the *Interahamwe za MRND*. The Accused also testified that as second vice president and member of this National Committee, he acted as a mediator and liaison between the National Committee of the MRND party and the young members who joined the party, quite possibly as a response to the organization and initiative of the *Interahamwe za MRND*.

131. According to the testimony of the Accused, the size and character of the *Interahamwe za MRND* changed significantly between its inception and the events which followed the death of President Habyarimana in April 1994. During his testimony, the Accused described a

[62] See *Testimony of Witness DNN, transcript of 16 February 1999.*

transformation in the popular usage and understanding of the word Interahamwe, as well as an increase in the number of people who joined the MRND, and in particular the *Interahamwe za MRND*. The Accused testified that the *Interahamwe za MRND* was initially composed of a small number of men who were mostly between the ages of thirty and forty. The Accused later referred to the *Interahamwe* as "the youth", and also stated that increasing numbers of Rwandan youth were drawn to the party and were subsequently organized. The Accused testified that by 6 April 1994 the *Interahamwe* had become an entirely different organization than the one in which he was originally involved. The Accused stated that the organization had already changed by mid-1992, and continued its transformation through 1994.

132. The Accused testified that the evolution of the *Interahamwe* as a youth wing of the party was an organic development, which he did not foresee when he joined this committee at its inception. Responding to questions concerning President Habyarimana's opinion of the *Interahamwe*, the Accused testified that in May 1992 President Habyarimana expressed his approval and encouraged "the youth" to join the organization.

133. The Accused stated to the court that the *Interahamwe* was popularly understood to encompass many more people than the *Interahamwe za MRND*. The word *Interahamwe*, and even *Interahamwe za MRND*, gained a pejorative, or negative meaning in popular usage and was used to describe a large and loosely organized militia which is said to have fought against the RPF[63], as well as to connote certain persons who had committed acts of banditry and violence[64]. While stating that popular understanding of the word *Interahamwe* had changed, the Accused added that the way in which this term was used after 6 April 1994 had little to do with the MRND, and that he had little knowledge of the persons perpetrating such acts, much less any political, social, or ideological connection with them.

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[63] See *Testimony of Georges Rutaganda, transcript of 23 April 1999.*

[64] See *Testimony of Georges Rutaganda, transcript of 22 April 1999*

134. Testifying about roadblocks that *Interahamwe* members were alleged to have manned, and where the Accused was alleged to have been, the Accused stated that roadblocks were initially set up and manned by civilians, largely through efforts of the civil defence, which was a multi-ethnic corps of citizens rallying together against the Rwandan Patriotic Front (the "RPF") army. Some confusion may have arisen, he suggested, because some people wore clothing falsely said to be a uniform of the *Interahamwe*. He further testified that the *Interahamwe* did not create or monitor roadblocks, and was not officially or unofficially involved at the roadblock sites, or in criminal acts allegedly committed there and therefrom.

135. Testifying about special clothing worn by *Interahamwe* and alleged Interahamwe members, the Accused submitted that there were both official and unofficial clothing and accessory items which were worn and promoted by the MRND. He also stated that there was no official uniform as such. He further stated that impostors wore clothing which had been associated with the MRND or *Interahamwe* when committing "evil" or criminal acts. This was the subject of a communiqué issued by the National Committee of the *Interahamwe za MRND*, addressed to the International Community and signed by the Accused, which discouraged members from wearing their "uniforms." According to the Accused, this communiqué was intended to dissociate the *Interahamwe* from Rwandan youths who were not members of, but who were publicly perceived as being members of and acting under the auspices of, the *Interahamwe za MRND* and who committed criminal or violent acts.

136. Witness DNN testified, to the contrary, that *Interahamwe za MRND* members did have a uniform, made out of kitenge fabric in yellow, blue and black colours. However, some wore clothes of the same colour as the party flag, that is black, yellow and green. This uniform was needed to distinguish the members of *Interahamwe* from members of the youth wings of other political parties.[65]

[65] See *Testimony of Witness DNN, 16 February 1999.*

137. Finally, the Accused testified that although he did not officially resign after 6 April 1994, his position in the *Interahamwe za MRND* was effectively rendered irrelevant, in what he described as "chaos", both within the organization and throughout Rwanda.

3.2 Defence of Alibi

138. The Defence case included submission of a defence of alibi. In his testimony, the Accused stated that he was in locations other than those alleged to be crime sites, or involved in activities other than those alleged during the times at which the crimes enumerated in the indictment were allegedly committed.

139. In her closing argument, Defence Counsel stated that a notice of alibi. The Chamber notes that no record of a notice of alibi was filed at any time, and that there is no record of such a notice in the judicial archives or within the judicial record. Notwithstanding this, the Trial Chamber finds it appropriate and necessary to examine the defence of alibi, pursuant to Rule 67(B) of the Rules which states that "Failure of the defence to provide such notice under this Rule shall not limit the right of the Accused to rely on the above defences."[66]

140. The Accused, Witness DF, Witness DD, and Witness DDD testified regarding the whereabouts of the Accused between the evening of 6 April 1994 to 9 April 1994.

141. The Defence submitted that in the first days following the crash of the aeroplane carrying President Habyarimana, the Accused was busy seeking protection for his family, trying to obtain news, and searching for food and other goods. The Accused testified that on the night of 6 April 1994, he and his friends were taken out of a car at a location close to the Kimihurura roundabout.

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[66] See *Rules of Procedure and Evidence*, Rule 67.

They were first told to sit down and later they were told to lie down on the road. They were finally released, the Accused testified, at 3:00 a.m. on 7 April 1994. They were then stopped at another roadblock manned by gendarmes in Kicukiro. At that time, they were asked to get out of the car, to show their identity cards and to sit on a hill by the side of the road before being allowed to continue on their way. The Accused testified that he then passed "Sonatubes," the airport, Bugesera and the town before reaching his home. The Accused stated that he remained at home on 7 April 1994.[67]

142. Witness DF stated that he had a drink with the Accused on the evening of 6 April 1994, and that DF left the Accused at 9:00 p.m. that night. [68]

143. Witness DD testified that he had a drink with the Accused on the evening of 6 April 1994. Witness DD further testified that he and the Accused separated on the night of 6 April 1994. Witness DD stated that he telephoned the home of the Accused on the morning of 7 April 1994 and the Accused's wife told DD that the Accused had not yet returned. Witness DD stated that at about 1:00 p.m. he contacted the Accused. During this conversation, the Accused told DD that he had encountered problems at Kimihurura on the night of 6 April 1994. Witness DD testified that the Accused told him that members of the Presidential Guard had stopped him there, and that he had spent the night sleeping on the ground.[69]

144. Witness DDD testified that she saw the Accused at 3:00 am on 7 April 1994. At this time, the Accused told DDD that many roadblocks had been erected. Witness DDD testified that the Accused told her that he was stopped at a roadblock at Kimihurura roundabout at 9:00 p.m.

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[67] See *Testimony of Georges Rutaganda, transcripts of 21 and 22 April 1999.*

[68] See *Testimony of Witness DF, transcript of 17 March 1999.*

[69] See *Testimony of Witness DD, transcript of 16 March 1999.*

on 6 April 1994 and left that roadblock after 12:00 a.m. on 7 April 1994. Witness DDD testified that she and the Accused stayed at home together on 7 April 1994.[70]

145. The Accused stated that on 8 April 1994, he walked towards the city from Kicukiro neighbourhood with a friend in order to find out whether his family should remain at home or leave. The Accused testified that he and his friend were shot at by the RPF as they neared a gendarmerie squad. After this, he decided to move his family. He stated that he took the road towards Rebero and left his family at the Rebero hotel. The Accused testified that he returned back in the evening and went to the parish mission by car. At the mission, he testified, he found a number of people whom he stated to the Chamber were seeking refuge from the RPF. The Accused proceeded, he testified, to visit the Conseiller to inquire where these refugees would spend the night. He testified that at his suggestion, some of these people followed him to his home where they spent the night.

146. The Accused testified that he went to the Rebero hotel on the morning of 9 April 1994, passing through roadblocks in front of the ETO school and around the air station. He testified that he returned with his family along the same route by which he had come. Arriving home, the Accused testified that he called his father, who informed him that his friend Jean Sebagenzi and his family had been killed. The Accused testified that he then went to see the Conseiller to get permission to move within the sector, in order to follow his father's wishes and bury the Sebagenzi family. The Accused testified that he was denied this permission by the Conseiller.

147. Witness DDD stated that she and the Accused went to the Rebero hotel, located on Rebero hill behind Kicukiro Sector on 8 April 1994. DDD testified that she next saw the Accused on 9 April 1994, at which time they left the Rebero hotel and returned to their house. Witness DDD stated that at that time a curfew had been imposed, and that the Accused went to the Sector

[70] See *Testimony of Witness DDD, transcript of 15 February 1999.*

office seeking special permission to move freely. DDD further testified that the Accused was denied such permission at the Sector office.

148. The Accused, Witness DD, Witness DF, and Witness DDD testified as to the whereabouts of the Accused on 10 April 1994.

149. The Accused testified that he returned to see the Conseiller on Sunday 10 April 1994. At this time he was granted a permit allowing free movement and exempting him from the curfew which was in place. The Accused testified that he reached the home of a friend in Muyima, where caskets containing the bodies of the Sebagenzi family were being loaded into a pickup truck. The Accused stated to the Chamber that he continued along with these people as they made their way to Nyirambo to bury these people. En route, he testified, they passed through many roadblocks - where the caskets were even opened to verify that they contained only dead bodies.

150. Witness DDD testified that the Accused received permission to move on 10 April 1994. Witness DDD learned of this when the Accused returned home in order to take a vehicle to go to the abovementioned burial. DDD testified that the Accused returned at 7:00 p.m. on the evening of 10 April 1994. Upon his return he explained to DDD that it had taken a long time because they had been stopped at many roadblocks, they had been searched, and that the caskets were even searched at the Agakingiro roadblock, where also that there were six people to bury.

151. Witness DF stated that he saw the Accused at this burial, which DF thought took place on 10 April 1994. Witness DF further testified that people manning the roadblock at Agakingiro wanted to open the caskets being transported for burial, and that they were also stopped close to a mosque at Biryogo and at a roadblock close to St Andrews school in Nyirambo.

152. Witness DD provided a detailed description of the day of the burial of 7 people in 5 coffins. He testified that they were detained at the Agakingiro roadblock, 10 metres from Amgar, while the coffins that he and the Accused were transporting were searched. Witness DD could not remember if the date was April 10; however, he thought that it took place on a Sunday afternoon.

153. The Accused, Witness DDD, Witness DF, and Witness DS gave testimony concerning the whereabouts of the Accused between 11 and 14 April 1994.

154. The Accused stated that at 7:30 a.m. on 11 April 1994, he left Kicukiro along with thirteen other people in a "505" sedan. They stopped at the house of an acquaintance where, the Accused testified, he wished to leave his family. Since this was not possible, they returned to his house. The Accused stated that they drove to Masango *Commune* instead, and that they arrived in Karambi in Masango at around 5:30 p.m. The Accused testified that he remained in his house in Karambi on the night of 11 April 1994. He stated that he had never been into the ETO compound, and was not near the premises on 11 April 1994. The Accused testified that early in the morning of 12 April 1994, he began thinking about how to finish construction of his house in Karambi. He testified that he drew up a contract with a trader and a mason for the construction work. He supervised the commencement of this work on 13 April 1994. The Accused stated that he returned to Kigali on the evening of 14 April 1994. He further testified that he could not reach Kicukiro because of the danger involved. Instead, he stated, he remained at the Amgar garage complex. The Accused testified that he found people hiding there. He stated to the Chamber that he took pity on these people and fed and cared for them. He also began to think of a strategy to evacuate them.

155. Witness DDD stated that she arrived in Kiyovu with the Accused at 9:00 a.m. on 11 April 1994 and stayed with a friend who was living there until about midday on that same day. DDD testified that they did not receive any special treatment at the roadblocks. Each of the adults had

to show their identity card at the roadblocks. Witness DDD stated that the officials manning the roadblocks did not have a special reaction to any of the occupants of the vehicle she traveled in. They crossed Nyabarongo and arrived in Masango at about 6:00 p.m. Witness DDD testified that the accused remained there for three days, departing for Kigali on 14 April 1994. Witness DDD testified that over the course of these three days, the Accused did not participate in any meetings.

156. Witness DF testified that the Accused left after the burial on 10 April 1994, and came back after two days. Witness DF stated that he saw the Accused at the Amgar garage. DF further stated that all of the people at the Amgar garage were there willingly, and had not been taken there by force.

157. The Accused, Witness DDD, Witness DEE, and Witness DS gave testimony concerning the whereabouts of the Accused from 15-18 April 1994.

158. The Accused testified that he arrived at the Amgar complex on 14 April 1994 and remained there on 15 April 1994. He also tried to collect money before returning to Masango *Commune*, where he told the Chamber he remained during the night of 16 April 1994. The Accused stated that he returned to Kigali early in the morning on 17 April 1994. The Defence Counsel submitted that the Accused organized the evacuation of vulnerable persons from the Amgar garage complex. The Chamber notes that the Accused did not specify a date on which the said evacuation occurred. The Accused stated that he met his mother and sister at the Red Cross in Kiyovu. He took them to the Amgar complex, he testified, and later a convoy was organized to move them. This was done with great difficulty. The Accused testified that they were sent back during their first attempt. The Accused testified that he remained in Kigali from 17 April 1994 until 29 April 1994.

159. Witness DEE testified that on 12 April 1994, she went to CHK hospital in Kigali. DEE stated that she then spent two days there and on the third she went to the Amgar complex. DEE

stated that she spent two days there, and that she saw the Accused there on both days. Witness DEE testified that when she saw the Accused there, he was wearing civilian clothing. DEE further testified that she never saw him enter the house carrying a weapon. Witness DEE testified that she spent two days at the Amgar complex and that on the third day the Accused organized the departure for their respective *préfectures*.

160. Witness DEE testified that she, the Accused, and four other people, departed in a vehicle which the Accused drove. Witness DEE testified that they were stopped at roadblocks. On 9 February 1999, DEE stated to the Chamber that at the first roadblock everyone in the car, including the Accused, was asked to produce their identity cards. However, on 10 February 1999, during her second day of testimony, she stated that they were not even asked for their identity cards[71]. This Witness testified that there was no special recognition or relationship between the Accused and the roadblock controller, and that this was evident because the Accused was asked to produce his identity card.

161. At a second roadblock which the witness stated was near the petrol station at Nyabugogo, the Accused was asked again to show his identity card. The people manning the roadblock also demanded the identity card of Witness DEE. Upon seeing it, these people told the witness that they should kill her. At this point, Witness DEE testified, the Accused begged them not to do so and gave them money. The Witness testified that the people at the roadblock did not know the Accused, which surprised her. DEE stated that she found this surprising because she thought that the Accused was well known throughout the country as he was an official of the MRND party.[72]

162. At a third roadblock, which was not far from the second, and was situated along the road, in the direction of the road to Gitarama, there were many people who had been stopped. DEE testified that on the evening before this trip, the RTLM had broadcast that the vehicle in which

[71] See *Testimony of Witness DEE, transcripts of 9 & 10 February 1999.*

[72] See *Testimony of Witness DEE, transcripts of 9 & 10 February 1999.*

they were traveling was being sought because the vehicle was said to have been used to find Tutsi and hide them. The witness testified, however, that the owner alleged by the RTLM was not the Accused, but was a person who was at the Amgar garage. This car was identified at the roadblock, but its passengers were not required to produce their identity cards. They turned around and went straight back to the Amgar complex. Witness DEE testified that the Accused organized another trip the next day. They traveled in a different car and reached Masango that night, 17 April 1994. They stayed in Masango at the house of the Accused's father.

163. Witness DDD stated that the Accused returned to Masango on 16 April 1994. DDD testified that the Accused left for Kigali again on the evening of 17 April 1994. Witness DDD further testified that the Accused did not do anything special when he was at Masango, and that all he did was bring back food.

164. The Accused testified that he remained in Kigali without leaving between 17April 1994 and 29 April 1994. He testified that he was very busy selling out his stocks of beer during this time. The Accused testified that he was approached by the Red Cross during the week of 17 to 24 April 1994. The Accused testified that the Red Cross asked him to draw up a communiqué appealing to MRND members, and in particular to members of the *Interahamwe za MRND*, if they were involved in killing, to stop, and to facilitate the transport of the wounded. The Accused stated that he left Kigali on 29 April 1994 and went to deposit his money at a bank in Gitarama. He then went to Masango to visit his family and stayed the night there. The Accused stated that he returned to Amgar on the following day and stayed there for about a week. On 8 May 1994, the Accused returned to Masango. He stated that he tried once again to deposit money in Gitarama before leaving. This did not work, so he asked his wife to deposit this money. He testified, without providing a date, that he went immediately back to Kigali and tried to shut down his business. The Accused testified that he could not state that he remained at Amgar permanently during the month of May 1994. Rather, he testified, he moved around a great deal and tried to attend to many matters.

165. Witness DDD stated that the Accused went to Kigali from Masango on the evening of 17 April 1994 and did not return for a period of two to three weeks.

166. Witness DEE testified that she saw the Accused in Butare once but that they did not have any interaction. DEE stated that this was either at the end of April or the beginning of May 1994. DEE testified that Rutaganda did not stay in Butare for the month or so that followed. Witness DEE believed that the Accused was in Masango staying either with his parents or at his home. However, DEE never actually saw the Accused in Masango.

167. The Accused, Witness DDD, Witness DS, Witness DD, Witness DF, and Witness DEE gave testimony concerning the whereabouts of the Accused from the end of May 1994 to the beginning of July 1994.

168. Defence Counsel submitted that the Accused left Kigali on 25 May 1994 and that he did not return there again. The Accused stated that he left the Amgar complex in Kigali on 27 May 1994. The Defence further stated that the Accused reached Cyangugu on 31 May 1994. The Accused testified that one week later, around 10 June 1994, he left Rwanda. He further testified that he returned to Rwanda twice to see his family. He stated that he did not return to Rwanda after the end of June 1994.

169. Witness DDD testified that the Accused arrived at Masango on the evening of 27 May 1994. According to her testimony, DDD and the Accused departed for Gitarama together on 28 May 1994. DDD stated that they then went to Ngange, in Kivumu *Commune* before returning to Masango. According to the testimony of DDD they then departed for Cyangugu on the following day, 29 May 1994. They passed through roadblocks. At each one they had to present identity cards. DDD testified that the people manning the roadblocks did not recognize the Accused. DDD testified that they reached Cyangugu on the night of 31 May 1994. DDD

testified that they stayed there together for a month, before leaving on 1 July 1994, and that the Accused did not return to Kigali.

170. Witness DS testified that he and the Accused left Kigali on 27 May 1994 and that they went to Gitarama.

171. Witness DD testified to having left the Amgar complex in company of the Accused on 27 May 1994. They experienced difficulties crossing roadblocks, and had to pay people who were manning the roadblocks. Witness DD testified that their trip lasted three days, and that this was due to the difficulties they encountered trying to cross the roadblocks. DD stated that he saw the Accused often when the Accused came to visit his family in Cyangugu.

172. Witness DF stated that DF and the Accused left the Amgar complex on the same day, on 27 May 1994. DF testified that the Accused was at first not allowed to pass through the Gikongoro roadblock, and that if he had been able to do so they would not have spent so many days there. DF stated that they reached Cyangugu on 31 May 1994. Witness DF stated that DF left Rwanda on 17 July. DF thought that the Accused departed two weeks earlier. DF testified that when the Accused reached Cyangugu, the Accused did not go to Kigali or Gikongoro.

173. Witness DEE stated that around 17 to 19 June 1994, she left Gikongoro for Cyangugu with the Accused and others. At a roadblock the Accused's vehicle was searched. DEE testified that the Accused's attitude was not that of someone in control when they were at the roadblocks. DEE testified that other people were supervising and controlling the roadblocks. DEE testified that on the following day the Accused suggested that he should take them to Bukavu, Zaire. They went to Zaire at some point not later than 26 June 1994.[73]

[73] See *Testimony of Witness DEE, transcripts of 09 & 10 February 1999.*

174. The Chamber considers the defence of alibi, after having reviewed the Prosecutor's case in the factual findings on the relevant paragraphs of the Indictment.[74]

[74] See Chapter 4 of this Judgement.

4. FACTUAL FINDINGS

4.1 Paragraph 10 of the Indictment

175. Paragraph 10 of the indictment reads as follows:

> "On or about April 6, 1994, Georges Rutaganda distributed guns and other weapons to *Interahamwe* members in Nyarugenge commune, Kigali."

Events alleged

176. Witness J, a Tutsi man who lived in the Cyahafi sector in the Nyarugenge *Commune*, testified that he had known the Accused since he was young because they were in neighboring *Communes*. He knew the Accused as the President of a sports team, as a Tuborg beer importer, and as someone he had seen leading several demonstrations of the *Interahamwe* of the MRND party. Witness J said that on 15 April, a policeman named Munyawara arrived in Cyahafi from Kimisagara and said that the *Inyenzi* had attacked and shot at the councillor of Cyahafi sector. The policeman gathered people together, including Witness J, and told them to follow him to go and fight the *Inyenzi* who were coming down.

177. Witness J said the group stopped just below a bar called Mount Kigali by a public standpipe near Mr. Shyirakera's house. At 3:00 p.m., they saw a pick-up truck arrive and stop near the standpipe. They approached the truck and saw two people in front and two people in back in the open bed of the truck. The Accused got out on the passenger side, and went to the back of the truck. He opened the cab and they saw him distributing weapons to young people, some of whom Witness J said he recognized as *Interahamwe*. Among these he named Bizimungo, Ziad, Muzehe, Cyuma and Polisi and said they were *Interahamwe* who had gone for training in the *Commune* of Bicumbi. He said they were his neighbors and he knew them.

Witness J said that he was close to the vehicle, indicating the length of the courtroom as a measure. He clarified on examination that the Accused did not himself distribute the weapons but was standing next to the truck as they were distributed. After this distribution of weapons, according to Witness J, the shooting started. Witness J testified that Muzehe immediately shot someone called Rusagara, who was standing with them, and Rusagara died on the spot. He estimated that from the time of the arrival of the vehicle to the time of this first shot, less than ten minutes passed. When he heard the shot, Witness J immediately fled. The shooting continued, and Muzehe and Bizimungo shot at young people known to Witness J, whom he named as Kalinda Viater and Musoni Emmanuel. Witness J saw them fall immediately and jumped over their bodies as he fled home. He stated that all the men he saw shot were Tutsi.

178. On cross-examination, the Defence produced two pre-trial written statements of Witness J. In the first statement, which was dated 5 December 1995, the witness said the event described had occurred on 6 April 1994. In the second statement, which was dated 3 May 1996, the witness had corrected this date to read 7 April 1994. Witness J maintained that it was either 15 or 16 April that Munyawera came to gather people together and stated that he had said it was 16 April at the time he made the statement. Witness J noted that it must have been 16 April, as on 6 April the plane had not yet been shot down. He said it was not possible that this happened on 7 April either because there was still calm on that date. He also stated that he did not remember saying to the Office of the Prosecutor that the event took place on 7 April.

179. Witness J was also questioned as to whether the councillor of Cyahafi was shot before or after the distribution of arms. In his testimony he indicated the shooting was beforehand and in the pre-trial statement it was indicated as having happened afterwards. The witness stated that the councillor was shot during a meeting which took place before the firearms arrived. He suggested that what he said might not have been written down accurately. He explained that he had been in a hurry to get back to work when the interpreter translated the statement into Kinyarwanda. The interpreter had said he would come back to him with a revised statement but

Witness J said he never did. When asked whether he had not met with investigators again on 3 May 1996, he said he didn't really remember that.

180. Witness J confirmed on cross-examination that the Accused did not distribute the weapons but that he got out and stood next to the vehicle while those in the back distributed the weapons. Witness J was also questioned as to when he fled - whether it was after Mr. Rusagara had been shot as he stated on direct examination, or as soon as people began getting out of the pickup truck, as reported in the pre-trial written statement. He responded that when the young men received weapons and approached them, they thought they were going to be defended. But then the firing began and at that time he fled.

181. Witness M, a Tutsi man, testified that he was in Nyarugenge *Commune*, in the sector of Kimisagara, when he heard of the President's plane crash on RTLM radio. On the next day, 7 April, he went to take refuge at the CHK hospital, which was 8 km from his house, after seeing people who had been killed by the *Interahamwe* and left strewn along the road, including neighbors he knew. On the way to the hospital he saw *Interahamwe* who were armed and bodies of people who had just been killed. He also saw two roadblocks, manned by soldiers and *Interahamwe*, with dead bodies lying nearby. He avoided these roadblocks for fear of being killed. At the hospital, Witness M saw many refugees and many dead bodies, three of which he recognized as Minister Zamubarumbao Fredrick and his daughter, and councillor Ngango Felistian. On 12 April, Witness M left the hospital and went to the Cyahafi sector, where he took refuge in the home of Nyamugambo, a Tutsi man, who told him that the sector was being protected by soldiers.

182. Witness M said that the sector was peaceful until 15 April, when the Accused "had the killings started". He said he saw the Accused at 9:30 a.m. with six people inside a pick-up truck. They were armed with guns and wearing UNAMIR clothing and vests. Witness M was at a standpipe with other people, and had been there about one hour when the Accused arrived,

wearing a military uniform, and stopped in front of the house of Shirakara Nishon. After he arrived, Witness M saw the Accused giving the guns he had brought to the *Interahamwe*, and saw him give a gun to a man named Muzehe. Witness M said the Accused sent his driver, Francois, to look for *Interahamwe* to whom the guns would be distributed. He said the guns were short black rifles, which he saw himself, and he said he knew the men were *Interahamwe* because the person leading them was the vice-president of the *Interahamwe* and they were wearing the clothing of the MRND party. He said that the Accused told the *Interahamwe* to kill the Tutsi and if they did not, he would bring in a tank to exterminate them all. Witness M said he was eight to ten meters away from the vehicle and that the Accused, whom he identified in court, was speaking in a loud voice.

183. Witness M said that the killing began that afternoon. After hearing the Accused say that the Tutsi should be killed, Witness M went back to where he was staying. In the afternoon, Muzehe shot Nyamugambo, the person who had provided refuge to Witness M, with the gun he had received from the Accused and then he came to loot the house. Witness M heard Muzehe say to an *Interahamwe* who was with him that he was going to tell the Accused that he had already started the job, and Muzehe left directly to go towards the Accused. Witness M was not able to hear what was said thereafter because he fled immediately. He stated that Muzehe did not kill him immediately because Muzehe was his friend and a taxi driver for whom he was a client. According to Witness M, of the 31 people who took refuge in Nyamugambo's house prior to the 15 April, the others were all killed by the *Interahamwe*. He said he knew they died because he hadn't seen them since. Witness M subsequently sought refuge with Alexander Murego, whose house was nearby, and he stayed in this house until the end of the war, during which his parents were killed.

184. On cross-examination, Defence counsel questioned the circumstances in which Witness M went to the CHK. The witness stated that he went alone and that all those in the house with him separated when they fled. Defence counsel questioned the date on which Witness M saw the

Accused, which he testified had been 15 April. In the pre-trial written statement dated December 4, 1995, the date had been recorded as 16 April. The witness maintained that it was 15 April when he saw the Accused. The Defence pointed out to the witness that on direct examination he had testified that he was with five to ten people at the standpipe, whereas his written statement had indicated that eighty people were there, and that while he testified that the date on which he left his house for refuge was 7 April, the pre-trial written statement indicated this date as 9 April. Witness M affirmed that there were eighty people at the standpipe as he had said in the pre-trial statement. He maintained that he left his house on 7 April, suggesting that it may have been written down incorrectly.

185. The Defence also challenged Witness M to explain why he had testified that he went to the standpipe to get water, while the pre-trial written statement indicates that he said he went to the standpipe to get guns, which he heard would be handed out for protection of the Tutsi. Witness M affirmed that he went to get guns as stated in his pre-trial statement and he said he thought he had testified to this on direct examination. Defence counsel pointed out that Witness M's statement says that when he reached the standpipe the Accused had already arrived, whereas in his testimony Witness M said that he had been there for an hour when the Accused arrived. Defence counsel questioned Witness M as to how he knew that the people with the Accused were *Interahamwe*. He said he knew a number of them and that they were the ones carrying guns and killing. Witness M was also questioned on his testimony that they were wearing UNAMIR clothing, which he said he had heard had been taken from the Belgian soldiers who were killed.

186. Witness M reaffirmed on cross-examination that he heard the Accused say to the *Interahamwe* that they should go and kill the Tutsi or he would bring tanks to exterminate them. He was asked why he had not mentioned having heard this in his pre-trial statement, and he indicated that the statement he made at that time had been limited, whereas the Tribunal had not limited him and asked him for many more facts. He affirmed that the statement made by the

Accused was the immediate provocation to begin killings. When asked how he could have forgotten to mention such an important statement, he said his memory was not good.

187. Defence counsel questioned Witness M on a number of other details relating to the incident. In response to the question of whether or not Muzehe was armed before he received a weapon from the Accused, Witness M stated that he did not remember well, that he had given approximate dates and numbers, and that his statement had been made a long time ago. He again reviewed details of the event, stating that the eighty people present were crowded but not too closely, and reaffirming the details of his earlier testimony of the killing of Nyamugambo and that he witnessed this killing.

188. Witness U testified that after the death of the President, the *Interahamwe* began killing in Nyarugenge. After two days, he left his home because of the killing. He said the *Interahamwe* stopped him and others with him, arrested them and took them to a place where they were killing people. According to Witness U, soldiers from the Kigali camp arrived at around 2:30 p.m. to calm down the situation. They told the *Interahamwe* to stop killing, which they did briefly, and the soldiers went back to their camp. Afterwards, Witness U said that the Accused arrived, driving a pickup truck which was filled with firearms and machetes which he himself saw. Witness U stated that he knew the Accused because he had a shop in the business district which sold beer. Witness U said the Accused distributed the weapons to the *Interahamwe* and ordered them to work, and the Accused said there was a lot of dirt that needed to be cleaned up. The Accused remained there with a rifle which he had over his shoulder.

189. Seeing this, Witness U said he left the place because they had started killing the people who remained. He hid in bushes below a nearby garage, which appeared to the Chamber to be the Amgar garage. At this time it was 3:00 p.m. and there was no one at the garage. Witness U then saw the Accused arrive, with many other *Interahamwe* who seemed to be his guards. Witness U estimated that they were approximately thirty in number. Witness U was very near

the garage and said he could see clearly through the bush. He said the Accused spoke loudly as there were many people, and Witness U was able to hear. Witness U said this incident took place just below the garage. He said he did not know the name of the owner of the garage. Witness U left the bushes and went further down. When he turned around he saw that they were killing people with machetes and throwing them in the hole.

190. On cross examination, Witness U was asked how he knew the Accused, how often he had seen him and where. The witness replied that he used to see the Accused in Kigali, in his shop or when he passed by on the way to meetings. He said he knew the Accused was President of the *Interahamwe* from the radio and from the meetings, and the fact that he took the floor at the meetings and spoke on the radio. On further questioning regarding how he knew the Accused to be President of the *Interahamwe* and the relationship between the MRND and the *Interahamwe*, Witness U said he had heard the Accused on the radio encouraging people to kill one another but that this was before the war.

191. When questioned on the distribution of weapons he witnessed, Witness U affirmed that this event took place two days after the President's plane was shot down. When confronted by Defence counsel with his pre-trial written statement, which recorded him as having said that the distribution took place on a Friday at the end of April 1994, he said he did not remember telling investigators that it was at the end of April. He said the day Agakingiro was attacked was the same day the weapons were distributed and the killings took place.

192. Witness U affirmed having said to investigators that he hid near the Accused's garage. When Defence counsel recalled that on direct examination he had said he did not know whose garage it was he hid near, he affirmed having said that he did not know the owner of the garage. Defence counsel elicited further detail from the witness on the circumstances prior to the arrival of the Accused in a pickup with weapons, and the witness affirmed that soldiers told the

Interahamwe, who he said were from Kimisagara and Cyahafi, to stop killing. He stated that the soldiers did not seize the weapons and left the *Interahamwe* armed.

193. Witness T testified that he was a neighbour of the Accused in Cyahafi sector, and that he knew him. He said that the killings that started after the death of the President on 6 April did not reach Cyahafi until late April because there was a group of Abakombozi, people from the Parti Social Democrate ("PSD"), defending the sector from *Interahamwe* from neighboring sectors. He said that around the time of 24 April, the *Interahamwe* attacked the Abakombozi and the killings started at around 5 p.m. He said the *Interahamwe* used guns in the attack. Witness T said that the Accused was present during the attack and had a red pick-up in which he brought weapons. He said that the Accused was standing in the vehicle and at that time the Tutsis and Hutus were separated and that when the killings were taking place, the Accused was sitting in the vehicle. He had an Uzzi gun, and Uzzi guns were being used for the killings. Witnes T said there were guns in the pick-up and that the Accused distributed some of them and the rest stayed in the pick-up. He said the Accused was assisted by the senior *Interahamwe* in the neighborhood, including Francois, the President of the *Interahamwe* in Cyahafi. He said the Accused gave the weapons to the President of the *Interahamwe*, who in turn distributed them. He said the *Interahamwe* gave weapons to those in the neighborhood who did not have any. On cross-examination, Witness T was asked about the weapons that he saw the Accused distribute, and specifically whether there pistols or only guns. He replied that the only type of weapon brought by the Accused was the Uzzi, although the *Interahamwe* may have gotten pistols from elsewhere.

194. Witness Q also stated that the Accused distributed firearms. Responding to questions from the Judges on the connection between the Accused and the *Interahamwe*, Witness Q testified that the Accused was a leader of the *Interahamwe* and cited the fact that he was the one who distributed firearms and ordered the distribution of firearms. Witness Q also stated that

everyone said that the Accused was distributing weapons at the *Commune* level. Witness Q was not cross-examined on this statement.

Factual Findings

195. Witness J and Witness M both testified about a distribution of firearms which took place in mid-April in Cyahafi Sector, Nyarugenge *Commune*. The Chamber found Witness J to be credible. He was consistent in his testimony on cross-examination and provided reasonable responses to the questions raised on cross-examination with regard to inconsistencies between his testimony and his pre-trial statement. Witness M, however, stated on cross-examination, that his memory had been affected by the events he had witnessed. The Chamber considers the testimony of Witness M to be unreliable with respect to details, particularly on dates, time, numbers and the sequence of events. The inconsistencies which arose in his testimony during cross-examination as well as the inconsistencies between his testimony and his pre-trial written statement are of a material nature in some cases. Although parts of his evidence are corroborated by the evidence of Witness J, other parts are materially inconsistent with the evidence of Witness J. Although the Chamber found Witness M to be a credible witness in that he made a sincere effort truthfully to recall what he saw and heard, and readily acknowledged his memory lapses, the Chamber considers that it cannot rely on the testimony of Witness M in its findings. The Chamber found Witness U, Witness T and Witness Q to be credible in their testimonies.

196. The Chamber notes that the testimony of the Accused and Witness DDD indicates that the Accused did leave his house on 8 April, and that he was in Kigali at the Amgar office on 15 April and on 24 April. His defence to the allegations set forth in paragraph 10 of the Indictment is a bare denial. The Chamber notes that under cross-examination, the Defence did not suggest to the Prosecution witnesses that the Accused had not participated in the distribution of weapons, or that he was not present at Nyarugenge *Commune* on 8, 15 and 24 April 1994. Further the Defence did not produce any witnesses to confirm an alibi by testifying that the Accused was

elsewhere when the events described by the Prosecution witnesses took place, as he does in respect of other allegations in the Indictment. A number of Defence witnesses testified that the Accused was very busy selling beer after his return to Kigali on 14 April, but the Chamber considers that selling beer would not have precluded the Accused from also engaging in the distribution of guns as alleged by the Prosecutor. For these reasons, the Chamber considers that the Defence has not provided evidence which effectively refutes the evidence presented by the Prosecutor in support of the allegations set forth in paragraph 10 of the Indictment.

197. The Chamber finds that on 15 April 1994 in the afternoon, the Accused arrived in a pick-up truck, with a driver and two men in the back, at a public standpipe in Cyahafi Sector, Nyarugenge *Commune*. In the back of the pickup truck were guns. The Accused got out of the vehicle, opened the back of the truck, and the men in the back distributed the guns to *Interahamwe*, including Bizimungo, Ziad, Muzehe, Cyuma and Polisi, while the Accused stood by. A crowd of people, including Witness J, had been gathered together at the standpipe by a policeman named Munyawara before the arrival of the Accused. Immediately following the distribution of the guns, Muzehe shot Rusagara, who died on the spot, and the shooting continued. Kalinda Viater and Musoni Emmanuel were shot by Muzehe and Bizimungo and fell immediately. All of the men shot were Tutsi. The crowd did not immediately disperse when the guns were distributed because they had been led to believe the *Interahamwe* who had received the weapons would protect them.

198. The Chamber finds that on the afternoon of 8 April 1994, the Accused arrived in a pickup truck at a place in Nyarugenge where the *Interahamwe* had been taking and killing people from the *Commune*. The pickup truck was filled with firearms and machetes, which the Accused distributed to the *Interahamwe*. He ordered them to work and said that there was a lot of dirt that needed to be cleaned up. The Accused was armed with a rifle slung over his shoulder and a machete hanging from his belt.

199. The Chamber finds that on or about 24 April in Cyahafi sector, the Accused distributed Uzzi guns to the president of the *Interahamwe* of Cyahafi during an attack by the *Interahamwe* on the Abakombozi.

200. In its findings on these three incidents, the Chamber notes certain common features. In each case, the Accused arrived in a pick-up truck with guns, which he distributed or had distributed, to *Interahamwe* in Nyarugenge *Commune*. The distribution of these weapons was immediately followed by the killing of people who, in at least two of the incidents, had been gathered together at these places prior to the arrival of the Accused.

201. The Chamber notes that the dates of the three incidents - 8 April, 15 April, and 24 April - vary from the date on or about 6 April, which is set forth in paragraph 10 of the Indictment[75]. The phrase "on or about" indicates an approximate time frame, and the testimonies of the witnesses date the events within the month of April. The Chamber does not consider these variances to be material or to have prejudiced the Accused. The Accused had ample opportunity to cross-examine the witnesses. In reviewing the allegation set forth in this paragraph of the Indictment, the Chamber finds that the date is not of the essence. The essence of the allegation is that the Accused distributed weapons in this general time period.

[75] See Chapter 1, Section 3 of this Judgement.

4.2. Paragraph 11 of the Indictment

202. Paragraph 11 of the Indictment reads as follows:

> "On or about 10 April 1994, Georges Rutaganda stationed *Interahamwe* members at a roadblock near his office at the "Amgar" garage in Kigali. Shortly after he left the area, the *Interahamwe* members started checking identity cards of people passing the roadblock. The *Interahamwe* members ordered persons with Tutsi cards to stand on one side of the road. Eight of the Tutsis were then killed. The victims included men, women and an infant who had been carried on the back of one of the women".

203. The Chamber is of the opinion that for the sake of clarity with respect to its findings on the events alleged in paragraph 11 of the Indictment, it is necessary to discuss successively the events relating to:

- Firstly, the fact that Georges Rutaganda stationed *Interahamwe* members at a roadblock near the Amgar garage;

- Secondly, the fact that the *Interahamwe* members checked the identity cards of people passing the roadblock and ordered persons with Tutsi cards to stand on one side of the road; and

- Thirdly, the fact that eight Tutsis were then killed and the victims included men, women and an infant who had been carried on the back of one of the women.

Regarding the fact that Georges Rutaganda stationed Interahamwe members at a roadblock near the "Amgar" garage:

204. The Chamber is of the opinion that as far as the above allegation is concerned, the Prosecutor must not only prove that a roadblock or a barrier was erected near the Amgar garage and manned by *Interahamwe* members but also that the Accused himself had stationed *Interahamwe* members there.

205. Prosecution Witnesses AA and HH identified in the slide tendered by the Prosecutor as exhibit 144, the location where the roadblock obstructing traffic was mounted, the location of the traffic lights and, on the left of the same slide, the wall of the Amgar Garage. According to the Prosecutor, the Amgar garage was located at the boundary of the Cyahafi *secteur*, in the Nyarugenge *Commune, Préfecture* of Kigali-*ville*. The main entrance to the garage opened onto the Avenue de la Justice where the said roadblock had allegedly been erected and which was indeed the location that witnesses AA and HH had identified as the location of the roadblock.

206. Witness HH, a Tutsi man, testified before the Chamber under direct examination that the roadblock near the Amgar garage was manned by members of the *Interahamwe* whom he could recognized by the *Interahamwe* uniform they wore, made out of red, yellow and green kitenge material, which was similar to the MRND party flag. During his cross-examination, the Defence asked Witness HH to explain the inconsistencies between his testimony and the statement he made to the investigators, as recorded in the transcripts of his questioning, to the effect that the roadblock was manned by soldiers. Witness HH replied that some *Interahamwe* dressed like soldiers.

207. Witness HH also testified before the Chamber that the young people manning the roadblock and with whom he had been in touch, had told him that the roadblock in front of Amgar was "Georges'". Witness HH, stated that he had been hiding near the Amgar garage and

as a result witnessed what took place at that roadblock. He testified that he saw the Accused come to the said roadblock many times, often in a Peugeot pick-up. According to Witness HH, the roadblock was the Accused's, indeed, like all roadblocks in Kigali and Rwanda, which were all under his control.

208. Witness HH also testified before the Tribunal that, on 20 May 1994, the *Interahamwe* had closed the road on which the said roadblock was erected. Witness HH asserted that he witnessed the arrival of the Accused at the roadblock around 9:00 a.m. According to HH, the Accused ordered the *Interahamwe* to open the road and they complied.

209. Prosecution Witness AA testified that, up until 18 April 1994, the road in front of Amgar Garage, like the neighbourhood, was controlled by the inhabitants of Agakingiro (Cyahafi). The people had erected a roadblock on that road which the *Interahamwe* destroyed on 18 April 1994. According to Witness AA, after the *Interahamwe* had attacked the neighbourhood and taken control of it, the Accused had a new roadblock erected in front of the gate to his garage. That roadblock was solidly built, with beer cases and wreckage from cars spanning the entire width of the road.

210. Witness AA stated that among the *Interahamwe* who used to come to the roadblocks, some were dressed in military uniforms while others wore *Interahamwe* uniforms.

211. According to Witness AA, the Accused was a famous man and the Amgar Garage, which belonged to him, was referred to at the time as a venue for the *Interahamwe*. According to the witness, people even spoke of "Rutaganda's soldiers"at that time.

212. Prosecution Witness T testified that soldiers of the Rwandan Armed Forces had erected a roadblock on the paved road, by a kiosk, near the Agakingiro market. Once resistance waned

in Cyahafi, towards the end of April, that roadblock was then controlled by the *Interahamwe*, who took over from the soldiers, who had gone to the frontline.

213. Prosecution Witness BB testified that he was arrested at the roadblock near the Accused's home. There were more than 10 people there, some of whom wore items of military uniform and others the *Interahamwe* uniform. BB explained, however, that none of those people was a real soldier. Some wore berets, with the sign of a pruning hook and a small hoe, identifying them as belonging to the *Interahamwe*. They were armed with guns, clubs, pangas, hammers, and knives. Witness BB stated that the *Interahamwe* had told him that their leaders were Robert Kajuga and Georges Rutaganda. The people manning the roadblocks said they would not kill anyone without prior instruction from Robert Kajuga or Georges Rutaganda.

214. Three defence witnesses confirmed that there was a roadblock in front of Amgar Garage. Witnesses DSS and DF stated that a roadblock had been mounted in front of Amgar Garage from 9 April 1994. According to Witness DD, the roadblock was erected from 7 April 1994 and was located about ten metres away from the garage, close to the traffic lights on Avenue de la Justice.

215. Witness DD testified that the people manning that roadblock were "bandits". He explained that some of them were armed, but that he saw neither uniforms nor any other signs suggesting that they were members of the *Interahamwe*. Witness DD also saw no distinctive signs or symbols that identified the people manning the roadblock with any political group whatsoever.

Regarding the matter of the Interahamwe checking the identity cards of persons who passed through the roadblock and ordering persons whose identity cards indicated they were Tutsi to stand on one side of the road:

216. Prosecution Witness HH testified that he passed the roadblock on 8 April 1994. He stated that people crossing the roadblock had to show their identity cards and also raise their hands so that their pockets could be checked for grenades. According to Witness HH, the people manning the roadblock shot at persons whose identity cards indicated they were Tutsi. Witness HH testified before the Chamber that he managed to cross that roadblock despite the fact that he was Tutsi because he was in the middle of a crowd and he was carrying his identity card at arm's length so that his pockets could be searched.

217. During cross-examination, the Defence asked Witness HH to explain an apparent difference between his testimony and a pre-trial statement he made to the Prosecution investigators. Witness HH had told the investigators that he passed through the roadblock without showing his identity card because there was a crowd of people around.

218. Witness HH added that from the location where he was hiding near the roadblock, he had heard the Accused tell the *Interahamwe* manning the roadblock to check the identity cards very well. Witness HH specified that when the *Interahamwe* saw a card with the reference "Tutsi", they took the holder into a house nearby. According to HH, people were arrested in this way every day.

219. Prosecution Witness AA testified that, at the time of the alleged events, the roadblocks, including the one near Amgar Garage, were used by the *Interahamwe* to "do their job", which, according to AA, meant to arrest Tutsis or other persons and to strip them of their belongings. According to AA, to pass a roadblock, one had to show one's identity card or other document that indicated the holder's identity.

220. Prosecution Witness BB testified that he was arrested at the roadblock near the residence of the Accused where he was asked to produce his identity card. According to BB, when the *Interahamwe* who manned the roadblock realized that he was Tutsi, they told him that they had received orders that very day to present anyone who had been apprehended at the roadblock to their president or vice-president. Two *Interahamwe*, one of whom carried a gun and the other grenades, removed his shoes and took him to the Accused at Amgar Garage. BB was then allegedly beaten by one of the *Interahamwe*. According to BB, the Accused then left and returned a little later and asked why BB who was Tutsi had not been killed. BB than held the Accused by the leg of his pants and asked him why he had not yet allowed the *Interahamwe* to kill him. BB testified that the Accused then kicked him and sent him away to do some work, gathering dirt in some area close by.

221. Under cross-examination, Witness BB acknowledged that upon his arrival at Amgar, when he was taken to the Accused, he was given tea because he was very weak. BB also admitted that a servant had brought him food. He then explained that it was indeed after he had been given the tea and food that the Accused had kicked him.

222. Defence Witness DD testifed that he could not confirm that the people manning the roadblock in front of Amgar Garage checked identity cards. He stated that he did not see anyone being taken aside and made to stand on one side of the road. Defence Witnesses DD, DDD and DNN testified that identity cards were checked at the roadblocks in order to identify RPF "infiltrators".

Regarding the fact that eight Tutsis had been killed, including men, women and an infant on the back of one of the women:

223. Prosecution Witness HH testified that immediately after crossing the roadblock, he had heard the sound of gunfire as he ran away; he had turned around and seen dead bodies on the ground. Witness HH testified before the Chamber that they were eight of them including, children, men and women. One of the women who fell was carrying an infant on her back. Witness HH testified further that the youths manning the roadblock later gave him protection. They told him that they had killed men, women and children.

224. Under cross-examination, Witness HH initially testified that on crossing the roadblock, he had not paid attention to whether the identity cards of people in the crowd were being checked. In reply to the Judges' question as to the material discrepancy between his testimony under direct examination and his statement under cross-examination, Witness HH stated that Tutsis who appeared at the roadblock were detained there.

225. Prosecution Witness AA, after testifying that the *Interahamwe* stopped Tutsis or anyone else at roadblocks to strip them of their belongings, explained that when people were arrested, they were led away and the sound of gunfire could then be heard close to Amgar.

Factual Findings

226. Based on corroborated testimonies, the Chamber finds that as from an unspecified date in mid-April, a roadblock was erected by *Interahamwe* on the Avenue de la Justice near a traffic light not far from the entrance to the Amgar Garage at the Cyahafi Sector boundary, in Nyarugenge *Commune* of the Kigali-*ville Préfecture*. The Chamber holds that, at the said roadblock, the *Interahamwe* checked the identity cards of those who crossed it and detained those who carried identity cards bearing the "Tutsi" ethnic reference or were otherwise considered as

"Tutsi" because they had stated that they were not in possession of an identity card. However, the Chamber notes that the Prosecutor has not led evidence to the effect that the *Interahamwe* manning the roadblock had been stationed there by the Accused. Hence, the Chamber finds that it has not been proven beyond reasonable doubt that the Accused stationed *Interhamwe* members at the said roadblock.

227. With respect to the allegation regarding the killing of eight Tutsis, including men, women and an infant carried on her back by one of the women, the Chamber notes that just one witness -Witness HH - had testified to those specific events. However, it notes that the Prosecution Witness HH was unable to provide a convincing explanation of the material inconsistencies, identified by the Defence, in his testimony before the Chamber and his earlier statement to the Prosecution investigators, as recorded. Accordingly, the Chamber has decided to disregard his testimony. Since the Prosecutor had not called any other witness, apart from Witness HH, to testify to such events, the Chamber finds that the allegation regarding the killing of eight Tutsis has not been proven beyond reasonable doubt.

4.3 Paragraph 12 of the Indictment

228. Paragraph 12 of the Indictment reads as follows:

> "In April 1994, on a date unknown, Tutsis who had been separated at a roadblock in front of the Amgar garage were taken to Georges RUTAGANDA and questioned by him. He thereafter directed that these Tutsis be detained with others at a nearby building. Later, Georges RUTAGANDA directed men under his control to take 10 Tutsi detainees to a deep, open hole near the Amgar garage. On Georges RUTAGANDA's orders, his men killed the 10 Tutsis with machetes and threw their bodies into the hole."

Regarding the allegations that on a date unknown, in April 1994, Tutsis who had been separated at a roadblock in front of the Amgar garage were taken to Georges Rutaganda and questioned by him. He thereafter directed that they be detained with others at a nearby building:

229. The Chamber notes that the said allegation follows the allegations contained in paragraph 11 of the Indictment. The Chamber, in its findings *supra* on the allegations set forth in paragraph 11, held that a roadblock had indeed been erected by the *Interahamwe* on Avenue de la Justice, near a traffic light, not far from the entrance to the Amgar Garage, at the Cyahafi sector boundary in Nyarugenge *Commune*.

230. Prosecution Witness BB testified before the Chamber that he was arrested at the roadblock near the residence of the Accused because he was a Tutsi. There were many people there, some of whom wore items of military uniform, while others were clad in *Interahamwe* uniform. According to Witness BB, the people at the roadblock said that they would kill no person without prior instruction from Robert Kajuga or Georges Rutaganda. When they realized that BB was Tutsi, the *Interahamwe* told him that they had received orders that very day to take

anyone apprehended at the roadblock to "the president or vice-president". Two *Interahamwe*, one of whom carried a gun and the other grenades, removed his shoes.

231. They took him to a location which Witness BB identified on the slide tendered by the Prosecutor as exhibit 145 as the Amgar garage. Witness BB was taken to the Accused in his office . An *Interahamwe* hit him. The Accused left the office and returned later. Witness BB testified that he held the Accused by the leg of his trousers and asked him why he had not yet allowed the *Interahamwe* to kill him. Witness BB testified that he begged for mercy but the Accused kicked him and sent him away to do some work, gathering dirt in a place where a cellar was under construction. Witness BB explained that the Accused had forced him to work on the cellar construction site without payment. In his opinion, he was therefore a slave of the Accused's. Witness BB testified that he stayed at Amgar until Kigali was captured by the RPF because he could no longer move about as he had thrown his identity card in some latrine.

232. Under cross-examination, Witness BB explained that the cellar was not under construction but that they were actually assigned to demolish part of a wall to create an entrance into the cellar from the Amgar garage. Witness BB also admitted that a mason had been hired to do the work and that the people, including himself, who were involved in such work were not prisoners, but mere workmen. Witness BB stated that there were no prisoners at that time and that, in fact, there were ordinary workmen who went home in the evenings.

233. Moreover, under cross-examination, when asked by the Defence to explain why, if the Accused had been the leader of a group of killers, BB had chosen to stay at the Accused's place rather than to move about and had found it safer to do so, Witness BB stated that he could not provide any explanation to that.

234. Prosecution Witness T who had testified that, at the time of the alleged events, he lived near Amgar garage, indicated that a neighbour of his, a Tutsi man, told him that, for a while, he

was forced to live inside Amgar garage. Around the end of May 1994, that man was killed. That same day, Witness T, his brother and their employee were arrested. The latter two men were also killed.

235. Prosecution Witness Q testified that, around 21 April 1994, he arrived at the Agakingiro roadblock where he was arrested because he did not have an identity card and because one of the people there, Vedaste Segatarama, had recognized him. Around 8 a.m., he was led into a garage, together with three other people who had also been detained at the roadblock because they had been identified as Tutsis on the basis of their identity cards.

236. Witness Q testified that he had not been to that garage before. He identified it before the Chamber on the slide which had been tendered by the Prosecutor as exhibit 145.

237. Witness Q stated that he was led, along with the three other Tutsis who had also been arrested, into the Chief's office. He testified before the Chamber that he recognized the office of the Accused to which he had been taken on the slide that had been filed as exhibit 149. They were introduced to the Accused, who ordered that they be locked up in the prison because they were *Inyenzi*. Witness Q explained that, in that office, the people who had been arrested were undergoing some kind of registration.

238. According to Witness Q, the prison where they were detained was in an Indian temple with the inscription "Hindi Mandal". He recognized it on a slide, tendered as exhibit 165. Witness Q stated that the temple was full, with about two hundred people. Only a small room, located behind the building and used for storage, was not full. Witness Q said that he was there for some three hours. The Accused then returned and said that 10 people should be taken out.

239. Defence Witnesses DD, DF and DDD testified before the Chamber that, in April, the Accused continued to sell beer within the premises of the Amgar garage. Witness DD stated that

he knew the people who had come to take refuge at Amgar. According to Witness DF people of various ethnic groups had been given refuge at Amgar, and no one was held against his or her will. Both Witnesses DD and DF testified that they saw no prisoners at Amgar. However, Witness DD explained that he did not go around the property to check.

240. Defence Witness DS testified that he remained with the Accused at Amgar from 14 April to 27 May 1994. Throughout that period, he never saw any prisoners or anyone being mistreated.

241. Defence Witness DEE stayed at Amgar from 14 to 17 April 1994. She explained that she was not the only Tutsi there. She knew some of the other Tutsis there. Of the Tutsis she did not know, she was told that they were hiding at Amgar. Witness DEE testified that she never saw any prisoners during her stay at Amgar, nor did she see anyone beaten, tortured or killed.

Regarding the allegations that Georges Rutaganda later directed men under his control to take 10 Tutsi detainees to a deep, open hole near the Amgar garage, and that upon his orders, his men had killed the 10 Tutsis with machetes and thrown their bodies into the hole:

242. Prosecution Witness BB identified on the slide tendered as exhibit 169, a site located between the ETM and the Accused's garage, where according to him the Tutsis were killed. According to Witness BB, at the time of the events referred to in the Indictment, there was a metal sheet wall near the blue fence located at the back to the right. It was at that spot that the Tutsis had been shot.

243. Prosecution Witness Q testified that after spending approximately three hours in the Indian temple, he was brought out, on the orders of the Accused, who had ordered that 10 people be taken outside. Witness Q stated that he himself, the three people who had been arrested with him at the roadblock and 10 other detainees were led away, around 10 or 11 a.m., to a pit, by men acting on the orders of the Accused. The pit was behind the garage, where there was a house with

a tiled roof and a fence. Witness Q identified the metal sheet fence on a slide tendered by the Prosecutor as exhibit 156. He recognized the location of the pit on the slide as exhibit 172, explaining that the metal item pictured on the slide was not there at the time of the events alleged.

244. At the said pit, the 14 persons were made to sit down in a hole, the location of which Witness Q recognized on a slide, tendered as exhibit 168, and ordered to look down. The people who had taken them to the pit then asked the Accused, who was present at the site, whether to use guns or machetes to kill them. The Accused allegedly told them "to kill with guns, is a waste of bullets." Witness Q stated that the people who had taken them to the pit then started to kill with machetes. At that point he bowed his head and then he lost consciousness upon seeing two persons die.

245. During cross-examination, the Defence asked Witness Q to explain why his statement to the investigators reflected that he had fainted after one man had killed three persons and a second person had killed three others. Witness Q confirmed before the Chamber that he fainted after two persons had been killed. He asserted that he had made the same statement to the investigators.

246. According to Witness Q, after those two persons had been put to death, the other four persons still alive, including himself, were made to get up and bury them. Witness Q testified before the Chamber that at that point he had no strength left and the Accused spared him and another man. The Accused kicked Witness Q and told him to leave, and told him that he would be killed on the day of Habyarimana's burial.

247. During cross-examination, the Defence asked Witness Q to explain the disparity between his testimony before the Tribunal and his earlier statement to the investigators. In the said statement, Witness Q had indicated that the Accused had ordered the four persons still alive to

throw the bodies of the victims into the pit and that, once they had finished doing that, the Accused kicked Witness Q who further explained that he then left with the four other persons.

248. In reply to the question, Witness Q testified before the Chamber that he did not bury the people and that when the investigators had read out the statement to him before he signed it, it did not include any reference to the effect that he had buried the bodies.

249. Defence Witness DD testified that he knew about the pit behind the Amgar garage and that around 26 April 1994, the Accused had a closed sheet metal fence built in front of the pit. Defence Witness DF also testified that the Accused had a metal fence built to protect his beer stocks. The said fence had no door. Witness DF explained that it was impossible to hear what was going on behind the fence from the garage. According to Witness DF, he was not aware that killings were going on at that location, but explained, however, that after the fence had been built, he could not know what was happening there. He did not hear any gunshots from the said location, but rather from the valley behind the "Hindi Mandal" temple.

250. Defence Witness DEE testified that on 14 April 1994, the day he arrived at the Amgar garage, she saw a group of about 10 people including men, women and children there. She spoke to some of them and they told her that they had found refuge there. Witness DEE who was not sure where the others had come from, thought that they were the Accused's family members.

251. During the time that she was at Amgar, from 14 to 17 April 1994, DEE heard gunshots and grenade explosions, but she was not sure where they came from. She explained that she was pregnant and sick at the time and was often lying down.

Factual Findings

252. The Chamber finds that all the Prosecution witnesses who testified to the aforementioned allegations are credible, including Witnesses BB and Q, and consequently decides to admit their testimonies. Indeed, the Chamber is of the opinion that although under cross-examination the Defence pointed out some contradictions in the testimonies of Witnesses BB and Q, such contradictions are not of a material nature and do not vitiate the consistency of the substance of their testimonies, as to their account of the facts at issue in the instant case.

253. With respect to Witness Q in particular, the Chamber holds that the said contradictions can probably be attributed to the trauma he may have suffered from having to recount the painful events he witnessed and of which he was a victim. The Chamber stresses further that the time lapse between the events and the testimony of the witness must be taken into account in assessing the recollection of details.

254. Further, the Chamber recalls that the inconsistencies in the witnesses's testimonies and their pre-trial statements must be assessed in light of the difficulties inherent *inter alia* in interpreting the questions asked to the witnesses. It also important to note that these statements were not made under oath before a commissioner of oaths.

255. The Chamber notes that the testimonies of Defence Witnesses DD, DF, DS, DEE and DDD do not refute the fact that the Accused was in his office at the Amgar garage from 15 to 24 April 1994. Such testimonies were offered to prove that the Accused was transacting business at Amgar during that period. The Defence submitted that the Accused welcomed into Amgar refugees of diverse ethnic groups including Tutsis and that no one was held at Amgar against his or her will, nor mistreated, or tortured or killed. The Chamber considers that, in any case, these facts would not exclude the Accused's participation in the events alleged in paragraph 12 of the Indictment.

256. The Chamber notes, furthermore, that Witness Q identified the hole where the ten persons were killed and where their bodies were thrown on the slide tendered by the Prosecutor as exhibit 168. The Chamber observes that the said slide shows the site identified as RUG-1 by Professor William Haglund, a forensic anthropologist, who appeared as an expert witness for the Prosecution. According to Professor Haglund, who exhumed several sites near Amgar garage, three bodies were exhumed from the hole identified as site "RUG-1". Dr. Nizam Peerwani, a pathologist, who had worked jointly with Professor Haglund and who also appeared as an expert witness for the Prosecutor submitted the following findings on the three exhumed bodies: the first body was that of a man aged between 35 and 45 at the time of death, the probable cause of which was homicide; the second body was that of a woman, aged between 30 and 39 at the time of death, the probable cause of which was homicide; and the third body was that of a man, aged between 35 and 45 at the time of death, the probable cause of which was blunt force trauma.

257. Firstly, the Chamber, on the basis of the testimony by Dr. Kathleen Reich, a forensic anthropologist, called by the Defence as an expert witness, is not satisfied that the scientific method used by Professor Haglund is such as to allow the Chamber to rely on his findings in the determination of the case.

258. Secondly, and above all, the Chamber notes that the Prosecutor failed to show a direct link between the findings of Professor Haglund and Dr. Peerwani and the specific allegations in the Indictment. Consequently, the Chamber holds that the findings of the said expert witnesses should not be admitted in the instant case.

259. Accordingly, the Chamber holds that the findings of the said expert witnesses do not help the Chamber determine the facts of the case. Moreover, the Chamber is not satisfied that the grave site referred to by Witness Q and the one exhumed by Professor Haglund are one and the same.

260. Thus, on the basis of the corroborating testimonies of Witnesses Q and BB, the Chamber is satisfied beyond any reasonable doubt that, in April 1994, Tutsis who had been separated at a roadblock in front of Amgar garage were taken to the office of the Accused inside Amgar garage. Based on the corroborating testimonies of Witnesses Q and T, the Chamber is satisfied beyond reasonable doubt that the Accused ordered that the Tutsis thus brought to him be detained within the premises of the Amgar garage.

261. Based on the testimony of Witness Q, the Chamber is satisfied beyond any reasonable doubt that the Accused ordered men under his control to take fourteen detainees, including at least four Tutsis, to a deep hole located near Amgar garage and that on the orders of Georges Rutaganda and in his presence, his men killed ten of the said detainees with machetes. The bodies of the victims were thrown into the hole.

4.4 Paragraphs 13, 14, 15 and 16 of the Indictment

262. The charges set forth in paragraphs 13, 14, 15 and 16 of the Indictment are as follows.

263. Paragraph 13 reads as follows:

> "From April 7 to April 11, 1994, thousands of unarmed Tutsi men, women and children and some unarmed Hutus sought refuge at the *École Technique Officielle* "ETO school" in Kicukiro sector, Kicukiro *Commune*. The ETO school was considered a safe haven because Belgian soldiers, part of the United Nations Assistance Mission for Rwanda forces, were stationed there."

264. Paragraph 14 reads as follows:

> "On or about April 11, 1994, immediately after the Belgians withdrew from the ETO school, members of the Rwandan armed forces, the *Gendarmerie* and militia, including the *Interahamwe*, attacked the ETO school and, using machetes, grenades and guns, killed the people who had sought refuge there. The *Interahamwe* separated Hutus from Tutsis during the attack, killing the Tutsis. Georges Rutaganda participated in the attack at the ETO school, which resulted in the deaths of a large number of Tutsis."

265. Paragraph 15 reads as follows:

> "The men, women and children who survived the ETO school attack were forcibly transferred by Georges Rutaganda, members of the *Interahamwe* and soldiers to a gravel pit near the primary school of Nyanza. Presidential Guard members awaited their arrival. More *Interahamwe* members converged upon Nyanza from many directions and surrounded the group of survivors."

266. Paragraph 16 reads as follows:

> "On or about April 12, 1994, the survivors who were able to show that they were Hutu were permitted to leave the gravel pit. Tutsis who presented altered identity cards were immediately killed. Most of the remainder of the group were attacked and killed by grenades or shot to death. Those who tried to escape were attacked with machetes. Georges Rutaganda, among others, directed and participated in these attacks".

Events Alleged

267. Witness A, a Tutsi man who had worked for the Accused as a mason, testified that on 7 April 1994 he went with his wife and five children to the ETO, a kilometre away from his house, to seek refuge and protection because the UNAMIR troops were stationed there. Upon his arrival, he realized he had not brought any food or blankets and returned home for supplies, leaving his family in the ETO compound. According to Witness A, there were approximately six thousand refugees in the ETO compound, outside and inside the buildings. When Witness A returned that evening, after circumventing the *Interahamwe* he encountered outside, he was unable to re-enter the compound for there were too many people. He spent the night near the sports field of the ETO.

268. According to Witness A, the next day Colonel Leonides Rusatila arrived and asked the Hutus to separate themselves from the group. Thereafter approximately 600 to 1,000 Hutus left the compound. The witness testified that on 10 April 1994, UNAMIR troops left the compound, although the refugees begged them to stay, as the *Interahamwe* had already surrounded the ETO compound. The departure of the UNAMIR troops created panic among the refugees and caused many of them to leave the ETO entrance; as a result, Witness A was able to re-enter the compound where he was reunited with his family. The *Interahamwe* also came in at that time and

mixed in with the crowd of refugees inside the building. According to Witness A, the refugees then decided to proceed together to the Amahoro stadium. They therefore left the ETO and headed in that direction but were diverted en route by soldiers at a roadblock. They were gathered together with their arms up over their heads, and ordered to lie on the ground. A soldier with a megaphone then came to them and told them it was not a good idea to go to the stadium and suggested instead that they go to Nyanza, where he said they would be safe.

269. Thereupon, Witness A and his family headed for Nyanza in a group of approximately 4,500 persons, flanked on both sides by *Interahamwe*. According to the Witness, at this time the *Interahamwe*, armed with machetes, clubs, axes, spears, and nail studded metal sticks had started killing people along the way, threatening people, forcibly taking young girls, spitting on them and committing atrocities. Along the way, Witness A saw the Accused coming in the opposite direction from Nyanza in his vehicle. He pulled over to the side of the road, got out, and stood leaning against the vehicle. Witness A saw a mason who had worked for the Accused pleading him for help, but the Accused waved him away.

270. Upon arrival at Nyanza, Witness A saw the Accused again who was directing the *Interahamwe* into position to surround the refugees who had been gathered together in one spot. Armed soldiers had taken position on the hill overlooking this spot. A sack full of grenades was brought by a man, and Hutus were told to show their identity cards. These Hutus were allowed to leave. Some Tutsis who tried to pass for Hutus were killed on the spot by the *Interahamwe* who knew them, and others were forced back into the group. A grenade was then hurled into the crowd and the soldiers began to fire their guns. Those who tried to flee from the group were snatched back by the *Interahamwe* surrounding them. Witness A saw the child his wife was carrying on her back blown off by a grenade. He was shot and fell to the ground, still holding another of his children in his arms. Others fell on top of him.

271. When the shooting stopped, Witness A heard the soldiers tell the *Interahamwe* to go to work, and the latter proceeded to kill people with clubs and other types of weapons. They also singled out some girls and put them aside. According to the witness they "had their way" with these girls and then killed them. Most of the women killed were stripped of their clothing, "so that Tutsi women could be seen naked." The *Interahamwe* continued to "have their way" until they left satisfied at around 11 p.m. Witness A's wife and four of his children were killed in this attack. His five year old child, whom he had shielded in his arms, sustained injuries from a grenade explosion. According to Witness A, when the *Interahamwe* returned the next day at dawn, he pretended to be dead. His injured arm was stepped on and he was hit on the head with a sharp object to see if he was alive, but he did not move. He spent that day, which he testified was Tuesday 12 April, at that spot, while the *Interahamwe* looted the bodies. In the morning of 13 April, RPF soldiers came and took him and other survivors away. Witness A testified that there were approximately two hundred survivors.

272. During the cross-examination, Defence counsel challenged the testimony of Witness A as being inconsistent with his prior statement dated 7 December 1995 made to OTP investigators. He had stated that he had three children, all of whom had died in the attack. When asked about his prior statement as to the number of children he had the witness maintained that four of his children had died in the attack and that only one had survived. He testified that he had no interest in saying there was a survivor among his children if they had all been killed.

273. Witness A was also asked about which radio station he was listening to on the morning of 7 April 1994. On direct examination he had testified that on that day he had tuned in to RTLM. The Witness explained that he generally listened to RTLM but that on that particular morning he had tuned in to Radio Rwanda. He further testified that RTLM broadcast only in the afternoon and that he had also learnt about the death of the President on RTLM on 7 April 1994 in the afternoon. Defence counsel also asked him how he had managed to listen to the radio, as

he had testified that he did not own a radio. The witness explained that he listened to the radio at his neighbour's house.

274. The Defence also asked the witness whether he knew the Accused well. The witness answered that he had never spoken to the Accused but had known him for six years, having seen him many times and having worked for him. Through further examination, Defence elicited additional details with respect to Witness A's earlier testimony regarding such matters as there being other persons with the Accused in his vehicle and the Accused positioning the *Interahamwe* at Nyanza.

275. Witness H, a Tutsi man from Kicukiro, testified that his house was attacked and searched in February 1994 by *Interahamwe*, armed with clubs, who had arrived shortly before a vehicle. Witness H was told that General Karangwa and the Accused, who owned the vehicle, were inside it. The Witness said that the Accused was his neighbour and lived 600 metres from his house. He knew the Accused as a businessman who imported beer, and he also knew him as the vice-president of the *Interahamwe*. When the killings began after the plane crash on 6 April, Witness H took his family to the ETO school, for their protection, where UNAMIR troops told them to come inside the compound. He stated that there were 3,500 to 4,000 refugees at the ETO, some of whom were in buildings but most of whom were on the sports field where Witness H was. The witness testified that the *Interahamwe*, armed with guns, grenades and other weapons, came and surrounded the ETO, but that they did not attack because they were afraid of the UNAMIR troops.

276. On 11 April 1994, Witness H saw the UNAMIR troops packing up to leave. A group of refugees, including the Witness, positioned themselves in front of a UNAMIR vehicle and begged the troops to stay, but they would not. According to Witness H, once UNAMIR left the ETO compound, the *Interahamwe* immediately entered and proceeded to attack, firing guns and hurling grenades. At that time, Witness H saw the Accused with Gerard Karangwa, the President

of the *Interahamwe* at the *commune* level. According to the Witness, as an *Interahamwe* official at the national level, the Accused ranked higher than Karangwa. They were in the group in front of him, and the group began throwing grenades and firing. The Witness saw the Accused before the shots were fired.

277. Witness H testified that he left the ETO with others and headed for the Amahoro stadium which he thought would be safe as it was under RPF control. En route, they were stopped by the *Interahamwe* and led to a road where they found soldiers who ordered them to sit down on the road. Thereafter, a military commander came and told them that he was taking them to Nyanza where he could ensure their safety. Led by Colonel Rusatila and surrounded on both sides by soldiers and *Interahamwe*, the group of refugees was escorted to Nyanza. Along the way, the *Interahamwe*, who were armed with machetes, grenades, spears and other weapons, beat and threatened the refugees. Of the four thousand refugees, many were injured en route to Nyanza. Witness H saw the Accused on the way to Nyanza, at the Kicukiro centre. The Accused was in a separate group talking to a number of people, including Mr. Kagina, a teacher at the ETO school whom he knew to be a member of the *Interahamwe*. When they arrived at Nyanza, the *Interahamwe* and the soldiers ordered the refugees to stop and to sit down. The Hutus were told to identify themselves and to stand up. They showed their identity cards and were told to leave. Thereafter, grenades were thrown and shots fired at the group. Witness H managed to escape and hide under a small bush sixty metres away. From that location, the witness heard shots and cries of pain. When the soldiers ran out of grenades and bullets, they asked the *Interahamwe* to begin killing people with knives. The killing lasted for more than an hour. Witness H heard the soldiers tell the *Interahamwe* to look around for people who were not dead yet and finish them off. Witness H testified that he did not see the Accused at Nyanza. He had waited until nightfall, and then fled to Kicikuro.

278. Under cross-examination, Witness H confirmed that he had been at the ETO compound from 7 to 11 April. The Defence asked Witness H whether he had met *Interahamwe* on the way

to the ETO, to which he replied that he had seen several groups of *Interahamwe* carrying weapons, but that they had not prevented him from going to the ETO. The Defence also asked Witness H to state specifically where he was located on the ETO sports field, the number of UNAMIR troops and their location. Witness H stated that he had moved around on the sports field during his stay at the ETO. He testified that the UNAMIR troops were camped near the sports field. When questioned on the activities of the *Interahamwe* before the soldiers left, and the circumstances of his departure from the ETO, Witness H stated that while he was at the ETO the *Interahamwe* did launch small-scale attacks, which were repelled by the UNAMIR troops.

279. Defence counsel also asked Witness H how the refugees reacted to being diverted from the road to Amahoro stadium towards Nyanza, whether they believed what they had been told about their safety, how they felt, his location within the crowd of refugees, en route to Nyanza, and the location of the bush at Nyanza where he hid during the attack on the refugees as well as the location of the *Interahamwe* and the soldiers during that attack. To those and related questions from the Defence, Witness H replied by providing additional information that had remained unclear under direct examination.

280. Witness DD, a Tutsi man who was a high school student in 1994, testified that he was a neighbour of the Accused and also knew him as the vice-president of the *Interahamwe*. When he learned of the death of the President, Witness DD and his family fled to the ETO for refuge because the UNAMIR troops were there and they thought their safety would be ensured. While at ETO, Witness DD saw the *Interahamwe*, some on foot and others in vehicles. They were armed, but Witness DD said they felt safe because of the UNAMIR presence. At the ETO, Witness DD stayed on the sports field, and had gone into one of the buildings only once. He estimated that there were approximately 5,000 refugees on the ETO premises. On 11 April, when the UNAMIR troops left, Witness DD saw the *Interahamwe* attack. He testified that *Interahamwe* leaders were present and named the Accused as well as the councillor of Kicukiro, who was also his neighbour, as having been among these leaders. He saw the Accused at about

fifty metres away from the ETO entrance, together with the councillor and many others he was unable to identify. According to Witness DD, all of them were armed, and the Accused had a gun. Witness DD fled the ETO when the *Interahamwe* attacked and was thus separated from his family.

281. Witness DD went to the Sonatube factory, where he and other persons were stopped by soldiers who ordered them to sit on the ground, which they did. The soldiers said they would take them to Nyanza where they would provide them with assistance. According to Witness DD, the women with children were forcibly separated from the group and raped by the *Interahamwe*. Witness DD stated that he learned only later that the women had been raped, when he saw them again and they told him that the *Interahamwe* had made them their wives, raped them and impregnated them. When they arrived at Nyanza, the refugees were assembled and surrounded by soldiers and *Interahamwe*. The Hutus were then asked to show their identity cards and to separate themselves from the group, following which they were allowed to leave. Witness DD also saw a person who tried to pass for a Hutu, shot on the spot. Once the Hutus had been separated, the soldiers began to kill people and throw grenades. When they stopped throwing grenades, they asked the *Interahamwe* to check the bodies for any survivors and to finish them off. Witness DD testified that he did not see the Accused again after the ETO.

282. During cross-examination, Defence counsel asked Witness DD about the circumstances in which he had seen the Accused at the ETO - where precisely it had been, and whether it was an open space with unobstructed view. The witness testified that he had been on the sports field when he saw the Accused. The Defence counsel submitted that in his pre-trial statement, Witness DD had stated that he had seen the Accused when he left the classroom with his family and that the Accused was in the school yard. The witness maintained that he had been on the sports field, and reiterated that he had come out of the classroom to see members of his family. He stated that the confusion stemmed from the fact that there was a basketball court near the entrance to the ETO. The Defence Counsel noted that there were several buildings between the

sports field and the ETO entrance and that the witness could have had an open, unobstructed view. The witness responded that he had been on the sports field and that there were no buildings there.

283. Witness W, a Tutsi man, also a neighbour of the Accused's, testified that he knew the Accused as the vice-president of the *Interahamwe*, and also as an engineer and a business man. On the morning of 7 April, Witness W fled his home, for Luberizi. On the way, he met the Accused setting up a roadblock in the company of the *Interahamwe*.

284. There were many people at that location and Witness W was able to return to his house, where he hid in the nearby bushes until nightfall, when he fled to the ETO together with four of his sister's children. He went to the ETO because the UNAMIR troops were there. Witness W testified that after the UNAMIR troops left, the *Interahamwe* and the Presidential Guard immediately entered the ETO compound, armed with grenades, machetes and clubs. He recognized some of the *Interahamwe* he had seen with the Accused at the roadblock on his way to the ETO but did not see the Accused. The *Interahamwe* then began to throw grenades onto the sports field and between the buildings where there were many people. His older brother's children and other people he knew were killed in that attack. Witness W also saw his mother die from a blow from a club. He himself was injured though not seriously and was able to flee through the back of the ETO compound to the house of a white person he knew. The latter who could not keep him in his house advised him to go to Sonatube.

285. Witness W walked towards Sonatube, together with others who had fled the ETO. They were stopped at Sonatube by soldiers who told them that Rusatila had ordered that they be sent to Nyanza where their security would be ensured. There were approximately 4, 500 refugees at Sonatube. They sat on the ground for about 30 minutes, and were forced towards Nyanza by the *Interahamwe* and soldiers of the Presidential Guard. Along the way, the refugees, surrounded by the *Interahamwe*, were mistreated. Some were stripped off their clothing or money, and

others were killed by the *Interahamwe* and the Presidential Guards. Witness W recognized some of the *Interahamwe* on the road to Nyanza, and he observed the vehicle of the Accused bringing in *Interahamwe* as reinforcements. He testified that the Accused could have been in this vehicle, which he only saw from afar, but he did not actually see the Accused. As they approached Nyanza, Witness W realized that they would be killed rather than protected. He and about 150 of his companions broke away from the group and fled. Some of them were shot from behind by the *Interahamwe*. Witness W and his companions hid in the forest nearby waiting for nightfall, during which time they heard gunfire from the Nyanza hill. They then fled to an RPF zone, the group of 150 having been reduced to only 60 by the time they arrived.

286. During cross-examination, Defence counsel asked Witness W which members of his family arrived at the ETO school with him. The Witness stated that his father, the children of his elder brother and others living in the house were with him. When confronted with his testimony on direct examination, he explained that he had mistakenly said he was with the children of his sister but that he meant his brother. Most of the cross-examination of Witness W related to other events and not to his experience at the ETO and Nyanza.

287. Luc Lemaire, a captain in the Belgian army who served with UNAMIR, testified that he was stationed at the ETO school, until the departure of UNAMIR troops from ETO on 11 April. He testified that there were approximately 2,000 refugees in the ETO compound by the time UNAMIR left. Captain Lemaire testified that at that time there was increased aggression by the *Interahamwe* near the ETO and that the latter were gathering quite near the compound, and were seen sometimes with weapons. Under cross-examination, Captain Lemaire was questioned about the *Interahamwe*. He stated that he had not seen *Interahamwe* in uniform near the ETO, but that he knew that the people he had seen were *Interahamwe* for they were able to move about freely and he had been told so by those at the ETO compound who knew them.

288. Defence Witness DZZ, a Hutu woman from Kicukiro, testified that she fled to a nearby church mission on 7 April, after hearing the sound of shooting. From there, on the same day she was taken by a Belgian priest to the ETO, about one and a half kilometres away, along with a group of 25 other refugees. She testified that when she arrived, there were about 2,000 refugees at the ETO. More people came subsequently, and Witness DZZ said she continued to hear gunshots. While she was at the ETO, she said that RPF soldiers in uniform came to take away some people who were Tutsi. On 9 April, the UNAMIR soldiers told Witness DZZ that they would be leaving, and she left the next day, on 10 April. Witness DZZ said that about 500 people remained at ETO by the time she left, and that many of those who left went to the Amahoro stadium. Witness DZZ returned home, which was approximately three kilometres away. She testified that she did not see any bodies or any roadblocks on the way. Under cross-examination, Witness DZZ stated that she could not testify to what happened at the ETO after she left on 10 April, or to what happened subsequently at Nyanza.

289. Defence Witness DPP testified that in April 1994 she was living in Kicukiro, approximately 400 to 500 metres from the ETO. She said that she saw the UNAMIR troops leave the ETO on 11 April on her way to get medicine for her sick child. After they left, she saw about fifty people including some people she knew go into ETO. She testified that they were not wearing uniforms and that some of them were armed. She heard gunshots, but from far away. Witness DPP saw people coming out of the ETO, carrying away school property, and then she saw men, women and children leaving the compound. She stated that they were not running and were unharmed. She testified that she did not see the Accused. In May 1994, Witness DPP sought refuge at the ETO. She said that at that time bullets were falling on the ETO, and she encountered some people who had taken refuge there after 6 April and stayed there throughout this period. She testified that there were mostly Tutsi but some Hutu refugees as well. After 11 May, Witness DPP said that Government soldiers came to camp at the ETO as well, and that there was no problem between them and the Tutsis there. She testified that on 23 May everyone left the ETO, as the RPF were shooting. During cross-examination, Witness DPP stated that she

stayed by the ETO for two hours on 11 April. She said that she did not see people in the ETO being attacked and clarified that she saw people entering but could not see the place where the refugees were from where she was. She stated that one person she spoke to told her they were on the way to the stadium but had been stopped en route and forced back. This person also told her that when they reached where they were going some were killed by knives or shot dead.

290. The Accused testified that on the morning of 11 April, his neighbour woke him up to tell him that the RPF were already in the neighbourhood and that they had killed a child. The Accused decided that he and his family had to leave their house in Kicukiro. They left around 7:30 a.m., with 14 people in his vehicle, and they drove to the house of an acquaintance, passing through many roadblocks. He found his acquaintance about to leave for Kibuye with his family. They left the house of this acquaintance around noon, and after much trouble at the roadblocks, arrived around 5:30 p.m. in Masango, where the Accused had a house in Karambi. The Accused described a mass exodus from the city, with many people on foot and others in vehicles. The Accused said he was never in the ETO, at the entrance or in the compound, on 11 April or any other time. He said he knew of the buildings there only through the slides which had been presented during the trial proceedings and that he had had no reason to go to the ETO. The Accused said he remained in Masango *commune* until 14 April, when he returned to Kigali. During cross-examination, the Accused said that he had not been aware of the fact that there were refugees at the ETO.

291. Defence Witness DDD testified that she and the Accused and their family had left their home on the morning of 11 April and gone to the house of a family friend in Kiyovu, where they arrived at around 9 a.m. They found that this friend was leaving Kiyovu for security reasons. After managing to obtain petrol, Witness DDD said they left Kiyovu around mid-day for Masango, where they arrived at 6 p.m. She said that the Accused remained in Masango until 14 April.

Factual Findings

292. Having heard and reviewed the testimony of the Prosecution witnesses regarding the allegations set forth in paragraphs 13, 14, 15 and 16 of the Indictment, the Trial Chamber finds Witness A, Witness H, Witness DD, Witness W and Captain Luc Lemaire all to be credible witnesses. They presented a similar account of the refugee situation at the ETO, the attack by the *Interahamwe* following the departure of UNAMIR troops, the diversion of refugees heading towards Amahoro stadium to Nyanza, and the massacre of refugees by soldiers and the *Interahamwe* which took place at Nyanza. Extensive cross-examination of the witnesses primarily elicited further details and background, without revealing any material inconsistencies. The Chamber considers that such inconsistencies as pointed out were not material and could for the most part be attributed to external factors relating to pre-trial statements and other language and translation issues. For example, the Defence highlighted the fact that the trial testimony of Witness A that he had four children who died and one who survived was inconsistent with the pre-trial statement he signed in 1995 stating that he had three children, all of whom died. The Chamber considers that the witness knew how many children he had and how many of them died, and that the error can be attributed to difficulties of transcription and translation, as addressed under the Evidentiary Matters.

293. Having heard and reviewed the testimony of the Defence witnesses, including the Accused, regarding the allegations set forth in paragraphs 13, 14, 15 and 16 of the Indictment, the Trial Chamber makes the following findings with regard to their evidence.

294. The Chamber notes that Witness DZZ was not, and did not claim to be, an eyewitness to the events at the ETO compound and at Nyanza on 11 April. Her testimony confirms that there were refugees at the ETO compound, but as she left prior to the events alleged in the Indictment, her testimony cannot challenge the eyewitness accounts of these events presented by the Prosecution. Her assertion that most refugees had left the compound and that only about 500

remained there by the time she left on 10 April, is inconsistent with the testimony of all the witnesses who were still there on 11 April when UNAMIR left, including Captain Luc Lemaire, who estimated - as they all did - that there were several thousand refugees at the ETO compound on 11 April.

295. Witness DPP was on the road in front of the ETO on 11 April, and she saw the UNAMIR troops leaving. She saw other people, including some armed, enter the compound, but she could not see inside the compound from where she was standing. She heard gunshots, although she said they were far away. She subsequently saw some people departing from the ETO but those people were not harmed and they were not running. The Chamber considers that much of this testimony is consistent with evidence provided by Prosecution witnesses, with regard to the departure of the UNAMIR troops and the subsequent incursion of others who were armed. Witness DPP concluded that these others went to loot the building, but testified that she was not in a position to see what was happening inside.

296. The Chamber accepts the evidence of Defence Witness DZZ and Defence Witness DPP but finds that this evidence does not refute the evidence presented by the Prosecution with respect to the allegations set forth in paragraphs 13, 14, 15 and 16 of the Indictment.

297. The Chamber has considered the testimony of the Accused and Witness DDD, jointly, as their testimony is consistent and puts forward a defence of alibi, claiming that the Accused was en route to Masango on 11 April and was not present at the ETO, at Nyanza, or at any of the locations on the way to the ETO from Nyanza where Witness A, Witness H, Witness DD and Witness W testified that they saw him on that day. The Chamber notes that the alibi defence was not introduced until near the end of the trial, after the Prosecution rested its case. Neither the Accused nor Witness DDD mentioned the alibi at the time of the arrest of the Accused or during any of the pre-trial proceedings.

298. The Chamber particularly notes that Defence counsel did not mention the alibi of the Accused in her opening statement or in her cross-examination of any of the Prosecution witnesses who testified over a period of 18 months. Consequently, Witness A, Witness H, Witness DD and Witness W were never confronted with and given an opportunity to respond to the assertion that the Accused was not present on 11 April at the ETO or at Nyanza and that their testimony must therefore be false. The Chamber has found these Prosecution witnesses to be credible, and finds the extremely delayed revelation of an alibi defence to be suspect. The inference to be drawn is that this defence was an afterthought and that the account of dates was tailored by the Accused and Defense Witness DDD, following the conclusion of the Prosecution's case. The only witness to support the alibi of the Accused is Witness DDD, and the Chamber is mindful that she has a personal interest in his protection. For these reasons, the Chamber does not accept the testimony of the Accused and Witness DDD that they were on the way to Masango on 11 April.

299. On the basis of the testimony cited above, the Chamber finds it established beyond a reasonable doubt that from 7 April to 11 April 1994, several thousand people, primarily Tutsis, sought refuge at the ETO. As all of the witnesses testified, they went to the ETO because UNAMIR troops were stationed there and they thought they would find protection there. The *Interahamwe*, armed with guns, grenades, machetes and clubs, gathered outside the ETO compound, effectively surrounding it. Colonel Leonides Rusatila separated Hutus from Tutsis at the ETO, prior to the attack, and several hundred Hutus left the ETO compound. When the UNAMIR troops left the ETO on 11 April 1994, the *Interahamwe* and members of the Presidential Guard entered and attacked the compound, throwing grenades, firing guns and killing with machetes and clubs. A large number of Tutsis, including many family members and others known to the witnesses, were killed in this attack.

300. Witness H saw the Accused at the time of this attack on the ETO, just before shots were fired, together with Gerard Karangwa, the President of the *Interahamwe* at the *Commune* level,

in a group which began throwing grenades and firing. Witness DD also saw the Accused at the time of the attack, armed with a gun, about 50 metres away from the ETO entrance. Based on this evidence, the Chamber finds beyond a reasonable doubt that the Accused was present and participated in the attack on Tutsi refugees at the ETO school.

301. Many of the refugees who escaped or survived the attack at ETO headed in groups towards the Amahoro Stadium, where they thought they would be safe as it was under RPF control. These groups were stopped en route by soldiers, gathered together near the Sonatube factory and diverted, having been told that Colonel Rusatila had ordered them to Nyanza where their safety would be ensured. Some women were taken forcibly from the group and subsequently raped. Flanked on both sides by *Interahamwe*, approximately 4,000 refugees were then forcibly marched to Nyanza. Along the way, these refugees were abused, threatened and killed by soldiers and by the *Interahamwe* surrounding them, who were armed with machetes, clubs, axes, and other weapons.

302. When they arrived at Nyanza, the refugees were stopped by the *Interahamwe*, assembled together and made to sit down in one spot, below a hill on which there were armed soldiers. They were surrounded by *Interahamwe* and soldiers. Hutus were told to stand up and identify themselves and were allowed to leave. Some Tutsis who tried to leave, pretending they were Hutus, were killed on the spot by *Interahamwe* who knew them. Grenades were then thrown into the crowd by the *Interahamwe*, and the soldiers began to fire their guns from the hillside. Those who tried to flee were brought back by the *Interahamwe* surrounding them. This attack took place on 11 April, in the late afternoon and into the evening. Many were killed in this attack, including Witness A's wife and four of their five children. Following the shooting and grenades, the soldiers told the *Interahamwe* to begin killing people. The *Interahamwe* then began killing people with clubs and other weapons. Some girls were selected, put aside, and raped before they were killed. Clothing had been removed from many of the women who were killed. The killing lasted more than an hour. The soldiers then told the *Interahamwe* to look for those who were not

dead and finish them off. The *Interahamwe* left at approximately 11:00 p.m. and returned on the morning of 12 April, when they came back to loot and to kill all surviving refugees. Approximately 200 people survived the massacre.

303. On the way to Nyanza, Witness A saw the Accused coming in a vehicle from the direction of Nyanza, pull over to the side of the road and get out. Thereafter, he saw the Accused wave away a person who had worked for him and approached him from the marching group of refugees for assistance. Witness H also saw the Accused on the way to Nyanza, standing in a group talking to a member of the *Interahamwe* whom he recognized and other people.

304. Witness W saw a vehicle belonging to the Accused bringing in *Interahamwe* as reinforcements. At Nyanza, Witness A again saw the Accused, directing the *Interahamwe* who were armed with grenades, machetes and clubs - into position to surround the refugees just prior to the massacre. The Chamber finds beyond a reasonable doubt that the Accused was present and participated in the forced diversion of refugees to Nyanza and that he directed and participated in the attack at Nyanza.

4.5. Paragraph 17 of the Indictment

305. Paragraph 17 of the Indictment reads as follows:

> "In April of 1994, on dates unknown, in Masango *Commune*, Georges Rutaganda and others known to the Prosecutor conducted house-to-house searches for Tutsis and their families. Throughout these searches, Tutsis were separated from Hutus and taken to a river. Georges Rutaganda instructed the *Interahamwe* to track all the Tutsis and throw them into the river".

Regarding allegations according to which in April of 1994, on dates unknown, in Masango Commune, Georges Rutaganda and others known to the Prosecutor conducted house-to-house searches for Tutsis and their families, and that throughout these searches, Tutsis were separated from Hutus and taken to a river:

306. Prosecution Witness EE testified that he saw, on three occasions, the father of the accused and other *Interahamwe* go to pick up Tutsis in vehicles, telling them that they were taking them to a safe location. Witness EE testified that he had seen these vehicles go to the river. He also explained that other people were led on foot to the river. He testified that his neighbours had told him that the people taken to the river had been thrown into it. Witness EE also stated that, from the window of his house, he heard people say they were returning from the river where they had just thrown Tutsis.

307. Under cross-examination, in reply to the Defence, EE indicated that he could not see the river from his house.

308. Prosecution Witness C also testified before the Chamber that, in Masango, the people who were tracking the Tutsis went to collect those who had sought refuge at the Bureau

communal in order to beat and kill them. Witness C testified that many Tutsis had therefore been killed in the Masango region. Those who sought refuge at the river were thrown into it while others were thrown into mass graves. In reply to questions from the Chamber, Witness C specified clearly that he did not see the Accused participate in the said massacres.

Regarding the allegations formulated as follows "Georges Rutaganda instructed the Interahamwe to track all the Tutsis and throw them into the river":

309. Prosecution Witness O testified before the Chamber that he saw the accused, on 22 April 1994, at about 5 p.m., in Masango. According to Witness O, the Accused was in mufti, armed with a short firearm and was driving a white Toyota pick-up which he parked at some 15 metres from Witness O's shop. Witness O then stated that he saw at the rear of this vehicle, guns partially covered with a tarpaulin. Witness O also testified that the Accused was accompanied by Robert Kajuga, National President of the *Interahamwe* and some 10 other people including about four in military uniform and others in the distinctive green, red and yellow *Interahamwe* uniform. Witness O testified that some of the men accompanying the Accused carried grenades or firearms and that Kajuga was carrying grenades on his belt. Witness O further stated that he saw the Accused speak with a certain Karera, in charge of the Youth Wing of the local *Interahamwe za MRND*, in Masango, near a pole from which a flag flew.

310. Prosecution Witness V testified before the Chamber that the Accused held a meeting at a place known as Gwanda (sic), located between Masango and Karambi, on a date he could not accurately recall. During the examination-in-chief, Witness V situated this meeting at the beginning of the month of May 1994 and, under cross-examination, he stated that it was rather in April 1994. Witness V stated that the Accused conducted this meeting in his capacity as Vice-President of the *Interahamwe*. Witness V testified that the Accused said during that meeting that it was necessary to stop eating the cows of Tutsis and to get rid of the Tutsis instead. Witness V, a Tutsi man, who attended the meeting, fled to safety. According to Witness V, the massacres

in Masango started after the Accused had held the said meeting. Witness V testified that prior to that there had been some looting but no killings.

311. Prosecution Witness C saw the Accused attending an MRND meeting at Masango. According to the witness, the Accused was wearing the uniform of the *Interahamwe*. The father of the Accused, Esdras Mpamo, was also in attendance as well as a certain Jean-Marie Vianney Jyojyi. The two individuals who took the floor, Mwanafunzi Anteri and a Protestant pastor urged the gathering not to support the Arusha Accords and to fight the enemy. According to Witness C, the RPF and the Tutsis were referred to as "the enemy" at the time. The witness also testified that the proverbs used at the meeting were meant to convey the notion that Tutsis, their families and children were to be tracked. Witness C noted that the Accused was present throughout the meeting and did not object to the statements made there. He was seated with Mwananfuzi Anteri and Sebuhuro at the table facing the gathering. His father, Esdras Mpamo, a former *Bourgmestre* of Masango who at the time of the events alleged was an MRND parliamentarian was also seated at the table next to the speakers. Witness C testified that the attacks against the Tutsis started after that meting.

312. Prosecution Witness EE, for his part, testified before the Chamber that he had attended a meeting, after 6 April 1994, at which the father of the Accused, Mpamo, who was chairing the meeting, had declared that Tutsis had to be killed to prevent them from taking over. The meeting was held near the Masango Communal Office. According to EE, the Accused was in attendance and was seated next to his father, at a table facing the audience. He explained that the Accused and his father were not the only ones seated at the table and that the Accused had not taken the floor.

313. Under cross-examination, Witness EE testified that he had attended that meeting because he had received a written invitation from Esdras Mpamo. He confirmed that he was personally surprised at the statements made at the meeting and that he had not reacted, nor had the

bourgmestre, Louis, who was also present. Witness EE then indicated that he was also seated at the table, next to the speakers, facing the audience.

Factual Findings

314. The Chamber notes that the Prosecutor had led no evidence in support of the allegations that in April 1994, the Accused had conducted house-to-house searches for Tutsis and their families in Masango *Commune* and that, throughout these searches, Tutsis were separated from Hutus and taken to a river.

315. Regarding the allegations that Georges Rutaganda had ordered the *Interahamwe* to track down all Tutsis and throw them into the river, the Chamber is satisfied, based on the testimonies of Witnesses C, V and EE, that the Accused had attended at least one meeting at which specific statements of incitement to kill Tutsis were made. The Chamber notes that the Accused did not object to such statements and that, in view of the authority he exercised over the population and the position he occupied during that meeting, being seated at the table of speakers next to his father, the former *bourgmestre* of the *Commune*, he had acquiesced to such statements. The Chamber notes however that only Prosecution Witness V had testified that the Accused had chaired the meeting and had taken the floor. The Chamber notes that V's testimony on this point is not corroborated by those of Witnesses C and EE, both of whom had declared that the Accused was indeed present at the meeting and had taken a seat at the table of speakers but had himself not taken the floor. Accordingly, the Chamber holds that, on the basis of uncorroborated testimonies presented to it, it has not been proven beyond a reasonable doubt that the Accused ordered that all Tutsis be tracked and thrown into the river.

4.6 Paragraph 18 of the Indictment

316. Paragraph 18 of the Indictment reads as follows:

> "On or about April 28, 1994, Georges Rutaganda, together with *Interahamwe* members, collected residents from Kigali and detained them near the Amgar garage. Georges Rutaganda and the *Interahamwe* demanded identity cards from the detainees. A number of persons, including Emmanuel Kayitare, were forcibly separated from the group. Later that day, Emmanuel Kayitare attempted to flee from where he was being detained and Georges Rutaganda pursued him, caught him and struck him on the head with a machete and killed him."

Regarding the allegations that on or about April 28, 1994, the Accused, together with Interahamwe members, collected residents from Kigali and detained them near the Amgar garage and demanded identity cards from them:

317. Prosecution Witness U testified before the Chamber that, on a day, that he was unable to pin point but that he put after 6 April 1994, at about 3 p.m., he hid in a bush near a garage of which he knew neither the name nor the owner. Later, Witness U recognized the said garage on a slide tendered by the Prosecutor as Exhibit 143. The Chamber notes that the garage identified is Amgar.

318. The witness testified that he clearly saw the following events unfold near the garage from where he was hiding. The Accused and some 30 *Interahamwe*, some of whom were in military uniform and others in mufti, armed with tools such as machetes, took away some 30 people there to kill them. According to Witness U, the *Interahamwe* looked like the bodyguards of the Accused.

319. Prosecution Witness AA testified that on 28 April 1994, around 10 a.m., *Interahamwe* conducted a house-to-house search in the Agakingiro neighbourhood asking the people to show their identity cards. They took away those they detained towards the "Hindi Mandal" temple, located near the Amgar garage and a mass grave, at a place now called Jango. According to Witness AA, streams of people who had been forced out of their homes headed up towards that location. Witness AA was among the persons detained and led near the garage. He testified that the Accused was present at the location where the detainees were gathered. According to Witness AA, the Accused was the leader of those *Interahamwe*. He wore a military uniform, comprising a coat and trousers, and carried a rifle.

320. Under cross-examination, Witness AA reiterated his testimony that the Accused himself did not directly conduct searches, at least he did not see him do so. The Accused was present at the location where the detainees were gathered, near Amgar garage. The accused was already there when AA arrived. Also under cross-examination, Witness AA testified that the Accused carried a pistol and not a rifle, and that he also carried grenades on his belt.

321. According to Witness AA, the persons who managed to leave this site where people had been assembled were Hutus. Those who were kept behind were either Tutsis or people from another ethnic group, known as member of political parties opposed to the government. According to Witness AA, those persons were later killed and buried on the spot.

Regarding the allegations that a number of persons, including Emmanuel Kayitare, were forcibly separated from the group and that when Emmanuel Kayitare attempted to flee, the Accused pursued him, caught him and struck him on the head with a machete and killed him:

322. Witness AA testified that the Accused was on the spot where the detainees including him were assembled. According to Witness AA, all the persons detained had their eyes riveted on the Accused in the hope that he would have mercy. Witness AA testified that the people were

afraid and that whenever the Accused looked at them they cast their eyes downwards. Witness AA was seated, crouching some 10 or 20 metres away from the Accused.

323. According to Witness AA, the detainees included Emmanuel Kayitare, nicknamed Rujindiri. Witness AA knew Emmanuel Kayitare's younger brother, Michel Kayitare very well. A man called Cekeri told Emmanuel that he knew him and that he was aware that he was going to the CND. Witness AA testified during the examination-in-chief that Emmanuel took fright and took off running. Witness AA saw the Accused grab Emmanuel by the collar to prevent him from escaping. The Accused seized a machete from Cekeri with which he struck Emmanuel on the neck.

324. In answer to questions from the Bench, Witness AA reiterated that the Accused did kill Emmanuel not with a bullet but rather with a machete. Witness AA then explained that the Accused was not carrying a gun but rather a pistol. When reminded by the Defence that he had testified before the Chamber, just as he had stated to the investigators of the Office of the Prosecutor that the Accused was carrying a gun, Witness AA replied that it was a pistol.

325. Under cross-examination, Witness AA testified that the Accused had grabbed Emmanuel by the collar of his shirt when the latter stood up to run and therefore had not chased after him. He further stated that the Accused had not even taken a step; he had merely turned around and grabbed Emmanuel. In answer to the Defence, Witness AA added that the Accused had seized Emmanuel with one hand while holding the weapon with the other hand. Witness AA confirmed that the Accused did not run after Emmanuel. Witness AA then stated that when he was called by Cekeri, Emmanuel stood up as if to walk towards him. Emmanuel walked by the Accused. That was when the Accused grabbed him by the neck.

326. Witness AA then insisted on the fact that the Accused held Emmanuel by the collar of his shirt and not by the neck as he had previously stated to the investigators of the Office of the Prosecutor.

327. Under cross-examination, Witness AA reiterated his statement to the effect that the Accused had struck Emmanuel on the neck with a machete. In response to the Defence pointing out an inconsistency between his testimony and his statement to the investigators of the Office of the Prosecutor in which he had alleged that the Accused had split Emmanuel's skull, Witness AA stated that he had seen the Accused strike Emmanuel with a machete, that there had been a splash of blood and that he had covered his eyes with his hands.

328. In answer to the Bench which had asked whether the splash of blood was from the front or the back of the head, Witness AA stated that Emmanuel had fallen with his head to the ground and that there was so much blood that neither his face nor his hair could be seen.

329. Prosecution Witness U testified before the Chamber that Emmanuel and another person, nicknamed Venant, were among those arrested and taken near the garage close to where he was hiding. U knew Emmanuel very well. He stated that Emmanuel and Venant were tied together with their shirts lest they escaped. The Accused untied them.

330. Witness U testified that he had then heard the Accused, speaking out loud so as to be heard, telling those who were with him that he was going to show them how they should work. According to U, the Accused had a machete hanging from his belt with which he hit Emmanuel on the head . Witness U testified that Emmanuel's head was split in two. Emmanuel fell dead instantly. According to Witness U, Emmanuel was killed by machete in a single blow.

331. Witness U testified further that when Emmanuel fell, the Accused then took the kalachnikov which he was carrying on his shoulder and shot Venant who also fell beside Emmanuel.

332. Again according to Witness U, the Accused then picked up their bodies and threw them into a pit with the help of those who were with him. Witness U identified the pit into which Emmanuel and Venant were thrown on the slide tendered as Prosecution Exhibit No.169. According to U, Emmanuel was a Tutsi and Venant, a Hutu who did not approve of the killings.

333. Witness U also stated that as he attempted to flee, he saw the Accused engaged in killing with a machete assisted by *Interahamwe*. The bodies were then thrown into a pit. Witness U stated that there were two pits - a small one into which two bodies were thrown and a larger into which a lot of bodies were dumped.

Factual Findings

334. The Chamber is of the opinion that Witness AA is credible and, consequently, accepts his testimony. Although contradictions emerged under cross-examination in his testimony with regards to details, such contradictions are not material and do not impugn the substance of his testimony on the circumstances of the death of Emmanuel Kayitare. The Chamber finds that such contradictions may be attributed to the possible trauma caused to Witness AA as a result of recounting the painful events he had witnessed and the period of time between the said events and AA's appearance before the Chamber. Additionally, the Chamber recalls that the inconsistencies between the witness testimony and statements made before the trial must be analysed in the light of difficulties linked, particularly, to the interpretation of the questions asked and the fact that those were not solemn statements made before a commissioner of oaths.

335. In the instant case, the Chamber notes, for instance, that the difficulties Witness AA faced in describing accurately the type of weapon carried by the Accused, that is, whether it was a rifle or a pistol, may be explained by lack of knowledge of weapons and by the fact that the witness is unable to tell apart the two types of weapons. Similarly, the Chamber is of the opinion that Witness AA's inability to indicate whether the blow unleashed by the Accused cut off the head or neck of the victim cannot call into question the reliability of his testimony since it is difficult for a lay person to ascertain the respective limits of the head and the neck.

336. Based on AA's testimony, as substantially corroborated by Witness U, the Chamber is satisfied beyond any reasonable doubt that, on 28 April 1994, the *Interahamwe* conducted a house-to-house search in the Agakingiro neighbourhood, asking people to show their identity cards. The Tutsi and people belonging to certain political parties were taken towards the "Hindi Mandal" temple, near Amgar garage. The Accused was present at the location where the people caught were gathered. He wore a military uniform, comprising a coat and trousers, and carried a rifle.

337. Furthermore, after considering the respective testimonies of Witnesses AA and U, the Chamber is satisfied that they are corroborative as regards the circumstances surrounding the killing of Emmanuel Kayitare, a Tutsi, by the Accused.

338. The Chamber notes that Witness U identified the grave where Emmanuel and Venant were killed and into which their bodies were thrown on the slide tendered by the Prosecutor as exhibit 169.

339. The Chamber observes that said slide tendered as exhibit 169 shows the same view as the one tendered by the Prosecutor as exhibit 269, which has been referred to by Professor William Haglund, a forensic anthropologist, who had appeared as an expert witness for the Prosecutor, as an exhumation site identified as "RUG-1".

340. According to Professor Haglund, three bodies were exhumed from the hole shown on the slide tendered as exhibit 269[76]. Dr. Nizam Peerwani, a pathologist, who had worked jointly with Professor Haglund and who had also appeared as an expert witness for the Prosecutor, submitted the following findings on the three bodies exhumed: The first body was that of a man aged between 35 and 45 years at the time of his death the probable cause of which, according to Dr. Peerwani, was homicide. The second body was that of a woman, aged between 30 and 39 years at the time of her death the probable cause of which was homicide. The third exhumed body was that of a man aged between 35 and 45 at the time of his death the probable cause of which, according to Dr. Peerwani, was blunt force trauma injuries.

341. Firstly, the Chamber, on the basis of the testimony by Dr. Kathleen Reich, a forensic anthropologist, called by the Defence as an expert witness, is not persuaded that the scientific method used by Professor Haglund is such as to allow the Chamber to rely on his conclusions in the determination of the case.

342. Secondly and, above all, the Chamber notes that the Prosecutor has failed to show a direct link between the findings of Professor Haglund and Dr. Peerwani and the specific allegations in the Indictment or even to call the attention of the Chamber to the fact that the slide tendered by the Prosecutor as exhibit 169, identified by Witness U as showing the hole where Emmanuel and Venant were killed and into which their bodies were thrown shows the same view as the slide tendered as exhibit 269, featuring the exhumation site "RUG-1".

343. Consequently, the Chamber holds that the said findings are not helpful to the Chamber in determining the facts of the case. Moreover, the Chamber is not satisfied that the grave site

[76]See Chapter 4, section 3 (of the present Judgement), factual findings on the allegations contained in paragraph 12 of the Indictment.

referred to by Witness U and Witness AA and that exhumed by Professor Haglund is one and the same.

344. Finally, on the basis of the testimonies of Witnesses AA and U, the Chamber finds that it has been established beyond any reasonable doubt that the Accused struck Emmanuel Kayitare with a machete and that the latter died instantly.

4.7 Charges as set forth in Paragraph 19 of the Indictment.

345. Paragraph 19 of the Indictment reads as follows:

> "In June 1994, on a date unknown, Georges RUTAGANDA ordered people to bury the bodies of victims in order to conceal his crimes from the international community."

Events Alleged

346. In respect of the aforementioned allegation, Witness Q testified in direct examination that he was hiding in the house that belonged to a person he identified as Thomas when an *Interahamwe* named Cyuma took him and a young girl to a hole behind the Technical school of Muhazi (École technique de Muhazi). The Witness said that when he arrived at this hole he saw the corpse of this nephew lying inside. He said that the young girl was killed by an *Interahamwe* named Karangwa, on the orders of Cyuma and he was about to be killed when a woman he identified as Martha, who at that time was the head of the cell, stopped Cyuma and the others from killing him.

347. Witness Q testified in direct examination that, whilst at the hole behind the Technical school of Muhazi, he saw another hole that he referred to in his evidence as the third hole and he stated that he saw the Accused, in the company of other people, standing in the vicinity of this hole. The Witness stated that, from where he was, he could see this hole but he could not get to it. The Witness stated that the Accused thereafter called Martha who immediately went to him, whereupon the Accused ordered a stop to all killings during the day and the dead buried immediately, as the killings were badly perceived by the people the Witness described as "whites" and "foreigners". According to the Witness, the Accused further ordered that killing should only take place at night.

348. Witness Q testified in direct examination that the Accused was addressing all those people in the vicinity of this third hole when he ordered that all killings be stopped and all corpses buried. The Witness stated that he did not hear the Accused give these orders but that he had learnt of these orders when Martha returned to the vicinity of the hole behind the Technical school and conveyed them to Cyuma, Karangwa and the others who had been participating in killings. When the Witness was asked by the Prosecutor to state what Martha said, in conveying the orders of the Accused, the Witness stated that Martha said that it was necessary to stop the killing. The remaining people will be killed after the burial of the Late President Juvenal Habyarimana.

349. Under cross examination Witness Q stated that Martha conveyed the orders of the Accused when she stated that the killing must stop and the dead must be buried immediately, because the foreigners were not in favour of the killing. In the tail end of his cross examination, the Witness stated that he saw and he heard the Accused give orders to Martha and the other people that were in the vicinity of the third hole. The Witness also testified that this incident took place at the end of April 1994.

350. Witness AA testified in chief, that on 28 April 1994 he saw the Accused kill Emmanuel behind the Amgar garage. The Witness also testified that there was a mass grave site at this location and many bodies, including that of Emmanuel were later exhumed from this mass grave.

351. Witness HH testified that he was hiding in a bush near a roadblock and he saw Prefect Renzaho telling people manning a roadblock to stop the killings during the day because there was a satellite that was monitoring their activities.

352. The Accused testified that he was taken by a member of UNAMIR to a roadblock where a UNAMIR convoy was stopped. He stated that there were 72 adults in the convoy. He stated that the roadblock was manned by angry people who were armed and soldiers. He stated that on

his arrival at the roadblock, people from the neighbourhood, some of whom were armed with sticks and machettes, gathered around. The Accused stated that the people at the roadblock were intent on killing those traveling in the convoy. The Accused said that when the people saw him alight the UNAMIR motor vehicle, they mocked him. The Accused stated that he spoke to some of the people at the roadblock and he told them that they were being monitored by satellite, in an attempt to persuade them to allow the convoy to pass.

353. Under cross-examination, the Accused confirmed saying to people that they were monitored by satellite and therefore people should not be killed. He stated that he made these statements to remind people of their responsibility. According to the Accused, he also used another argument to remind people of their responsibility. He would say that the International Community would not come to their assistance if they knew about any killings, but the Accused stated that he did not have any contact with anybody in the International Community.

Factual Findings

354. The Chamber considers that Witness Q identified the Accused in court, he knew of the Accused and of his father, before the events of 1994 and he described the Accused as a rich business man who lived in the neighbouring *Commune* of Masango. The Witness also testified that, after having been stopped at a roadblock at Agakingiro, he was taken by a person he identified as Vedaste Segatarama to the Accused. The Witness described how he was made to enter a little office and presented to the Accused. The Chamber is satisfied beyond a reasonable doubt that Witness Q is able to positively identify the Accused and that the Accused was present at this hole that served as a mass grave, as testified to by the Witness.

355. The Chamber notes that there are discrepancies in the testimony of Witness Q, such as his factual account of the exact words used by the Accused, in conveying his (the Accused's) orders. Despite these discrepancies, the Witness nevertheless conveyed clearly the crux of what

was ordered, that is the killing should stop and the bodies buried in order to conceal the dead from the foreigners.

356. It is clear from Witness Q's evidence that the Accused was present at this mass grave site and that he ordered the burial of bodies. However there is no evidence that the Accused gave these orders, in order to conceal his crimes from the International Community. The Chamber is satisfied beyond a reasonable doubt, that the Accused ordered the burial of bodies in order to conceal the dead from foreigners. The Chamber is however not satisfied beyond a reasonable doubt, that in giving the said order the Accused sought to conceal his crimes from the International Community.

4.8 General allegations (Paragraphs 3-9 of the Indictment)

357. The Chamber now considers the general allegations in Paragraphs 5, 6, 7 and 8 of the Indictment.

Paragraph 6 alleges: *"In each paragraph charging crimes against humanity, crimes punishable by Article 3 of the Statute of the Tribunal, the alleged acts were committed as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds";*

Paragraph 7 alleges: *"At all times relevant to this Indictment, a state of internal armed conflict existed in Rwanda";*

Paragraph 8 alleges: *"The victims referred to in this indictment were, at all relevant times, persons taking no active part in the hostilities":*

358. In respect of the allegations in Paragraph 6 of the Indictment, Witness C testified that at a MNRD meeting held in April 1994, it was stated that Tutsis were the accomplices of the RPF. It was also stated that every Tutsi was the enemy[77]. Witness EE testified that a meeting was held at the *Commune* office, following the death of President Habyarimana. During this meeting the Accused's father stated that Tutsis had to be killed, to prevent them from assuming power[78]. Witness Hughes testified that, following radio announcements calling for the apprehension of Tutsis, people actively sought Tutsis at roadblocks and on the streets. Tutsis were terrified to walk the streets. Hughes stated that Tutsis were in hiding, even in areas where the killings had

[77]See Testimony of Witness C, transcript of 04 March, 1998

[78]See Testimony of Witness EE, transcript of 04 March 1998

not begun[79]. Witness W testified that following the death of the President, people in vehicles used megaphones to spread propaganda messages about the *Inkotanyi.* Following this announcement Tutsis were killed, their houses looted and burned, and their cattle killed.

359. The Chamber considers that Witnesses A, B, H, W, O, Z, BB and HH testified about the construction of roadblocks immediately after the death of President Habyarimana. People fleeing for safety, were intercepted at such roadblocks. Some people were selected to be killed, whilst others were allowed to proceed. Such selection and separation process began with the erection of such roadblocks.[80]

360. Witness W testified that the Accused ordered Councillors and heads of *cellules* to erect roadblocks. Roadblocks were immediately erected and all persons passing through these roadblocks, who produced identity cards indicating their Tutsi ethnicity, were apprehended and some were immediately killed.[81]

361. Witness A testified to having observed Tutsis separated from Hutus at the Nyanza crossroads[82]. Witness DD also testified that, at Nyanza, soldiers and members of the *Interahamwe* surrounded her group. According to the witness Hutus were asked to leave such group. Hutus were then asked to produce their identity cards. On producing their cards, a man who had lied about his ethnicity was immediately killed. The Tutsis were thereafter attacked by soldiers and members of the *Interahamwe.* The witness recalled that grenades were used in such attack[83]. Witness H also testified, that soldiers were everywhere. The soldiers asked them to sit

[79]See Testimony of Witness Mr Hughes, transcripts of 25, 26 and 27 May 1998

[80]See supra, Chapter 4, part 2, on Factual Findings, para. 11

[81]See Testimony of Witness W, transcript of 28 May 1997

[82]See Testimony of Witness A, transcript of 24 March 1997

[83]See Testimony of Witness DD, transcript of 27 May 1997

down and told Hutus to identify themselves and leave. They attacked the remaining group of people, by throwing grenades and firing guns into the group. The *Interahamwe* also participated killing people, with their knives[84]. Mr Hughes testified that a group of survivors from the Nyanza massacre were found with machete wounds to the back of their heads and limbs.[85]

362. Witness Z, a Hutu living in Kicukiro, testified that when he came out of his house, he observed corpses of men and women near a roadblock. He stated that he and others were divided into four groups to dig holes, collect and bury bodies[86].

363. An expert witness for the Prosecutor, Mr Nsanzuwera testified that the Accused held a high position within the *Interahamwe* and exercised authority over members of the *Interahamwe*. The witness also testified that the Accused was often present at roadblocks and barriers, issuing orders[87]. The Accused testified that after he joined the MRND party in 1991, he was involved in the creation of its youth wing, the *Interahamwe za MRND,* and was subsequently its second vice-president.

364. Defence witness DNN testified to hearing that the *Interahamwe* received military training. The witness also stated that such training commenced at the beginning of the war[88]. Witness DNN confirmed that they received this training[89].

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[84] See Testimony of Witness H, transcript 26 March 1997

[85] See Testimony of Witness Mr Hughes, transcript of 25 May 1998

[86] See Testimony of Witness Z, transcript of 20 March 1998

[87] See Testimony of expert witness Mr Nsanzuwera, transcript of 24 March 1998

[88] See Testimony of Witness DZZ, transcript of 11 February 1999

[89] See Testimony of Witness DNN, transcript of 16 February 1999

365. Defence Witness DZZ stated that she had heard about the *Interahamwe* receiving military training, but only after the beginning of the war[90]. Defence Witness DNN confirmed that the *Interahamwe* received such training.[91]

366. Defence witnesses DDD[92], DD[93], DNN[94] and DZZ[95] testified that RPF infiltrators were identified at roadblocks, by virtue of their falsified identity cards. Defence Witness DEE testified that identity cards were verified at all roadblocks she passed through in Kigali, except the roadblock near the hospital. She stated that being in possession of an identity card, indicating Tutsi ethnicity, was justification enough to be killed.[96]

367. Witnesses H and DD testified to hiding in the house of a Burundian and survived house to house searches. Defence Witness DF testified to house to house searches conducted in Kigali. Witnesses U, T, J and Q testified that the Accused was present and participated in the distribution of weapons to the *Interahamwe*. It has been established that weapons were distributed to the *Interahamwe*. The Accused was present and participated in the distribution of weapons on at least three occasions.

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[90] See Testimony of Witness DZZ, transcript of 11 February 1999

[91] See Testimony of Witness DNN, transcript of 16 February 1999

[92] See Testimony of Witness DDD, transcript of 16 February 1999

[93] See Testimony of Witness DD, transcript of 17 March 1999

[94] See Testimony of Witness DNN, transcript of 16 February 1999

[95] See Testimony of Witness DZZ, transcript of 11 February 1999

[96] See Testimony of Witness DEE, transcript of 09 February 1999

368. The Accused testified that:

> "It developed a situation such that the people who were identified as RPF unfortunately I regret the fact and most of them were Tutsis. 90 percent were Tutsis and this led to a generalisation and excessive behaviour which also affected people who I – you know – old men, children and so on and so forth."[97]

> "What happened in my country – in our country is an incident which I would call a tragedy, a tragedy. It's a series of massacres, of killings which affected people from the RPF and the Inkotanyi. Yesterday, I spoke about the generalisation of the Tutsis and this even affected children."[98]

369. According to Expert Witness Nsanzuwera, the Tutsi were systematically targeted as such, because they were considered to be opponents of the regime. Mr Nsanzuwera testified that, the militia, including the *Interahamwe*, killed Tutsis and Hutus who opposed the Hutu Regime, the

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[97] See Testimony of the Accused, transcript of 21 April 1999. In French this reads:

"Il a évolué, et une situation telle que les gens identifiés comme au FPR, malheureusement je regrette, étaient à plus de 90% Tutsi. Ce qui a conduit à une globalisation que je déplore – et même jusqu'à maintenant - à une globalisation et à un excès, un débordement... un débordement qui a touché également les personnes vraiment que moi je... des personnes, des vieillards, des enfants, tout ça."

[98] See Testimony of the Accused, transcript of 22 April 1999. In French this reads:

"Ce qui s'est passé dans notre pays c'est un incident, mais pas un incident, moi je le qualifie de drame, de drame. C'est une série de massacres, de tueries, qui ont gardé les gens du FPR et les Inkotanyi, j'ai expliqué hier dans la globalisation des Tutsis, qui a connu même des débordements jusqu'à atteindre les enfants."

victims of these massacres being civilians. Mr Nsanzuwera also confirmed that the *Interahamwe*'s involvement in the killing of Tutsis was not spontaneous but well planned[99].

370. Professor Reyntjens, an expert witness for the Prosecution, testified to the existence of a plan formulated years prior to the events of 1994 in Rwanda, which suggests that the attacks were systematic[100]. Mr Hughes testified that the attacks appeared to be pre-planned due to their consistent pattern.[101]

371. The Chamber finds that there is sufficient evidence of meetings held to organise and encourage the targeting and killings of the Tutsi civilian population as such and not as "RPF Infiltrators", as testified to by Defence Witnesses DDD, DD, DNN and DZZ. The Chamber also finds that this organisation and encouragement took the form of radio broadcasts calling for the apprehension of Tutsi, the use of mobile announcement units to spread propaganda messages about the *Inkontanyi,* the distribution of weapons to the *Interahamwe* militia, the erection of roadblocks manned by soldiers and members of the *Interahamwe* to facilitate the identification, separation and subsequent killing of Tutsi civilians and, the house to house searches conducted to apprehend Tutsis, clearly suggest that a systematic attack on the Tutsi civilian population existed throughout Rwanda in 1994.

372. The Chamber accepts the testimony of expert Witnesses Mr Nsanzuwera and Professor Reyntjens that the attack on the Tutsi population was of a systematic character. The Chamber also accepts Mr. Nsanzuwera's evidence that the victims of the massacres were civilians. The Chamber finds that the attack on the Tutsi population occurred in various parts of Rwanda, such as in Nyanza, Nyarugenge *Commune*, Kiemesakara Sector in the Kigali Prefecture, Nyamirambo,

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[99] See Testimony of expert Witness Mr Nsanzuwera, transcript of 23 April, 1998

[100] See Testimony of expert Witness Mr Reyntjens, transcript 13 October 1997

[101] See Testimony of Witness Mr Hughes, transcript of 25 May 1998

Cyahafi, Kicukiro, Masango. The Chamber finds beyond a reasonable doubt that the attack on the Tutsi civilian population was of a widespread and systematic character.

With regard to the allegation in paragraph 5, which alleges that : "The victims in each paragraph charging genocide were members of a national, ethnical, racial or religious group".

373. As indicated *supra* in the discussion on the applicable law, the Chamber holds that in assessing whether a particular group may be considered as protected from the crime of genocide, it will proceed on a case-by-case basis, taking into account both the relevant evidence proferred and the political, social and cultural context.[102]

374. The Chamber concurs with the *Akayesu Judgement* [103], that the Tutsi population does not have its own language or a distinct culture from the rest of the Rwandan population. However, the Chamber finds that there are a number of objective indicators of the group as a group with a distinct identity. Every Rwandan citizen was, before 1994, required to carry an identity card which included an entry for ethnic group, the ethnic group being either Hutu, Tutsi or Twa. The Rwandan Constitution and laws in force in 1994 also identified Rwandans by reference to their ethnic group. Moreover, customary rules existed in Rwanda governing the determination of ethnic group, which followed patrilineal lines. The identification of persons as belonging to the group of Hutu or Tutsi or Twa had thus become embedded in Rwandan culture, and can, in the light of the *travaux préparatoires* of the Genocide Convention, qualify as a stable and permanent group, in the eyes of both the Rwandan society and the international community. In Rwanda in 1994, the Tutsi constituted an ethnic group.

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[102] See Chapter 2, section 2 of this Judgement

[103] *Akayesu Judgement*, para. 170

375. The reference to ethnic origin exists in the Rwandan life today as it did before 1994, although with different connotations, but still used by most Rwandans, inside and outside of the country. All witnesses heard referred to the Tutsi as a particular group and identified themselves before the Chamber by ethnicity.

376. The Chamber notes that the Defence did not challenge the fact that the Tutsi constitutes a group protected under the Genocide Convention, and further notes that the *Kayishema and Ruzindana Judgement* [104] and the *Akayesu Judgement* [105] establish that the Tutsi group is a group envisaged by the Genocide Convention.

377. Consequently, after having reviewed all the evidence presented, the Chamber finds that the Tutsi group is characterised by its stability and permanence and is generally accepted as a distinct group in Rwanda. Therefore, the Chamber considers that it constitutes a group protected by the Genocide Convention and, thence, by Article 2 of the Statute.

Regarding paragraph 7, which alleges that at all times relevant to this indictment, a state of internal armed conflict existed in Rwanda:

378. Paragraph 7 of the Indictment alleges that there existed in Rwanda at the time set out in the Indictment a state of internal armed conflict. According to the testimony of Professor Reyntjens, in the early 1990's Rwanda experienced a period of political turmoil while in transition to a multiparty political system. During this time several political parties were organised in opposition to the ruling party MRND. These parties included the *Mouvement Démocratique Républicain* (MDR), *Parti Social Démocrate* (PSD), *Parti Libéral* (PL), *Parti Démocrate Chrétien* (PDC) and the *Coalition pour la Défense de la République* (CDR). The

[104] *Kayishema and Ruzindana Judgement* para. 291

[105] *Akayesu Judgement* para. 170-172

Accused testified that these political parties competed to recruit new members. Among the activities to attract newcomers was the creation of youth wings, and the Interahamwe was the youth wing of the MRND.

379. According to the Accused, the term *Interahamwe* attained a negative connotation and came to be used to describe in popular usage, after 6 April 1994, a large or loosely organized militia which is said to have fought against the RPF[106].

380. Mr Nsanzuwera testified that the *Interahamwe* evolved from the youth wing of a political party into a militia[107]. Mr Nsanzuwera further testified that, on 5 January 1994, the President of Rwanda was sworn in but he did not swear in a government and the National Assembly as intended by the Arusha Peace Accords. Moreover certain obstacles remained that prevented the full participation of other political parties in the interim government. Consequently, widespread insecurity prevailed in Kigali. On 6 April 1994 the plane carrying President Habyarimana crashed. The interim government appealed to the population to join the civil defence and the RAF to fight against the RPF and eliminate the moderate wing within the government[108].

381. The armed conflict between the government and the RPF resumed. The RPF battalion engaged in hostilities with the RAF, according to testimonies by Mr Reyntjens and Mr Nsanzuwera. Immediately, roadblocks were erected in and around Kigali and later extended to the rest of the country to prevent the penetration of RPF. However, according to testimonies of eyewitnesses heard by the Chamber, and of Mr Reyntjens as expert witness for the Prosecutor[109],

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[106] See Testimony of the Accused, transcript of 22 and 23 April 1999.

[107] See Testimony of expert Witness Mr Nsanzuwera, transcript of 24 March 1998.

[108] *Ibid.*

[109] See Testimony of expert Witness Mr Reyntjens, transcript of 14 October 1997.

one only needed to be a suspected sympathiser of the RPF to be targeted. This resulted in a globalisation of crimes with Tutsis being systematically targeted and eliminated for representing the majority of RPF infiltrators. The Accused further testified that roadblocks were set up initially by civilians who, as the "civil defence" were rallying together against the RPF[110]. According to Mr Nsanzuwera, the civil defence was mainly composed of Interahamwe members and radical youth wings of other political parties like the CDR which aimed at the elimination of the Tutsi as a support for the RPF[111]. The Defence expert witness, Professor Mbonimpa, called the RPF a militia and agreed that militia also had a command structure, wore a different uniform, was armed, and capable of carrying out war. Both sides mobilised people for war through their radios, including the RTLM radio on the government's side. He stated that the RPF said that any force that intervened in the conflict was regarded as an enemy force[112].

382. The Chamber notes the findings in the *Akayesu Judgement* and finds that the evidence establishes that there existed an internal armed conflict in Rwanda during the time period alleged in the Indictment.

[110] See Testimony of the Accused, transcript of 22 April 1999

[111] See Testimony of expert Witness Mr Nsanzuwera, transcripts of 23, 24 and 27 March 1998

[112] See Testimony of expert Witness Mr Mbonimpa, transcript of 6 April 1999

5. LEGAL FINDINGS

5.1 Count 1: Genocide

383. Count 1 covers all the acts described in the Indictment. It is the Prosecutor's contention that, by his acts as alleged in paragraphs 10 to 19 of the Indictment, the Accused committed the crime of genocide punishable by Article 2(3)(a) of the Statute.

384. In its findings *supra*[113] on the law applicable to the crime of genocide, the Chamber held that for the crime of genocide to be established, it was necessary, firstly, that one of the acts enumerated under Article 2(2) of the Statute be perpetrated; secondly, that such act be directed against a group specifically targeted as such on ethnic, racial or religious grounds; and thirdly, that such act be committed with intent to destroy the targeted group in whole or in part.

Regarding the acts alleged in paragraphs 10 to 19 of the Indictment and based on its factual findings supra, the Chamber is satisfied beyond any reasonable doubt of the following:

385. Regarding the facts alleged in paragraph 10, the Chamber finds that it is established beyond any reasonable doubt that, on the afternoon of 8 April 1994, the Accused arrived at Nyarugenge in a pick-up truck, filled with firearms and machetes. The Accused personally distributed weapons to the *Interahamwe* and ordered them to go to work stating that there was a lot of dirt that needed to be cleaned up. The Accused was carrying a rifle slung over his shoulder and a machete hanging from his belt. The Chamber also finds that it is established beyond any reasonable doubt that on 15 April 1994 in the afternoon, the Accused arrived at the Cyahafi Sector, Nyarugenge *Commune*, in a pick-up truck. The pick-up was parked near a public standpipe. The Accused got out of the vehicle, opened the back of the truck where the guns were

[113] See Chapter 2, Section 2 of this Judgement.

kept. The men who had come with him distributed the weapons to members of the *Interahamwe*. Immediately after the distribution of rifles, those who received them started shooting. Three persons were shot dead; all were Tutsis. The Chamber also finds that it is established beyond a reasonable doubt that on or about 24 April 1994, in the Cyahafi Sector, the Accused distributed Uzzi guns to the President of the *Interahamwe* of Cyahafi during an attack by the *Interahamwe* on the Abakombozi.

386. In the opinion of the Chamber, the Accused is individually criminally responsible by reason of such acts for having aided and abetted in the preparation for and perpetration of killings of members of the Tutsi group and for having caused serious bodily or mental harm to members of said group.

387. With respect to the acts alleged under paragraph 11 of the Indictment, the Prosecutor failed to satisfy the Chamber that such acts are proven beyond any reasonable doubt and that the Accused incurs criminal responsibility as a result.

388. Regarding the allegations included in paragraph 12 of the Indictment, the Chamber is satisfied beyond any reasonable doubt that in April 1994, Tutsis who had been separated at a roadblock in front of Amgar garage were taken to the office of the Accused inside Amgar garage and that the Accused thereafter directed that these Tutsis be detained within Amgar. The Accused subsequently directed men under his control to take fourteen detainees, at least four of whom were Tutsis, to a deep hole near Amgar garage. On the orders of the Accused and in his presence, his men killed ten of the detainees with machetes. The bodies of the victims were thrown into the hole.

389. In the opinion of the Chamber, the Accused is individually criminally responsible as charged for having ordered, committed, aided and abetted in the preparation and execution of

killings of members of the Tutsi group and caused serious bodily or mental harm to members of said group.

390. As concerns the acts alleged in paragraphs 13, 14, 15 and 16 of the Indictment, the Chamber finds that these have been established beyond any reasonable doubt. From 7 April to 11 April 1994, several thousand persons, most of them Tutsis, sought refuge at the ETO. Members of the *Interahamwe*, armed with rifles, grenades, machetes and cudgels gathered outside the ETO. Prior to the attack, the Hutus were separated from the Tutsis who were at the ETO, following which hundreds of Hutus then left the ETO compound. When UNAMIR troops withdrew from the ETO on 11 April 1994, members of the *Interahamwe* and of the Presidential Guard surrounded the compound and attacked the refugees, throwing grenades, firing shots and killing people with machetes and cudgels. The attack resulted in the deaths of a large number of Tutsis. The Accused was present during the ETO attack, armed with a rifle in the midst of a group of attackers who proceeded to throw grenades and fire shots. He was seen about fifty metres away from the entrance to the ETO. The Chamber finds that it is established beyond any reasonable doubt that the Accused was at the ETO and that he participated in the attack against the Tutsi refugees.

391. A large number of the refugees who managed to escape or survived the attack on the ETO then headed in groups for the Amahoro Stadium. On their way, they were intercepted by soldiers who assembled them close to the Sonatube factory and diverted them towards Nyanza. They were insulted, threatened and killed by soldiers and members of the *Interahamwe* who were escorting them and who were armed with machetes, cudgels, axes and other weapons. At Nyanza, the *Interahamwe* forced the refugees to stop; they were assembled and made to sit at the foot of a hill where armed soldiers stood. The refugees were surrounded by *Interahamwe* and soldiers. The Hutus were asked to stand up and identify themselves and were subsequently allowed to leave. Some Tutsis who tried to leave pretending to be Hutus were killed on the spot by members of the *Interahamwe* who knew them. Grenades were then hurled into the crowd by the

Interahamwe and the soldiers on the hill started shooting. Those who tried to escape were escorted back by the *Interahamwe*. Many people were killed. After firing shots and throwing grenades at the refugees, the soldiers ordered the *Interahamwe* to start killing them. Thereupon the *Interahamwe* started killing, using cudgels and other weapons. Some young girls were singled out, taken aside and raped before being killed. Many of the women who were killed were stripped of their clothing. The soldiers then ordered the *Interahamwe* to check for survivors and to finish them off. The Accused directed the *Interahamwe* who were armed with grenades, machetes and clubs into position to surround the refugees just prior to the massacre. The Chamber finds that it has been established beyond any reasonable doubt that the Accused was present and participated in the Nyanza attack. Furthermore, it holds that by his presence, the Accused abetted in the perpetration of the crimes.

392. With respect to the acts alleged against the Accused, as described in paragraphs 13 to 16 of the Indictment, the Chamber finds that individual criminal responsibility attached to the Accused for having committed, aided and abetted in the killings of members of the Tutsi group and having caused serious bodily or mental harm to members of the Tutsi group.

393. With respect to the allegations made in paragraph 17 of the Indictment, the Chamber notes that the Prosecutor has failed to lead evidence in support of the allegations that, in April 1994, the Accused conducted searches in the Masango *Commune*. Nor has the Prosecutor satisfied the Chamber beyond any reasonable doubt that the Accused instructed that all Tutsis be tracked down and thrown into the river.

394. The Chamber finds, with regard to the events alleged in paragraph 18, that it is established beyond any reasonable doubt that, on 28 April 1994, *Interahamwe* conducted house-to-house searches in the Agakingiro neighbourhood demanding identity cards from people. Tutsis and people belonging to certain political parties were taken to the "Hindi Mandal" temple, near Amgar garage. The Accused was present at the location where the detainees had been gathered.

He was dressed in military uniform, including a coat and trousers, and was carrying a rifle. Among the detainees was Emmanuel Kayitare, alias Rujindiri, a Tutsi. A man called Cekeri told Emmanuel that he knew him and that he was aware that he was going to the National Development Council (CND). Emmanuel became frightened and took off running. The Accused caught Emmanuel by the collar of his shirt to prevent him from running away. He struck Emmanuel Kayitare on the head with a machete, killing him instantly.

395. The Chamber finds that the Accused incurs individual criminal responsibility for such acts for having personally killed a Tutsi and for having aided and abetted in the preparation or causing of serious bodily and mental harm on members of the Tutsi group.

396. Regarding the events alleged in paragraph 19 of the Indictment, the Chamber finds that, while it is established that the Accused ordered that the bodies of the victims be buried, the Prosecutor, however, failed to satisfy the Chamber beyond reasonable doubt that the Accused gave such orders in order to conceal his crimes from the international community.

397. In light of the foregoing, the Chamber is satisfied beyond reasonable doubt that the Accused incurs criminal responsibility, under Article 6(1) of the Statute, for having ordered, committed or otherwise aided and abetted in the preparation or execution of murders and the causing of serious bodily or mental harm on members of the Tutsi group.

As to whether the above-mentioned acts were committed against the Tutsi group, specifically targeted, as such, and whether the Accused had the requisite intent in committing the above - mentioned acts for which he incurs criminal responsibility:

398. In its findings on the applicable law with respect to the crime of genocide[114], the Chamber held that, in practice, intent may be determined, on a case by case basis, through a logical inference from the material evidence submitted to it, and which establish a consistent pattern of conduct on the part of the Accused. Quoting a text from the findings in the *Akayesu Judgement*, it holds:

> "On the issue of determining the offender's specific intent, the Chamber considers that the intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the Accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act".[115]

399. The Chamber notes that many corroborating testimonies presented at trial show that the Accused actively participated in the widespread attacks and killings committed against the Tutsi group. The Chamber is satisfied that the Accused, who held a position of authority because of his social standing, the reputation of his father and, above all, his position within the

[114] See Chapter 2, Section 2 of this Judgement.

[115] *Akayesu Judgement*, para. 523.

Interahamwe, ordered and abetted in the commission of crimes against members of the Tutsi group. He also directly participated in committing crimes against Tutsis. The victims were systematically selected because they belonged to the Tutsi group and for the very fact that they belonged to the said group. As a result, the Chamber is satisfied beyond any reasonable doubt that, at the time of commission of all the above-mentioned acts which in its opinion are proven, the Accused had indeed the intent to destroy the Tutsi group as such.

400. Moreover, on the basis of evidence proffered at trial and discussed in this Judgement under the section on the general allegations,[116] the Chamber finds that, at the time of the events referred to in the Indictment, numerous atrocities were committed against Tutsis in Rwanda. From the widespread nature of such atrocities, throughout the Rwandan territory, and the fact that the victims were systematically and deliberately selected owing to their being members of the Tutsi group, to the exclusion of individuals who were not members of the said group, the Chamber is able to infer a general context within which acts aimed at destroying the Tutsi group were perpetrated. Consequently, the Chamber notes that such acts as are charged against the Accused were part of an overall context within which other criminal acts systematically directed against members of the Tutsi group, targeted as such, were committed.

401. The Chamber recalls that, in its findings on the general allegations, it also indicated that, in its opinion, the Tutsi group clearly constitutes a protected group, within the meaning of the Convention on genocide.

402. In light of the foregoing, the Chamber is satisfied beyond any reasonable doubt; **firstly**, that the above-mentioned acts for which the Accused incurs individual responsibility on the basis of the allegations under paragraphs 10, 12, 13, 14, 15, 16 and 18 of the Indictment, are constitutive of the material elements of the crime of genocide; **secondly**, that such acts were

[116] See Chapter 4, Section 8 of this Judgement.

committed by the Accused with the specific intent to destroy the Tutsi group as such;, and **thirdly**, that the Tutsi group is a protected group under the Convention on genocide. Consequently, the Chamber finds that the Accused incurs individual criminal responsibility for the crime of genocide.

5.2 Count 2: Crime Against Humanity (extermination)

403. Count 2 of the Indictment charges the Accused with crimes against humanity (extermination), pursuant to Article 3(b) and Article 6(1) of the Statute, for the acts alleged in paragraphs 10 to 19 of the Indictment.

404. In respect of paragraph 10 of the Indictment, the Chambers finds that on 8 April 1994, the Accused arrived at Nyarugenge *Commune* in a pick-up truck, carrying firearms and machetes. The Accused distributed weapons to the *Interahamwe* and ordered them to go to work, stating that there was a lot of dirt that needed to be cleaned up.

405. The Chamber finds that on the afternoon of 15 April 1994, the Accused went to Cyahafi Sector, Nyarugenge *Commune* in a pick-up truck. The Accused opened the back of the truck and the men who were with him distributed weapons to the *Interahamwe.* The Chamber also finds that on or about 24 April 1994 and in the Cyahafi sector, the Accused distributed fire arms to the President of the *Interahamwe* of Cyahafi, during an attack by the *Interahamwe* on the Abakombozi.

406. In respect of the allegations in paragraph 12 of the Indictment, the Chamber finds that in April 1994 Tutsis were singled out at a roadblock near the Amgar garage and taken to the Accused, who ordered the detention of these people. The Accused subsequently ordered that 14 detainees be taken to a hole near the Amgar garage. On the orders of the Accused and in his presence, ten of these detainees were killed and their bodies were thrown into the hole.

407. In respect of the allegations in paragraphs 13 and 14 of the Indictment, the Chamber finds that several thousand people, mostly Tutsis, sought refuge at the ETO, from 7 to 11 April 1994. Following the departure of UNAMIR from the ETO, on 11 April 1994 , Colonel Leonides Rusatila went into the ETO compound and separated Hutus from Tutsis and several hundred Hutus left the ETO. Thereafter the *Interahamwe*, together with the Presidential Guard attacked the people in the compound. The Accused was present and participated in this attack. A number of Tutsis, including many family members and others known to the witnesses were killed in the attack.

408. In respect of the allegations in paragraphs 15 and 16 of the Indictment, the Chamber finds that the Accused was present and participated in the forced diversion of refugees to Nyanza and that he directed and participated in the attack at Nyanza on 11 April 1994.

409. The Chamber notes that paragraph 16 of the Indictment alleges that certain events, namely the separation of Hutus and Tutsis refugees and the attack on the Tutsis refugees, took place on or about 12 April 1994. As noted by the Prosecutor, these events took place on 11 April 1994. The Chamber does not consider this variance to be material, particularly in light of the language "on or about". The sequence of events leading to the massacre is described in paragraphs 14, 15 and 16 of the Indictment as having commenced on 11 April 1994. Moreover, the killing at Nyanza was resumed on the morning of 12 April 1994. The Chamber considers that 11 April 1994 constitutes "on or about April 12, 1994".

410. The Chamber further notes that paragraphs 15 and 16 of the Indictment allege that refugees were transferred to a gravel pit near the primary school of Nyanza, where they were surrounded and attacked. As the Defence indicated in her closing statement, none of the witnesses described the site of the massacre as a gravel pit. The evidence establishes that the refugees were assembled and surrounded at a site at Nyanza, at the base of a nearby hill. The

Chamber does not consider the description of this site as a gravel pit in the allegation, to be of the essence to the charges set forth in the Indictment and finds that the allegations set forth in paragraph 15 and 16 of the Indictment have been proved, beyond a reasonable doubt.

411. In respect of the allegations in paragraph 18 of the Indictment, the Chamber finds beyond a reasonable doubt that on 28 April 1994, Emmanuel Kayitare, together with other people, were taken to the "Hindi Mandal" temple, near the Amgar Garage, where they were detained. The Accused was present at this location, and when Emmanuel Kayitare tried to escape by running off, the Accused grabbed him by his collar and struck him on his head with a machete, which resulted in his death.

412. The Chamber relies on this factual finding to hold the Accused criminally responsible for crimes against humanity (murder), as charged in Count 7 of the Indictment. The Chamber finds that the act of killing Emmanuel Kayitare, taken together with other proven acts, such as, the distribution of fire arms and machetes to the *Interahamwe* and the killings at ETO and Nyanza, cumulatively form the basis for crimes against humanity (extermination). The Chamber will therefore take into consideration the factual findings in paragraph 18, together with other proven acts, when assessing the responsibility of the Accused, in respect of Count 2.

413. In respect of the allegation in paragraph 19 of the Indictment, the Chamber finds that the accused ordered the burial of bodies, in order to conceal the dead from the "'foreigners". The Chamber finds that there is no evidence to suggest that the Accused ordered the burial of bodies to conceal his crimes from the international community. The allegation in paragraph 19 has therefore only been proved in part.

414. In respect of the allegations in paragraphs 11 and 17 of the Indictment, the Chamber finds that these allegations have not been proved, beyond a reasonable doubt.

415. The Chamber notes that Article 6(1) of the Statute, provides that a person who "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime."

416. The Chamber finds beyond a reasonable doubt that the Accused: aided and abetted in the killings by distributing weapons to the *Interahamwe* on 8, 15 and 24 April 1994; ordered the killing of 10 people in April 1994 who were subsequently killed in his presence; participated in an attack on the people who sought refuge at the ETO; directed and participated in the attack at Nyanza; murdered Emmanuel Kayitare and by his conduct intended to cause the death of a large number of people belonging to the Tutsi ethnic group, because of their ethnicity.

417. The Chamber finds beyond a reasonable doubt that in the time periods referred to in the indictment there was a widespread and systematic attack on the Tutsi ethnic group, on ethnic grounds. The accused had knowledge of this attack, and he intended his conduct to be consistent with the pattern of this attack and to be a part of this attack.

418. The Chamber therefore finds beyond a reasonable doubt that the Accused is individually criminally responsible for crimes against humanity (extermination), pursuant to Articles 2(3)(b) and 6(1) of the Statute.

5.3 Count 3: Crime Against Humanity (murder)

419. Count 3 of the Indictment charges the Accused with crimes against humanity (murder), pursuant to Articles 3(a) and 6(1) of the Statute, for the acts alleged in paragraph 14 of the Indictment.

420. The Chamber notes that pursuant to Count 2 of the Indictment, the Accused is charged for crimes against humanity (extermination), under Articles 3(b) and 6(1) of the Statute of the Tribunal, for the acts alleged in paragraphs 10-19 of the Indictment, which acts include the attack on the ETO compound, as alleged in paragraph 14. The allegations in paragraph 14 of the indictment also form the basis for Count 3, crimes against humanity (murder)

421. The Chamber concurs with the reasoning in the *Akayesu Judgement*[117] that:

> "[...] it is acceptable to convict the accused of two offences in relation to the same set of facts in the following circumstances: (1) where the offences have different elements; or (2) where the provisions creating the offences protect different interests; or (3) where it is necessary to record a conviction for both offences in order fully to describe what the accused did. However, the Chamber finds that it is not justifiable to convict an accused of two offences in relation to the same set of facts where (a) one offence is a lesser included offence of the other, for example, murder and grievous bodily harm, robbery and theft, or rape and indecent assault; or (b) where one offence charges accomplice liability and the other offence charges liability as a principal, e.g. genocide and complicity in genocide."

[117] *Akayesu Judgement*, para. 468.

422. As crimes against humanity, murder and extermination share the same constituent elements of the offence of a crime against humanity, that it is committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. Both murder and extermination are constituted by unlawful, intentional killing. Murder is a the killing of one or more individuals, whereas extermination is a crime which is directed against a group of individuals.

423. The Chamber notes that in the *Akayesu Judgement*, a series of murder charges set forth in individual paragraphs of the Indictment were held collectively to constitute extermination. In that case the individual allegations which formed the basis for counts of murder and at the same time formed the basis for a collective count of extermination were incidents in which named persons had been murdered. In this case, the single allegation of the ETO attack, although charged as murder, is in itself an allegation of extermination, that is the killing of a collective group of individuals.

424. Having held the Accused criminally responsible for his conduct, as alleged in paragraph 14 of the Indictment, in respect of crimes against humanity (extermination), as charged in Count 2, the Chamber finds that he cannot also be held criminally responsible for crimes against humanity (murder), as charged in Count 3 of the Indictment on the basis of the same act.

5.4 Count 5: Crime Against Humanity (murder)

425. Count 5 of the Indictment charges the Accused with crimes against humanity (murder), pursuant to Articles 3(a) and 6(1) of the Statute, for the acts alleged in paragraph 15 and 16 of the Indictment.

426. The Chamber notes that the Accused is charged, pursuant to Count 2 of the Indictment for crimes against humanity (extermination), under Articles 3(b) and 6(1) of the Statute, for the acts alleged in paragraphs 10-19 of the Indictment, which acts include the massacre of Tutsi refugees at Nyanza, as alleged in paragraphs 15 and 16. These allegations also support Count 5, crimes against humanity (murder).

427. For the reasons set forth in the legal findings pertaining to Count 3 above, the Chamber finds that the Accused cannot be held criminally responsible for crimes against humanity (murder), as charged in Count 5 of the Indictment.

5.5 Count 7: Crime Against Humanity (murder)

428. Count 7 of the Indictment charges the Accused with crimes against humanity (murder), pursuant to Articles 3(a) and 6(1) of the Statute, for the acts alleged in paragraph 18 of the Indictment.

429. The Chamber finds beyond a reasonable doubt that on 28 April 1994, Emmanuel Kayitare together with other people were taken near the Amgar Garage, where they were detained. The Accused was present at this location and when Emmanual Kayitare tried to escape by running off, the Accused grabbed hold of him by his collar and struck him on his head with a machette, which resulted in his death.

430. The Chamber notes that Article 6(1) of the Statute of the Tribunal provides that a person who "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime." The Chamber finds beyond a reasonable doubt that the Accused detained or alternatively aided and abetted in the detention of Tutsis and other people belonging to certain political parties and that he murdered Emmanual Kayitare when the said Kayitare attempted to escape.

431. The Chamber finds beyond a reasonable doubt that Emmanual Kayitare was a civilianbelonging to the Tutsi ethnic group.

432. The Chamber finds beyond a reasonable doubt that in April 1994 there was a widespread and systematic attack on the Tutsi ethnic group, because of their ethnicity. The accused had knowledge of this attack and he intended the murder of Kayitare to be consistent with the pattern of this attack and to be a part of this attack.

433. The Chamber finds beyond a reasonable doubt that the Accused is individually criminally responsible for crimes against humanity (murder), as charged in Count 7 of the Indictment.

5.6 Counts 4, 6, and 8 : Violation of Common Article 3 of the Geneva Conventions (murder)

434. Counts 4, 6 and 8 of the Indictment charge the Accused with violations of Common Article 3 of the 1949 Geneva Conventions, as incorporated in Article 4 of the Statute. The Prosecutor has chosen to restrict the wording of these counts to violations of Common Article 3 only, even though Article 4 of the Statute covers both Common Article 3 and also Additional Protocol II of 1977 to the Geneva Conventions of 1949. As indicated *supra* by the Chamber[118], Additional Protocol II merely supplements and reaffirms Common Article 3, without modifying the article's field of applicability. The only true difference between the Article and the Protocol is the higher threshold to be met for internal conflicts to be characterized as meeting the requirements of the Additional Protocol.

435. The Prosecutor, in her closing brief, outlined the elements of the offences and the burden of proof with which she was laden. In so doing, she developed not only the material requirements to be met for an offence to constitute a serious violation of Common Article 3, but also presented to the Chamber the material requirements to be met for Additional Protocol II to be applicable. It thus transpires from her argumentation that she intended to prove that the material requirements of both Common Article 3 and Additional Protocol II had to be met before any finding of guilt could be made with regard to counts 4, 6 and 8 of the Indictment. Moreover, were any doubt to remain as to whether the Prosecutor needs to demonstrate that Common Article 3 is applicable, or that both Common Article 3 and Additional Protocol II are applicable, the Chamber recalls that in criminal proceedings, matters in doubt should be interpreted in favour of the Accused. Furthermore, the Trial Chamber considers the material requirements of Article 4 of the Statute to be indivisible, in other words, that Common Article 3 and Additional Protocol II must be satisfied conjunctively, before an offence can be deemed to be covered by Article 4 of the Statute. Thus, it is the opinion of the Chamber that for a finding of guilt to be made for any

[118] See section 2.4 of Applicable Law

one of counts 4, 6 and 8 of the Indictment, the Chamber must be satisfied that the material requirements of Common Article 3 and Additional Protocol II have to be met. Consequently, the Prosecutor must prove that at the time of the events alleged in the Indictment there existed an internal armed conflict in the territory of Rwanda, which, at the very least, satisfied the material requirements of Additional Protocol II, as these requirements subsume those of Common Article 3.

436. On the basis of evidence presented in this case by Professor Reyntjens, Mr. Nsanzuwera, Professor Mbonimpa and Captain Lemaire, the Chamber is satisfied that at the time of the events alleged in the Indictment, namely, in April, May and June 1994, there existed an internal armed conflict between, on the one hand, the government forces and, on the other, the dissident armed forces, the RPF. The RPF were under the responsible command of General Kagame and exercised such control over part of their territory as to enable them to carry on sustained and concerted military operations. The RPF also stated to the International Committee of the Red Cross that it considered itself bound by the rules of international humanitarian law[119]. Moreover, the theater of combat in April 1994 included the town of Kigali, as the opposing forces fought to gain control of the capital.

437. Evidence adduced in support of the paragraphs contained in the general allegations, and more specifically paragraphs 7 and 8, and also the allegations set out in paragraphs 14, 15, 16 and 18 of the Indictment, demonstrate that the victims of the offences were unarmed civilians, men, women and children who had been identified as the "targets" on the basis of their ethnicity. Those persons who had carried weapons were disarmed by the UNAMIR troops on entering the ETO compound. The Chamber does not consider that the bearing of these weapons prior to being disarmed deprived the victims of the protection afforded to them by Common Article 3 of the Geneva Conventions and Additional Protocol II. Indeed, the Chamber is not of the opinion that

[119] See Report of the United Nations High Commissioner for Human Rights on his Mission to Rwanda 11-12 May 1994, paragraph 20.

these "armed" civilians were taking a direct part in the hostilities, but rather finds that the bearing of these weapons was a desperate and futile attempt at survival against the thousands of armed assailants.

438. The Chamber is satisfied that the victims were persons taking no active part in the hostilities and were thus protected persons under Common Article 3 of the Geneva Conventions and Additional Protocol II.

439. The Accused was in a position of authority vis-à-vis the *Interahamwe* militia. Testimonies in this case have demonstrated that the Accused exerted control over the *Interahamwe*, that he distributed weapons to them during the events alleged in this Indictment, aiding and abetting in the commission of the crimes and directly participating in the massacres with the *Interahamwe*. The expert witness, Mr. Nsanzuwera, testified that the *Interahamwe* militia served two roles during April, May and June 1994, on the one hand, they supported the RAF war effort against the RPF, and on the other hand, they killed Tutsi and Hutu opponents.

440. Moreover, as testified by Mr. Nsanzuwera, there is merit in the submission of the Prosecutor that, considering the position of authority of the Accused over the *Interahamwe*, and the role that the *Interahamwe* served in supporting the RAF against the RPF, there is a nexus between the crimes committed and the armed conflict. In support thereof, the Prosecutor argues that the *Interahamwe* were the instrument of the military in extending the scope of the massacres.

441. Thus, the Chamber is also satisfied that the Accused, as second vice-president of the youth wing of the MRND, being known as the *Interahamwe za MRND* and being the youth wing of the political majority in the government in April 1994, falls within the category of persons who can be held individually responsible for serious violations of the provisions of Article 4 of the Statute.

442. The Prosecutor argues that the *Interahamwe* orchestrated massacres as part of their support to the RAF in the conflict against the RPF, and as the Accused was in a position of authority over the *Interahamwe*, that, *ipso facto*, the acts of the Accused also formed part of that support. Such a conclusion, without being supported by the necessary evidence, is, in the opinion of the Chamber, insufficient to prove beyond reasonable doubt that the Accused is individually criminally responsible for serious violations of Common Article 3 and Additional Protocol II. Consequently, the Chamber finds that the Prosecutor has not shown how the individual acts of the Accused, as alleged in the Indictment, during these massacres were committed in conjunction with the armed conflict.

443. Moreover, in the opinion of the Chamber, although the Genocide against the Tutsis and the conflict between the RAF and the RPF are undeniably linked, the Prosecutor cannot merely rely on a finding of Genocide and consider that, as such, serious violations of Common Article 3 and Additional Protocol II are thereby automatically established. Rather, the Prosecutor must discharge her burden by establishing that each material requirement of offences under Article 4 of the Statute are met.

444. The Chamber therefore finds that it has not been proved beyond reasonable doubt that there existed a nexus between the culpable acts committed by the Accused and the armed conflict.

445. Consequently, the Chamber finds the Accused not guilty of Counts 4, 6, and 8 of the Indictment, being serious violations of Common Article 3 of the Geneva Conventions (murder), as incorporated under Article 4 (a) of the Statute.

6. VERDICT

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments, THE CHAMBER unanimously finds as follows:

Count 1:	Guilty of Genocide
Count 2:	Guilty of Crime Against Humanity (Extermination)
Count 3:	Not Guilty of Crime Against Humanity (Murder)
Count 4:	Not Guilty of Violation of Article 3 Common to the Geneva Conventions (Murder)
Count 5:	Not Guilty of Crime Against Humanity (Murder)
Count 6:	Not Guilty of Violation of Article 3 Common to the Geneva Conventions (Murder)
Count 7:	Guilty of Crime Against Humanity (Murder)
Count 8:	Not Guilty of Violation of Article 3 Common to the Geneva Conventions (Murder)

7. SENTENCE

446. The Chamber will now summarize the legal texts relating to sentences and penalties and their enforcement, before going on to specify the applicable scale of sentences, on the one hand, and the general principles governing the determination of penalties, on the other.

A. Applicable texts

447. The Chamber will apply the statutory and regulatory provisions hereafter. Article 22 of the Statute on judgement, Articles 23 and 26 dealing respectively with penalties and enforcement of sentences, Rules 101, 102, 103 and 104 of the Rules which cover respectively sentencing procedure on penalties, status of the convicted person, place and supervision of imprisonment.

B. Scale of sentences applicable to the Accused found guilty of one of the crimes listed in Articles 2, 3 or 4 of the Statute of the Tribunal

448. The Tribunal may impose on an accused who pleads guilty or is convicted as such, penalties ranging from prison terms up to and including life imprisonment. The Statute of the Tribunal excludes other forms of punishment such as the death sentence, penal servitude or a fine.

449. Whereas in most national systems the scale of penalties is determined in accordance with the gravity of the offence, the Chamber notes that the Statute does not rank the various crimes falling under the jurisdiction of the Tribunal and, thereby, the sentence to be handed down. In theory, the sentences are the same for each of the three crimes, namely a maximum term of life imprisonment.

450. It should be noted, however, that in imposing the sentence, the Trial Chamber should take into account, in accordance with Article 23 (2) of the Statute, such factors as the gravity of the offence. In the opinion of the Chamber, it is difficult to rank genocide and crimes against humanity as one being the lesser of the other in terms of their respective gravity. The Chamber holds that both crimes against humanity, already punished by the Nuremberg and Tokyo Tribunals, and genocide, a concept defined later, are crimes which are particularly shocking to the collective conscience.

451. Regarding the crime of genocide, in particular, the preamble to the Genocide Convention recognizes that at all periods of history, genocide has inflicted great losses on humanity and reiterates the need for international cooperation to liberate humanity from such an odious scourge. The crime of genocide is unique because of its element of *dolus specialis,* (special intent) which requires that the crime be committed with the intent 'to destroy in whole or in part, a national, ethnic, racial or religious group as such', as stipulated in Article 2 of the Statute; hence the Chamber is of the opinion that genocide constitutes the "crime of crimes", which must be taken into account when deciding the sentence.

452. There is no argument that, precisely on account of their extreme gravity, crimes against humanity and genocide must be punished appropriately. Article 27 of the Charter of the Nuremberg Tribunal empowered that Tribunal, pursuant to Article 6(c) of the said Charter, to sentence any accused found guilty of crimes against humanity to death or such other punishment as shall be determined by it to be just.

453. Rwanda, like all the States which have incorporated crimes against humanity or genocide in their domestic legislation, provides the most severe penalties for such crimes under its criminal legislation. To this end, the Rwandan Organic Law on the Organization of Prosecutions for

Offences constituting Genocide or Crimes against Humanity, committed since 1 October 1990, [120], groups accused persons into four categories, according to their acts of criminal participation. Included in the first category are the masterminds of the crimes (planners, organizers), persons in positions of authority, and persons who have exhibited excessive cruelty and perpetrators of sexual violence. All such persons are punishable by the death penalty. The second category covers perpetrators, conspirators or accomplices in criminal acts, for whom the prescribed penalty is life imprisonment. Included in the third category are persons who, in addition to committing a substantive offence, are guilty of other serious assaults against the person. Such persons face a short-term imprisonment. The fourth category is that of persons who have committed offences against property.

454. Reference to the practice of sentencing in Rwanda and to the Organic law is for purposes of guidance. While referring as much as practicable to such practice of sentencing, the Chamber maintains its unfettered discretion to pass sentence on persons found guilty of crimes falling within its jurisdiction, taking into account the circumstances of the case and the individual circumstances of the accused persons.

C. General principles regarding the determination of sentences

455. In determining the sentence, the Chamber shall be mindful of the fact that this Tribunal was established by the Security Council pursuant to Chapter VII of the Charter of the United Nations within the context of measures the Council was empowered to take under Article 39 of the said Charter to ensure that violations of international humanitarian law in Rwanda in 1994 were halted and effectively redressed. The objective was to prosecute and punish the perpetrators of the atrocities in Rwanda in such a way as to put an end to impunity and thereby to promote national reconciliation and the restoration of peace.

[120] Organic Law No. 8/96 of 30 August 1996, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996.

456. That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retribution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely to dissuade for ever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights.

457. The Chamber also recalls that, in the determination of sentences, it is required under Article 23(2) of the Statute and Rule 101(B) of the Rules to take into account a number of factors including the gravity of the offence, the individual circumstances of the convicted person, the existence of any aggravating or mitigating circumstances, including the substantial co-operation with the Prosecutor by the convicted person before or after his conviction. It is a matter, as it were, of individualizing the penalty.

458. Clearly, however, as far as the individualization of penalties is concerned, the judges of the Chamber cannot limit themselves to the factors mentioned in the Statute and the Rules. Here again, their unfettered discretion in assessing the facts and attendant circumstances should enable them to take into account any other factor that they deem pertinent.

459. Similarly, the factors referred to in the Statute and in the Rules cannot be interpreted as having to be applied cumulatively in the determination of the sentence.

D. Submissions of the Parties

Prosecutor's submissions

460. In her final brief and in her closing argument made in open court on 16 June 1999, the Prosecutor submitted that the crimes committed by Rutaganda, in particular the crime of genocide and crimes against humanity, are of extremely serious offences calling for appropriate punishment. She submitted that the Chamber should take into account the status of Rutaganda in the society, his individual role in the execution of the crimes, his motivation, his mental disposition and his will, the attendant circumstances of his crimes and his behaviour after the criminal acts.

461. The Prosecutor submitted that the following aggravating circumstances are such as to justify a more severe sentence in this matter:

(i) Rutaganda was known in society as the second vice-president of the *Interahamwe* at the national level. He also was a rich businessman;

(ii) His criminal participation extended to all levels. He acted as a principal authority at Amgar garage, ETO and Nyanza massacres. He incited to kill and he also killed with his own hands. He provided logistical support in distributing weapons;

(iii) He endorsed the genocidal plan of the interim government. At the same time, he seized the occasion for his personal gain;

(iv) He played a leading role in the genocide. He killed or ordered his victims to be killed in cold blood;

(v) He ordered the *Interahamwe* to kill the victims with various blunt and sharp weapons in complete disregard for the suffering of the individual victim. The victims were placed in a world of total persecution which lasted for 100 days;

(vi) In his capacity as direct supervisor of the *Interahamwe* at Amgar garage, he failed to punish the perpetrators. In fact, he was one of the principal offenders.

462. Furthermore, the Prosecutor submits that there are no mitigating circumstances. The Accused did not cooperate with the Prosecutor. He has shown no remorse for his crimes.

463. With regard to the issue of multiple sentences which could be imposed on Rutaganda as envisaged by Rule 101(c) of the Rules, the Prosecutor asked for separate sentences for each of the counts on which Rutaganda was found guilty while specifying that the Accused should serve the more severe sentence. The Prosecutor, submitted that the Chamber should impose a sentence for each offence committed in order to fully recognize the seriousness of each crime, and the particular role of the convicted person in its commission.

464. In conclusion, the Prosecutor recommends life imprisonment for each count for which the accused is convicted.

Defence's submissions

465. During the final arguments hearing, the Defence submitted that Rutaganda is innocent and asked that he be acquitted of all the eight counts charged. The Accused himself expressed his sorrow to the Rwandan population especially those who live in his native land. He called on

the Chamber to consider especially his health condition and though he did not feel he was guilty, he prayed that the Chamber afford him time to live with his children, should it find him guilty.

E. Personal circumstances of Georges Rutaganda

466. Rutaganda was born on 28 November 1958. His father was a prominent person in Rwanda. Rutaganda is married and has three children. He was a rich businessman. He was a member of MRND at the national and prefectural levels. He served as the second vice- president of the *Interahamwe* at the national level.

467. The Chamber has scrupulously examined all the submissions presented by the parties in determination of sentence; from which it derives the following:

F. Aggravating circumstances

(i) Gravity of the Offences:

468. The offences with which the accused Georges Rutaganda is charged are, indisputably, extremely serious, as the Trial Chamber already pointed out when it described genocide as the "crime of crimes".

(ii) The position of authority of Georges Rutaganda in the *Interahamwe*

469. Rutaganda was the second vice- president of the *Interahamwe* at the national level. The Chamber finds that the fact that a person in a high position abused his authority and committed crimes is to be viewed as an aggravating factor.

(iii) The role played by Rutaganda in the execution of the crimes

470. The Chamber finds that Rutaganda played an important leading role in the execution of the crimes. He distributed weapons to the *Interahamwe* for the purpose of killling Tutsis. He positioned the *Interahamwe* at Nyanza and incited and ordered the killing of Tutsis on several occasions. As a second vice president of the *Interahamwe*,. He killed Emmanuel Kayitare, alias Rujindiri, a Tutsi, by stricking him on the head with a machete.

G. Mitigating circumstances

(i) Assistance given by Georges Rutaganda to certain people

471. The Defence alleges that Georges Rutaganda, during the period of the commission of the crimes with which he is charged, helped people to evacuate to various destinations at various times and by various means. The Chamber accepts, as mitigating factors, the fact that Rutaganda had evacuated the families of witnesses DEE and DS and that he had used exceptional means to save witness DEE, the Tutsi wife of one of his friends and that he provided food and shelter to some refugees.

(ii) Rutaganda's health condition

472. Rutaganda requested that the Chamber consider his present health condition. The Chamber notes that Rutaganda is in poor health and has had to seek medical help continously.

473. Having reviewed all the circumstances of the case, the Chamber is of the opinion that the aggravating factors outweigh the mitigating factors, especially as Rutaganda occupied a high position in the *Interahamwe* at the time the crimes were committed. He knowingly and

consciously participated in the commission of such crimes and never showed remorse for what he inflicted upon the victims.

TRIAL CHAMBER I

FOR THE FOREGOING REASONS,

DELIVERING its decision in public, *inter partes* and in the first instance;

PURSUANT to Articles 23, 26 and 27 of the Statute of the Tribunal and Rules 101, 102, 103 and 104 of the Rules of Procedure and Evidence;

Noting the general practice regarding sentencing in Rwanda;

Noting that Rutaganda has been found guilty of:

Genocide	- Count 1
Crime Against Humanity (extermination)	- Count 2
Crime Against Humanity (murder)	- Count 7

Noting the brief submitted by the Prosecutor;

Having heard the Prosecutor and the Defence;

IN PUNISHMENT OF THE ABOVE MENTIONED CRIMES,

SENTENCES Georges Rutaganda to:

A SINGLE SENTENCE OF LIFE IMPRISONMENT
FOR ALL THE COUNTS ON WHICH HE HAS BEEN FOUND GUILTY

RULES that imprisonment shall be served in a State designated by the President of the Tribunal, in consultation with the Trial Chamber, the Government of Rwanda and the designated State shall be notified of such designation by the Registrar;

RULES that this judgement shall be enforced immediately, and that, however:

(i) Until his transfer to the designated place of imprisonment, Georges Rutaganda shall be kept in detention under the present conditions;

(ii) Upon notice of appeal, if any, the enforcement of the sentence shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

Arusha, 6 December 1999,

Laïty Kama	Lennart Aspegren	Navanethem Pillay
Presiding Judge	Judge	Judge

(Seal of the Tribunal)