

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO. : ICTR-01-63-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
SIMÉON NCHAMIHIGO

WEDNESDAY, 24 SEPTEMBER 2008
1505H
JUDGEMENT

Before the Judges:

Judge Dennis Byron, Presiding
Judge Gberdao Gustave Kam
Judge Robert Fremr

For the Registry:

Ms. Aminatta L. R. N'gum
Ms. Zulphur Mhina

For the Prosecution:

Mr. Alphonse Van
Mr. Lloyd Strickland
Ms. Madeleine Schwarz
Mr. Adama Niane

For the Accused Siméon Nchamihigo:

Mr. Denis Turcotte
Mr. Benoit Henry

Court Reporter:

Ms. Sherri Knox

P R O C E E D I N G S

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MR. PRESIDENT:

Good afternoon, everybody.

Madam Registrar, could you open the proceedings, please?

MS. N'GUM:

Thank you, Mr. President, Your Lordships.

Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Dennis Byron, presiding, Judge Gberdao Gustave Kam and Judge Robert Fremr, is now sitting in open session today, Wednesday, the 24th of September 2008 for the delivery of judgement in the matter of the Prosecutor versus Siméon Nchamihigo, Case No. ICTR-01-63-T.

Thank you, Mr. President, Your Lordships.

MR. PRESIDENT:

Thank you, Madam Registrar.

Could we now have the appearances, please?

MR. VAN:

Mr. President, Your Honours, good afternoon. The Prosecutor today is represented in the following manner: Mr. Lloyd Strickland, senior attorney; Ms. Madeleine Schwarz, senior trial attorney; Mr. Adama Niane, trial attorney; Ms. Beatrice Chapaux, trial attorney for the appeals; Ms. Marilize Keefer, our case manager; Ms. Aisha Kagabo, and our investigator. My name is Alphonse Van, senior trial attorney. The Prosecutor, Mr. Bubacar Hassan Jallow, indicated that he may be able to join us later.

I thank you, Mr. President.

MR. PRESIDENT:

Thank you, Mr. Van.

MR. TURCOTTE:

Good afternoon, Mr. President, Your Honours. I am Denis Turcotte, lead counsel for Mr. Nchamihigo. I am together with my colleague, Mr. Benoît Henry, co-counsel for Mr. Nchamihigo, and Mr. Malien Habyarimana, investigator. And, lastly, Mr. Kalisa, Aphrodise.

Thank you, Mr. President. And we are at your full disposal this afternoon.

1 MR. PRESIDENT:

2 Thank you, Mr. Turcotte.

3

4 The only item on our agenda today is the delivery of oral judgement in this case. Trial Chamber III will
5 now render a summary of its judgement in the case of the Prosecutor against Siméon Nchamihigo. The
6 written judgement, which is the authoritative version, will be filed in due course.

7

8 Siméon Nchamihigo was deputy prosecutor in Cyangugu in 1994. He is charged with genocide and
9 three crimes against humanity: extermination, murder and other inhumane acts. These charges relate
10 to allegations that he planned, instigated, ordered or aided and abetted others to kill Tutsi, accomplices
11 of the RPF, and Hutu political opponents of the authorities, and that his actions resulted in mass killings
12 at roadblocks he had established, the killing of several individuals, the massacre of two groups who
13 were removed from the Kamarampaka stadium and the massacre of Tutsi at places where they had
14 taken refuge.

15

16 Siméon Nchamihigo admitted that many of the massacres and killings alleged in the indictment
17 occurred but denied that he had any involvement in these events. In support of his story that he could
18 not have committed the alleged crimes, he offered an alibi presented in three facets.

19

20 Firstly, he testified that prior to March 1994, he was not working or living in Cyangugu but had been
21 stationed in other districts. Therefore, he asserted the testimony of Prosecution witnesses who
22 adduced evidence of background and contextual activities during 1992, 1993 and early 1994 should not
23 be believed. There was conflicting testimony from some Defence witnesses, including Nchamihigo's
24 wife, Mrs. Collette Uwubuheta. Although she corroborated some aspects of Nchamihigo testimony, she
25 also gave evidence that they lived together in their own home in the Kamurera *cellule*,
26 Cyimbogo *commune*, Cyangugu *préfecture* from 1991 until their departure from Rwanda in July 1994.
27 Her testimony was consistent with evidence presented by Defence Witness SCJ, a motorcycle taxi
28 driver, who testified that he used to drive her to work in 1992 and 1993.

29

30 Secondly, Nchamihigo stated that between 6 April and 17 July he was in his office all day, every day.
31 He stated that his Suzuki vehicle, in which Prosecution witnesses testified that they saw him, was not
32 functional during that period. Some of his witnesses conceded that they saw him in his Suzuki during
33 that period and that he used to go out to do investigations during the period. The Chamber considered
34 this facet of Nchamihigo's alibi unbelievable.

35

36 Thirdly, Nchamihigo testified that he assisted religious sisters to cross the border into Bukavu on
37 12th April 1994 and that he could not have been at the places at which Prosecution witnesses placed

1 him. This aspect of his alibi will be considered in the Chamber's discussion of the relevant events.

2

3 The Chamber recalls that even if it does not believe the alibi, the Prosecution still has the obligation to
4 prove its case beyond a reasonable doubt. If the Prosecution fails to do so, the Accused, who is
5 presumed innocent until proven guilty, shall be acquitted.

6

7 The Chamber will now consider and discuss its findings in relation to five categories of allegations in
8 this case: (1) Nchamihigo's political connections; (2) the killing of individuals; (3) the killings at
9 roadblocks; (4) the killing of Tutsi removed from Kamarampaka stadium; and (5) the killings at various
10 places of refuge.

11

12 Political connections: It is alleged in the indictment that Siméon Nchamihigo was appointed as the
13 deputy prosecutor of Cyangugu *préfecture* on the basis of a forged diploma because he was a
14 supporter of the MRND political party, that he was involved in politics with the MRND and CDR parties,
15 that he was a member of a clandestine group called *Tuvindimwe*, and that he was an *Interahamwe*
16 leader responsible for recruiting and providing military training.

17

18 In respect of the first allegation, no evidence was adduced to show that the Accused presented a forged
19 diploma when he applied for the position of deputy prosecutor in Cyangugu *préfecture*. The Chamber
20 considers that the Prosecution did not establish any impropriety in the appointment of Nchamihigo to
21 that post.

22

23 In respect of the second allegation that he was involved in politics with the MRND and CDR parties,
24 Mrs. Marianne Baziruhiha testified that she and Nchamihigo were political opponents. Mrs. Baziruhiha
25 is a Hutu, and she survived the Kamarampaka stadium events in relation to which Nchamihigo is
26 charged with genocide and crimes against humanity in this indictment. She stated that Nchamihigo
27 made his political affiliations to the MRND and the CDR parties publicly known during political
28 campaigns, during rallies, during meetings and demonstrations prior to and during 1994. After
29 President Habyarimana's plane was shot down, Nchamihigo worked closely with local MRND party
30 authorities. The Chamber believes the evidence presented by Mrs. Baziruhiha and concludes that
31 Nchamihigo publicly exhibited his support for the MRND and CDR parties. However, it was not
32 established that he held any official position with either the MRND or the CDR parties.

33

34 In respect of the third allegation, Witness LM testified that Nchamihigo was a member of a clandestine
35 political group called *Tuvindimwe*. The Chamber considers that the witness's testimony lacked detail
36 and, in short, was based on rumour. The Chamber, therefore, does not find proof beyond reasonable
37 doubt of the existence of *Tuvindimwe* or of Nchamihigo's membership in it.

1 In respect of the fourth allegation, no evidence was adduced to prove that Nchamihigo held any official
2 position as a leader of *Interahamwe* or *Impuzamugambi*. However, the Chamber accepted the
3 testimony of witnesses who testified that Nchamihigo recruited them and other young Hutu men for
4 militia training as *Interahamwe* and *Impuzamugambi*.

5

6 Individual killings: The indictment charges that Nchamihigo committed genocide and crimes against
7 humanity, specifically murder, extermination, or other inhumane acts, by ordering or instigating or aiding
8 and abetting the killings of targeted individuals. It specified that as a result of Nchamihigo's actions on
9 7th of April 1994, a number of killings occurred and that other killings were perpetrated as a
10 consequence of acts of the Accused on subsequent occasions.

11

12 Prosecution Witness LAG testified that around 9 a.m. on the 7th of April 1994, he saw
13 Siméon Nchamihigo armed with a rifle in his vehicle, a Suzuki Samurai, on a road in Kamembe.
14 According to the witness, Nchamihigo was talking to a group of *Interahamwe*, including
15 Thompson Mubiligi. Nchamihigo said that the Tutsi, the *Inyenzi* and the RPF had shot down the
16 presidential plane and told the *Interahamwe* to search for the Tutsi wherever they were and to seek out
17 the accomplices and those who were in opposition to the authorities. He told them to find and
18 dismantle the flags of the opposition. Witness LAG emphasised that Siméon Nchamihigo clearly meant
19 that the *Interahamwe* should kill the Tutsi, *Inyenzi* and RPF accomplices. The witness further testified
20 that shortly after this meeting, and as a consequence, some of these *Interahamwe* killed people,
21 including a Tutsi businessman by the name of Karangwa; Kongo, who was a Hutu businessman; the
22 wife and daughter of Trojean, a Tutsi; and Dr. Nagafizi, a Tutsi doctor. All of these victims lived in the
23 neighbourhood of Siméon Nchamihigo.

24

25 The Chamber notes that Witness LAG is Nchamihigo's accomplice and accordingly considers his
26 testimony with caution. Witness LAG was arrested in Rwanda in 1995 on charges of complicity in
27 genocide and illegal possession of a weapon, confessed his guilt and was sentenced in August 1999 to
28 11 years in prison. The Chamber does not see any motive for this witness to falsely incriminate the
29 Accused. In addition, his evidence was supported in several material particulars by other witnesses.
30 The Chamber has relied upon the testimony of Witness LAG.

31

32 The Chamber believes, therefore, that the Prosecution established that Nchamihigo told LAG and
33 *Interahamwe* and others to whom he spoke at Kamembe on 7th of April 1994 to seek out and kill Tutsi
34 with the intention to destroy the Tutsi ethnic group and other civilians who are RPF accomplices as part
35 of a widespread attack against civilians in Cyangugu on political and ethnic grounds.

36

37 The Chamber is satisfied that, as a result of the orders of Nchamihigo, many were killed, including

1 Karangwa, Nagafizi, Kongo, and the family of Trojean. These victims, apart from Kongo, were burnt to
2 death. The Chamber also believes the evidence that Nchamihigo looted the property of Karangwa and
3 Trojean.

4

5 There was an another victim on the 7th of April 1994: Serubyogo. LAG testified that it was not his
6 group that killed him. The evidence was that Serubyogo was killed by soldiers who were not shown to
7 have been influenced by Nchamihigo. The Chamber, therefore, finds that it cannot impose criminal
8 responsibility on Nchamihigo for the killing of Serubyogo.

9

10 There are also allegations against Nchamihigo in respect of the killing of Jean de Dieu Gakwandi and
11 Canisius Kayihura, Émilien Nsengumuremyi, three Tutsi girls, two Tutsi students, Father Boneza and
12 13 FAR soldiers.

13

14 In respect of the alleged murders of Gakwandi and Kayihura, the Chamber observes that they were not
15 killed, although it believes the evidence of the witness who testified that Nchamihigo gave instructions
16 to kill these two men. The indictment charged that Nchamihigo committed genocide by ordering or
17 instigating *Interahamwe* at a roadblock to kill Kayihura. The indictment further charges Nchamihigo
18 with murder as a crime against humanity by ordering or instigating the *Interahamwe* to kill both
19 Gakwandi and Kayihura. The Chamber cannot enter a conviction for the killing of the two men in the
20 absence of proof of their death.

21

22 Additionally, in relation to Gakwandi, Nchamihigo was charged with ordering or instigating the
23 commission of an inhumane act as a crime against humanity. Inflicting serious bodily harm in certain
24 circumstances may constitute a crime against humanity. The evidence revealed that Gakwandi had
25 been hit on the head, knocked unconscious and left for dead by his assailants. The Chamber believes
26 the Prosecution witnesses on this attack and the suffering of the victim. The Chamber finds that
27 Nchamihigo instigated a crime against humanity for inhumane treatment of Gakwandi.

28

29 LAG testified that on 15th of April 1994, Nchamihigo came to the roadblock he was manning.
30 Nchamihigo told the *Interahamwe* there to hunt down and kill the Tutsi who were hiding in the area, and
31 he read out the names of Émilien Nsengumuremyi, Gasali Aloys, Isidore Kagenza, and
32 Jean-Marie Vianney Tabaro from a list. The evidence established that Émilien was shot by a soldier.
33 LAG testified that his *Interahamwe* were not involved in this killing. No causal link was established
34 between Nchamihigo's reading out the victim's name at the roadblock and his subsequent death. As a
35 consequence, the Chamber finds that the Accused is not criminally responsible for the death of Émilien.
36 There was no evidence that any of the other people whose names were read out at the roadblock was
37 killed.

1 Siméon Nchamihigo is also alleged to have ordered or instigated, aided and abetted the killing of three
2 Tutsi girls, Joséphine Mukashema, Hélène and Marie, who sought refuge at the home of a male
3 classmate who lived with his brother Jonas. The Chamber believed the testimony of Witness BRD that,
4 in late April 1994, Siméon Nchamihigo, accompanied by *Interahamwe*, took the three girls from the
5 home of Jonas. Shortly afterwards, Witness BRD went in search of the girls and found their dead
6 bodies. Nchamihigo, who was present, informed Witness BRD that the three girls had been killed
7 because they were *Inkotanyi* and that the witness and Jonas should not be hiding *Inyenzi*. The only
8 reasonable inference from the evidence is that Nchamihigo aided and abetted the killing of these three
9 girls.

10
11 Witness BRD also testified that on another occasion he was with two Tutsi students,
12 Ukwizagenza Uzier and Innocent, on the road leading to the Nyungwe forest, seeking transportation.
13 Nchamihigo picked up the students and gave them a lift. Approximately one hour later, Witness BRD
14 saw the bodies of the two students near a roadblock, and the Accused was among the crowd gazing at
15 their corpses.

16
17 The Chamber believes the testimony of Witness BRD. The Chamber recalls that it can draw inferences
18 from the facts that it finds. However, this power is restricted in the sense that it should not draw an
19 inference leading to a conviction unless it is the only reasonable inference that could be drawn. The
20 fact that Nchamihigo picked up the students and approximately one hour later was on the scene where
21 their dead bodies were found allows more than one inference to be drawn. One inference would be
22 that he handed the students to the killers. But an hour had elapsed, and there is no evidence about
23 what he did during that time. He could have delivered the students anywhere and travelled to another
24 destination and on his return have seen their bodies, like other spectators.

25
26 The situation is different from that of the three Tutsi girls. In that case, there was evidence that
27 Nchamihigo knew that they were Tutsi and that he specifically sought them out. After they were killed,
28 he told Witness BRD that they were killed because they were *Inkotanyi* and uttered threats to the
29 witness about assisting Tutsi. This testimony provided an undeniable link between Nchamihigo and the
30 killing of the three girls. In the case of the two students, however, it would be speculative to conclude
31 that Nchamihigo identified the students as Tutsi when he was driving past and suddenly decided to pick
32 them up for that reason. There was no evidence that he did or said anything before or after their death
33 from which any inferences could inevitably be drawn. The Chamber concludes that the Prosecution
34 has failed to show beyond a reasonable doubt that Nchamihigo ordered or instigated or aided and
35 abetted the killing of these two students.

36
37 Father Joseph Boneza was a Tutsi priest at Mibirizi parish. Prosecution Witnesses LAG, LDC and BRF

1 testified that Nchamihigo chased Father Boneza to the Kucyapa roadblock and that at that location he
2 called on an "intelligent Hutu" to kill the priest. Mutabazi and Félicien Nyagatere responded and killed
3 Father Boneza. The witnesses' testimonies were supported in many particulars even by witnesses
4 called by the Defence, whose evidence about the circumstances of the killing was consistent with that
5 of the Prosecution witnesses, except in regard to the presence of Nchamihigo. The Chamber finds that
6 Nchamihigo instigated the killing of Father Boneza.

7
8 The indictment further alleges that by transferring 13 FAR soldiers from the Cyangugu central prison to
9 the *préfecture*, Siméon Nchamihigo facilitated their killing. One Prosecution witness, BRO, testified
10 about this alleged event. The Chamber did not believe Witness BRO. Accordingly, the Chamber finds
11 that the allegation of the Accused's criminal responsibility for the killing of the 13 FAR soldiers has not
12 been proved.

13
14 Roadblocks: The Prosecution alleges that Siméon Nchamihigo instigated and ordered the erection of
15 several roadblocks to intercept and kill Tutsi, that he supervised the effective manning of those
16 roadblocks, and that several Tutsi were killed by his *Interahamwe* at the roadblocks. Both Prosecution
17 and Defence witnesses, including Nchamihigo, testified that there were roadblocks at several locations.

18
19 Having considered the evidence, the Chamber concluded that it was Prefect Bagambiki who directed
20 the local authorities to set up the roadblocks and not Nchamihigo. However, there was evidence that
21 Siméon Nchamihigo visited these roadblocks and that he gave instructions to the persons manning the
22 roadblocks from time to time.

23
24 Evidence related to the killings at roadblocks has already been considered in relation to the killing of the
25 three Tutsi girls, the two Tutsi students, and Father Boneza.

26
27 The Kamarampaka stadium: The indictment alleged that Nchamihigo attended *préfecture* security
28 council meetings at Cyangugu on 11 and 14 April 1994 and participated in planning and organising acts
29 of genocide and crimes against humanity. Following these meetings, and as part of the agreed
30 strategy, it is alleged that 16 Tutsi, who were removed from the Kamarampaka stadium on the
31 instructions of the *préfecture* security council, were killed on 16 April by *Interahamwe* as ordered and
32 instigated by Nchamihigo. It is further alleged that the Accused and others returned to the stadium on
33 or about 18 April 1994 and removed certain individuals who were also subsequently killed.

34
35 Witness AOY was the main Prosecution witness to give evidence that Nchamihigo participated in the
36 security council meetings at which acts of genocide, including the Kamarampaka stadium incident, were
37 planned. The Chamber considered his evidence with the requisite degree of caution as he was an

1 accomplice. The Chamber noted that he did not attempt to lessen his own criminal responsibility and
2 did not have any motive to falsely implicate Nchamihigo. Furthermore, aspects of his testimony were
3 corroborated by other witnesses. On the strength of Witness AOY's testimony, the Chamber finds that
4 Nchamihigo participated in the *préfecture* security council meetings on 11 and 14 April, where the
5 events that transpired at Kamarampaka stadium were planned.

6
7 It is not disputed that refugees were transferred from the Cyangugu cathedral to the stadium on
8 15th April 1994 on the instructions of the *préfecture* security council. The Chamber has found, on the
9 basis on the evidence of Marianne Baziruwiha, that Nchamihigo, together with other members of the
10 *préfecture* security council, were present when refugees were transferred from the cathedral to the
11 stadium.

12
13 The Chamber finds that Nchamihigo was present at the stadium on 16th April 1994 with other members
14 of the *préfecture* security council. Prefect Bagambiki told the refugees that there were some among
15 them who were accomplices of the RPF and had to be removed for questioning. He instructed the
16 gendarmerie commander to read out the list of names that had been prepared by order of the
17 security council. On the basis of the evidence of Marianne Baziruwiha and Witnesses LBB, LCR and
18 LM, the Chamber believes that the individuals whose names were called out, including that of
19 Marianne Baziruwiha, were removed from the stadium. Apart from Marianne, they were all Tutsi.

20
21 The Chamber has concluded, based primarily on the evidence of Witness BRK, who testified that he
22 was one of the killers, that the refugees were taken to the *brigade de gendarmerie* at Ruzizi.
23 Witness BRK testified that Nchamihigo and other authorities, including Prefect Bagambiki and
24 Imanishimwe, were present. BRK testified that Nchamihigo had come to Mutongo earlier in the day and
25 arranged for assailants to come to carry out the killings. At the brigade, Nchamihigo had a list of the
26 intended victims, and BRK participated in killing them all, except for Marianne. She testified that she
27 had managed to escape from the group and to find refuge in the residence of the commander of the
28 gendarmerie. BRK testified that after the killing, Nchamihigo instructed the *Interahamwe* not to throw
29 the bodies into the Ruzizi river but into pit latrines at Gapfumu's home. Gapfumu was one of the
30 victims. As the *Interahamwe* drove to Mutongo to dispose of the bodies, Nchamihigo asked them to
31 sing, "No enemy can attack an armoured vehicle."

32
33 A couple days later, Nchamihigo and Imanishimwe went to the residence of the gendarmerie
34 commander and promised to spare Marianne's life if she went to the stadium and told the refugees
35 there that those previously removed had not been killed. Marianne testified that when she refused, they
36 ordered her to be delivered to the gendarmes, but she escaped and fled to Bukavu and onwards.

37

1 The Chamber considered the testimony of Witness BRK with caution. It concluded that it was
2 corroborated in many material particulars. In his testimony, Siméon Nchamihigo denied knowing
3 Witness BRK but confirmed that the witness was on the official list of those suspected of killing the
4 people removed from the stadium. The Accused's evidence supports BRK's admission that he was
5 present and was one of the killers. In addition, although Nchamihigo denied going to Mutongo centre
6 on that day, he revealed knowledge in his testimony that *Sous-Préfet* Munyagabe went to the centre to
7 pacify the population. Indeed, BRK testified that Munyagabe was at the centre, but with Nchamihigo.
8 Witness BRK's testimony that *Interahamwe* were outside the stadium to attack those removed was
9 supported by Prosecution Witness LM, who heard the shouting, and by Marianne Baziruwiha, who saw
10 the *Interahamwe*.

11
12 There were several witnesses who testified that those removed from the stadium were killed.
13 Defence Witness SBA gave evidence that the gendarmerie commander reported the killings to the
14 *préfecture* security council. Prosecution Witness AOY testified that Prefect Bagambiki telephoned him
15 to confirm that the killings had taken place as planned. Moreover, Nchamihigo himself testified that the
16 prosecutor informed him that the people removed from the stadium had been brought to the
17 gendarmerie and murdered and that the prosecutor ordered that arrest warrants be issued against the
18 perpetrators.

19
20 Several witnesses confirmed that the bodies were buried in Gapfumu's latrine and that when they were
21 subsequently exhumed, they were identified by relatives as the people removed from the stadium on
22 16th April 1994. Although Witness BRK was an accomplice, his evidence was supported in many
23 material particulars. In fact, he confessed to the Rwandan judicial authorities that he was one of the
24 killers at the gendarmerie and is liable to suffer penal consequences for his crime. The Chamber
25 believed his testimony.

26
27 Attacks on places of refuge: Nchamihigo is charged with genocide and with extermination as a crime
28 against humanity for ordering, instigating or aiding and abetting attacks against and killings of Tutsi who
29 sought refuge at places, including the Gihundwe *secteur*, Bisesero, Shangi parish, Hanika parish,
30 Nyamasheke parish, Nkanka parish, Mibilizi parish and hospital, and Nyakanyinya school. During the
31 presentation of its case, the Prosecution did not adduce any evidence about killings at Nkanka parish.
32 Consequently, the Chamber finds that no conviction can be entered against Nchamihigo in relation to
33 that event.

34
35 With respect to Mibilizi, Nchamihigo was alleged to have participated in an attack on or around
36 18th April 1994. Prosecution Witness BRK gave detailed evidence which was corroborated by three
37 other Prosecution witnesses. The Chamber recalls having already rejected Nchamihigo's alibi that he

1 was in his office all day, and considered the remaining Defence evidence on the matter to be weak.
2 After considering the totality of the evidence adduced, the Chamber concludes that Nchamihigo's
3 actions and words substantially contributed to the massacres perpetrated against the Tutsi civilian
4 refugees at Mibilizi parish and hospital on or about the 18th of April 1994.

5
6 With respect to Nchamihigo's alleged role in the massacre at Nyamasheke parish, the Chamber
7 observes that evidence presented by the Prosecution did not address the substance of the allegations
8 in the indictment and is far from direct evidence. Neither Witness BRD nor Witness BRF personally
9 saw the attack at the parish. Neither witness presented any evidence as to Nchamihigo's presence at
10 the parish or his instigation of the attack. The Chamber, therefore, concludes that the Prosecution
11 failed to establish Nchamihigo's criminal responsibility for the massacre at Nyamasheke parish, as
12 alleged in the indictment.

13
14 With respect to Nchamihigo's alleged role in the massacres at Bisesero in Kibuye *préfecture*, the
15 Chamber notes that the evidence presented by the Prosecution was too limited to support a finding
16 beyond reasonable doubt that Nchamihigo ordered or instigated *Interahamwe* to kill Tutsi who had
17 taken refuge in Bisesero. Additionally, there is a discrepancy between the date alleged in the
18 indictment, late June 1994, and the date about which the witnesses testified, which was late April. The
19 Chamber dismisses the charges against Nchamihigo in relation to the massacres at Bisesero.

20
21 With respect to Nchamihigo's role in the massacres at Shanghi parish, the Chamber heard evidence
22 from Witness AOY. He testified that Nchamihigo had been appointed zone supervisor for a district,
23 which included Shanghi parish, at a meeting of the *préfecture* security council on the 11th of April.
24 Subsequently, during a *préfecture* security council meeting held on 14th April 1994, when supervisors
25 were giving their reports, Nchamihigo requested additional arms or manpower to kill the Tutsi refugees
26 at Shanghi parish. His request was granted, and a decision was made to dispatch Munyakazi's
27 *Interahamwe* from Bugarama to intervene. Witness BRF testified that some time later in April,
28 Munyakazi's *Interahamwe* stopped, on route to Shanghi parish, at Nchamihigo's village, where they were
29 fed and entertained by Nchamihigo. The next day, these *Interahamwe* attacked the refugees at
30 Shanghi parish.

31
32 The Defence evidence was that a notorious killer, Pima, led the attacks at Shanghi. The Defence also
33 provided witnesses who claimed that they never heard Nchamihigo's name used in connection with the
34 Shanghi massacres. In the Chamber's view, the Defence evidence, even if true, is not inconsistent with
35 the Prosecution testimony. The Chamber believes the testimonies of Witnesses AOY and BRF and
36 finds that Nchamihigo instigated Munyakazi's *Interahamwe* to kill the Tutsi refugees at Shanghi parish.

37

1 With respect to the Nchamihigo's alleged role in the attack on Hanika parish, the Prosecution led
2 evidence from Witness BRN, who was one of the killers during the attack. The witness testified that on
3 the afternoon of 11 April 1994, in Gatare *commune*, Nchamihigo addressed a meeting he attended.
4 Witness BRN testified that Nchamihigo, among others, took the floor and said that the Tutsi refugees
5 had to be driven out of the parish because they could create a security risk. An immediate but failed
6 attack ensued.

7
8 The following day, 12th April 1994, according to Witness BRN, Nchamihigo returned to Gatare and
9 threatened civilians with death if they did not hurry up and kill the Tutsi refugees. He left grenades,
10 which were used in the attack. Over 1,000 Tutsi refugees were massacred at Hanika parish.
11 Nchamihigo later returned to reward the assailants with beer.

12
13 Both Nchamihigo and Witness RLN testified that on 12th April Nchamihigo spent much of the day
14 helping Belgian nuns to escape from Rwanda by driving them across the border into Zaire. The
15 Chamber believes that this occurred, but does not believe that the exercise took more than one hour.
16 Thus, the evidence of Witness RLN and the Accused is not inconsistent with the testimony of
17 Witness BRN.

18
19 The Chamber believes the testimony of BRN beyond reasonable doubt and finds that Nchamihigo
20 instigated soldiers and civilians to kill the refugees at the Hanika parish on or about the
21 12th of April 1994 with intent to destroy, in whole or in part, the Tutsi group and as part of a widespread
22 attack against a civilian population.

23
24 With respect to Nchamihigo's role in the attack on Nyakanyinya school on 12th April,
25 Prosecution Witness BRK recalled that Nchamihigo convened members of the population to a small
26 meeting at the *conseiller's* house in Mutongo *secteur*, which lasted some 20 minutes, and at which
27 Nchamihigo said that there were Tutsi refugees at Nyakanyinya school attacking Hutu. After the
28 meeting, approximately 150 attackers left Mutongo town centre for Nyakanyinya in two vehicles.
29 Nchamihigo and Sergeant Major Marc Ruberanziza arrived at Nyakanyinya after the assailants had
30 already started shooting at the refugees. They came with three cartons of grenades, one of which they
31 handed over to the leader of the attack before leaving the massacre scene. After the killing, the
32 assailants were welcomed in Mutongo by Nchamihigo and others who bought them beer.

33
34 The Chamber considers that Nchamihigo's alibi of assisting the religious sisters to cross into Bukavu is
35 not inconsistent with the evidence of Witnesses BRK and BRN. The Chamber believes the testimony of
36 BRK beyond reasonable doubt.

37

1 Finally, with respect to Nchamihigo's alleged role in the killings in Gihundwe *secteur*, the Chamber
2 heard from Prosecution Witness LDC, who was also a participant in the killings. He recalled that on
3 either 14th or 15th April 1994, soldiers, *Interahamwe*, *Impuzamugambi* and civilians carried out an
4 attack against the four *cellules* of Gihundwe *secteur*. Nchamihigo divided the group of civilians and
5 militiamen into four, one for each *cellule*, and then left with the assailants for Murindi. The attack on
6 Gihundwe *secteur*, which lasted some hours, resulted in the deaths of hundreds of Tutsi.

7
8 Witness LDC further testified to a meeting he attended at the Gihundwe *secteur* office on
9 24th April 1994. Participants included members of the public, as well as important authorities. At this
10 meeting, Nchamihigo asked those in attendance whether they had killed all the Tutsi and whether there
11 were any more Tutsi hiding and what needed to be done to exterminate all the Tutsi in all the *secteurs*.
12 At that point, one of the leaders asked -- one of the leaders of the assailants requested a two-week
13 allowance to accomplish the task. Védaste Habimana responded that the Tutsi had to be exterminated
14 within three days. As a result, attacks were launched within the following three days; Tutsi were found
15 in the bush and killed.

16
17 Nchamihigo denied the allegations and attested that he was in his office all day on 14 and 15 April. He
18 admitted that a meeting was held on the 24th of April but denied being present. The Chamber does not
19 consider his alibi to be credible. Instead, the Chamber believes Witness LDC.

20
21 The Chamber finds that on 14th or 15th April 1994, Nchamihigo instigated civilians, *Interahamwe* and
22 *Impuzamugambi* to launch attacks against Tutsi who had been hiding in their or others' homes in the
23 four *cellules* of Gihundwe *secteur*. His contribution to the gathering of civilians and the organisation of
24 the citizens into four groups was substantial in bringing about the subsequent massacre of Tutsi on that
25 day.

26
27 The Chamber also find that at a meeting held on 24th April 1994, Nchamihigo made enquiries into the
28 status of the extermination of the Tutsi in Gihundwe *secteur* and that the nature of his enquiries
29 instigated others present at the meeting to find more Tutsi in hiding to kill within the following
30 three days.

31
32 Verdict: Cumulative convictions for genocide and crimes against humanity based on the same conduct
33 are permitted, because the crimes contain distinct elements requiring proof of a fact not required by the
34 other.

35
36 However, in instances where there are charges for extermination, murder and/or other inhuman acts
37 arising from the same conduct, the position is equally well settled that the crime of extermination

1 subsumes the crime of murder, as murder does not require any additional materially distinct element
2 than what is contained in the definition of extermination. In return, extermination requires an additional
3 element, that is, the killing of one or more persons as part of a mass killing of civilians and the crime of
4 inhumane acts is subsumed in every other crime against humanity as it requires no additional element
5 to any other crime against humanity.

6
7 Genocide is a crime against a national, ethnic, racial or religious group with intent to destroy the group
8 in whole or in part. It has been judicially determined that acts committed against Hutu political
9 opponents may be crimes against humanity, but they cannot be perceived as acts of genocide,
10 because the victim of an act of genocide must have been targeted by reason of the fact that he or she
11 belongs to a protected group. The crime against humanity is broader than genocide, as a perpetrator
12 need not target a specific group, but is committed as part of a widespread or systematic attack against
13 any civilian population on national, political, ethnic, racial or religious grounds.

14
15 The Chamber has found that Nchamihigo instigated, ordered and aided and abetted killings of Tutsi
16 with intent to partially destroy the Tutsi ethnic group. It also found that these killings and the killings of
17 Hutu political opponents of the Rwandan authorities were committed as part of a widespread attack on
18 the civilian population in Cyangugu on the ethnic grounds of destroying the Tutsi and on the political
19 grounds of destroying accomplices of the RPF and those engaged in removing the government from
20 power.

21
22 At this stage, I invite the Accused to stand.

23
24 The Chamber finds Siméon Nchamihigo guilty on count 1 for genocide, on count 2 for murder as a
25 crime against humanity, on count 3 for extermination as a crime against humanity, and on count 4 for
26 other inhuman acts as a crime against humanity.

27
28 All crimes under the Tribunal's Statute are serious violations of international humanitarian law. Under
29 Rwandan law, genocide and crimes against humanity carry the possibility of life imprisonment.

30
31 At the time of conviction, Siméon Nchamihigo is a Hutu Rwandan citizen. He is 49 years old. He is
32 married and has five children. He has spent the totality of his professional career in Rwanda, working
33 for the Rwandan ministry of justice as a deputy prosecutor.

34
35 Among the aggravating factors in this case, the Chamber notes that Siméon Nchamihigo, as a deputy
36 prosecutor of Cyangugu *préfecture*, was in a prominent public position of trust, yet he exhibited zeal in
37 the perpetration of these grave crimes. Because of his position in the justice system, he was expected

1 to uphold the rule of law and principles of morality. Some witnesses testified that because of
2 Nchamihigo's position, they believed that they would suffer no legal consequences for their participation
3 in the genocide and widespread killings and looting. Siméon Nchamihigo promoted an environment of
4 impunity for mass atrocities. The Chamber also considers the large number of victims directly affected
5 by the Accused's crimes to be an aggravating factor. Additionally, note must be taken of his cruelty and
6 disregard for human dignity. Witness LDC saw Nchamihigo looting Trojean's house while Trojean's
7 wife and daughter were burning to death. Witness BRK testified that Siméon Nchamihigo ordered
8 *Interahamwe* to bury corpses in a latrine. The Chamber considers the details of his criminal activity, the
9 distances he travelled to supervise numerous massacres, as well as the number of locations where he
10 intervened, all to be cumulative factors, demonstrating his zeal in the commission of these crimes.

11
12 The Chamber finds few mitigating circumstances. While the Accused may be a good father, this factor
13 has little impact on the sentence. Evidence also exists that the Accused assisted a few people
14 especially close to him. This factor carries limited weight as a mitigating factor in light of the totality of
15 the evidence. The Chamber believes that limited mitigation is warranted.

16
17 In these circumstances, the Chamber sentences Siméon Nchamihigo to life imprisonment.

18
19 Siméon Nchamihigo shall serve that sentence in a state designated by the President of the Tribunal, in
20 consultation with the Chamber, and the Registrar shall so notify the government of Rwanda and the
21 designated state.

22
23 Until his transfer to his designated place of imprisonment, Nchamihigo shall remain in detention under
24 the present conditions.

25
26 Pursuant to Rule 102(B) of the rules, on notice of appeal, if any, enforcement of the above sentences
27 shall be stayed until a decision has been rendered on the appeal with the convicted person
28 nevertheless remaining in detention. Thank you.

29
30 You may sit.

31
32 That concludes the judgement, which is the only item on our agenda. But I must enquire, are there any
33 representations that counsel wish to make before we close the proceedings?

34 MR. VAN:

35 No, Mr. President.

36 MR. TURCOTTE:

37 No, Mr. President.

1 MR. PRESIDENT:

2 Thank you, Counsel.

3

4 Well, before we adjourn, the Chamber has discussed this matter in some detail, and we feel that it's
5 important to recognise the high quality of professionalism of counsel on both sides in this case. And we
6 would like to thank you all for the contribution to the administration of justice and to commend you for
7 your professionalism.

8

9 The Chamber will now rise.

10 *(Court adjourned at 1604H)*

11 *(Pages 1 to 15 by Sherri Knox)*

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C E R T I F I C A T E

I, Sherri Knox, an Official Court Reporter for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

_____ Sherri Knox