

706. Witness AAJ testified that on 7 April 1994, some *Impuzamugambi* came to their area in vehicles, carrying clubs, firearms and grenades, and they started burning the houses of Tutsi who lived in their region. The witness fled with other Tutsi. When they reached a roadblock, the soldiers there told them that their safety would be guaranteed. They were gathered together and put in one of the buildings of a milk plant. The *Impuzamugambi* and the *Interahamwe* then arrived with the soldiers who had put them in the room. They began to shoot and throw grenades into the room, shouting, "let's exterminate them".⁷⁰¹ Witness AAJ and some others climbed a metallic ramp and hid in the ceiling. From there they saw the *Impuzamugambi* and the *Interahamwe* come in with knives to finish off those who were not dead. From the ceiling, the witness saw Iragana and Ruhura, who were Barayagwiza's *Impuzamugambi*. In the room there was a woman who was pregnant but not yet dead. Ruhura said "go and bring a knife so that we can cut open this woman's stomach and remove the baby, and after that we will put her together with the others in the pit". The witness testified that he knew that they were cutting the woman open when he heard her scream. When they came down from the ceiling after nightfall, they saw a lot of blood and traces of blood from the bodies that had been dragged up to the pit. They also saw bodies in the pit.⁷⁰²

707. Witness ABC, a Hutu from Kigali, testified that sometime in the middle of April 1994 he saw Barayagwiza at the road below Kiyovu hotel leading to the French school, where there was a roadblock that was manned by *Impuzamugambi*. Barayagwiza was in a white Pajero vehicle with a soldier from the Presidential Guard, who was his bodyguard, and he was speaking to the *Impuzamugambi*. Witness ABC was about 2 to 3 metres away from Barayagwiza and heard him tell them not to allow Tutsi or persons from *Nduga* to pass the roadblock unless these individuals showed that they had CDR and MDR party cards; otherwise, they were to be killed. The witness explained that *Nduga* referred to the region of Gitarama and Butare.⁷⁰³ He said there were about 15 people manning the roadblock, carrying machetes, grenades and firearms, with a radio set tuned to RTL, which was encouraging them to pursue Tutsi. The witness was at the roadblock because his employer was in hiding and had sent him to buy a drink. He was there for about five minutes. Barayagwiza was there before the witness arrived and left before the witness left. Witness ABC was allowed through the roadblock because his identity card stated he was a Hutu, and because the witness was employed and was a refugee. He said that there were three roadblocks on that road at estimated intervals of one kilometre.⁷⁰⁴ The witness said that the roadblocks were manned by the *Impuzamugambi* and members of CDR, and Barayagwiza supervised the roadblocks in that location. After this incident, Witness ABC would see Barayagwiza passing by in his vehicle, supervising the roadblocks. He deduced that he was supervising the roadblocks as they were manned by CDR members and Barayagwiza was the CDR boss in that district. He said his observation that Barayagwiza monitored the work being done, to see if Tutsi were being killed, was confirmed by the *Impuzamugambi*.⁷⁰⁵

⁷⁰¹ T. 21 Mar. 2001, pp. 24-25; T. 22 Mar. 2001, pp. 114-119.

⁷⁰² T. 21 Mar. 2001, pp. 26-27.

⁷⁰³ T. 28 Aug. 2001, pp. 3, 21-22; T. 29 Aug. 2001, p. 43.

⁷⁰⁴ T. 28 Aug. 2001, pp. 23-24.

⁷⁰⁵ T. 28 Aug 2001, pp. 24-26.

708. Prosecution Witness AFB, a Hutu businessman, testified that Barayagwiza used the term, “*tubatsembembe*”, or “we shall exterminate them”, in meetings. At a CDR meeting Witness AFB attended in 1993 at Umuganda stadium, where Barayagwiza spoke, the *Impuzamugambi* were singing this.⁷⁰⁶ Witness X testified that in either February or March 1992, he attended a CDR rally in Nyamirambo stadium, during which Barayagwiza spoke and used the term “*gutsembatsemba*,” which he said meant “kill the Tutsi”.⁷⁰⁷ Nahimana, who was also at this rally, testified that there was no mention of “*tubatsembembe*”⁷⁰⁸ during this rally, but he affirmed in his testimony that there were complaints against CDR in the end of 1993 and beginning of 1994 for singing a song using the word “*tubatsembembe*”.⁷⁰⁹

Credibility of Witnesses

709. The Chamber has found the testimony of Witness AHI, Witness ABC, Witness X, and Witness ABE to be credible, as set forth in paragraphs 775, 331, 547 and 332 respectively. The Chamber has also considered the evidence of Omar Serushago and accepted his evidence with caution, relying on it only to the extent that it is corroborated, as set forth in paragraph 816.

710. **Witness AGK** was cross-examined by Counsel for Ngeze on the location of Barayagwiza’s office, which he said was on the first floor of Ministry of Foreign Affairs building, and the location of the witness, which he said was on the ground floor at reception. He was asked how he knew that visitors were going to Barayagwiza’s office. The witness said he was at the entry and would tell people where to go when they arrived. He acknowledged that people from other political parties, and from the RPF, also came to the building, but he said that most of the people coming to see Barayagwiza were from the CDR.⁷¹⁰ Counsel for Barayagwiza questioned AGK on several details relating to his job within the office and the number of others who worked with him. He was questioned with regard to the occasion on which AGK said he had been called to Barayagwiza’s office to deliver a letter, and whether that was part of his responsibilities. The witness said he could not refuse to go to Barayagwiza’s office when he was called.⁷¹¹ He was also questioned as to how he heard the remarks he reported Barayagwiza to have made regarding the *Inkotanyi*, and he responded that this took place outside and he was able to hear as he was at the entrance of the building. The witness was asked why Barayagwiza would have made these remarks, and when he said he did not know, it was pointed out to him that in his statement he referred to the RPF having reached Mulindi. He acknowledged his statement and explained that this reference was a marker in time he had used, not an explanation for Barayagwiza’s remarks.⁷¹² Witness AGK provided

⁷⁰⁶ T. 6 Mar. 2001, pp. 17-21, 31.

⁷⁰⁷ T. 18 Feb. 2002, pp. 71-75.

⁷⁰⁸ *Tubatsembembe* means “let’s kill the Tutsi” and *gutsembatsemba* “kill the Tutsi” in the imperative form.

⁷⁰⁹ T. 19 Sept. 2002, p. 108.

⁷¹⁰ T. 21 June 2001, pp. 130-134.

⁷¹¹ T. 25 June 2001, pp. 8-11.

⁷¹² *Ibid.*, pp. 11-16.

further details in cross-examination on the distribution of CDR caps by Barayagwiza – where the caps were stored and how they were distributed.⁷¹³ The witness was questioned on his testimony regarding the demonstration, and he affirmed the details of his evidence and his testimony that Barayagwiza was the only person able to leave the building at that time. He said he did not know the reason for the demonstration. He was also questioned on the date of the demonstration and affirmed that May 1993 was his recollection of the date. The Chamber found Witness AGK's testimony to be clear and coherent. He responded to questions directly, and his evidence was not effectively challenged in cross-examination. For these reasons the Chamber finds the testimony of Witness AGK to be credible.

711. **Witness AAM** was cross-examined as to how well he knew Barayagwiza and how many times he had seen him. He was also questioned about Ngeze and the circumstances in which he saw Ngeze at the demonstration he recounted in his testimony. The witness answered the questions put to him adequately and provided further details. It was suggested to him that he had mistakenly identified Ngeze rather than one of Ngeze's brothers. Witness AAM replied that he knew two of Ngeze's brothers, and he affirmed his testimony that it was Ngeze he saw.⁷¹⁴ He was questioned on his statements, in particular the fact that Ngeze is not mentioned in his statements dated 11 April 1996 and 18 November 1997. He explained that he was not asked about Ngeze on those occasions.⁷¹⁵ The Chamber notes that he did mention Ngeze in his two other statements. Witness AAM was questioned on political events in Rwanda both before and after 1994. He denied that he was a member of the RPF. He was questioned on his knowledge of and views regarding the RPF and its activities. The witness characterized the RPF as soldiers fighting for their rights and their own cause, and he questioned the attacks on the civilian population in retaliation for the RPF attack on 1 October 1990.⁷¹⁶ He affirmed his testimony that he did not know at the time that the attack on 1 October 1990 was launched by the RPF, and not Ugandan foreigners, which he was told at the time and believed.⁷¹⁷ Witness AAM stated that he was not biased against the Hutu, despite his experiences of killings of Tutsi by Hutu, and stated that there was intermarriage within his family.⁷¹⁸ The witness also affirmed that he was not testifying out of fear of his government or to please his government.⁷¹⁹ He acknowledged that he had an affiliation with Ibuka. Witness AAM responded adequately to the questions put to him in cross-examination, none of which effectively challenged his evidence. For these reasons, the Chamber finds the testimony of Witness AAM to be credible.

712. **Witness AFX** maintained on cross-examination that he had attended three CDR meetings despite the fact that he was of Tutsi ethnicity. He said nobody was excluded from attending at the time, and he was personally interested in the meetings. The witness denied that he was a member of the RPF or an RPF sympathiser. In cross-examination by

⁷¹³ *Ibid.*, pp. 18-21.

⁷¹⁴ T. 12 Feb. 2001, pp. 131-149.

⁷¹⁵ T. 13 Feb. 2001, pp. 14-52.

⁷¹⁶ T. 12 Feb. 2001, pp. 155-158.

⁷¹⁷ T. 13 Feb. 2001, pp. 67-71; T. 15 Feb. 2001, pp. 48-52.

⁷¹⁸ T. 13 Feb. 2001, pp. 52-58.

⁷¹⁹ T. 15 Feb. 2001, pp. 53-54.

Counsel for Barayagwiza he said that he did not hear of RPF military or political activities in 1993 and early 1994.⁷²⁰ However, in cross-examination by Counsel for Nahimana, the witness acknowledged that he knew about RPF attacks from October 1990.⁷²¹ He had testified that before the genocide he was working as a secretary without pay in a civil service capacity, although his boss paid him from time to time. He denied that this payment was compensation for spying.⁷²² Witness AFX was questioned on his testimony that he saw weapons in Ngeze's house. He explained that Ngeze showed him the weapons because Ngeze was his relative and hid nothing from him. The witness described the layout of the house, the location of the weapons in the room, the time he saw the weapons and the light condition prevailing at that time. When asked how many rooms were in the house, he said that he was not sure of the exact number, and that he knew of four rooms because those were the rooms he had been in.⁷²³ Witness AFX said this incident was not mentioned in his statement of 24 September 1999 because he was not asked about it at the time. It is mentioned in his statement of 20 April 2001 because the investigators on that occasion had asked him about his visits to Ngeze's house.⁷²⁴ Having testified that he particularly remembered Kangura No. 35, the witness explained, when questioned about his memory of this issue and its number, that he found the content regarding Habyarimana's praise of himself interesting. He said he remembered the issue number as he had read it many times. Counsel put to the witness that he had wrongly identified the man seated in the top row on the far right of a photograph in that issue as Barayagwiza. The witness maintained his testimony. The Chamber notes that while the person identified is not Barayagwiza, the witness said several times when he made the identification that the photograph was not clear.⁷²⁵ Witness AFX was asked about several discrepancies relating to his statements. He explained that in his statement of 20 April 2001, he described himself as "pensioned" although he was not drawing a pension, meaning that he had stopped working at the beginning of the killings. Asked why in this 2001 statement and another statement dated 24 September 1999 his mother was recorded as having two different names, he said he had only given one name for both statements.⁷²⁶ Witness AFX testified to his association with Ibuka. The Chamber considers that Witness AFX gave reasonable responses to the questions put to him in cross-examination. In his testimony, Hassan Ngeze alleged that this witness was motivated to testify by a desire to remove Ngeze from and take over his house. This allegation, which does not directly relate to his testimony concerning Barayagwiza, was not put to the witness and for this reason will not be considered. The Chamber finds the testimony of Witness AFX to be credible.

713. **Witness AAJ** first stated that he heard about Barayagwiza from Barayagwiza's younger brothers. He then said that it was the children of these brothers he talked to about Barayagwiza, and later he said that he also heard the wives of these brothers talk about

⁷²⁰ T. 7 May 2001, pp. 15-16, 28-31.

⁷²¹ T. 8 May 2001, pp. 10-12.

⁷²² T. 7 May 2001, pp. 43-45 (Closed Session).

⁷²³ T. 7 May 2001, pp. 62-66, 71-77, 79-82 (Closed Session); T. 8 May 2001, pp. 37-42 (Closed Session).

⁷²⁴ T. 7 May 2001, pp. 78-79 (Closed Session).

⁷²⁵ T. 8 May 2001, pp. 16-27, 32; 50-51 (Closed Session).

⁷²⁶ T. 7 May 2001, pp. 45-47 (Closed Session).

Barayagwiza, clarifying subsequently that he was referring to only one brother's wife.⁷²⁷ The witness stated in direct examination that he was 15 years old in 1990. On cross-examination he said that he was 15 in 1991. He was unable to state the date of his birth or even the month, only that he was born in early 1976. He said his date of birth was on his documents but he did not remember it.⁷²⁸ Initially, he testified that he was surprised that Tutsi were excluded from the rally since they were all Rwandans, but later he said that it was announced beforehand by Aminadabu that Tutsi were not allowed to attend the rally. Subsequently, he said that it was not announced beforehand, that two Tutsi had gone to the meeting and been turned away and that it was after that that other Tutsi in the area were warned against attending. Asked by the Chamber how he recognized Barayagwiza during this first meeting if he had never met him nor seen his photograph, the witness explained that after the meeting he was identified by Aminadabu. The witness clarified that he had not known at the time he heard the speech that it was Barayagwiza speaking. However, he added that he knew the rally was organized by Barayagwiza and that such an organizer would be standing in front of the audience which was where he was. He then said that he had heard that he was the organizer of the meeting because he had never seen him in the area before. The witness had testified that after the first meeting Tutsi could not leave their homes because of the insecurity, but then later said that it was after the second meeting that the Tutsi could not leave their homes. He explained that they felt insecure from the first meeting and the second meeting reinforced those feelings, and clarified that the insecurity following the first meeting lasted for one or two days.⁷²⁹ The Chamber has considered the evidence of Witness AAJ in light of the frequent alteration of his testimony in his responses to the questions put to him in cross-examination and his inability to recall events with accuracy. His evidence is inconsistent and unreliable. Therefore, the Chamber finds the testimony of Witness AAJ not credible.

Discussion of Evidence

714. The Chamber notes from the testimony of Witness AGK that Barayagwiza walked freely out of the Ministry of Foreign Affairs after work at 5.15 p.m., in the midst of a CDR siege of the building in May 1993, during which no one else was able to leave from 3 p.m. to 1 a.m. He stopped outside and spoke with the demonstrators, who chanted "*Tubatsembatsembe*" or "let's exterminate them" outside the building. If not in some way a participant in the planning of this event, this evidence indicates that he was nevertheless in a position of coordination with or control over the demonstrators such that he could leave the building. That he was a participant in the planning of the demonstration could be inferred from the evidence of his leadership role in the CDR. Witness AGK said Barayagwiza received many CDR visitors in his office, distributed CDR berets, and gave orders.

715. Witness AHI and Witness AAM testified to Barayagwiza's activities at the time of the killing of Bagogwe Tutsi in 1991 and 1992. Witness AHI saw the dead bodies of thirty Tutsi civilians outside the Gisenyi prefecture's office, and a meeting was taking

⁷²⁷ T. 22 Mar. 2001, pp. 15-17, 22-23.

⁷²⁸ T. 21 Mar. 2001, p. 8; T. 22 Mar. 2001, pp. 18-21.

⁷²⁹ T. 22 Mar. 2001, pp. 28-34, 35-37, 85-87, 133-134.

place there, attended by Barayagwiza and Ngeze among others, which the witness said was about the corpses. When asked how he knew that this was the agenda for the meeting, Witness AHI said that a problem arose between the members of the population and the army, making it necessary to determine who had killed these Bagogwe. He said the matter was never clarified.⁷³⁰ From this response it remains unclear how the witness knew that the meeting was related to the corpses. While this might be inferred from the circumstances as described by the witness, it is nevertheless the case that he did not convey in his testimony what, if anything, happened at the meeting. Any role Barayagwiza may have had in these killings, or in their aftermath, has not been established by the evidence, which indicates only that Barayagwiza and Ngeze were present at a meeting that may have discussed the killings.

716. Witness AAM recounted a public meeting following the killing of Bagogwe Tutsi, which was convened by Barayagwiza and the *sous-prefet* in Mutura commune in 1991. At this meeting, Barayagwiza ordered the separation of the Hutu and Tutsi present at the meeting. He asked the Tutsi to dance, and they did a dance called *Ikinyemera*, after which he told them that they should stop saying that they were being killed, which he had heard on the radio. He said, "if we hear that once again, we are going to kill you, because killing you is not a difficult task for us." Witness AFX was at another meeting at which Barayagwiza told the Tutsi present to dance the *Ikinyemera*, which he explained was their traditional dance. At this meeting, which took place in 1993, also in Mutura commune, he asked where these Bagogwe were coming from, as it had been said that the Bagogwe were killed. Couched in Barayagwiza's separation of Tutsi from Hutu and his request that the Bagogwe Tutsi dance in a public display of their tradition is the intent to demean and humiliate the Tutsi, which was each time followed by an intimidating reference to killing them. In the meeting recounted by Witness AAM, Barayagwiza explicitly threatened to kill them.

717. Witness AAM recalled another statement made by Barayagwiza at a stadium rally in 1993, that if there was any Hutu with Tutsi blood in his veins he did not need him. Witness AFX testified that at a meeting in Ngororero in 1993, Barayagwiza said it was high time the Hutu knew who their enemies were and found ways and means of fighting them. He also said it was high time the Hutu knew how to behave themselves. The Chamber notes the testimony of the witness that Barayagwiza had Tutsi friends before he joined the CDR, and the testimony of Witness X and Witness ABE that Barayagwiza sent away his wife, the mother of three children by him, when he learned that she was of Tutsi ethnicity. Barayagwiza was himself following the Ten Commandments of the Hutu, and according to Witness X trying to set an example for others.

718. Witness AAM also saw Barayagwiza at demonstrations in 1992, wearing a CDR cap and accompanied by *Impuzamugambi* who were carrying cudgels and terrorizing people. They were shouting and singing *Tuzatsembatsembe* or "let's exterminate them", which the witness understood to mean the *Inyenzi* and the Tutsi. Witness AFX testified that Barayagwiza had the power to call meetings and order the erection of roadblocks.

⁷³⁰ T. 4 Sept. 2001, pp. 81-93.

Witness ABC testified that he saw Barayagwiza at a roadblock, telling the *Impuzamugambi* to kill Tutsi or *Nduga* trying to pass unless they had CDR and MDR party cards. The witness said Barayagwiza supervised the three roadblocks in this location, and that his role in ensuring that the Tutsi were being killed was confirmed to the witness by *Impuzamugambi*.

Factual Findings

719. Jean Bosco Barayagwiza convened CDR meetings and spoke at these meetings, ordering the separation of Hutu and Tutsi present at a meeting in Mutura commune in 1991, and asking Bagogwe Tutsi to do their traditional dance at this meeting and at another meeting in Mutura commune in 1993, publicly humiliating and intimidating them and threatening to kill them. Barayagwiza supervised roadblocks manned by the *Impuzamugambi*, established to stop and kill Tutsi. He was present at and participated in demonstrations where CDR demonstrators armed with cudgels chanted "*Tubatsembatsembe*" or "lets' exterminate them", and the reference to "them" was understood to mean the Tutsi. Barayagwiza himself said "*tubatsembatsembe*" or "let's exterminate them" at CDR meetings.

6.2 Distribution of Weapons

720. Witness AHB, a Hutu farmer, testified that he saw Barayagwiza in 1994 in Gisenyi, one week after the plane crash. Barayagwiza arrived at around noon in a red vehicle, together with another vehicle, a white Daihatsu, and parked in front of Ntamaherezo's house. Ntamaherezo, who was the MRND President in the commune, distributed weapons in 1994. That morning Ntamaherezo had told them that Barayagwiza would be arriving with tools to kill the Tutsi. When he arrived, Barayagwiza got out of the car. *Impuzamugambi* wearing CDR caps got out of the Daihatsu and offloaded firearms and machetes into Ntamaherezo's house. Witness AHB knew these *Impuzamugambi* and named them as Sinanrugu and Nzabandora, both cellule officials. During this time Barayagwiza was talking to Ntamaherezo, and Witness AHB was twenty steps away from them. Barayagwiza and some of the *Impuzamugambi* left after ten minutes. Other *Impuzamugambi* and others who were waiting took the weapons away and used them to kill. On that same day, Witness AHB saw Sinanrugu and Nzabandora kill thirty people, including children and older people. He named eight of these people who were killed, together with their families and many other people, all of whom were Tutsi. The victims were not armed, and Sinanrugu and Nzabandora killed them with guns and machetes.⁷³¹

721. On cross-examination, Witness AHB provided additional detail on the distribution of the weapons that Barayagwiza brought. He said the vehicle with the weapons was a pick-up, and he named those who offloaded the weapons as Sinanrugu, Nzabandora, Mbarushimana, and Kinoti. He heard them say that they left some weapons in the vehicle to distribute to other individuals. They came to the group in which Witness AHB was standing and told them that those who wanted weapons should go and fetch them, and

⁷³¹ T. 27 Nov. 2001, pp. 118-139; T. 28 Nov. 2001 p. 112.

that the other weapons would be taken to Kabari for distribution to other people. Witness AHB testified that there were many people with him in the group, and that the populations of three sectors had assembled there to collect the tools in order to go and kill the Tutsi. He said on that morning, at around 8 a.m., the CDR and MRND leaders had announced by word of mouth that people were to meet at Ntamaherezo's house to collect weapons. Asked who made this announcement, Witness AHB named the *Interahamwe* as Barabwiriza and Semagori, and the *Impuzamugambi* as Mbarushimana and Kinoti. Mbarushimana was the one who came to his house to tell him. Witness AHB left his home with a group of thirty people from his cellule. They were all Hutu. He said he went in order to see whether the people he had hidden were going to be killed. Asked to name the thirty from his cellule, Witness AHB gave seven names and said he could not recall all of them. He testified that he did not himself collect weapons because he had decided to protect the people he was hiding.⁷³²

722. On cross-examination, Witness AHB was also questioned on the location and other details of Mizingo, which was where Ntamaherezo's house was. He described Mizingo as a park between Gisenyi and Ruhengeri, and as a centre where people stop and meet to look for work. There were bars there, and people would bring produce there. The door of Ntamaherezo's house overlooked the tarmac road and the centre. When Barayagwiza arrived, Witness AHB was near the road, on the side where the house was, twenty steps away from Barayagwiza. In response to a question about his statement, Witness AHB said that some of the weapons brought by Barayagwiza were left at Ntamaherezo's house and the other weapons, which stayed in the vehicle, were taken to Aminadab in Kabara and to Ruhura, Barayagwiza's younger brother who was the CDR Chairman in Kanzenze sector. He noted that Sinanrugu and Nzabandora had admitted that they got weapons, had pleaded guilty and were currently in prison. The witness said people who came and took the weapons at Ntamaherezo's house were also in prison. He also mentioned that Ruhura launched an attack against his home because he was hiding Tutsi there. He said this was the only time in 1994 that he saw Barayagwiza delivering weapons. Witness AHB was asked what he meant when he said in his statement that Barayagwiza had sparked the killings in Mutura commune. He said that the Tutsi who had managed to survive the killings that took place on 7 April would have survived if Barayagwiza had not distributed weapons to be used to kill them. That is why many massacres took place in Mutura, and Tutsi who had managed to save their lives were killed there.⁷³³

723. Omar Serushago, an *Interahamwe* leader, testified that in 1992 and 1993, as well as between January and April 1994, he saw Barayagwiza and Ngeze together at CDR meetings, which he also attended, at Regina Hotel and St. Fidel Institute. These meetings, which were chaired by Barayagwiza, collected funds for the purchase of weapons.⁷³⁴ It was said during the meetings that these weapons were to fight the enemy, the *Inyenzi*, meaning the Tutsi. Serushago testified that Barayagwiza and Ngeze made financial

⁷³² T. 28 Nov. 2001, pp. 11-39.

⁷³³ T. 28 Nov. 2001, pp. 12-21, 60.

⁷³⁴ T. 15 Nov. 2001, pp. 86-91.

contributions for the purchase of weapons. He further testified that weapons were in fact purchased.⁷³⁵

Credibility of Witness

724. **Witness AHB** was asked in cross-examination why Barayagwiza, a CDR official, would deliver weapons for the *Impuzamugambi* to the house of the MRND chairman. He replied that CDR and MRND collaborated and were doing the same thing. He was questioned on a statement he made in June 2000, in which he said that Barayagwiza had deposited weapons at the houses of Ruhura, Aminadab, Sinanrugu and Nzabandora, as well as the house of Ntamaherezo. He confirmed his statement and provided much additional detail, including a report of the conversation he overheard that day among those offloading the weapons. On request he provided many names including the names of the CDR and MRND leaders who announced the distribution of weapons on that day, the name of the person who came to his house to tell him about it, and the names of seven people from his cellule who were in the group that went to collect weapons. He was asked whether in stating that there were thirty members from his cellule in this group he was confusing the number with the thirty people he said were killed that day. He denied that this was the case and reaffirmed his testimony. When asked why he had mentioned the *Interahamwe* in his testimony but not in his statement, Witness AHB said that no question had been put to him in that regard.⁷³⁶

725. Witness AHB was also questioned on the details of his statement regarding the killing of Tutsi on 7 April 1994, where they were killed and how many were killed. He named a number of churches – Bweramana, Nyamirango, Cyambara - where Tutsi were killed and estimated that 30,000 were killed on that day. He clarified that he only witnessed the killings that took place in his area, at Cyambara church. When asked how he knew about the 7 April attack on the church, Witness AHB explained that his house was near the church. He heard the people attacked crying out, and he saw people attacking them with machetes.⁷³⁷ The witness was asked if he was one of the killers and replied that if he were he would not have hidden the people he mentioned and would not have been elected to a leadership position in his community.⁷³⁸ He named eleven persons killed before him while he was standing in front of his house, guarding people he had hidden. He also named several Tutsi he had saved.⁷³⁹ Witness AHB was questioned about Ruhura's attack on him and his statements to the Rwandan authorities in 2000 about Ruhura's activities. He explained why he had not reported Ruhura earlier, and why he had not included Ruhura's attack on him in his statement.⁷⁴⁰ Witness AHB was also questioned about an occasion in 1993 on which he saw Barayagwiza when he came to Muhe for the installation of the RTLM antenna. He described the location from which he saw Barayagwiza and his proximity to the vehicle in which Barayagwiza was travelling. It was put to him that the RTLM antenna was installed in 1994 and that Barayagwiza was

⁷³⁵ T. 15 Nov. 2001, pp. 93-108.

⁷³⁶ T. 28 Nov. 2001, pp. 9-30, 134-137, 154-158.

⁷³⁷ T. 28 Nov. 2001, pp. 12, 41-48, 51-52, 103-104.

⁷³⁸ T. 28 Nov. 2001, p. 96.

⁷³⁹ T. 28 Nov. 2001, p. 58.

⁷⁴⁰ T. 28 Nov. 2001, pp. 85-97.

not present, but Witness AHB affirmed his testimony, insisting that he was speaking about things he saw.⁷⁴¹ He was also questioned on the testimony he gave regarding a CDR meeting in 1991. He affirmed that the meeting was in 1991 and that the CDR existed, at least in his region, in 1991.⁷⁴²

726. The Chamber has considered the extensive cross-examination of Witness AHB by Counsel for Barayagwiza and Counsel for Ngeze. With regard to the statement made by the witness that some weapons were offloaded and some remained on the vehicle for delivery to individuals other than Ntamaherezo, the Chamber notes that he readily affirmed in his testimony what he had said in his statement and provided additional details on the matter. The Chamber also notes that in his direct examination, Witness AHB did not say that all the weapons were offloaded. His testimony that weapons were offloaded at Ntamaherezo's house does not preclude the possibility that some weapons remained in the vehicle, and he did say in direct examination that the vehicle left with Barayagwiza and some *Impuzamugambi*, while other *Impuzamugambi* remained. For this reason, the Chamber considers that the statement of the witness is not inconsistent with his testimony. Witness AHB answered the many questions put to him with additional detail and clarification as requested. His answers were responsive and clear, and consistent with his prior testimony. He provided names, locations, distances and other specific information with precision, and his answers on cross-examination greatly elaborated his testimony in direct examination. With regard to his account of having seen Barayagwiza from the roadside in 1993, when an RTL M antenna was installed, the Chamber notes that although the witness was challenged on the date of this event and Barayagwiza's presence for it, no evidence was adduced by the Defence that the antenna was not installed in 1993 or that Barayagwiza was not present. With regard to the CDR meeting in 1991, the Chamber notes the testimony of Witness AHB that the meeting was focused on recruitment of members and his strong affirmation that the meeting took place in 1991. As Barayagwiza was from this prefecture, the Chamber considers it possible that a preliminary meeting of the party for recruitment purposes took place prior to its official launch. For these reasons, the Chamber finds the testimony of Witness AHB credible.

Discussion of Evidence

727. The Chamber accepts the clear account of Witness AHB that Barayagwiza came to Gisenyi with a truckload of arms for distribution. Barayagwiza accompanied the pick-up in a separate vehicle, and Witness AHB described him talking to Ntamaherezo, whose house was the central point of distribution, while others, *Impuzamugambi*, unloaded the arms. This evidence suggests that Barayagwiza was supervising the operation, which is supported by the evidence of Barayagwiza's leadership role in the CDR. The call to three sectors earlier that morning with instructions to the population to assemble at Ntamaherezo's house to collect tools with which to kill the Tutsi, indicate a high level of planning for and coordination of killing, in which this arms distribution played a significant role. Thirty people were killed with these arms in the presence of Witness

⁷⁴¹ T. 28 Nov. 2001, pp. 64-75.

⁷⁴² T. 27 Nov. 2001, pp. 142-149; T. 28 Nov. 2001, pp. 97-100.

AHB. All the victims were Tutsi. The eight he named were killed with their families, and among those killed were children and older people. The victims were not armed.

728. The Chamber notes the comment made by Witness AHB in his statement that Barayagwiza “sparked the killings” in Mutura commune and his explanation of what he meant. The commune had sustained a massive attack against Tutsi on 7 April. Witness AHB spoke of 30,000 killed on that one day. The Tutsi who managed to survive this onslaught were attacked again a week later with the weapons brought to the commune by Barayagwiza. That morning an *Impuzamugambi* named Mbarushimana, one of those he mentions as also having offloaded the weapons, came to Witness AHB’s house to tell him to come and collect the arms to kill Tutsi. This door to door recruitment of killers, cellule by cellule, telling them where to go and handing them arms, sparked the killings that would not have happened otherwise, in Witness AHB’s view.

729. With regard to the evidence that Barayagwiza raised funds for the purchase of weapons, the Chamber notes that the testimony of Omar Serushago is not corroborated. Serushago’s evidence alone is not enough to sustain a finding that Barayagwiza raised funds for the purchase of weapons.

Factual Findings

730. The Chamber finds that Barayagwiza came to Gisenyi in April 1994, one week after the shooting of the plane on 6 April, with a truckload of weapons for distribution to the local population. The weapons were to be used to kill Tutsi civilians, and outreach to three cellules was coordinated in advance, to recruit attackers from among the residents of these cellules and bring them together to collect the weapons. That same day at least thirty Tutsi civilians were killed, including children and older people, with the weapons brought by Barayagwiza. Barayagwiza played a leadership role in the distribution of these weapons.

6.3 Killings and the Death Squad

731. Prosecution Witness Omar Serushago said he learned from his sister, who was working at the CDR secretariat in Kigali, that Barayagwiza belonged to the death squad (*Esquadron de la mort*) and financed groups of young men, including Katumba and Mutombo, who were killing Tutsi. Serushago was often in the company of Mutombo and others who came from Gisenyi. He himself attended many meetings of the death squad, which he said was an organisation set up in the 1990s to fight the learned and rich Tutsi. Serushago recalled two of these meetings, one in 1993 and the other in early 1994, which were also attended by Barayagwiza and which took place in Kiyovu in Kigali, a neighbourhood inhabited by Ministers and other high ranking officers and authorities in Habyarimana’s regime. Among the high ranking officers who attended the death squad meetings, Serushago named Colonel Rwendeye and Colonel Buregeye. At the meeting, he said it was known that the enemy was the Tutsi. Barayagwiza was among those who addressed the meeting, and he said that there was a single objective, to raise funds to be

able to kill the Tutsi. Serushago said that he was not a direct member of the death squad but was close to the death squad.⁷⁴³

732. Serushago testified that Colonel Elie Sagatwa was the head of the death squad. In cross-examination he clarified that Lieutenant Bizumerenye, whom he had named in a statement as responsible for the death squad, was known throughout the country, particularly in Kigali, as the one who rounded up and killed the Tutsi. He said that Barayagwiza was a member of the death squad but was not involved in this rounding up. Barayagwiza's people, Katumba and Mutombo, carried out the killings. They killed in collaboration with Lt. Bizumerenye but Barayagwiza gave the orders, just like Sagatwa.⁷⁴⁴ In response to questions from the Chamber, Serushago testified that he knew Barayagwiza had given Katumba and Mutombo orders to kill because he discussed this with them at length and they told him so. He mentioned the names of three Tutsi who were killed in 1993 on the orders of Barayagwiza. He said he did not hear Barayagwiza give orders to kill to Katumba and Mutombo. In response to further questioning, he said these names were mentioned at the meetings in 1993 and 1994, and that he heard Barayagwiza give the order for them to be killed at both meetings.⁷⁴⁵

733. Omar Serushago testified that after Bucyana was killed in February 1994, he saw a fax sent by Barayagwiza when he was in front of Ngeze's kiosk in Gisenyi. The fax was addressed to the Youth Wing of the CDR Party and the MRND Party, and it stated that now that the *Inyenzi* had killed the CDR President, all Hutu were requested to be vigilant to closely follow up the Tutsi wherever they were hiding. It said that even if they were in churches, they should be pursued and killed.⁷⁴⁶ Serushago testified that from April to June 1994, CDR and *Interahamwe* groups held meetings every evening to report on the number of Tutsi killed. These meetings were attended by the leaders, including Barayagwiza and Ngeze.⁷⁴⁷

734. Serushago saw Barayagwiza in Gisenyi in June 1994 in a meeting at the Hotel Meridien, attended by Ministers, military officers and businessmen, which lasted the whole day. There was a list from Kigali, which Serushago saw, of Tutsi and Hutu who intended to go through Kigali and flee to Zaire. The one most sought after was a moderate Hutu called Stanislas Simbizi, who was the director of a school printing press, said to be cooperating with the RPF and printing identity cards for Tutsi who wanted to pass as Hutu.⁷⁴⁸ Serushago clarified that he was not referring to Stanislas Simbizi, a CDR member whom he knew and who was on the ICTR list of wanted persons, and in cross-examination it was further clarified that the name of the school director was Stanislas Sinibagwe.⁷⁴⁹ At the meeting Barayagwiza named this director, whom Serushago subsequently arrested at the end of June at the La Corniche border post. He heard a description of the man on RTL, and Zigiranyirazo, Habyarimana's brother in law,

⁷⁴³ T. 15 Nov. 2001, pp. 140-157.

⁷⁴⁴ T. 22 Nov. 2001, pp. 6-26, 36-40.

⁷⁴⁵ T. 27 Nov. 2001, pp. 74-82.

⁷⁴⁶ T. 15 Nov. 2001, pp. 117-122.

⁷⁴⁷ T. 16 Nov. 2001, pp. 39-40, 51.

⁷⁴⁸ *Ibid.*, pp. 46-48.

⁷⁴⁹ T. 26 Nov. 2001, pp. 111-112.

identified him near the Immigration Office at La Corniche. Serushago handed him over to the *Interahamwe* who took him to Commune Rouge and killed him.⁷⁵⁰

Discussion of Evidence

735. Serushago was cross-examined extensively on his evidence relating to these meetings and the activities of the death squad. He said he did not hear Barayagwiza order Katumba and Mutombo to kill, but learned it from Katumba and Mutombo. He also said that he heard Baryagwiza give orders to kill at the meetings. He named three people Barayagwiza ordered to be killed at the meetings in 1993 and 1994, and when it was pointed out to him that these people had already been killed by 1994, he said the 1994 meeting had other victims.⁷⁵¹ He also named Colonel Rwendeye as having been present at these meetings, and when presented with an issue of Kangura from 1990 reporting the death of Rwendeye, he said that Rwendeye died in 1992, and then subsequently stated that the two meetings may have occurred in 1992 and 1993, rather than 1993 and 1994.⁷⁵² As discussed in more detail in paragraph 816, Serushago's testimony is confused and the Chamber will not rely on it except to the extent that it is corroborated. His evidence that Barayagwiza was a member of the death squad, that he ordered Katumba and Mutombo to kill people at two meetings in 1993 and 1994, that he sent a fax to the CDR and MRND youth wings ordering them to kill Tutsi, and that he ordered that the director of a school printing press be killed at a meeting in June 1994, is not corroborated. The Chamber cannot make a factual finding on these allegations based solely on the testimony of Omar Serushago.

6.4 Le Sang Hutu est-il Rouge?

736. The Chamber has reviewed Barayagwiza's book, *Le Sang HUTU est-il rouge? (Is Hutu Blood Red?)*. The Chamber's intention is to gain understanding of the perspective of the Accused on issues relevant to the trial. The book, which was filed as an exhibit by Counsel for Barayagwiza, is not a substitute for the testimony of the Accused, and the Chamber does not consider it as such.

737. In his book, Barayagwiza maintained that the RPF was responsible for the downing of the plane and that its main objective was to take complete power by force, stopping the republican movement in the process and provoking reprisals against the Tutsi. He noted that thousands of Hutu civilians were murdered by the RPF invaders, who were filled with the spirit of vengeance and wanted to achieve the dream of the Tutsi minority of reducing the number of Hutu to the number of Tutsi or even lower. The RPF claimed that their war was a war of liberation, but it was actually a war to put the Tutsi back in power. Barayagwiza accused the RPF of committing crimes of unlawful aggression in violation of the UN Charter, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights. He listed acts of

⁷⁵⁰ T. 16 Nov. 2001, pp. 40-51.

⁷⁵¹ T. 27 Nov. 2001, pp. 74-82.

⁷⁵² T. 16 Nov. 2001, pp. 65-68.

violence committed by the RPF against the Hutu, which he termed as genocide, and noted a report by Amnesty International criticizing the RPF for the killings.⁷⁵³

738. Barayagwiza challenged the findings and conclusions of the report of the UN Special Rapporteur for failing to examine the intentions of the RPF and conclude that there was a genocide of Hutu. He wrote that of the 1.5 million killed at the time of the report, 1.2 million were Hutu. The Tutsi, he said, were responsible for the massacres of the Hutu, but when the Hutu killed Tutsi it was either in self-defence or an immediate unplanned reprisal. Barayagwiza distinguished between RPF Tutsi, their accomplices and civilian Tutsi. He maintained that there was no intention to destroy the Tutsi group; therefore there was no genocide. The Rwandan authorities committed no crime in distributing arms to the population in the combat zones or to youth involved in defending the country, given that self defence is legitimate with respect to international law. Mobilizing the population is the right and duty of every State that is attacked. However, he deplored the abusive use of these weapons by some people. The armed agents and accomplices of the RPF were combatants, not innocent civilians. Barayagwiza deplored the massacres of innocent Hutu and Tutsi and children.⁷⁵⁴

739. Barayagwiza asked who would face trial before the Tribunal after the RPF had executed all the “*genocidaires*”, who would be left for reconciliation. In reality, the United Nations was manipulated by powers sponsored by the RPF. Next to Tutsi blood, Hutu blood is not red. It is black. Therefore it can be spilt without serious consequences. Every person who is guilty of a crime during the war that started on 1 October 1990, the interethnic massacres, must be handed over to the law.⁷⁵⁵

740. Barayagwiza wrote that national sentiment excludes ethnicity and regionalism, which have been the plagues of Rwandan society in recent times, but this must not be confused with the noble feeling of belonging to a particular ethnic group or region. This sentiment only becomes bad when it serves as a pretext to deny the rights of those who do not belong to your group and to take socio-political advantages. The noble sentiment of belonging to an ethnic group or region can legitimately encourage the defence of the interests of that group when they are ignored or flouted. No true democracy can be built without respect for human rights as defined in international instruments.⁷⁵⁶

741. Barayagwiza decided to get involved in the creation of a political party, the CDR, out of a desire to serve his country and people. In the face of the coalition of parties allied to the RPF, the CDR decided to cooperate with the MRND and others, which led to the conclusion of a collaboration agreement in November 1992, called the Alliance for the Revival of Democracy (ARD). The CDR was neither from the MRND nor attached to it. Neither its leaders nor its members were linked, although many members of CDR belonged to various political parties such as MRND before CDR was created. When the MRND accepted the Arusha Accords on 30 October 1992, the CDR had no choice but to

⁷⁵³ Exhibit 2D35, pp. 16-35, 59, 75.

⁷⁵⁴ *Ibid.*, pp. 83-84, 89-90, 100, 143, 148.

⁷⁵⁵ *Ibid.*, p. 169.

⁷⁵⁶ *Ibid.*, p. 206.

quit ARD, which it did officially in March 1993. The CDR is a pacifist party attached to the principles of a liberal, open and pluralist democracy. It is a national and nationalist party, involved in the battle against ethnic or political minority dictatorship. Barayagwiza wrote that he was among the founding members of CDR and that he was proud of this: "I, therefore would not blush to be the ideologist of the CDR, no more than I feel in any way guilty of being called as such". Barayagwiza asserted that the CDR was not extremist as it excluded the use of force and violence as a means to take power. The CDR neither advocated nor practiced a policy of violence.⁷⁵⁷

742. Barayagwiza was a founder of RTLM. He wrote that freedom of the press is an essential means of fulfilling democracy. Those in power had taken the national radio and television under their control. RTLM was the fruit of an ingenious idea which developed in the republican group, bringing together different political sympathies concerned with finding a way to correctly inform the Rwandan public on the stakes of the war provoked by the RPF and on the benefits of a republican democracy. RTLM was not created to prepare massacres.⁷⁵⁸

7. Hassan Ngeze

7.1 Radio Interviews on Radio Rwanda and RTLM

743. The Indictment alleges that in radio broadcasts Hassan Ngeze called for the extermination of the Tutsi and Hutu political opponents, and that he defended the extremist Hutu ideology of the CDR. The Chamber has reviewed these broadcasts and considered Ngeze's explanations of them.

Radio Rwanda

744. On 12 June 1994, Ngeze was interviewed on Radio Rwanda by Charles Semivumba. Eight extracts of this interview have been introduced into evidence, in which Ngeze discussed what was happening at roadblocks. He said that as Ruhengeri and Byumba were occupied by the *Inkotanyi*, soldiers considered people from these regions to be accomplices, and "you find that our men at the roadblocks arrest their people and kill them as accomplices".⁷⁵⁹ This was a trap laid by the RPF, to help kill those that they had not been able to kill. Those at the roadblocks checking identity cards should scrutinize with care those who come from these regions and take them to the authorities. Ngeze warned listeners:

...you find these last few days that there are roadblocks where you arrive, you are thin, you have a small nose, you were born that way, and they say you are a Tutsi, even if you have an identity card showing that you are Hutu. Or they say that you are an accomplice. Then if you are a Hutu born thin with a small nose... he shows you his identity card that he is Hutu, he tells you his commune and you refuse saying: "it is not possible, there is no Hutu like you." You take him and

⁷⁵⁷ *Ibid.*, pp. 132, 208-213, 230, 235.

⁷⁵⁸ *Ibid.*, pp. 216-217, 220.

⁷⁵⁹ Exhibit P104/4D.

kill him; remember that there are Hutus with big noses, such as Kanyarengwe and Bizimungu who became accomplices.⁷⁶⁰

745. Ngeze noted that sometimes a soldier leaves without permission and said, "do not take him and burn him alive or kill him, because by killing him you give assistance to the enemy". Rather he should be arrested and taken to the authorities, who could take him to the nearest military camp where they could see if such a soldier was an enemy. "By killing him you wipe out traces", said Ngeze. Therefore, the soldier should be arrested and taken to the authorities. Some people at the roadblocks might be enemies: "The time will come when we will treat them like the others."⁷⁶¹ Those at the roadblocks "should not be in a hurry to kill soldiers who desert; that is not the solution to the problem". Such killing might provoke revenge, and he asked what would have been achieved if that happened. "If they arrest people whose identity cards bear the mark 'RPF' on the back, they should not kill them."⁷⁶²

746. In the 12 June interview, Semivumbi asked Ngeze to say something encouraging to the soldiers. Ngeze replied that the armed forces supported him and said they should keep up their morale. Even if there were accomplices among them, they were very few. "We are going to neutralize the accomplices," he said. "Let us fight for the country, let us fight for our mothers, our fathers, our younger brothers, let us fight for our land... we are with them, the courage of Kangura is always there, we are going to work for them..."⁷⁶³ When asked about Kibungo, Ngeze responded that the civil defence there should be given arms and soldiers. Noting that the RPF used few soldiers but was able to destabilize, he suggested that 20 soldiers should be taken to Kivyue, not 500 and "observe for us what is happening there..."⁷⁶⁴

747. When Semivumbi asked Ngeze about the situation in Gisenyi, he said that some acts should be condemned and that there were people at the roadblocks who were working for the enemy, without the enemy have asked them to do so. "Who are these people?" he asked. "It is those that I spoke to you about who are in a hurry to kill people who resemble Tutsis."⁷⁶⁵ Using a vehicle loaded with potatoes as an example, Ngeze explained that from Kigali to Gisenyi via Gitarama there were 713 roadblocks and that if the vehicle had to empty and offload the potatoes at each roadblock, it would take thirty days to reach Kigali. This would be discouraging to the potato seller. Controls should be reasonable, and those at the roadblock should remember that their purpose was to look for the enemy and enemy accomplices. He said:

You have to understand that the enemy has many tricks. The enemy does not go through the roadblock. The enemy, once he finds you at the roadblock, passes by the side. I take this opportunity to tell all those who are at the roadblock that they should not wait for the enemy at the roadblock, at the roadblock only. They must

⁷⁶⁰ Exhibit P105/4F.

⁷⁶¹ Exhibit P105/4I.

⁷⁶² Exhibit P105/4I.

⁷⁶³ Exhibit P105/4K.

⁷⁶⁴ Exhibit P105/4L.

⁷⁶⁵ Exhibit P105/4M.

also look for him on footpaths near the roadblock, since once the enemy reaches the roadblock he comes down from the vehicle and crosses through other paths so that he can reach Gisenyi without going through any roadblock. I remember this morning we arrested an Inyenzi, a young Inyenzi. We are the ones who arrested the child that you heard on Radio RTLM this morning. But he is a small child that you cannot suspect of being an Inyenzi. He had all the required papers.⁷⁶⁶

748. On cross-examination, Ngeze was asked whether his reference to "our men at the roadblocks" in this broadcast was not a reference to the *Interahamwe* and *Impuzamugambi*. He explained that the RPF had captured Ruhengeri and Byumba. They took the identity cards of those they had captured and wrote "RPF" on them in order to ensure control over them. Some of these people decided to leave and when they got to the government-controlled zone they were killed at the roadblocks because their identity cards had "RPF" written on them. Ngeze was trying to explain to those at the roadblocks that these were innocent people, mostly Hutu, who were fleeing the RPF. Ngeze said he raised this concern with the Minister of Defense, who said he was aware of the problem, but he was doing nothing about it. Ngeze therefore decided to go on the air to tell those at the roadblocks to stop killing these people, and that it was an RPF trick. When he referred to "our men", Ngeze said he was referring to the people of Rwanda, as opposed to the RPF, and pointed out that he did not say "militia".⁷⁶⁷

749. Asked why he was congratulating those at the roadblock, Ngeze explained that he had gone to Kigali on 22, and found a number of Tutsi refugees in his house. He secured fake Hutu identity cards for these people, but he was concerned that they would be recognized as Tutsi and killed at the roadblocks. For this reason he went on the radio to say that a person should not be killed just because he looks like a Tutsi. He should be taken to the authorities. Ngeze would then be able to explain to the authorities that they did not have the right to kill people just because they were Tutsi. He congratulated those who were stationed where he was planning to pass with the Tutsi refugees, and he reminded them that Kanyarengwe and Bizimungu, who came from that region, were Hutu. When he came to the roadblock, he said they greeted him there and had heard his radio broadcast. Again he told them not to kill anyone but rather to take them to the authorities.⁷⁶⁸

750. Ngeze also explained that soldiers without travel permits were being killed at the roadblocks. He wanted to let people at the roadblocks know that they were killing their own and helping the RPF, and that they should take soldiers without travel permits to the authorities. Ngeze said some people who were Hutu had destroyed their identity cards because their region of origin was suspect. Ngeze wanted to stop those at the roadblocks from killing these people. He said that he believed what he did saved the lives of innocent people. Asked whether he was not threatening punishment for people at the roadblock in

⁷⁶⁶ *Ibid.*

⁷⁶⁷ T. 3 April 2003, pp. 83-86.

⁷⁶⁸ *Ibid.*, pp. 86-88.

saying that "The time will come when we will treat them like the others", Ngeze affirmed that he was warning them that they would be punished if they wrongly killed people.⁷⁶⁹

751. Regarding his comment in the broadcast on civil defence, Ngeze affirmed that he was advocating civil defence to regain the prefecture of Kibungu, which had been taken by the RPF. He noted that civil defence was under the control of the government. He did not know much about the civil defence initiative but that the government had decided to establish it, just in Ruhengeri and Byumba, in 1990. Ngeze said civil defence should not be confused with the "stupid people" who were killing at the roadblocks. His intention was to see the government use civil defence rather than people at the roadblocks.⁷⁷⁰ To clarify what he had said about looking for the RPF off the main road, Ngeze explained that the RPF had managed to enter Kigali at night without passing through the roadblocks. A young commando, a seventeen year-old, had decided to go and destroy Radio Rwanda. Ngeze saw him at the Ministry of Defence, where he had been arrested but he thereafter escaped. Ngeze recalled that the RPF had bombed RTLM, and said that avoiding the main roads, the RPF had managed to bring 1,000 people to Kigali.⁷⁷¹

RTLM

752. On 14 June 1994, in an interview on RTLM by its Editor-in-Chief Gaspard Gahigi, Ngeze said:

There is another problem on the roads...it is said that all the persons... with a nice physiognomy are Tutsis. They have to chase this idea from their heads. This does not mean that all the people with a small nose are necessarily Tutsis. It happens that someone is arrested at the customs and shows his ID card with the inscription "Hutu". However, because of his small nose or light skin, he is considered as a Tutsi and is accused of complicity and assaulted.

Therefore Gahigi, once in front of the microphone, please explain to the population manning roadblocks that all those having a small nose, slender, with a light skin are not necessarily Tutsis. Otherwise, you will find that we, the Hutus, are killing other Hutus mistaking them for Tutsis, for *Inyenzi*. Where would we go like this? You arrest someone and ask him his ID card. You find that he is a Hutu. If you do not understand, go and see the Conseiller and ask him, go and see the *bourgmestre* and ask him. In my view, this must be a priority and be absolutely respected on roadblocks.⁷⁷²

753. Asked about this broadcast, Ngeze explained again that after it captured Ruhengeri and Byumba, the RPF was writing "RPF" on identity cards of Hutu, who were fleeing to the government-controlled zone and getting killed at the roadblocks because of the writing on these identity cards. He also recalled that Hutu from the south were getting killed at the roadblocks because they were from the south and looked like the Tutsi. Ngeze was asking those at the roadblocks not to kill these innocent people. When it was

⁷⁶⁹ *Ibid.*, pp. 88-90, 104-109.

⁷⁷⁰ *Ibid.*, pp. 110-114.

⁷⁷¹ *Ibid.*, pp. 114-122.

⁷⁷² Exhibit P103/257E.

put to Ngeze that he was equating the Tutsi with the *Inyenzi* in this broadcast, he recalled his effort to save sixteen Tutsi with false identity cards, and he said he wanted suspects brought to the authorities so that they could decide who should be killed and would be accountable for those decisions. An excerpt from the RTLM broadcast was put to Ngeze in which he had denied that he was saving Tutsi. Ngeze explained that after he helped some journalists escape to Congo, Radio Muhabura, the RPF radio, had congratulated him on the air for saving innocent people and told people to go to his house for assistance. Ngeze was afraid for his life because he had been named in this way. For this reason he had made the statement on RTLM, that this was a cunning rumour on the part of the RPF, to dispel suspicion.⁷⁷³

Discussion of Evidence

754. The Chamber considers that through the Radio Rwanda and RTLM broadcasts, Ngeze was trying to send a message, or several messages, to those at the roadblocks. One clear message was: do not kill the wrong people, meaning innocent Hutu who might be mistaken for Tutsi because they had Tutsi features, or because they did not have identification, or because they had identification marked "RPF". In the broadcasts is also the message that there were enemies among the Hutu as well, even some at the roadblocks. In mentioning Kanyarengwe, the Hutu RPF leader, Ngeze reminded listeners that the enemy could be Hutu as well as Tutsi. This is not the same as saying that the Tutsi is not the enemy and should not be killed. In the broadcasts, Ngeze did not tell those at the roadblocks not to kill the Tutsi. The message was to be careful and bring suspects to the authorities, as much to ensure that the enemy does not mistakenly get through the roadblock as to ensure that the wrong people, meaning innocent Hutu, are not killed. In his testimony, Ngeze provided many explanations for what he said, describing various scenarios, including one to suggest he was trying to trick those at the roadblock into letting him pass with Tutsi refugees carrying false Hutu identity cards. Nevertheless, in the Chamber's view, Ngeze also made it clear in his testimony that his message was not to kill Hutu by mistake.

755. The Chamber is of the view that in telling those at the roadblock not to kill Hutu by mistake, Ngeze was also sending a message that there was no problem with the killing of Tutsi at the roadblock. Such a message was implicit in the broadcasts, which repeatedly urged that suspects not be killed but rather be brought to the authorities. In these convoluted circumstances, the Chamber does not find that these broadcasts constituted a call to kill as alleged.

7.2 Killing of Modeste Tabaro

756. Prosecution Witness AAY, a Hutu taxi driver from Gisenyi, testified that he knew both Modeste Tabaro and Hassan Ngeze very well, and that he was a witness to the killing of Modeste Tabaro.⁷⁷⁴ He said that Modeste Tabaro, a friend of his for at least ten years and his neighbour, was a Tutsi and a member of the PL party, and that for this

⁷⁷³ T. 4 April 2003, pp. 1-12.

⁷⁷⁴ T. 19 Mar. 2001, pp. 19-21.

reason he was being sought following the death of President Habyarimana. On 21 April 1994, at 4 a.m., the witness heard shouting and went outside. The first person he met told him that Modeste Tabaro had been found. Witness AAY went to the place where Tabaro had been hiding and found Hassan Ngeze there, in military uniform, asking Tabaro who had brought him the hot chips he had. The witness said that Hassan Ngeze was carrying a gun in his right hand but that it was pointed to the ground. Modeste Tabaro was lying on the ground, and his leg was bleeding. Witness AAY was the one who had earlier brought the food to Tabaro, and he was concerned that Tabaro might tell Ngeze. Tabaro asked Ngeze not to kill him with a machete but to kill him with a gun. Witness AAY said that he saw Kananura, a policeman whom he described as Ngeze's bodyguard, pointing a gun at Modeste Tabaro. As Witness AAY took three or four steps back he heard a shot. The witness fled and heard later in the morning that Modeste Tabaro's body had been put in a vehicle by Ngeze and others and brought to the cemetery. After the death of Modeste Tabaro, Witness AAY said he helped Tabaro's wife cross the border to Zaire.⁷⁷⁵

757. Witness AAY said that he was unable to see Hassan Ngeze at the time he heard the shooting but that he thought Kananura shot Modeste Tabaro on a signal from Ngeze, as Ngeze was asking the questions and as Tabaro asked Ngeze that he not be killed by a machete.⁷⁷⁶ On cross-examination, Witness AAY said that he knew Kananura to be Ngeze's bodyguard from 7 April 1994 when the killings started because he was always with Ngeze in the rear part of the pickup, wearing either a military or police uniform. The witness clarified that he did not hear Hassan Ngeze order the shooting of Tabaro. He insisted that Kananura was Ngeze's subordinate and would not have acted independently.⁷⁷⁷ Witness AAY was not able to see where Tabaro was hit by the bullet, but he said that he was able to see the sparks fly from the muzzle of Kananura's gun.⁷⁷⁸

758. Prosecution Witness AHI, a member of the *Impuzamugambi* from Gisenyi and a neighbour of Hassan Ngeze, testified that he saw the killing of Modeste Tabaro and described the circumstances.⁷⁷⁹ One night, towards the end of April, at 3 a.m. he heard gunfire, lots of shooting, which he said he imagined was more than 10,000 bullets. He said they were shooting in the air, to scare Tutsi out of their hiding places, and that is how they found Modeste Tabaro. When he went to see what was happening, he found Hassan Ngeze, whom he knew very well, and his bodyguards. Modeste Tabaro was hidden not far from there, between two houses. He said that Ngeze's house was about 300 meters from the road, and that Tabaro was killed between the house and the road.⁷⁸⁰ That is where the witness saw Modeste Tabaro, about twenty meters from the road. Tabaro's body had been riddled by bullets.⁷⁸¹ He had been shot with more than 15 bullets all over his body, including his arms, chest, head, legs, stomach and back. The witness testified that when Tabaro was about to die, Hassan Ngeze took a rifle and placed it on his body. He named a number of individuals who shot the body, including Ngeze, whom he called

⁷⁷⁵ T. 19 Mar. 2001, pp. 36-50; T. 20 Mar. 2001, pp. 28-33.

⁷⁷⁶ T. 19 Mar. 2001, p. 47.

⁷⁷⁷ T. 20 Mar. 2001, pp. 8-10.

⁷⁷⁸ T. 20 Mar. 2001, p. 61.

⁷⁷⁹ T. 4 Sept. 2001, pp. 46, 48.

⁷⁸⁰ T. 4 Sept. 2001, pp. 62-67.

⁷⁸¹ T. 6 Sept. 2001, pp. 64-66.

their "leader" and who was the first he saw to shoot. Ngeze then said they should look for other *Inkotanyi* who might still be on the street. Witness AHI was asked whether Modeste Tabaro was already dead when he first saw him. The witness said that because they were still shooting the body, that meant he was still alive. He subsequently stated that the body was still moving. Witness AHI said he later saw Colonel Anatole with eight soldiers. When Colonel Anatole saw Modeste Tabaro's body he went to Hassan Ngeze's house and asked him what was happening, as they had heard the gunshots. Ngeze replied that they had seen an *Inkotanyi* trying to shoot and had shot and killed him, and showed him the body of Tabaro. The colonel then confiscated the weapons that Ngeze and his bodyguard had, but when Ngeze protested, he gave back the weapons and then left. Witness AHI testified that Witness AAY was not hiding Modeste Tabaro but was bringing food to him. He said that he did not see Witness AAY at the scene of Tabaro's death.⁷⁸²

759. Prosecution Witness AGX, a Tutsi member of the PL party in Gisenyi, testified that he heard Ngeze say in a radio interview sometime between 7 and 29 April, that the small numbers of *Inyenzi* who were arrested in Gisenyi, including Modeste Tabaro, had been killed. The witness said he did not know the circumstances in which Tabaro, whom he knew, died. He was in hiding at the time, but others who could go out and come back told him that Modeste Tabaro had died because Ngeze had given instructions to kill him.⁷⁸³

760. Prosecution Witness AFB, a moneychanger who lived in Gisenyi in 1994, testified that he had heard about the killing of Modeste Tabaro but did not see it. During the night he heard many shots being fired. In the morning, people were saying that Hassan Ngeze had exchanged fire with other people and that Modeste Tabaro, a Tutsi who had been hiding across the street from Hassan Ngeze's house, had been killed. When asked directly whether he was saying that Hassan Ngeze killed Modeste Tabaro, he said that he could not confirm something he had not witnessed, and that he did not know.⁷⁸⁴

761. Prosecution Witness DM, a Tutsi man from Gisenyi, testified that Modeste Tabaro was gunned down by a soldier called Jeff. He said this took place between 5 a.m. and 6 a.m., on 10 or 11 April, or between 10 and 12 April, just after the beginning of the killing. He affirmed these details on cross-examination and said that he had been called to transport the body. When he arrived Jeff was still there with his weapon, and the body was on the road. The witness said that since the neighbourhood was Ngeze's, people thought that Ngeze had killed him, but that it was actually Jeff who had done it and that Jeff was saying so himself. Hassan Ngeze had nothing to do with the death of Modeste Tabaro, and Ngeze had also been attacked by soldiers who wanted to kill him because of his efforts to protect children he had brought from Kigali to their father, Habib Musalimu. Witness DM further testified that Hassan Ngeze knew where Modeste Tabaro's wife and children were and could have just as well killed them if he had killed Tabaro.⁷⁸⁵

⁷⁸² T. 4 Sept. 2001, pp. 66-69; T. 6 Sept. 2001, pp. 64, 72.

⁷⁸³ T. 11 June 2001, pp. 5, 43-45.

⁷⁸⁴ T. 6 Mar. 2001, pp. 17, 84-85.

⁷⁸⁵ T. 11 Sept. 2001, pp. 15-16, 62-67, 70.

762. Defence Witness RM14 testified that he had interpreted an interview for investigators of the Office of the Prosecutor with an eyewitness to the killing. He said this person told the investigators, who asked him whether Hassan Ngeze had killed Modeste Tabaro, that on the night he was killed Ngeze's house was attacked and that Tabaro was killed by the two soldiers, Jeff and Regis. Other people told the witness that Modeste Tabaro was killed by Jeff and Regis and mentioned a young man who said he had been an eyewitness. Witness RM14 testified that he had been told by investigators to say in his written statement of 1997 that Hassan Ngeze's uncle killed Modeste Tabaro.⁷⁸⁶

763. Defence Witness BAZ1 testified that he did not witness the killing of Modeste Tabaro. There was an attack on Hassan Ngeze's compound on 21 April. The following day the body of Modeste Tabaro was found near a garbage dump about 30 meters from the road. The witness did not know who was responsible for the killing. Hassan Ngeze was not present when he saw the body, which had bullet wounds and was lying on its back. The witness was there when the body was taken away, at around 7 a.m. He said that during this time people described as *Inkotanyi* were being killed, and that all those who were members of the PL party, including Modeste Tabaro, were characterized as *Inkotanyi*.⁷⁸⁷

764. Defence Witness BAZ9 testified that on 20 or 21 April, she heard the sound of bullets and went to see what happened. Modeste Tabaro had been killed by two soldiers named Jeff and Regis, who were living at the house of Kayonga, a neighbour. They were standing there boasting that they had found this "*Inyenzi*", and she heard them say that they killed him. The witness did not see the shooting. She saw Tabaro's body, with blood on it, and did not approach. The body was taken away in a vehicle by Hassan Bagogwe, but she did not remember whether the body was facing up or down. On cross-examination, Witness BAZ9 was confronted with her written statement of 2000,⁷⁸⁸ in which she said that Modeste Tabaro had come out from hiding, shooting with his gun, and was killed by people in charge of security. The witness said she was not there when it happened. She heard the gunshots and learned everything in the morning. She did not mention the names of the soldiers in her statement because she lacked confidence and did not want to denounce them, or say anything prejudicial against them. Witness BAZ9 described Modeste Tabaro as a Tutsi who belonged to the PL party. She said in Rwanda, if you were a Tutsi and belonged to the PL party, many people would describe you as an *Inyenzi*.⁷⁸⁹

765. Defence Witness RM19 testified that she and her husband passed a crowd of people on the way to work on the morning of 21 April. In the crowd was one of their employees, who told them that the authorities had gone to look for people in hiding, that Modeste Tabaro had come out of his hiding place, and that the soldiers Jeff and Regis, who were staying at the house of Kayonga, shot Tabaro and ordered Hassan Bagoye to go

⁷⁸⁶ T. 16 Jan. 2003, pp. 10-11, 16-19, 59.

⁷⁸⁷ T. 27 Jan. 2003, pp. 56-58, 68-69.

⁷⁸⁸ Exhibit P231.

⁷⁸⁹ T. 28 Jan. 2003, pp. 44-46, 51-56.

and bury him. In response to questions from the bench as to how the employee knew the circumstances of Tabaro's death, the witness indicated that her employee lived nearby and saw what happened. Witness RM19 also testified that Kananura was one of the policemen who had been assigned to protect her shop and her home, and that on 21 April, he had spent the night protecting her residence. She said subsequently that he spent 20 and 21 April at their shop, and that he had nothing to do with the death of Modeste Tabaro.⁷⁹⁰

766. Defence Witness RM112 testified that he woke up to the sound of gunfire and came to the scene around 5.30 a.m. He saw the body of Modeste Tabaro, whom he did not know. When the witness arrived at the scene there were many people there, many soldiers who lived on that street, and they were boasting that they had killed an *Inkotanyi*. They were happy and drinking beer. He named Jeff and Regis as two soldiers boasting of the killing. They wanted to give the body to a man called Bagoye to go and bury it. The body was lying on its stomach, and he saw bullet wounds in the back.⁷⁹¹

767. Defence Witness RM113 testified that the soldiers Jeff and Regis killed Modeste Tabaro on the day Hassan Ngeze's house was attacked. She said they heard gunfire, her husband went to see what happened, came back and told her Tabaro had been killed. He did not see the killing, but heard about it, like everyone else.⁷⁹²

768. Defence Witness RM115 testified that on the night of 20 April, the neighbourhood was attacked. At around 6 a.m., she went to check on her shop and saw two soldiers named Jeff and Regis, who said they had killed an *Inyenzi*. They were boasting about it and drinking beer. There was a crowd around. The witness did not look at the dead body but continued on to her shop.⁷⁹³

769. Defence Witness BAZ5 testified that on the night of 21 April, Hassan Ngeze's house was attacked. She went to see what had happened and saw the body of Modeste Tabaro, whom she recognized. Many were there, including Jeff and Regis, kicking the body. A vehicle came, and Hassan Bagoyi took the body away. The witness testified that Jeff and Regis killed Tabaro, and that Hassan Ngeze was not there. She went to Ngeze's house at around 8.00 or 9.00 a.m. The windows were shattered. Ngeze arrived and seemed very surprised. He did not stay long.⁷⁹⁴

770. Defence Witness BAZ6 testified that he saw the body of Modeste Tabaro, with bullet wounds, but said he had no idea who killed him. Later on he heard it said that Michel had killed Tabaro. He said Michel was a Tutsi, the son of Gasaka, and was a soldier in the government forces.⁷⁹⁵

⁷⁹⁰ T. 3 Mar. 2003, pp. 6-11, 20.

⁷⁹¹ T. 13 Mar. 2003, pp. 6-7, 11, 18-20.

⁷⁹² *Ibid.*, pp. 29-30, 38-39.

⁷⁹³ T. 14 Mar. 2003, pp. 4-5, 8.

⁷⁹⁴ T. 15 Mar. 2003, pp. 12-13, 19.

⁷⁹⁵ *Ibid.*, pp. 20, 40, 44.

771. Defence Witness RM5 testified that on the night of 20 April, soldiers attacked the house of Hassan Ngeze because he was hiding Tutsis. He said that he went to the mosque and did not see Ngeze at morning prayers. He went to see if Ngeze had survived the attack. On the way, between 5.30 and 6.00 a.m., he found the dead body of Modeste Tabaro, with Jeff and Regis beside it, drunk and boasting that they had killed this *Inyenzi*. The body was lying on its back, riddled with bullets, and blood was flowing. Hassan Bagoyi was being asked to take the body away to *Commune Rouge*, and the witness saw the body taken away. Witness RM5 knew Modeste Tabaro and testified that he was a Tutsi, a member of the PL party, and the PL representative in Gisenyi. She affirmed in cross-examination that he was killed for these reasons.⁷⁹⁶

772. Witness RM117 testified that she saw the body of Modeste Tabaro at around 6 a.m. She was told that Tabaro had been killed by two men, Jeff and Regis. The body was drenched in blood, lying on its back. The witness was not an eyewitness to the killing. She knew it was Jeff and Regis who had done the killing because everyone said so and because they were still there in military uniforms, carrying weapons. She said they were quite sober and conscious of what they were doing. They were not drunk. The body was taken away by Hassan Bagoyi.⁷⁹⁷

773. The Accused Hassan Ngeze testified that he did not spend the night of 20 April at his house because he knew it would be attacked. The next morning he told Witness BAZ15 to check on his house. At around 7.30 to 8.00 a.m., Witness BAZ15 came back and told him that Modeste Tabaro had been killed by the soldiers Jeff and Regis, and his body taken by Hassan Bagoyi. At around 10 a.m. Ngeze met Hassan Bagoyi and asked him what had happened. Bagoyi said he was asked by Jeff and Regis to take the body. At around noon Ngeze went and met Witness RM14, who asked Ngeze to help get the wife and children of Modeste Tabaro across the border, which he did.⁷⁹⁸

Credibility of Witnesses

774. Witness AAY conceded on cross-examination that he did not like Hassan Ngeze. It was put to him that among the reasons was that Ngeze had written bad things about him in *Kangura*. The witness insisted that he was testifying to events that happened. He explained many details on cross-examination that effectively responded to the questions of how he could see at night, where he was standing, and why he did not know or remember certain details. The Chamber finds the testimony of Witness AAY to be credible.

775. Witness AHI is currently imprisoned in Gisenyi, convicted of genocide and sentenced to death. His case is on appeal. The witness pleaded guilty as a co-offender in crimes committed when he was an *Impuzamugambi* of the CDR. He admitted to having killed three people. Witness AHI denied in cross-examination that he was testifying to save his life, stating when he first spoke to ICTR investigators, his case had not yet

⁷⁹⁶ T. 21 Mar. 2003, pp. 5-6, 15-17.

⁷⁹⁷ T. 24 Mar. 2003, pp. 19-20, 26-27, 36.

⁷⁹⁸ T. 31 Mar. 2003, pp. 52, 56-59.

started.⁷⁹⁹ He was extensively questioned on the circumstances in which he witnessed the killings of Modeste Tabaro and others.⁸⁰⁰ His estimate that 10,000 bullets were fired was questioned, and he confirmed that he heard a lot of gunfire. He said that it was not pitch black because there was dawn light, and said it was about 4 am. He was asked if he had mistaken Ngeze for other Hassans in Gisenyi, and he replied that he had not, and that he knew Ngeze very well.⁸⁰¹ The witness was also questioned about a notebook he had compiled in October 2000, which contained notes he took from the Rwandan prosecutor's file of allegations against himself and of the names of other alleged perpetrators of crimes. The events he testified to concerning Ngeze were not recorded in this notebook.⁸⁰² The Chamber recalls that the notebook is a record made by the witness of the Rwandan prosecutor's file. It is not his own statement and cannot be used in this way to impeach the credibility of his testimony. The Chamber finds the testimony of Witness AHI to be credible.

776. **Witness DM** testified that he heard the soldier Jeff say that he killed Modeste Tabaro, which is what the Defence maintains. The Chamber considers that this witness, who also testified that Hassan Ngeze had nothing to do with the killing, turned hostile to the Prosecution. Because he was not so declared, however, he was not effectively cross-examined on his evidence. His cross-examination was used to elicit further details of his testimony that undermine the Prosecution's case. The Chamber notes that Witness DM dates the killing of Modeste Tabaro on 10 or 11 April, which is inconsistent with all other testimony on the date of this incident. He was not an eyewitness to the killing. In light of the questionable circumstances surrounding the testimony of this witness on behalf of the Prosecution, the Chamber considers his evidence unreliable.

Discussion of Evidence

777. Of the four Prosecution witnesses, only two testified to having witnessed the killing of Modeste Tabaro – Witness AAY and Witness AHI. Witness AFB only heard about the killing and said he could not confirm what he had not witnessed. Witness AGX also only heard about the killing and said he did not know the circumstances of Tabaro's death. Witness DM reported what he was told after the killing.

778. The Chamber notes that Witness AAY did not actually see but rather heard the shooting of Modeste Tabaro. It was when he heard a shot, as he was stepping back from the crowd, that the witness looked and saw sparks flying from Kananura's gun. He did not hear Ngeze order Kananura to shoot. He was only present at the scene for a period of a few minutes, and his narration of these events, including what Modeste Tabaro and Hassan Ngeze said, is not corroborated by any other witness.

779. Witness AHI, also an eyewitness, testified that when he arrived, he saw Modeste Tabaro's body riddled with more than fifteen bullets, but he said Tabaro was still alive.

⁷⁹⁹ T. 4 Sept. 2001, p. 47; T. 6 Sept. 2001, pp. 7-11, 20-24.

⁸⁰⁰ T. 6 Sept. 2001, pp. 24-36, 62-82, 87-98.

⁸⁰¹ T. 10 Sept. 2001, pp. 52-60.

⁸⁰² T. 10 Sept. 2001, pp. 5-8, 22-34.

He saw Ngeze place a rifle on his chest. He named a number of individuals who shot Tabaro, including Ngeze, whom he described as their leader. Ngeze was the first person he saw shooting Tabaro, although it is clear that Tabaro had already been shot many times before Witness AHI arrived on the scene. The witness's description of the shooting that took place that night, with 10,000 bullets fired, was challenged by the Defence, and does seem a likely exaggeration. However, he responded to the challenge by stating that he heard a lot of gunfire. Witness AHI testified that he came to the scene because he heard this gunfire. Witness AAY did not say he heard the sound of gunfire. He said that he heard shouting. When he arrived, Modeste Tabaro had been shot in the leg, but he heard Tabaro speak, and he left after he heard a shot. The account given by Witness AHI indicates that Tabaro was virtually dead when the witness arrived. In fact, he was asked on cross-examination how he knew Tabaro was still alive. Considering this evidence, the Chamber considers it possible that Witness AHI arrived on the scene after Witness AAY left, which accounts for the details in their testimony that would otherwise seem inconsistent.

780. While the testimony of the only two Prosecution eyewitnesses to the killing of Tabaro is not necessarily inconsistent, the two witnesses presented two different accounts of the killing that do not corroborate each other. Witness AAY testified that Kananura shot Tabaro on the order of Ngeze. However, he did not hear Ngeze give the order to shoot. This evidence is insufficient, in the Chamber's view, to support a finding that Ngeze ordered the shooting of Tabaro. Witness AHI testified that Ngeze shot Tabaro. He did not mention Kananura in his testimony, and he said that Witness AAY was not there. The evidence presented does not convey a clear and comprehensible account of what happened. In light of these circumstances, the Chamber cannot determine who killed Modeste Tabaro.

781. Many of the Defence witnesses testified that they heard the soldiers Jeff and Regis boasting that they had killed Modeste Tabaro, although none of these witnesses personally witnessed the killing. Many of the Defence witnesses testified that they saw the body of Modeste Tabaro. The testimony of these numerous witnesses is not entirely consistent with regard to whether the body was face up or face down, or with regard to whether Jeff and Regis were drunk or sober. Nevertheless, because the Prosecution has not met its burden of proof, the Chamber need not examine inconsistencies among or make a finding on the credibility of the Defence witnesses in respect of the allegation that Hassan Ngeze ordered the killing of Modeste Tabaro. The Chamber notes that in Ngeze's letter to Omar Serushago, which he received at the UNDF asking him not to testify against Ngeze, the names Jef and Regis are mentioned.

Factual Findings

782. The Chamber finds that Modeste Tabaro, a Tutsi who was in hiding, was found and killed by gunshot on or about 21 April 1994 near Hassan Ngeze's house because he was a Tutsi and a member of the PL party. The Chamber is unable to determine the circumstances of Modeste Tabaro's death and finds that the allegation that Hassan Ngeze shot or ordered the shooting of Modeste Tabaro has not been established.

7.3 Distribution of Weapons, Demonstrations, Roadblocks and Killings in Gisenyi and at the *Commune Rouge*

783. Prosecution Witness AHA, who worked for *Kangura* and lived in Ngeze's house in Kigali, testified that between April and July 1994 there was no publication of *Kangura* and that Ngeze got involved with a militia and was moving around. He recalled seeing him in military uniform and said he was no longer a journalist at that time. In cross-examination, Witness AHA testified that Ngeze was not incarcerated at any time in 1994. In response to questioning from the Chamber, he said that he spoke to Ngeze by telephone within a few days of 6 April 1994.⁸⁰³

784. Prosecution Witness Omar Serushago, an *Interahamwe* leader from Gisenyi, testified that he has known Hassan Ngeze since childhood. They were born in the same town and grew up together. Ngeze's father was a great friend of Serushago's father, and their younger brothers were friends as well.⁸⁰⁴ Serushago testified that Ngeze was an active member of the MRND like himself. When the CDR was set up, Ngeze became an influential member of that party; he was the coordinator of CDR activities in Kigali and Gisenyi regions.⁸⁰⁵ Serushago became a member of the *Interahamwe* in 1991. He described the activities of the *Interahamwe* between 1991 and 1993 as raising funds to buy weapons. He also said that they looted and threatened the Tutsi, and that people like Ngeze and Barayagwiza worked with them in carrying out these activities. Ngeze took active part in threats and the looting of Tutsi property. He also participated in killing and eating the cows of the Tutsi. The *Interahamwe* and *Impuzamugambi* participated jointly in these activities, and in the distribution of weapons, which he said were in preparation for the genocide. Weapons were distributed by Ngeze and Barayagwiza. Training sessions were also arranged during these years on the use of these weapons. Serushago saw weapons at Gisenyi Camp, and he said that Ngeze and Barayagwiza were involved in bringing them, and that they were destined for members of the CDR. He knew that they were distributed to the youth because the youth who received these weapons showed them to him. Weapons were distributed between 1993 and 1994, and more in 1994 within the framework of the preparation of the genocide.⁸⁰⁶

785. At the time of the death of Bucyana in February 1994, Serushago saw a fax sent by Barayagwiza when he was in front of Ngeze's kiosk in Gisenyi. Barnabé Samvura had the fax and showed it to others. The fax was addressed to the Youth Wing of the CDR Party and the MRND Party, and it stated that now that the *Inyenzi* had killed the CDR President, all Hutu were requested to be vigilant to closely follow up the Tutsis wherever they were hiding. It said that even if they were in churches, they should be pursued and killed. Ngeze then went around the town in his Toyota Hilux, on which he had mounted a megaphone, saying that that was it for the Tutsi. Serushago himself was amongst those who were threatening the Tutsi and he said that he warned some of his

⁸⁰³ T. 6 Nov. 2000, p. 110.

⁸⁰⁴ *Ibid.*, pp. 34-37.

⁸⁰⁵ T. 15 Nov. 2001, pp. 77-78.

⁸⁰⁶ T. 16 Nov. 2001, pp. 3, 8-27.

Tutsi friends to leave town. Ngeze extorted money from Tutsi individuals, whom the witness named.⁸⁰⁷ From April to June 1994, CDR and *Interahamwe* groups held meetings every evening to report on the number of Tutsi killed.⁸⁰⁸ These meetings were attended by the leaders, including Barayagwiza and Ngeze.

786. Serushago testified that he was the leader of the *Interahamwe* in Gisenyi town and in charge of roadblocks. He was responsible for the roadblock at *La Corniche*, an important roadblock at the intersection between Goma and Gisenyi. There were six groups of *Interahamwe* and *Impuzamugambi*. Ngeze and his brother Juma were members of CDR and their group consisted mostly of reservists of CDR and MRND *Interahamwe*. The CDR and *Interahamwe* leaders met every evening during April, May and June 1994 to report on the killings of Tutsi to leaders, including Barayagwiza, who were there after the Interim Government came to Gisenyi. Ngeze came on many occasions to these daily meetings.⁸⁰⁹ At the border post, Serushago said he himself had selected Tutsi who were trying to flee to Zaire, by their identity cards. He said one could easily tell a Tutsi from a Hutu. Serushago testified that Ngeze and Juma were moving around Gisenyi town selecting Tutsi at roadblocks and directing them to Gisenyi Cemetery, which was known as the "*Commune Rouge*", to kill them. Serushago's brother worked with them, and Serushago personally saw Ngeze selecting Tutsi at roadblocks several times. Ngeze's brother-in-law transported bodies and worked with Ngeze and Serushago.⁸¹⁰

787. Serushago testified that at 7 a.m. on the morning of 7 April, after the death of the President, from the upper floor of his home, he saw Ngeze transporting weapons, including guns, grenades and machetes, in a red Hilux vehicle. He subsequently corrected his testimony and said that the time was 10 a.m., not 7 a.m. Serushago's house was next to the road and the distance between them was five to ten metres. He did not speak to Ngeze but saw him. On cross-examination by Counsel for Ngeze, it was put to Serushago that Ngeze was in custody from 6 to 9 April. Serushago said Ngeze was never imprisoned, that he had a great deal of power in Gisenyi and no one could arrest him. He said the proof that Ngeze was not arrested was that Ngeze passed by his house that morning.⁸¹¹

788. Serushago saw Ngeze again between 13 and 20 April, in front of his uncle's house. The same Hilux vehicle was parked at this location and contained weapons, including guns, grenades and machetes. Ngeze himself was carrying a pistol on his left hip. Serushago testified that later that day together they went to Hassan Gitoki's house at the *Commune Rouge*, where they found five Tutsi standing in front of the house. According to Serushago, Ngeze asked why the Tutsi were being kept waiting, why they had not been killed immediately. He said he would give an example to show how *Inyenzis* die, and then he took his pistol and shot one of the five Tutsi in the head. The Tutsi, a man, died on the spot. Serushago knew him to be a Tutsi but did not know his

⁸⁰⁷ *Ibid.*, p. 118-119.

⁸⁰⁸ T. 16 Nov. 2001, p. 39.

⁸⁰⁹ *Ibid.*, pp. 38, 52.

⁸¹⁰ *Ibid.*, pp. 53-60.

⁸¹¹ T. 20 Nov. 2001, p. 13.

name. Ngeze told the *Interahamwe* and members of the CDR to do likewise for the remaining Tutsi. Serushago said he was present and witnessed butchers who cut up the bodies of the Tutsi into pieces, and removed women's clothing before killing them. Some people were attacking with bladed weapons and others were disrobing the people before they were killed. The Tutsi were not armed but hoes were given to some of them so that they could dig their graves before they were killed. He said on that day five Tutsi were killed in his and Ngeze's presence. Serushago testified that he and the others, including Ngeze, remained there for about two hours and left together. Between the months of April and June 1994, he could not say exactly how many times he saw Ngeze at the *Commune Rouge* but that he must have gone there on several occasions, whether during the day or at night, and that operations there were ongoing. Serushago testified that he himself killed four Tutsi.⁸¹²

789. Witness EB, a Tutsi teacher from Gisenyi, testified that he knew Ngeze, who had been his neighbour. He said that Ngeze was the coordinator of the activities of the *Interahamwe* and the *Impuzamugambi* from 1992 to 1993. On the morning of 7 April 1994, at around 7 am, Witness EB saw Ngeze in a red taxi on which a loudspeaker had been set up. He was alone and went towards the house of Barnabé Samvura, who was the Chief of CDR in that commune. The witness saw many *Interahamwe* go into the compound of Samvura's house and fetch nail-studded clubs, rifles and grenades. He heard Ngeze speak through his loudspeaker, telling the *Interahamwe* to kill the Tutsi and that some of them should go to the *Commune Rouge* to dig holes. Witness EB said they were then attacked. His parents went into their house, and he and his little sister went into another house. His other sister went to a neighbour's house. The attackers went into the kitchen, where his little brother and four nephews were. They killed his younger brother and took his body to the side of the road, where the bodies were placed before being taken to the *Commune Rouge*. From where he was, Witness EB could see the road and Samvura's house. He saw the body of his younger sister, and he saw two women, one of whom was Hassan Ngeze's mother, thrusting the metal rods from an umbrella in between his sister's thighs. She was pregnant at the time. There were many bodies, which were loaded on a vehicle and taken to the *Commune Rouge* for burial.⁸¹³

790. Witness EB testified that two hours later, at noon, the attackers returned and looted his parents' home. The attackers returned again at 6 p.m., and when they saw his mother, they said, "You, old woman, why are you still here? Why haven't you been killed yet?" Just as she was saying to them, "But, my children, I know you. I know your parents. We have lived together with them. Why do you want to do this to me?" the *Interahamwe* hit her on the forehead with a nail-studded club. Witness EB's mother cried out to him for help, which alerted them to where he was. The *Interahamwe* then threw a grenade into the house and the house caught on fire. Witness EB was seriously wounded on his left leg. He fled and first hid in a banana plantation and then dragged himself to the house of a neighbour. The witness was helped to the Majengo mosque, where for the first two days, he hid in a casket. He took shelter in the mosque for three weeks and thereafter went to Goma. In Goma, his cousin told him that he had been at *Commune*

⁸¹² *Ibid.*, pp. 29-31.

⁸¹³ T. 15 May 2001, pp. 104-108, 151; T. 16 May 2001, pp. 3-14.

Rouge where many people were killed. His cousin saw Hassan Ngeze there, inspecting dead bodies and finishing off those who were not completely dead. In all, Witness EB said that there were eight victims of these attacks in his family.⁸¹⁴ In cross-examination, it was put to him that he could not have seen Ngeze on 7 April, as Ngeze had been arrested on 6 April. Witness EB affirmed his testimony that Ngeze was there and that he had seen him himself. It was suggested to him that he might have mistaken Hassan Bagoyi for Hassan Ngeze. Witness EB replied that he knew Ngeze very well and could not have mistaken his person.⁸¹⁵

791. Witness AHI, a Hutu taxi driver from Gisenyi who was recruited to the CDR by Ngeze and who became an *Impuzamugambi*, testified that he saw Ngeze on 7 April 1994, very early in the morning at 7 a.m. Ngeze was in military gear with an officer's hat. He was carrying a nine millimeter gun and had four body guards whom he named. He said two of the four were soldiers but on that day they were in plainclothes. Weapons were delivered that day by Colonel Anatole Nsenigyumva through the *bourgmestre* of Rubavu commune, who forwarded them to the *conseiller* of the town, but they realized that the weapons were inadequate. A meeting of MRND and CDR officials was held the next day at 2 p.m., at the scout centre in the neighbourhood called Gacuba, with several military officers and soldiers participating. Ngeze was present and spoke at the meeting, saying the *Interahamwe* had obtained weapons and the *Impuzamugambi* also needed weapons. The officers promised to supply more weapons. That evening the weapons were delivered, Kalashnikovs, R4s and grenades. Ngeze and Serushago were among those who obtained weapons. There were eighty weapons, and Ngeze was one of those who distributed them. Witness AHI testified that Tutsi were killed by the *Impuzamugambi* and the *Interahamwe* with these weapons, and he named a number of individuals who were killed, including three children.⁸¹⁶

792. Witness AHI said that on 7 April, Ngeze had changed vehicles and from that day was driving his brother's vehicle, a double-cabin Hilux from MININTER, the ministry where his brother worked. He had bodyguards in this vehicle. Witness AHI said he saw Ngeze at roadblocks in Gisenyi in 1994 and that Ngeze manned a roadblock that was set up near a place known as Chez Kagemana. Ngeze also manned or monitored a roadblock that was near the main custom's office, near *La Corniche*, where Serushago manned a roadblock. He would also be found at a smaller roadblock on the road to Goma, which was manned by cellule officials and people who lived in the cellule. Witness AHI recalled the instructions that were given by Hassan Ngeze and others to be followed at the roadblocks. Those at the roadblocks were to stop and search any vehicle which came through, to ask for identity cards from those in the vehicles and to set aside those persons whose cards mentioned Tutsi ethnicity. These Tutsi were then transported in vehicles assigned to this task by individuals the witness named, who were directed by Colonel Nsenigyumva and taken to *Commune Rouge*. Allegedly they were transported so that their lives could be saved, but in fact this was as a cemetery and that is where they were buried. Witness AHI testified that roadblocks had been set up by the government but in

⁸¹⁴ T. 16 May 2001, pp. 15-24.

⁸¹⁵ T. 17 May 2001, pp. 47-49.

⁸¹⁶ T. 4 Sept. 2001, pp. 55-62.

1994 other roadblocks were added. He named Ngeze as among those who set up these additional roadblocks.⁸¹⁷

793. Witness AGX, a Tutsi man from Gisenyi, was in the Kigali Central Prison together with Hassan Ngeze in 1990. Ngeze told him he was in prison for having written an article predicting that an armed group from outside would attack Rwanda. Witness AGX was imprisoned on charges relating to embezzlement. Ngeze was released just after the war began in October 1990, and Witness AGX was released in November 1990 after an investigation established that he was not the one who had embezzled the money. After his release when he returned to Gisenyi, the witness found that Ngeze had become a very important person. In his newspaper he would denounce people as *ibytso*, or accomplices, and these people would end up in prison. He gave himself as an example, as well as a taxi driver and the driver's younger brother. In 1991, after having been named as an accomplice, Witness AGX spent two months in prison. On cross-examination, Witness AGX clarified that he was not named in *Kangura*, that Ngeze had otherwise denounced him and used to address him as an accomplice when they met. He explained that the term for accomplice, *icyitso*, meant Tutsi, as did the word "enemy", because the Hutu had been taught to know that their enemy was the Tutsi.⁸¹⁸ The witness testified that Ngeze played videotapes in the kiosk in Gisenyi market where he sold his newspapers. In the one video he saw, in 1993, people were killing other people using traditional weapons. Ngeze commented that these were Tutsi killing Hutu in Burundi. After that, Witness AGX said the Hutu began to look at the Tutsi as if they wanted to beat them.⁸¹⁹

794. On the morning of 7 April 1994, at around 10 a.m., Colonel Nsengiyumva spoke in Gisenyi saying that the President had been killed by enemies and they were there without weapons, and these enemies might kill them as well. About two hundred people were there, including Witness AGX. By 1 p.m. that day, he said the town of Gisenyi had completely changed. There were men carrying traditional weapons, armed with panga and clubs, and some were carrying guns. That afternoon, at around 2 p.m., Witness AGX went to his friend's house. From there, at around 2.30 p.m., he saw Ngeze passing by on the road in a vehicle with *Interahamwe* and *Impuzamugambi* of the CDR aboard, armed with different kinds of weapons. Through a megaphone mounted on the vehicle Bikindi songs were playing. Ngeze also spoke through the megaphone, saying that the enemy had killed the Head of State and therefore it was necessary to flush out the enemy and his accomplices. When it was put to the witness in cross-examination that he could not have seen Ngeze on that day because Ngeze was in prison, he affirmed his testimony that he saw Ngeze that day.⁸²⁰

795. Witness AGX described another incident, some time before 15 April, in which Ngeze came to his friend's house and asked him if he was hiding accomplices, which the friend denied. Ngeze then said, "It's we, the *Impuzamugambi*, the *Interahamwe*, who are working. We have the right of life and death." Witness AGX was in another room and did

⁸¹⁷ *Ibid.*, pp. 69-74.

⁸¹⁸ T. 13 June 2001, p. 35; T. 11 June 2001, pp. 10-15.

⁸¹⁹ T. 11 June 2001, pp. 10-12, 15, 21-25; T. 12 June 2001, pp. 26-28.

⁸²⁰ T. 11 June 2001, pp. 34-39.

not see Ngeze but heard him and recognized his voice. While at his friend's house, the witness also heard Ngeze interviewed on the radio sometime between 7 and 29 April, either on the national radio station or RTL, and asked about the news in Gisenyi. He said that the work of looking for *Inyenzi* and their accomplices was finished, and that the small numbers of *Inyenzi* who were arrested, including Modeste Tabaro, had been killed. Witness AGX said he left his hiding place twice and from outside, he could see two roadblocks on the road to Zaire. One time, he saw Ngeze going back and forth between these roadblocks. He was with Anatole Nsengiyumva, and when asked what he was doing, the witness said he believed Ngeze was giving orders.⁸²¹

796. Witness AFX, a Tutsi man from Gisenyi, testified that he saw Ngeze twice after 6 April 1994. The first time was on a Friday in April, when the witness was going to pray. The second time was on a Wednesday in May. Before the killings in April 1994, he saw the weapons later used, guns and grenades, at Ngeze's house. He said Ngeze showed him the room in which the guns were, and he estimated that there were at least fifty guns.⁸²²

797. Witness AAM, a Tutsi farmer from Gisenyi, testified that towards the end of 1992, demonstrations were carried out by the CDR and MRND in Gisenyi town, not far from where he lived. Witness AAM said they did a lot of bad things including blocking roads, looting Tutsi who lived nearby and beating up Hutu who did not speak the same language as they did. This lasted for two weeks, towards the end of which the witness saw Barayagwiza wearing a CDR cap and accompanied by *Impuzamugambi*. They were shouting and singing *Tuzatsembatse* or "let's exterminate them". Among others present, he named Hassan Ngeze, who was transporting the *Impuzamugambi* in a pick-up vehicle and had a megaphone that he used. He was wearing a military uniform and carrying a gun. Witness AAM also saw Ngeze at a CDR rally in 1993, near the end of the year, after which CDR members who were there went on a rampage, maltreating Tutsi. Thereafter, also in 1993, he saw Ngeze driving the *Impuzamugambi* in a pick-up truck, taking them somewhere to be trained. Witness AAM saw Ngeze in early 1994 in the company of soldiers. It was in the evening, and he was carrying a weapon.⁸²³

798. Witness AEU testified that starting in 1992 and 1993, and continuing, Hassan Ngeze used to come to the shop where she worked in Gisenyi, seeking contributions for CDR from the people she worked for. He did this with all the merchants and was raising funds to buy weapons to be used for the killings, as well as uniforms. She described Ngeze as the "leader" and said he organized meetings, sometimes at the stadium and other times at the prefecture meeting room. The object of these meetings was to teach how people were going to be killed within the framework of the CDR. On cross-examination, Witness AEU clarified that the shop she worked in was on the main road, so she could see people going to the meetings. She would see Ngeze at the front of the convoy speaking into a megaphone, while many others would sing and bang on their vehicles, going to the CDR meeting. She saw this on many occasions. Ngeze was the one speaking into the megaphone, bragging about what he had done. He was saying that he

⁸²¹ T. 11 June 2001, pp. 35-36, 39, 41-43, 49-50.

⁸²² T. 3 May 2001, pp. 17-26, 37.

⁸²³ T. 12 Feb. 2001, pp. 102-105, 110-111.

was going to kill and exterminate, as had happened, and that he was going to do this to all the *Inyenzi*. He would be speaking from a vehicle, being driven as if he were the head of the country. On one occasion she heard Ngeze singing as he was going by, saying that they had killed people, *Inkotanyi*. On cross-examination, Witness AEU was questioned as to the term "extermination" and to whom it referred. She insisted that it was a reference to the Tutsi and not the *Inyenzi* or *Inkotanyi*. If they had talked about fighting the *Inyenzi*, she said, "they would go find them where they were and not hold their meetings where we were and should not kill ordinary citizens who had nothing to do with politics; but to go and find *Inyenzi*s wherever they were and kill them". Witness AEU is Tutsi but obtained a Hutu identity card in 1982 to help her secure employment.⁸²⁴

799. Witness ABE, a Tutsi man from Kigali, testified that he would see Hassan Ngeze sometimes calling members of the CDR using a megaphone, telling they should gather together to go and attend a meeting.⁸²⁵

800. Witness LAG, a Hutu from Gisenyi who attended the funeral of Martin Bucyana, testified that Ngeze was at the funeral with his camera, photographing the event. He said Ngeze was there as a journalist and in the crowd, when Witness LAG heard him say, "Our President has just died, but if Habyarimana were also to die, we would not be able to spare the Tutsi." The witness said he heard Ngeze's voice behind him and turned around and saw him while he was speaking.⁸²⁶

801. Witness AFB, a Hutu money changer, saw Ngeze in a blue Hilux vehicle with bodyguards who were *Impuzamugambi* and *Interahamwe*. He saw Ngeze near the place where he worked, which was right next to the office of *Kangura*. The witness met Ngeze about three times, and Ngeze said "How is it going *Inyenzi*?"⁸²⁷

802. In his testimony, Hassan Ngeze asserted repeatedly that Serushago was a liar, noting contradictions in his testimony. Ngeze introduced into evidence a photograph of Serushago's residence and stated that the distance from that house to the road was at least 25 metres, so that Serushago could not have seen someone driving a car from his house.⁸²⁸ He also repeated his assertion that he was in jail during this time. On cross-examination, another photograph was put to Ngeze of the residence of Serushago indicating a clear view from the building to the highway. Ngeze confirmed that it looked like the residence of Serushago but maintained that it was 25 to 35 metres from the house to the road.⁸²⁹ Ngeze also stated that Serushago could not have seen him on the morning of 7 April 1994 because he was in jail from 6 to 9 April 1994. He said that Serushago could not have seen him between 13 and 18 April 1994 because he was in jail during this period also.⁸³⁰

⁸²⁴ T. 26 June 2001, pp. 5-9, 32-36; T. 27 June 2001, pp. 119-120.

⁸²⁵ T. 26 Feb. 2001, p. 95.

⁸²⁶ T. 3 Sept. 2001, pp. 21-22.

⁸²⁷ T. 6 Mar. 2001, pp. 80-83.

⁸²⁸ Exhibit 3D244; T. 1 Apr. 2003, pp. 10-13.

⁸²⁹ T. 7 Apr. 2003, pp. 55-60.

⁸³⁰ T. 1 Apr. 2003, p. 5; T. 4 Apr. 2003, p. 22.

803. Ngeze testified that around 10 p.m. on 6 April 1994, after the President was killed in the plane crash, he was arrested and taken to Gisenyi prison where he remained until 9 April 1994 because of his prediction in *Kangura* of Habyarimana's death.⁸³¹ Ngeze produced a letter, not previously disclosed by the Defence pursuant to Rule 73ter, which he said he wrote at mid-day on 10 April 1994, after his release from prison on 9 April. The letter, dated 10 April 1994, was addressed to Colonel Anatole Nsengiyumva. It described his arrest as follows:

The day before yesterday, April 6 1994 at about 10 p.m., 5 soldiers coming from the military camp that's under your direction, among who a certain sub-lieutenant Dusabeyezu Eustache, have done [irruption] at my home with a lot of anger saying that they had received from you the order to catch me and to lead me alive or dead before you.⁸³²

804. In cross-examination, it was put to Ngeze that the reference in the letter to 6 April 1994 as "the day before yesterday" would indicate that the letter was written on 8 April 1994, when he claimed he was still in detention and could not therefore have typed a letter on that date. Ngeze responded, "My arrest was during the night 6 to 7. That means that we have one day on 7th and two days on 8th. On 9th I was released, in the evening when I wrote this letter."⁸³³ The letter itself states in the penultimate paragraph: "I have been released yesterday in the afternoon April 9th 1994."⁸³⁴

805. Ngeze was also questioned in cross-examination on his website, which mentions that he was often arrested in April but does not mention the arrest from 6 to 9 April 1994. Ngeze replied that the website was run by a friend and that the materials for it did not come from him. When it was put to him that the website address was on all his correspondence with the Tribunal, he explained that he used it as a header merely because it promoted his trial. When asked by the Chamber how the structured outline of his testimony, which he himself prepared and distributed to the court, had come to be on the website, he said he did not know.⁸³⁵

806. The Chamber requested Ngeze to furnish the dates of his various arrests from 1990 to 1994, together with the reasons for arrest, any charges that were brought, and the date of release. In response, Ngeze provided a document in which he wrote, *inter alia*, that he was arrested eight times from April to July 1994, without specifying the dates of arrest or providing the other information requested by the Chamber.⁸³⁶ In cross-examination, Ngeze was asked to read a document printed from his website, which said: "In that very month of April, I was many times carried to the military camp where they locked me in until the morning to be released." In this document he further indicated that he had been kept in custody six times in April 1994, taken by night and sent back in the following morning. Sometimes they would come in the morning to arrest him and then

⁸³¹ T. 31 Mar. 2003, pp. 31-33, 48.

⁸³² Exhibit 3D245E.

⁸³³ T. 4 Apr. 2003, p. 52.

⁸³⁴ Exhibit 3D245E.

⁸³⁵ Exhibit 3D244 (Structure, dated 24 Mar. 2003); T. 4 Apr. 2003, pp. 40-42; T. 7 Apr. 2003, p. 13.

⁸³⁶ Exhibit 3D246.

he was released the following day. In May he was locked in eight times, all in Gisenyi military camp. In June he was taken in three times. Ngeze reconciled the information in this document with the information in the document he had provided to the Chamber by differentiating "custody", which was being locked up, sometimes just for a few hours, from "arrest".⁸³⁷

807. Ngeze said that sometimes he was questioned when arrested, always by Colonel Nsengiyumva or others under his supervision. He testified that when he was arrested, on the night of 6 April 1994, he was questioned by a lieutenant who wanted to know how he knew that Habyarimana would be killed.⁸³⁸ Ngeze was questioned in cross-examination about a letter he wrote to Colonel Nsengiyumva, dated 10 May 1994, in which he reminded Nsengiyumva that he had not asked Ngeze how *Kangura* was able to predict the President's death. It was put to him that this letter showed that he was not in Nsengiyumva's custody from 6 to 9 April 1994 and was not questioned about this prediction. Ngeze explained that he was inviting Nsengiyumva in the letter to ask him how he knew what would happen rather than to kill him.⁸³⁹ Ngeze testified that Prosecution witnesses lied when they said they saw him in military attire. He stated that he wore Muslim attire when in Rwanda.⁸⁴⁰

808. A number of Defence witnesses testified to the date of Ngeze's arrest in April 1994. Witness BAZ2⁸⁴¹, Witness RM1⁸⁴², Witness RM5⁸⁴³, Witness BAZ6⁸⁴⁴, Witness RM19⁸⁴⁵, Witness BAZ9⁸⁴⁶ and Witness BAZ15⁸⁴⁷ testified that Ngeze was arrested on 6 April 1994. Witnesses RM13⁸⁴⁸ and Witness BAZ3⁸⁴⁹ testified that Ngeze was arrested just after Habyarimana's death. Witness RM2 testified that Ngeze was arrested on 6-7 April 1994.⁸⁵⁰ Witness BAZ1 testified that Ngeze was arrested the day before 6 April 1994 and was detained for three days.⁸⁵¹ Witness RM117 testified that Ngeze was arrested on 7 April 1994.⁸⁵² Witness RM112 testified that he found out on 7 April 1994 that Ngeze had been arrested.⁸⁵³ As to the date of Ngeze's release from prison, Witness RM5⁸⁵⁴ and Witness RM2⁸⁵⁵ testified that Ngeze was released on 9 April 1994. Witness

⁸³⁷ T. 4 Apr. 2003, pp. 40-44.

⁸³⁸ T. 31 Mar. 2003, p. 32.

⁸³⁹ *Ibid.*, p. 68; Exhibit 3D80F.

⁸⁴⁰ T. 31 Mar. 2003, p. 62.

⁸⁴¹ T. 29 Jan. 2003, p. 4.

⁸⁴² T. 14 Mar. 2003, p. 62.

⁸⁴³ T. 21 Mar. 2003, p. 4.

⁸⁴⁴ T. 15 Mar. 2003, p. 25.

⁸⁴⁵ T. 3 Mar. 2003, p. 6.

⁸⁴⁶ T. 28 Jan. 2003, p. 41.

⁸⁴⁷ T. 3 Mar. 2003, pp. 23-24.

⁸⁴⁸ T. 22 Jan. 2003, p. 4.

⁸⁴⁹ T. 15 Mar. 2003, p. 4.

⁸⁵⁰ T. 14 Mar. 2003, p. 72.

⁸⁵¹ T. 27 Jan. 2003, pp. 55-56.

⁸⁵² T. 24 Mar. 2003, p. 18.

⁸⁵³ T. 13 Mar. 2003, p. 3.

⁸⁵⁴ T. 21 Mar. 2003, p. 4.

⁸⁵⁵ T. 14 Mar. 2003, p. 72.

BAZ2⁸⁵⁶, Witness RM112⁸⁵⁷ and Witness RM1⁸⁵⁸ testified that Ngeze was released on 10 April 1994. Witness BAZ15 testified that Ngeze was released after about six days in custody.⁸⁵⁹ Witness BAZ9 testified that she saw Ngeze on 10 April 1994.⁸⁶⁰ Witness BAZ31 testified that Ngeze went into hiding from 6 April 1994.⁸⁶¹ All of these witnesses learned of Ngeze's arrest from other people. Witness RM112⁸⁶², Witness RM19⁸⁶³ and Witness BAZ15⁸⁶⁴ testified that they heard about the arrest from Ngeze himself. The other witnesses heard about the arrest from people on the street or other Muslims, or knew of it as a matter of common knowledge.

809. Defence Witnesses RM13⁸⁶⁵, RM10⁸⁶⁶, BAZ31⁸⁶⁷, BAZ1⁸⁶⁸, BAZ4⁸⁶⁹, BAZ9⁸⁷⁰, BAZ2⁸⁷¹, BAZ33⁸⁷², BAZ10⁸⁷³, RM19⁸⁷⁴, BAZ15⁸⁷⁵, RM5⁸⁷⁶, RM117⁸⁷⁷, RM112⁸⁷⁸, RM113⁸⁷⁹, RM114⁸⁸⁰, RM118⁸⁸¹, RM115⁸⁸², RM200⁸⁸³, RM1⁸⁸⁴, RM2⁸⁸⁵, RM300⁸⁸⁶, BAZ3⁸⁸⁷, BAZ5⁸⁸⁸, BAZ6⁸⁸⁹, BAZ8⁸⁹⁰ and BAZ11⁸⁹¹ testified that Ngeze wore Muslim or civilian attire, not military uniform, and that he was not armed.

⁸⁵⁶ T. 29 Jan. 2003, p. 5.

⁸⁵⁷ T. 13 Mar. 2003, p. 4.

⁸⁵⁸ T. 14 Mar. 2003, p. 62.

⁸⁵⁹ T. 3 Mar. 2003, pp. 23-24.

⁸⁶⁰ T. 28 Jan. 2003, p. 41.

⁸⁶¹ T. 27 Jan. 2003, p. 36.

⁸⁶² T. 13 Mar. 2003, p. 3.

⁸⁶³ T. 3 Mar. 2003, pp. 6, 23.

⁸⁶⁴ T. 3 Mar. 2003, pp. 23-24.

⁸⁶⁵ T. 22 Jan. 2003, p. 2.

⁸⁶⁶ T. 20 Jan. 2003, p. 9.

⁸⁶⁷ T. 27 Jan. 2003, pp. 4-7.

⁸⁶⁸ *Ibid.*, p. 60.

⁸⁶⁹ T. 28 Jan. 2003, p. 19.

⁸⁷⁰ *Ibid.*, pp. 41-42.

⁸⁷¹ T. 29 Jan. 2003, p. 5.

⁸⁷² *Ibid.*, p. 32.

⁸⁷³ *Ibid.*, p. 45.

⁸⁷⁴ T. 3 Mar. 2003, pp. 4-6.

⁸⁷⁵ *Ibid.*, p. 23.

⁸⁷⁶ T. 21 Mar. 2003, p. 3.

⁸⁷⁷ T. 24 Mar. 2003, pp. 17-18.

⁸⁷⁸ T. 13 Mar. 2003, p. 7.

⁸⁷⁹ *Ibid.*, p. 29.

⁸⁸⁰ *Ibid.*, p. 55.

⁸⁸¹ *Ibid.*, p. 73.

⁸⁸² T. 14 Mar. 2003, p. 4.

⁸⁸³ *Ibid.*, p. 26.

⁸⁸⁴ *Ibid.*, p. 62.

⁸⁸⁵ *Ibid.*, p. 73.

⁸⁸⁶ *Ibid.*, p. 88.

⁸⁸⁷ T. 15 Mar. 2003, p. 3.

⁸⁸⁸ *Ibid.*, p. 12.

⁸⁸⁹ *Ibid.*, p. 24.

⁸⁹⁰ *Ibid.*, p. 59.

⁸⁹¹ *Ibid.*, p. 75.

810. Defence Witnesses BAZ15⁸⁹², RM5⁸⁹³, RM1⁸⁹⁴, RM115⁸⁹⁵ and RM117⁸⁹⁶ said that neither Ngeze's Peugeot nor his Hilux was ever equipped with a megaphone. Witness BAZ15 said that Hassan Gitoki had an old Peugeot with a megaphone and that Gitoki used this to praise the *Interahamwe*. He said that Gahutu had a yellow Toyota Starlet and that Gahutu and Gitoki took turns with the megaphone.⁸⁹⁷ Defence Witnesses RM5⁸⁹⁸ and RM1⁸⁹⁹ confirmed this and said that Hassan Sibomana had a vehicle with a megaphone which he used to call people to MRND meetings. RM1 also said that Hassan Bagoye had a microphone in his vehicle. He testified that Hassan Ngeze was neither a member of the CDR nor a member of the MRND and so he could not have had microphones and loudspeakers in his vehicle. RM1 informed the Court that Gisimba had mistaken Hassan Ngeze for Hassan Gahutu and that Gisimba had never said it was Ngeze, he had just said Hassan.⁹⁰⁰ Both Defence Witness RM200⁹⁰¹ and RM113⁹⁰² testified that Hassan Gitoki had a vehicle with a megaphone.

Credibility of Witnesses

811. The Chamber has found the testimony of Witness AHA, Witness AHI, Witness AFX, Witness AAM, and Witness LAG to be credible in paragraphs 132, 775, 712, 711 and 333 respectively. The credibility of Hassan Ngeze's testimony is discussed in section 7.6.

812. **Witness EB** was cross-examined with regard to three written statements he had made. He was asked why Hassan Ngeze was mentioned in only one of the three statements. He explained that the other statements were about other individuals. The witness was asked why he had not mentioned incidents such as the looting of his parents' home and the insertion of metal rods into the body of his pregnant sister in his statements. He replied that he had only answered questions that were put to him, and at that time, because of the horrors they had lived through, he had not yet returned to a state that would have allowed him to make normal responses. In his statement of 8 December 1997, Witness EB did refer to the torture and mutilation of Tutsi victims before finishing them off "by driving umbrella stems into their genitals".⁹⁰³ He confirmed that they did this to his sister's body after she was killed and said it was known that they did it to other persons.⁹⁰⁴ Witness EB was questioned on the sequence of events following his injury and leading to his escape to Goma, as reflected in his statement of 2 August 1997 and his testimony. The Chamber found his explanations to these and other questions reasonable

⁸⁹² T. 3 Mar. 2003, p. 34.

⁸⁹³ T. 21 Mar. 2003, p. 7.

⁸⁹⁴ T. 14 Mar. 2003, p. 68, 69.

⁸⁹⁵ *Ibid.*, p. 6.

⁸⁹⁶ T. 13 Mar. 2003, p. 33.

⁸⁹⁷ T. 3 Mar. 2003, pp. 33-34.

⁸⁹⁸ T. 21 Mar. 2003, p. 6.

⁸⁹⁹ T. 14 Mar. 2003, pp. 63-64.

⁹⁰⁰ *Ibid.*, pp. 68-70.

⁹⁰¹ *Ibid.*, p. 32.

⁹⁰² T. 13 Mar. 2003, p. 33.

⁹⁰³ Exhibit 3D37.

⁹⁰⁴ T. 17 May 2001, pp. 3-4.

and adequate. Witness EB was clear in his account of events, and the Chamber notes that he was careful to distinguish what he did and saw from what he was reporting, in the context of information he learnt from his cousin about what happened at the *Commune Rouge*. For these reasons, the Chamber finds the testimony of Witness EB credible.

813. **Witness AGX** was cross-examined extensively. He affirmed that he saw Ngeze in Gisenyi in December 1990 and January 1991 when it was put to him that Ngeze was in Kigali at that time, and he affirmed that he saw Ngeze on the afternoon of 7 April 1994 when it was put to him that Ngeze was in prison.⁹⁰⁵ He rejected the suggestion by Counsel that the videotape he watched in Ngeze's kiosk was a BBC broadcast on the murder of President Ndadaye, noting that the programme stated that it was a tape showing how the Hutu in Burundi were being killed by the Tutsi.⁹⁰⁶ He was asked about the conditions and physical circumstances in which he watched this video, and he stated that he could see Ngeze, who had a microphone, and that he could hear the television clearly.⁹⁰⁷ Witness AGX acknowledged that when he saw Ngeze speak to Nsengiyumva, he could not hear what was being said, conceding that it was possible that Ngeze was interviewing him.⁹⁰⁸ In response to the suggestion by Counsel that Ngeze could also have been interviewing people at the roadblocks in his capacity as an investigative journalist, the witness said that his acts and his words regarding the *Interahamwe* and their killings showed that Ngeze was not interviewing people.⁹⁰⁹ Witness AGX was vigorously cross-examined on the location of the house in which he sought shelter, and the view he had from his location when he saw Ngeze at the roadblock. He could not remember certain details such as the exact date and what shoes Ngeze was wearing, but he demonstrated that he had a full and unobstructed view and affirmed that it was Ngeze that he saw at the roadblock.⁹¹⁰ When asked whether he supported the armed invasion by the RPF, Witness AGX replied that he supported them in their efforts to return to their country and acknowledged that he was an RPF sympathizer.⁹¹¹ He denied that he was arrested for this reason in February 1991, saying that while some were arrested for this reason, other ordinary citizens were arrested because they were Tutsi and therefore considered to be *Ibyitso*.⁹¹² Witness AGX was questioned on his political views, which he stated.⁹¹³ He was also questioned on the information in his statement about his wife and children. He explained inconsistencies, such as date references, adequately.⁹¹⁴ The witness stated that he was a member of Ibuka. The testimony of Witness AGX was clear and consistent, in the Chamber's view, and it was not effectively challenged in cross-examination. For this reason, the Chamber finds the testimony of Witness AGX to be credible.

⁹⁰⁵ T. 12 June 2001, pp. 30-31.

⁹⁰⁶ T. 13 June 2001, pp. 3-7.

⁹⁰⁷ *Ibid.*, pp. 11-28.

⁹⁰⁸ *Ibid.*, pp. 31-33.

⁹⁰⁹ T. 14 June 2001, pp. 20-21.

⁹¹⁰ T. 13 June 2001, pp. 40-72; T. 14 June 2001, pp. 1-28.

⁹¹¹ T. 14 June 2001, pp. 111-113.

⁹¹² T. 18 June 2001, pp. 4-5.

⁹¹³ *Ibid.*, p. 12.

⁹¹⁴ *Ibid.*, pp. 41-49, 78-80.

814. **Witness AEU** acknowledged on cross-examination that she did not go to CDR meetings but said that it was obvious that Ngeze was a leader because she saw that he was the one in front and everyone else followed him. She was questioned extensively on the identity of her employer and the location of her place of employment in 1994. Although not readily cooperative in her responses, she finally stated that there was no wall between her shop and the road. Witness AEU was questioned by the Chamber as to how she knew money collected by Ngeze from her employer was for weapons. When first asked, she gave a number of answers, none of which was directly responsive to the question. When asked again later, she said that Ngeze was seeking contributions for the CDR and to her it was obvious that the money was for purchase of weapons. It was put to Witness AEU that in her March 1999 statement she said that Hassan Gitoki told her he had made a deal with her boss for one thousand dollars, and she did not mention Ngeze in this account of what happened. She explained that Ngeze had sent Gitoki to see her, and that Gitoki was Ngeze's subordinate and would not do anything without consulting Ngeze. The Chamber notes that in her statement, after mentioning that Gitoki came to find her and just prior to mentioning the deal for one thousand dollars, Witness AEU described Gitoki as an *Interahamwe* chief appointed by Ngeze. Asked why she went willingly with Gitoki when he came to her house, whereas she did not take up the offer of protection made by the woman she knew, sent by Ngeze, she explained that when Gitoki came with *Interahamwe*, if she had not opened the door they would have demolished it. She thought they had come to kill her. Witness AEU testified that Hassan Ngeze had a scar on his nose. She acknowledged in cross-examination that no such scar was visible and suggested that he might have used some product that led to its disappearance. The witness was not well when she testified and complained of headaches and dizziness, referring several times to the head wounds she had sustained. She was asked whether problems with her memory would affect the reliability of her testimony, and she replied that what she did not remember she would not speak of, recalling that she made a solemn declaration to speak the truth.⁹¹⁵ She testified that she was a member of Ibuka. The Chamber notes that Witness AEU was not particularly helpful in responding to questions in cross-examination. Nevertheless, she established that she was able to see the events she had described and that the contents of her statement were not inconsistent with her testimony. For these reasons, the Chamber finds the testimony of Witness AEU to be credible.

815. **Witness AFB** was questioned in cross-examination by Counsel for Barayagwiza with regard to his testimony on the CDR. Counsel suggested that the CDR was like any other party seeking votes and asked him what was wrong with people who have something to say about Hutu doctrine. Basing his answer on events in Rwanda, the witness said these were basically bad ideals and people were being killed. The witness was asked if he was a magician, or on what basis he could say that Barayagwiza and his friends planned the genocide. Witness AFB repeated his evidence that Barayagwiza had said at the rally, "we shall exterminate you", which the *Interahamwe* and *Impuzamugambi* youth groups started to chant, and this led to actions.⁹¹⁶ Counsel for Ngeze questioned Witness AFB on some details in his statement, and the witness

⁹¹⁵ T. 27 June 2001, pp. 4-6, 15; 28 June 2001, pp. 13-25, 35-36, 69, 78, 82.

⁹¹⁶ T. 6 Mar. 2001, pp. 59-62.

corrected the dates on which he left and returned to Rwanda in 1994. He also specified the dates for several incidents he described relating to his identity documents.⁹¹⁷ Witness AFB was asked about his relationship with Ngeze and statements he had made about Ngeze's role in *Kangura*, which he clarified.⁹¹⁸ He identified photographs of Ngeze and his brother and said he could distinguish between them.⁹¹⁹ Counsel suggested that the name given as Witness AFB's surname in his statements was not his true name and sought to inspect his identity documents and passport, submitting that he came under a false name. The witness clarified that he had made changes to his name for religious reasons. He said he had not been paid to testify, as suggested by Counsel, and that such a thing would be incompatible with his religion.⁹²⁰ The Chamber notes that Witness AFB's testimony was not effectively challenged in cross-examination. No inconsistencies or contradictions of any significance were demonstrated. For these reasons, the Chamber finds the testimony of Witness AFB to be credible.

816. **Omar Serushago**, an *Interahamwe* leader from Gisenyi, pleaded and was found guilty of genocide and crimes against humanity on 5 February 1999 and sentenced to fifteen years' imprisonment. His appeal against this sentence was dismissed on 6 April 2000, and he is currently serving his sentence. According to his plea, Serushago personally killed four Tutsi, and 33 other people were killed by militiamen under his authority. He testified that he pleaded guilty after becoming aware that he was accused of committing crimes in Rwanda and was being sought by the Tribunal. The witness stated that he did so without any promises being made to him or any threats. He became an informant for the Office of the Prosecutor to assist the Tribunal to arrest the killers and make public what happened in Rwanda. Serushago participated in the arrest of Hassan Ngeze.⁹²¹ Serushago is a Hutu.⁹²² His mother and wife are Tutsi.⁹²³

817. Serushago was extensively cross-examined, and a number of significant inconsistencies and contradictions in his testimony were raised. On cross-examination by Counsel for Barayagwiza, Serushago said that it was at 10 a.m. on 7 April that he saw Ngeze in the Hilux transporting guns, machetes, and grenades, and that he had gone to the shop to fetch his gun before he saw Ngeze. Having initially testified that he saw Ngeze at 7 a.m. on 7 April, when asked to explain the difference in the time, Serushago said it was a small confusion and that there was not much difference between 7 a.m. and 10 a.m.⁹²⁴ Serushago testified that Colonel Rwendeye attended two death squad meetings in 1993 and early 1994. Confronted with evidence that Colonel Rwendeye died in 1990, he challenged the evidence and replied that Colonel Rwendeye had died at the end of 1992. When it was pointed out to him that this reply did not make sense, Serushago tried to deny his testimony, saying he had said the meetings took place at the end of 1992 and

⁹¹⁷ *Ibid.*, pp. 69-73.

⁹¹⁸ *Ibid.*, pp. 95-102.

⁹¹⁹ T. 7 Mar. 2001, p. 38.

⁹²⁰ *Ibid.*, p. 40.

⁹²¹ *Ibid.*, pp. 34-37.

⁹²² T. 15 Nov. 2001, p. 5.

⁹²³ *Ibid.*, pp. 9, 12, 22; T. 22 Nov. 2001, pp. 96-97.

⁹²⁴ T. 22 Nov. 2001, pp. 63-66.

1993 rather than the end of 1993 and 1994.⁹²⁵ Serushago mentioned in his testimony the names of three Tutsi who were killed in 1993 on the orders of Barayagwiza. Yet he said the names of the victims were mentioned at the 1994 meeting as well as the 1993 meeting. When he was asked how this was possible since by 1994 they had already been killed, he said they were killed in 1993 but that in the 1994 meeting other victims were named.⁹²⁶ Serushago testified both that he heard Baryagwiza give his men these orders to kill, and that he did not hear Barayagwiza say this but rather learned it from the men themselves, who told him about it. These inconsistencies and others relating to Serushago's testimony on the death squads are discussed in more detail in paragraph 816.

818. Serushago was also cross-examined regarding inconsistencies between his testimony and his written statements. In his statement of 10 March 1998, he said that he did not know whether the person he saw Ngeze shoot was a woman or a boy. He testified that when the bodies were buried, having been undressed for burial, he realized it was a man. He did not explain why in his 1998 statement he said he did not know the sex of the person killed, when in fact he knew that the person killed was a man from the day he was killed. He simply maintained that it was a man who had been killed. In subsequent questioning by the Chamber about his recollection, Serushago said that when he thinks about the pile of bodies at the *Commune Rouge*, it might bring him to tears, but that when he had thought about it later he realized it was a man. At the time of the killing, he was close to the man and there was no obstruction in his view. In subsequent further questioning by the Chamber as to why he did not specify the sex of the person killed, he said that even though he had himself killed, the sight of blood was terrible. He said he took precautions in his interview, telling himself that he might forget or make a mistake. He again made reference to all the blood he had seen.⁹²⁷

819. In cross-examination, Serushago was questioned about his statement of 3 February 1998, which mentioned neither Ngeze nor the *Commune Rouge*. He said that from 13 to 20 April 1994, there was no incident at *La Corniche* roadblock and that they did not participate in the operations.⁹²⁸ He was asked how he could have been at the *Commune Rouge* as he said he was at *La Corniche* roadblock during this same time. Serushago replied that the distance between the roadblock and the *Commune Rouge* was not far, about three kilometers, and that he could go back and forth. He affirmed that nothing happened during this period at the roadblock.⁹²⁹ On cross-examination, Serushago was confronted with a statement in which he mentioned only five militia groups in Gisenyi, rather than six, and did not mention Ngeze. The statement records Serushago's answer to a follow-up question about Ngeze's brother, in which Serushago affirmed that Ngeze's brother was the leader of another group and part of the CDR. Serushago reaffirmed his testimony that there were six groups and said that although he had not mentioned the sixth group in his statement, it was made up of Ngeze and his

⁹²⁵ T. 21 Nov. 2001, pp. 122-126.

⁹²⁶ T. 27 Nov. 2001, pp. 74-82.

⁹²⁷ T. 20 Nov. 2001, pp. 71-73; T. 27 Nov 2001, pp. 67-69, 85-86.

⁹²⁸ Exhibit 3D72.

⁹²⁹ *Ibid.*; 20 Nov 2001, pp. 82-88; Exhibit 3D72.

brother.⁹³⁰ The Chamber notes that in the statement, which recorded questions and answers, Serushago was not asked about Ngeze's role in that group.

820. There are many other inconsistencies between Serushago's testimony and his statements that relate to his evidence regarding Barayagwiza. These inconsistencies, which are detailed in paragraph 816 include a statement made by Serushago in February 1998 that he only knew of one meeting at the St. Fidel Institute, and that he did not participate in it but rather received an account of it from Kiguru, the child of his older brother. Serushago said that he had been speaking "half baked French" without an interpreter and mistakes might have been made. On re-examination, Serushago affirmed his testimony that both he and Kiguru had attended these meetings.⁹³¹ In his testimony, Serushago recounted an incident at the Meridien Hotel in June 1994 involving the killing of a Hutu nun at the *Commune Rouge*, in which Barayagwiza and others played a role in resolving a conflict that arose in the aftermath of the killing. Yet in his statement he did not mention Barayagwiza as having played a role in this incident, only the others. Serushago reaffirmed his testimony and said he must have made a mistake.⁹³² In cross-examination, many such omissions were highlighted.

821. The Chamber found Serushago to be confused and at times incomprehensible in his testimony. He did not narrate events clearly and had difficulty answering questions clearly. In many instances the Chamber was eventually able to understand and make sense of his testimony, with the assistance of further examination. Gaps remain, however, and Serushago's responses to questions on cross-examination often did not make sense. For example, he was questioned extensively on what evidence he had of the existence of the death squad. The proof, he answered, was that the members of the death squad prepared the genocide and he said he was speaking of Barayagwiza, Ngeze, *Kangura* and RTL. ⁹³³ The Chamber noted that he often added more details that were incriminating to the Accused than were in his statements, mentioning for the first time in his testimony their presence at meetings or their role in training of *Interahamwe* or distribution of weapons. In his statements, Serushago also tended to minimize his own participation in the events recounted. In some cases, the Chamber notes that there are explanations for these omissions. Serushago was not asked about Ngeze's role in the CDR militia, for example, when he only mentioned Ngeze's brother. He was specifically asked only about Ngeze's brother in the question put to him.

822. The Chamber made a repeated effort, as did Counsel, to clarify Serushago's testimony on the killing of a Tutsi man at the *Commune Rouge*. Serushago's explanation that he only identified the sex of the victim subsequent to the killing does not explain why he did not know several years later in an interview with investigators whether the victim was a woman or a boy. Serushago was unable to address this question clearly. What the Chamber understood from his several responses is that the killings at *Commune Rouge* were traumatic for him and that he is still haunted by memories of all the blood he

⁹³⁰ T. 19 Nov. 2001, pp. 116-120.

⁹³¹ T. 21 Nov 2001, pp. 96-106; T. 27 Nov 2001, pp. 25-26.

⁹³² T. 22 Nov. 2001, pp. 76-78, 80.

⁹³³ *Ibid.*, pp. 66-71.

saw there. He said he was concerned when questioned by investigators that he would forget or make a mistake, and he answered cautiously, subsequently recalling that it was a man who had been killed. The Chamber notes that Serushago testified that he did not know the sex of the Tutsi killed at the time of the killing, but he discovered it later that day before the body was buried. While it is not impossible that recalling the moment of execution, Serushago might as a result of trauma have failed to remember the sex of the victim at that moment, this failure in any event diminishes the reliability of his evidence.

823. Several substantial contradictions arose during the course of Serushago's testimony, such as the fact that Colonel Rwendeyc could not have been present at a meeting in 1993 or 1994, as he was reported to have died in 1990. Even if he died in 1992 as Serushago maintained, he still could not have attended meetings in 1993 or early 1994, as Serushago had testified he did. His subsequent alteration of the meeting dates, while not credible, similarly could, in the view of the Chamber, reflect an effort by the witness to make sense of his scattered recollection. Nevertheless, errors of this nature directly affect the reliability of Serushago's evidence regarding the presence of others, including Barayagwiza and Ngeze, at these and other meetings.

824. Counsel for Ngeze suggested that Serushago had been paid by the Office of the Prosecutor to testify. Serushago replied that the money he had received, approximately \$5,000, was to pay for taxis and assist the Prosecution in arrests.⁹³⁴ Serushago acknowledged that he did not mention Ngeze in his guilty plea agreement, and the Chamber notes this omission.⁹³⁵ The Chamber accepts that the money paid to Serushago was for his expenses incurred over the extended period of time in which he was cooperating with the Prosecutor in investigations. Recognizing that Serushago is an accomplice and in light of the confusion and inconsistency of his testimony, although the Chamber accepts many of the clarifications and explanations offered by Serushago, it considers that his testimony is not consistently reliable and accepts his evidence with caution, relying on it only to the extent that it is corroborated.

Discussion of Evidence

825. Serushago's evidence that Hassan Ngeze was transporting arms in a red Hilux vehicle on the morning of 7 April 1994 is corroborated by the evidence of Witness EB that he saw Ngeze on the morning of 7 April in a red taxi with a loudspeaker. Witness AHI saw Ngeze early in the morning, in military gear, carrying a gun. Witness AGX also saw Ngeze on 7 April at around 2.30 p.m., passing by on the road in a vehicle with *Interahamwe* and *Impuzamugambi*, armed with different kinds of weapons and speaking through a megaphone, calling on the public to flush out the enemy and enemy accomplices. Witness EB gave a clear and detailed account of an attack that day against the Tutsi population in Gisenyi by the *Interahamwe*, an attack in which he and his family were targeted as victims. He saw his brother killed, the body of his pregnant sister sexually violated, and his mother attacked with a nail studded club and killed. He himself was severely injured. Although there is no evidence that he was present during these

⁹³⁴ T. 19 Nov. 2001, pp. 20-27; Exhibit 3D73.

⁹³⁵ T. 19 Nov. 2001, pp. 1-2, Exhibit 3D72.

killings, this attack was ordered by Hassan Ngeze, communicated through a loudspeaker from his vehicle. Ngeze ordered the *Interahamwe* to kill the Tutsi and ordered some of them to go to *Commune Rouge* to dig graves. The bodies, and there were many according to Witness EB, were subsequently taken to *Commune Rouge* and buried. The description of the attack suggests that it was planned systematically. Weapons were distributed from a central location, Samvura's house, where Witness EB saw the *Interahamwe* picking them up. Graves were dug in advance, and vehicles were organized to transport the bodies. The brief dialogue recounted between the *Interahamwe* and Witness EB's mother, before she was clubbed in the head, indicates that the attackers and their victims knew each other. The attackers were wondering why she was still alive, signifying that the *Interahamwe* intended to kill all their Tutsi neighbours.

826. Ngeze has raised the defence of alibi for 7 April 1994. The Chamber has considered his evidence and the evidence of Defence witnesses, all of which is riddled with inconsistencies. Ngeze testified that he was arrested on the evening of 6 April and released on 9 April. The letter to Colonel Nsengiyumva, which has language suggesting it was written on 8 April, caused Ngeze to change his testimony to say that he had written it on the evening of 9 April, rather than on 10 April, as the letter states and as he initially testified. In counting the two days from 6 April, in an apparent effort to stretch to 9 April, Ngeze also mentioned 7 April as an arrest date. The Alibi Notice filed by Counsel for Ngeze states that Ngeze was incarcerated by the military on 7 April 1994.⁹³⁶ Similarly, the response by Defence Counsel on Admission of Facts states that Ngeze was incarcerated on 7 April 1994, as does the Closing Brief of Counsel for Ngeze.⁹³⁷ In light of the last minute and irregular introduction of this letter into evidence, and the questions it raises, the Chamber notes and shares the suspicion expressed by the Prosecution regarding the authenticity of this document.

827. Despite a specific request from the Chamber, Ngeze was unable to provide simple information relating to the alibi, namely the dates of and reasons for his arrests. He merely stated that he had been arrested eight times from April to June 1994. This response does not in any way substantiate the alibi. Moreover, it differs significantly from the information on the internet website bearing Ngeze's name, which describes a number of short overnight arrests in April and does not mention his arrest from 6-9 April 1994. The evidence indicates that Ngeze controls this website, as there is information on it that could only have come from him and as he lists the address of the website on all his correspondence. The Chamber notes that Counsel for Ngeze expressed concern in December 2002 that Ngeze was putting confidential information on the internet.⁹³⁸

828. The Defence witnesses are also thoroughly inconsistent with regard to dates on which Ngeze was arrested and released in April 1994. While a number of witnesses testified that he was arrested on 6 April, one witness said he was arrested on 5 April, one

⁹³⁶ Notice of Alibi filed 20 January 2003, pursuant to Rule 67(a)ii of the Rules of Procedure and Evidence. ICTR Ref. No. 30653-30651.

⁹³⁷ Rule 73bis response filed by Defence Counsel on Admission of Facts on 16 October 2000 (ICTR. 3786-3737), p. 36, para. 5.30; Defence Closing Brief, p. 125, para. 600.

⁹³⁸ T. 4 Dec. 2002, p. 9.

witness stated he was arrested on 7 April, and one witness testified that he went into hiding on 6 April, not that he was arrested at all. Several witnesses testified that Ngeze was released on 9 April and several testified that it was on 10 April. Most importantly, none of the Defence witnesses had evidence other than hearsay that Ngeze was arrested at all. Their sources of information were vague, with the exception of three witnesses who learned of the arrest from Ngeze himself.

829. In light of the inconsistencies in Ngeze's own testimony, as well as among the Defence witnesses, and the unreliable nature and source of the information to which they testified, the Chamber finds that the defence of alibi is not credible (see paragraph 99). Four Prosecution witnesses saw Ngeze on 7 April 1994. Their eyewitness testimony under oath is not shaken by the hearsay of the Defence witnesses or the contradictory testimony of Ngeze himself. Moreover, the Chamber notes that even if Ngeze had been arrested on 6 or 7 April, depending on the time of his arrest and the length of his detention, which could have been a few hours, he would not have been precluded from participation in the events described by the Prosecution witnesses.

830. Serushago testified to another scene of slaughter a week later, some time between 13 and 20 April at the *Commune Rouge*. Serushago said he saw Ngeze shoot a Tutsi man after asking why he had been kept waiting and not killed immediately. The shooting was to be an example for others of how to kill. There is no corroboration of Serushago's testimony, and the Chamber cannot rely solely on his testimony to substantiate this charge against Ngeze. The Chamber notes the evidence of Witness EB, that his cousin told him that he had been at *Commune Rouge* and saw Ngeze there, inspecting dead bodies and finishing off those who were not completely dead. Although the Chamber considers Witness EB reliable, this evidence is hearsay and in no way connected to the killing of the Tutsi man referred to by Serushago. In the view of the Chamber, it cannot be relied on without further corroboration to sustain a finding of grave consequence to the Accused.

831. Witness AHI testified that Ngeze took part in the distribution of weapons on the evening of 8 April 1994, following a meeting that day in which he made representations on behalf of the *Impuzamugambi* regarding their need for additional weapons. Witness AFX saw at least fifty guns in Ngeze's house, which Ngeze himself showed the witness. Omar Serushago testified that he saw Ngeze on the morning of 7 April transporting weapons, including guns, grenades and machetes. He saw him again between 13 and 20 April with the same vehicle, parked and containing guns, grenades and machetes. Serushago said that Ngeze and his brother were members of a group that met every evening from April to June 1994 to report on the killings of Tutsi, and that Ngeze came often to these meetings. The Chamber accepts the evidence of Witness AHI and Witness AFX that Ngeze stored and distributed weapons, and played a role in securing weapons for the *Impuzamugambi*. This evidence corroborates the testimony of Serushago that he saw Ngeze with weapons in his vehicle.

832. A number of Prosecution witnesses saw Ngeze dressed in military attire and carrying a gun. Ngeze maintains that these witnesses are lying, and a number of Defence

witnesses testified that he wore Muslim or civilian attire, not military attire, and that he did not carry a gun. The Chamber accepts the evidence of the Defence witnesses that they saw Ngeze in Muslim or civilian attire, unarmed. This does not preclude the possibility that there were other occasions on which he dressed in military attire and was armed. The Chamber notes that in cross-examination, Witness RM 13 was shown a picture of Ngeze in *Kangura* dressed in military attire. The witness stated that he had never seen Ngeze dressed in that manner, illustrating that the testimony of these Defence witnesses is not necessarily inconsistent with the testimony of the Prosecution witnesses on this point.

833. Witness AHI saw Ngeze at roadblocks in Gisenyi in 1994 and named him as among those who had set up additional roadblocks in 1994. He testified that Ngeze manned or monitored a roadblock and gave instructions to others at the roadblocks: to stop and search vehicles, to check identity cards, and to "set aside" persons of Tutsi ethnicity. These Tutsi were transported to and killed at the *Commune Rouge*. Omar Serushago testified that Ngeze was moving around Gisenyi town selecting Tutsi at roadblocks and directing them to the *Commune Rouge* to kill them. He said he personally saw Ngeze selecting Tutsi at roadblocks several times. The Chamber notes that the testimony of Witness AHI corroborates the testimony of Serushago that Ngeze played an active and supervisory role in the identification and targeting of Tutsi at roadblocks, who were subsequently killed at the *Commune Rouge*.

834. Many Prosecution witnesses testified that they saw Ngeze in a vehicle with a megaphone. Omar Serushago testified that in February 1994, following the death of Bucyana, Ngeze drove around in his vehicle, which had a megaphone mounted on it, saying that this was it for the Tutsi, after receiving a fax from Barayagwiza. Witness ABE saw Ngeze calling CDR members to meetings. Witness AAM saw him transporting *Imuzamugambi* in a pick-up truck with a megaphone at a CDR demonstration in Gisenyi, where *Tuzatsembatsembe*, or "let's exterminate them", was chanted. Witness AEU would see him at the front of the convoy on the way to CDR meetings, speaking into the megaphone and saying he was going to kill and exterminate the *Inyenzi*, meaning the Tutsi. A number of Defence witnesses testified that Ngeze did not have, or could not have had, a megaphone in his vehicle, although several did mention other people named Hassan who had megaphones and might have been confused with Ngeze. Again the Chamber notes that this evidence does not preclude the possibility that Prosecution witnesses did see Ngeze with a megaphone. The testimony of the Prosecution witnesses indicates that Ngeze frequently used a megaphone in conjunction with his vehicle to drive around and mobilize CDR members and others against the *Inyenzi*, who were understood to be the Tutsi.

835. Witness AGX testified that Ngeze personally denounced him and others as enemy accomplices and would address him as *icyitso*, or accomplice, when they met. Witness AFB said Ngeze regularly addressed him as *Inyenzi*. Witness LAG heard and saw Ngeze say at the funeral of Bucyana that if Habyarimana were to die "we would not be able to spare the Tutsi". These comments are a further and clear indication that Ngeze was determined to target the Tutsi population and that he was vocal and active in this effort.

Factual Findings

836. The Chamber finds that Hassan Ngeze ordered the *Interahamwe* in Gisenyi on the morning of 7 April 1994 to kill Tutsi civilians and prepare for their burial at the *Commune Rouge*. Many were killed in the subsequent attacks that happened immediately thereafter and later on the same day. Among those killed were Witness EB's mother, brother and pregnant sister. Two women, one of whom was Ngeze's mother, inserted the metal rods of an umbrella into her body. The attack that resulted in these and other killings was planned systematically, with weapons distributed in advance, and arrangements made for the transport and burial of those to be killed.

837. The Chamber finds that Ngeze helped secure and distribute, stored, and transported weapons to be used against the Tutsi population. He set up, manned and supervised roadblocks in Gisenyi in 1994 that identified targeted Tutsi civilians who were subsequently taken to and killed at the *Commune Rouge*. Ngeze often drove around with a megaphone in his vehicle, mobilizing the population to come to CDR meetings and spreading the message that the *Inyenzi* would be exterminated, *Inyenzi* meaning, and being understood to mean, the Tutsi ethnic minority. At Bucyana's funeral in February 1994, Ngeze said that if President Habyarimana were to die, the Tutsi would not be spared.

7.4 Saving Tutsi

838. Prosecution Witness AEU testified that on 12 April 1994, a woman she knew came to see her in her employer's house where she had taken refuge, and the woman told her that Hassan Ngeze had brought together a number of women and was helping them. Witness AEU declined her invitation to join them and asked her not to tell anyone that she had seen her or where she was. When they came back from exile at the end of the war, this woman came to apologize to Witness AEU and told her that Ngeze had given up the women she had mentioned to the *Interahamwe* in the sector, who had killed them. She said it was Ngeze who gave instructions to all the women and had asked the woman to come. The woman was also a Muslim and for this reason thought she could call Witness AEU. In cross-examination, Witness AEU clarified that when Ngeze took these women he pretended that he was protecting them but later on he allowed the *Interahamwe* to kill them. All Muslim women who could leave left, but the non-Muslims including Catholics as herself could not leave. She said that Ngeze protected people from his own religion.⁹³⁹

839. Witness AEU said that on 29 April 1994, Hassan Gitoki came to her employer's house with *Interahamwe* looking for her. She asked him if they had come to kill her, and he told her that Hassan Ngeze had sent them to save her and her children. Ngeze had written to her employer asking him for \$1000 to save her children and had said that if the money was not given to him they were going to kill them. For the three children who had large noses, he had asked for \$300 and for Witness AEU and the other child, who had long noses, he had asked for \$700. Her employer paid the money and Hassan Gitoki

⁹³⁹ T. 26 June 2001, pp. 46-48; T. 28 June 2001, p. 35.

helped the three children cross the border. Because there were two people manning the roadblock who were considered particularly difficult, she was taken to get a *laissez-passer*, which she did, from the *prefet*. She said that Gitoki had to ask Ngeze whether he could seek a *laissez-passer* for her because she had a long nose. They were taken to the border in Ngeze's car. Witness AEU testified that they did not go through the border post, but that Gitoki handed her over to an *Interahamwe* to help her pass through a banana plantation. She said they realized that she was a Tutsi and she was taken to the *Commune Rouge*. Before taking her there, they beat her on the head, leaving her with two scars, and tried to strangle her.⁹⁴⁰

840. At the *Commune Rouge*, Witness AEU was taken to a very deep hole that had been dug. She saw people being killed, and she saw other people being buried alive. She said she was taken to the edge of the hole four times and became tired of seeing people being killed. Eventually she told them that she had lied, that she was not Hutu but Tutsi and asked them to kill her but let her child, who was Hutu, live. They beat her up and she was covered in blood. When they were going to kill her they looked at her identity card and the *laissez-passer* issued by the *prefet*. They discussed whether she and her child should be killed and decided to let them live. After looking at these documents, they told her to go back to where she lived. She went back to her house, and at 6 p.m. Hassan Gitoki came. He was glad that she had not mentioned his or Ngeze's name and took her to his house as she was bleeding. She stayed at his house for three days, during which time Gitoki's wife took her jewelry, threatening her with a grenade not to tell anyone she had taken the jewelry. Witness AEU gave her child to a Hutu woman for whom she had done a favour in the past, and eventually she crossed the border in Ngeze's vehicle with Gitoki driving. Ngeze came to Gitoki's house while she was there and entered the room she was in, but she covered herself to hide from him as she was afraid. She recognized his voice.⁹⁴¹

841. Prosecution Witness AHA testified that Ngeze saved one Tutsi family of three women and two boys and allowed them to lodge in his house. He said it often happened that some Hutu sheltered Tutsi friends while at the same time they committed crimes against other Tutsi.⁹⁴²

842. Hassan Ngeze testified that some Muslim Tutsi had sought refuge in his house while he was in prison and he returned to find them there. Ngeze decided that the only way to save these people was to take them to Congo, and he realized that it would be possible to transport people across the border in oil drums. He would say that he was going to bring gasoline back, which he did. The people he saved in this way included two families, the family of an old Tutsi man named Gatama, Witness RM19 and his brother-in-law. Ngeze taught others how to hide in the drums so that he could pick them up from their homes to take them across the border. He also trained six people in this method of saving Tutsi, and these six used the method successfully.⁹⁴³ He enlisted the help of

⁹⁴⁰ T. 26 June 2001, pp. 68-69.

⁹⁴¹ T. 30 Aug. 2001, p. 52; T. 26 June 2001, pp. 71-81.

⁹⁴² T. 7 Nov. 2000, pp. 19-21, 119.

⁹⁴³ T. 31 Mar. 2003, pp. 34-37, 40-43.

Witness BAZ15, who was well-known, to help ensure their security.⁹⁴⁴ Ngeze testified that he could save 20 Tutsi per day, and that in total he saved more than 400 Tutsi in Gisenyi from April to July 1994. If one included the other Tutsi people he took from their homes in Kigali to Hotel des Milles Collines or to UNAMIR, the total would be more than 1,000.⁹⁴⁵ In cross-examination, Ngeze said he did not take money from those he saved. He used the sum of \$50,000 from the US Government, which was personally delivered to him by the Cultural Affairs Officer of the American Embassy between 20 and 22 March 1994, to help him do his newspaper business.⁹⁴⁶

843. Defence Witness BAZ15 testified that Ngeze hid Tutsi in his house and wrote down the names of four people and two families who were saved by Ngeze.⁹⁴⁷ Ngeze used barrels to transport them to Zaire from where he would bring oil back to Rwanda. Witness BAZ15 testified that Tutsi and mixed Arab/Tutsi hid in Ngeze's house and named three such people and a family.⁹⁴⁸ He said Ngeze helped people across to Congo about twenty times.⁹⁴⁹

844. Defence Witness RM19 testified that she lent Ngeze a vehicle with which to transport Tutsi across the border. The witness named some Tutsi saved by Ngeze: Gatama's family (including a child whose name she wrote down⁹⁵⁰), Habib Saleem's family, Caritas and her younger sister, and Antoine Mbayiha.⁹⁵¹

845. Defence Witness RM10, whose husband is Tutsi, testified that Ngeze saved her child and took him to Congo, and also helped Gatama's family and others.⁹⁵² Witness RM116, a Tutsi, testified that she, her younger sister and her baby, amongst others, hid in Ngeze's house before he took them across to Zaire in a barrel on a Toyota.⁹⁵³ Witness RM113 testified that Ngeze saved her and others, Hutu and Tutsi, by putting them in barrels and driving them into Congo. She wrote down the names of seven saved that she could remember.⁹⁵⁴ She also testified that she heard Radio Muhabura commend Ngeze for saving Tutsi.⁹⁵⁵ Witness RM114 testified that she hid in Ngeze's house together with more than 20 other people, of whom she named five Tutsi.⁹⁵⁶ Defence Witness RM200 testified that Ngeze helped her and her children across the border in petrol barrels.⁹⁵⁷

⁹⁴⁴ *Ibid.*, p. 81.

⁹⁴⁵ *Ibid.*, pp. 74-75.

⁹⁴⁶ T. 4 Apr. 2003, pp. 18-20.

⁹⁴⁷ Exhibit 3D176.

⁹⁴⁸ Exhibit 3D178.

⁹⁴⁹ T. 3 Mar. 2003, pp. 24-25, 29-32, 37, 44.

⁹⁵⁰ Exhibit 3D172.

⁹⁵¹ T. 3 Mar. 2003, pp. 5, 14.

⁹⁵² T. 20 Jan. 2003, pp. 10, 25.

⁹⁵³ T. 3 Mar. 2003, pp. 64-65.

⁹⁵⁴ Exhibit 3D189.

⁹⁵⁵ T. 13 Mar. 2003, pp. 27-30, 41.

⁹⁵⁶ Exhibit 3D195; T. 13 March 2003, pp. 56-57.

⁹⁵⁷ T. 14 Mar. 2003, pp. 25-26.

846. Defence Witness BAZ31 testified that his friend Rashid told him that Ngeze helped a Tutsi child named Jan and others to cross into Zaire from Gisenyi.⁹⁵⁸ Witness BAZ2 testified that Ngeze saved Tutsi such as the wife of Kajanja, Ali Kagoyire, Dative, Caritas and the daughters of Charles.⁹⁵⁹

847. Defence Witness RM5 testified that Ngeze hid Tutsi including Caritas and family, Antoine Mbayiha, Gatama and family, Habibu Musaliyama, and the children of Lucie and Célestin.⁹⁶⁰ Witness BAZ13 testified that a soldier, on his way to search Ngeze's house, had told him that Ngeze hid *Inkotanyi* in his house where he also kept many weapons.⁹⁶¹ Defence Witness RM112 testified that many people had taken refuge in Ngeze's house. Ngeze paid the witness \$250 to help them, who included both Hutu and Tutsi, across the border into Zaire in drums. He named Devota, Caritas, Mbayiha, Habib Muselyama, Gatama's family, Mbarara and Mbaraga and many others.⁹⁶² Defence Witness RM118 testified that Ngeze helped Tutsi and named Habib and family, Gatama and family, Caritas and her sister Devota. He said some people sought refuge in Ngeze's house and he helped them cross the border.⁹⁶³ Defence Witness RM115 testified that Hutu and Tutsi sought refuge in Ngeze's house. The witness stated that Ngeze helped people cross the border to Zaire and he named amongst these people Gatama and his children, and Musariyama and his family.⁹⁶⁴

848. Defence Witness RM1 testified that Ngeze saved the lives of Tutsi, including Barara, Gatama, Antoine Mbayiha, Devota, Musiama Habibe and family, Mbarasoro and Caritas.⁹⁶⁵ Defence Witness RM2 testified that he saw ten women in Ngeze's house waiting to be helped across the border by Ngeze. The witness heard from Caritas later that Ngeze had helped her across the border.⁹⁶⁶ Defence Witness BAZ10 testified that Ngeze save a Tutsi named Chacha.⁹⁶⁷ Defence Witness BAZ33 testified that Ngeze saved Tutsi but could not recall any names.⁹⁶⁸ Defence Witness RM300, a Tutsi, testified that Ngeze hid a lot of Tutsi and assisted them to cross the border, including her children. She herself was helped across the border by Ngeze's friend.⁹⁶⁹ Defence Witness BAZ3 testified that she heard from people across the border that Ngeze saved Tutsi, naming Caritas and family and her sister Devota, the family of Agnes and Mbarara and Babbe, Yusuf's wife Adeline.⁹⁷⁰ Defence Witness BAZ5 testified that Ngeze saved Tutsi, including Caritas, her mother and her sister Devota, and Daniel Ruhumuliza's three children.⁹⁷¹ Defence Witness BAZ6 testified that Ngeze saved Tutsi such as Caritas,

⁹⁵⁸ T. 27 Jan. 2003, pp. 8-9.

⁹⁵⁹ T. 29 Jan. 2003, pp. 5-6.

⁹⁶⁰ T. 21 Mar. 2003, pp. 4-5.

⁹⁶¹ T. 28 Jan. 2003, p. 2.

⁹⁶² T. 13 Mar. 2003, pp. 3-5.

⁹⁶³ *Ibid.*, p. 75.

⁹⁶⁴ T. 14 Mar. 2003, pp. 6, 18.

⁹⁶⁵ *Ibid.*, pp. 62-63, 68.

⁹⁶⁶ *Ibid.*, pp. 74, 80.

⁹⁶⁷ T. 29 Jan. 2003, pp. 50-51.

⁹⁶⁸ *Ibid.*, pp. 35-36.

⁹⁶⁹ T. 14 Mar. 2003, pp. 84, 86.

⁹⁷⁰ T. 15 Mar. 2003, p. 4.

⁹⁷¹ *Ibid.*, p. 13.

Devota, his uncle's wife, Kajanja's wife, and Muganda and his children.⁹⁷² Witness BAZ8 testified that Ngeze saved Tutsi and helped them cross the border into Zaire.⁹⁷³

Credibility of Witnesses

849. The Chamber has found the testimony of Witness AEU to be credible, as set forth in paragraph 814. The testimony of Hassan Ngeze is discussed in section 7.6. The Chamber notes that most of the Defence witnesses cited above testified very briefly and on a limited range of issues. In some cases their testimony was completed in less than one hour. Cross-examination of these witnesses was very limited. Several of the witnesses were not cross-examined at all. The Prosecution, in declining to cross-examine, cited the repetitive and cumulative testimony of witnesses testifying that Ngeze saved Tutsi, the late notice and inability to investigate, and the legal argument that Ngeze having saved a few Tutsi did not exonerate him from other acts he committed.⁹⁷⁴ In light of these circumstances, the Chamber simply accepts the evidence of these witnesses to the extent that they testified regarding Ngeze's having saved Tutsi.

Discussion of Evidence

850. The Chamber accepts that Ngeze saved Tutsi and notes that a number of individuals he saved have been named by him and other Defence witnesses. There is much overlap in the names that have been given and a number of names of close relatives of Ngeze, which leads the Chamber to conclude that a small circle of individuals were saved by his intervention, in particular Tutsi of the Muslim faith and Tutsi close relatives. Based on this evidence, the Chamber considers it highly improbable that Ngeze saved over 1,000 Tutsi individuals, as he claimed. The experience of Witness AEU in crossing the border with assistance from Ngeze is an indication of how difficult and precarious it was to proceed without detection. The Chamber also notes that in saving Witness AEU and her children, Ngeze extorted her employer, extracting the price of \$1,000 for their lives. Moreover, Witness AEU testified that those who joined in another initiative of Ngeze, presented to them as a humanitarian intervention, were in the end lured to their death by Ngeze rather than saved by him. The Chamber notes that Ngeze's innovative method of saving Tutsi through transport by barrel also involved lucrative trading in much needed fuel that he brought back to Rwanda in the barrels. At the time of his arrest, by his own admission Ngeze had a bank balance in the region of \$ 900,000.

7.5 Ibuka

851. The Defence contends that a number of Prosecution witnesses were improperly influenced in their testimony by the Rwandan non-governmental organization (NGO) Ibuka. A number of Prosecution witnesses were questioned in cross-examination as to whether they had been asked to testify by Ibuka. The answers of those Prosecution

⁹⁷² *Ibid.*, p. 26.

⁹⁷³ T. 15 Mar. 2003, p. 59.

⁹⁷⁴ T. 29 Jan. 2003, pp. 36-38.

witnesses who replied that they knew of or had been in contact with Ibuka prior to their testimony is summarized below.

852. Witness AHA and Witness ABH testified that they were familiar with the organization Ibuka but had not been contacted by it.⁹⁷⁵ Witness MK had heard of Ibuka but affirmed that her testimony had not been prepared with the assistance of anyone from Ibuka.⁹⁷⁶ Witness AHB was asked if he was a member of Ibuka. He said that only Tutsi survivors could be members, but he knew of it because he had heard people talking about it. He did not attempt to become a member.⁹⁷⁷

853. Witness EB was asked if he knew the organization Ibuka. He said he did and described it as an organization of survivors with the goal of keeping the memory alive, but it was open for membership to anyone, even foreigners. He had heard of its existence from the radio, and knew that its headquarters were in Kigali. He had never met with any of its representatives.⁹⁷⁸

854. Witness ABC testified that he did not know that his employer was a high-ranking member of Ibuka. He said his employer did not know he was testifying before the ICTR and he had not discussed this with him, although he had discussed the events of 1994 with him.⁹⁷⁹

855. Witness FS testified that he was a member of LIDER, an organization which came under Ibuka as a coordinating body. LIDER had the support of the government and paid for the education of children. Ibuka's objective was to help genocide survivors, both Hutu and Tutsi, widows and children.⁹⁸⁰ Witness FS was questioned about and affirmed his testimony that assistance was given without ethnic considerations.⁹⁸¹

856. Asked if he was a member of Ibuka, Witness AAM replied that when Ibuka was created, everyone became a member but stated that he is not an office-holder in Ibuka. He said that he was not sent by Ibuka to testify and did not tell anyone from Ibuka that he was coming to testify or discuss the content of his testimony. He used his friend's address c/o Ibuka so that he could be contacted since the ICTR staff did not know where he lives. His friend is the communal President of Ibuka.⁹⁸² Witness AAM said that as a member of Ibuka he did not pay any dues or have a membership card, noting that it was an association, not a political party. He said they would meet to assist orphans, widows and

⁹⁷⁵ T. 6 Nov. 2000, p. 71; T. 14 Nov. 2001 (Closed Session), p. 31.

⁹⁷⁶ T. 8 Mar. 2001, pp. 45-46.

⁹⁷⁷ T. 28 Nov. 2001, pp. 62-63.

⁹⁷⁸ T. 16 May 2001, pp. 53-54.

⁹⁷⁹ T. 29 Aug. 2001, pp. 20-22. The French statement reflects that his employer's name is listed as the prefecture in which the witness lives, whilst the English statement shows his employer's name as the cellule and sector in which the witness currently lives.

⁹⁸⁰ T. 7 Feb. 2001, pp. 89-92; T. 8 Feb. 2001 (Closed Session), pp. 124-139.

⁹⁸¹ T. 7 Feb. 2001, pp. 101-108.

⁹⁸² T. 12 Feb. 2001, pp. 119-123.

disabled people. He himself did not receive assistance from Ibuka as he was able to work.⁹⁸³

857. Witness AFX provided the office address of Ibuka as his contact address in one of his statements. He explained that there was a time when he was working at Ibuka's office helping survivors. He later clarified that he was not working directly for Ibuka but was rather a volunteer worker for a fund that assisted survivors, in the same building as Ibuka's office. He described Ibuka as an organization that defends survivors' rights but was not able to provide any further details. He denied that Ibuka prepared witnesses who testified at the ICTR and denied that he was recruited by Ibuka to be a witness in the present case. He stated that he had no connection with Ibuka and did not inform anyone in Ibuka that he was going to testify in the ICTR.⁹⁸⁴ He said he had not been paid or promised money in exchange for his testimony.⁹⁸⁵

858. Witness AGX was a member of Ibuka from 1998 but did not hold a position in the organization. Once, Ibuka paid for his child's tuition fees for one term when he was separated from his child for six months. The witness said he did not discuss his testimony with any Ibuka members and no one from Ibuka knew he was testifying in Arusha. He gave Ibuka as his contact point in Gisenyi because Ibuka knew how to find his named contact person. The witness denied that Ibuka paid him to testify in Arusha.⁹⁸⁶ He explained that Ibuka meant "remember" and that the organization assisted persons without a livelihood after the war.⁹⁸⁷ The witness was not promised any form of assistance for testifying.⁹⁸⁸ He said he did not have any link with Ibuka.⁹⁸⁹

859. Witness AEU testified that she was a member of Ibuka.⁹⁹⁰ She joined when the organization was formed and it is specified in her statement as her contact point. She said she joined Ibuka as it reminded her of the people who had died.⁹⁹¹ She participated in Ibuka meetings, but could not say how often. She received medication and food and assistance at the hospital from Ibuka. The association also helped pay children's school fees.⁹⁹² Witness AEU said that Ibuka did not know that she had come to Arusha to testify.⁹⁹³

860. Witness BU was asked about Ibuka, which he described as an association formed to help genocide survivors, orphans, students and the physically and mentally handicapped. In the course of his voluntary work at the university, the witness dealt with Ibuka and other associations. Within Ibuka's framework, schools and communes would

⁹⁸³ T. 13 Feb. 2001, pp. 95-98.

⁹⁸⁴ T. 8 May 2001, pp. 36-37 (Closed Session).

⁹⁸⁵ T. 7 May 2001, pp. 47-60 (Closed Session).

⁹⁸⁶ T. 11 June 2001, pp. 8-10; T. 12 June 2001, pp. 49-53.

⁹⁸⁷ T. 14 June 2001, pp. 100-101.

⁹⁸⁸ T. 18 June 2001, pp. 21-22.

⁹⁸⁹ *Ibid.*, pp. 39-41.

⁹⁹⁰ T. 26 June 2001, p. 15.

⁹⁹¹ T. 27 June 2001, pp. 123-126.

⁹⁹² T. 28 June 2001, pp. 51-52.

⁹⁹³ *Ibid.*, p. 68.

send him, as a specialist in physiology, cases concerning children and adults to follow up on and he had been doing this work for two to three years.⁹⁹⁴

861. Witness WD was a member of Ibuka from 1996. He described Ibuka as an organization that stands for the rights of survivors, and assists them with their problems, e.g. education, health and housing. He did not know if it took an active part in the prosecution of individuals alleged to have been involved in the genocide. Ibuka followed ongoing trials in Rwanda closely but the witness did not know if it had a similar interest in ICTR trials. Ibuka members would have meetings but the fact the witness would be giving evidence was not discussed in Ibuka, and he had never seen investigators come looking for witnesses from the organization.⁹⁹⁵

862. Witness DM stated that Witness AFX was a member of Ibuka, a group of survivors who invented false testimony about refugees outside Rwanda, thinking that they would not return to correct what had been said against them. He testified that all witnesses sponsored by Ibuka come to Arusha to give false testimony as they would have to report on the testimony they had given when they returned to Rwanda, although he did not know to whom they gave their reports, or Ibuka's response when they gave their reports. The witness said that everyone knew their departure and return dates from Arusha. If they did not answer questions as Ibuka wanted, their families would ostracize them. Ibuka provided assistance in the form of food for those who came to testify.⁹⁹⁶

863. The testimonies of Defence Witnesses about Ibuka are set out below.

864. Witness F2 testified that Ibuka was an extremist organization in that it did not work for the reconciliation of the Rwandan people. He said Ibuka meant "remind yourself".⁹⁹⁷ Witness RM10, who was arrested in Rwanda in September 1994 and detained for a year without charge, said she left Rwanda out of fear of Ibuka, which questioned her release. If she left her house, stones would be thrown at her.⁹⁹⁸ Witness RM114 testified that she was approached by a member of Ibuka who asked her to testify falsely against someone as being the killer of her brothers. The witness refused as she did not witness those events.⁹⁹⁹

865. Witness RM10 testified that when she returned to Rwanda in September 1994, she was arrested and detained for over a year without knowing the charges against her. She later said that she was accused of being an accomplice in the genocide. She was raped and beaten while she was detained. As no evidence against her had been found, she was released. Ibuka asked why she had been released and she had to report every Friday to have a document stamped to show she was still in the country. After about a year, she was again imprisoned and provisionally released after over a year on 13 August 1998. She was subsequently finally released in February 2001. Before her imprisonment, on 21

⁹⁹⁴ T. 27 Aug. 2001, pp. 17-20.

⁹⁹⁵ T. 6 Feb. 2001, pp. 101-104.

⁹⁹⁶ T. 11 Sept. 2001, pp. 93-96; T. 12 Sept. 2001, pp. 70-71.

⁹⁹⁷ T. 11 Dec. 2002, pp. 60, 64.

⁹⁹⁸ T. 21 Jan. 2003, p. 43.

⁹⁹⁹ T. 13 Mar. 2003, pp. 60-61.

April 1997, when she was at home, she was visited by Ibuka or ICTR representatives, namely, two white men, a Rwandan woman and a soldier named Jeff. They told her what to say against Kabuga, Moar and Ngeze. When she said that she did not know Kabuga, they showed her his photograph. She said she knew Ngeze though. The woman would tell her things and she would agree and she would then tell the two men to put them into writing. She was also told to say that Kabuga and Ngeze worked together to bring firearms to kill people. She was offered \$2,200 and promised security for her and her family if she gave this evidence, which the witness stated was false. They also promised better conditions of detention. She agreed. However, they did not promise her an acquittal, as she was subsequently prosecuted and then acquitted. She testified that others, like Bagoyi and Gershom were asked to provide false testimony as well.¹⁰⁰⁰ The witness left Rwanda on 20 October 2001 solely because she was afraid of Ibuka which would protest each time she was released and would have her returned back to prison, even though there was no evidence against her. She could not even leave her house as stones would be thrown at her if she did so. As a result, she had to stay at home.¹⁰⁰¹

866. Witness RM113 described Ibuka as a tiny group of Tutsi responsible for bringing false accusations against people. She wrote down two names of people who had given false testimony, Witness RM 14, whom she said was asked to give false testimony regarding Modeste Tabaro but refused and testified to the truth, and Witness AFX, who testified falsely that Ngeze was a killer. She denied that Ibuka represented survivors, and asserted that it gave false testimony as a rule.¹⁰⁰²

867. Witness RM200 named five Prosecution witnesses who she said were paid by Ibuka to give false testimony. She said that she was told by Witness EB that he had come to Arusha to testify falsely against Ngeze, to "cut the head of Ngeze" and that Ibuka had given him money to do this. She said that Witness AFB had boasted about having been paid by Ibuka to give false testimony, also characterized as cutting off Ngeze's head. According to her, Witness AFX also said he had given false testimony about Ngeze being a killer. Witness RM 200 said another witness, Witness AGX, also told her he received money from Ibuka to say that Ngeze was a killer.¹⁰⁰³ In cross-examination it was revealed that RM200 did not have direct conversations with the persons she had named but overheard the conversation they were having during ablutions prior to prayer at the house of Witness DM. In redirect examination, she mentioned a second conversation with one of the witnesses on her list, in front of his house.

868. Witness RM14 testified that he was told by Witness AFX, a member of Ibuka, to make a false statement, which was his statement dated 14 January 1997. Witness AFX told him to lie about the death of Modeste Tabaro, to say that Ngeze's uncle killed Tabaro, who was really killed by two soldiers, one of whom was Jeff.¹⁰⁰⁴ The witness stated that he never complained about the ICTR investigators as they were accompanied

¹⁰⁰⁰ T. 20 Jan. 2003, pp. 11-24, 67.

¹⁰⁰¹ *Ibid.*, pp. 66-67; T. 21 Jan. 2003, p. 43.

¹⁰⁰² T. 13 Mar. 2003, pp. 34-35, 48, 52.

¹⁰⁰³ T. 14 Mar. 2003, pp. 28-30.

¹⁰⁰⁴ T. 16 Jan. 2003, pp. 4-9, 16, 23-25.

by a Rwandan and he did not know who this person was. As they were consulting with Ibuka, he could not trust them. He described Ibuka as a powerful organization capable of destabilizing the government. He said Hutu could not be members of Ibuka.¹⁰⁰⁵ Witness RM14 named four people who had given false testimony at the ICTR.¹⁰⁰⁶ One of these names corresponds to one of the names provided by RM113. Three of these names, including the one mentioned by both RM113 and RM14, correspond to three of the names provided by RM200.

Credibility of Witnesses

869. **Witness RM200** initially testified that five Prosecution witnesses spoke to her about having been paid by Ibuka to give false testimony. These Prosecution witnesses, when asked in cross-examination about Ibuka, testified that they had not received any money or been influenced in any way by the organization in connection with their testimony. On cross-examination, Witness RM200 disclosed that she in fact had not spoken personally to the five Prosecution witnesses but had overheard them talking. Although it was established subsequently that she did have one conversation with one of the five witnesses, the fact remains that in her testimony she distorted the nature of the communication she had with the Prosecution witnesses. The Chamber notes the close personal relationship of the witness to the Accused and her zeal in supporting all of his defences. The Chamber believes that her evidence was contrived. For these reasons it finds her testimony not credible.

870. **Witness RM14** was originally a Prosecution witness who informed the Prosecution that his statement of 14 January 1997 was not accurate and subsequently testified as a Defence witness. He claimed that Prosecution Witness AFX, who was a member of Ibuka, told him to make a false statement against Ngeze, to say that Ngeze's uncle killed Modeste Tabaro. Witness RM14 in his testimony recanted his statement and accused four Prosecution witnesses of having given false testimony against Ngeze. Witness RM14 claimed that he made the statement under duress, in fear of his life. The Chamber notes that what Witness RM14 says he was told to testify, that Ngeze's uncle had killed Modeste Tabaro, is inconsistent with the evidence of Prosecution witnesses who testified about this killing. If the evidence had been concocted by Ibuka with the aim of incriminating Ngeze, as Witness RM14 alleges, then he would have been told to testify consistent with the other Prosecution evidence. Moreover, what Witness RM14 said in his statement was that according to some rumor the uncle who was living with Hassan Ngeze killed Tabaro. A statement made under duress to incriminate Ngeze would, in the Chamber's view, have been more incriminating than this report of a vague rumor. Initially, when the Prosecution made the witness available to the Defence, while he was still in Arusha, Witness RM14 refused to see Defence Counsel. He testified that he had been threatened by the Head of the Witness and Victims Services Section of the ICTR with the loss of protective measures if he did meet with Defence Counsel. He did not report any such threat at the time, to Defence Counsel or to the Chamber. The Chamber does not believe that Witness RM14 is telling the truth and notes that he has close family

¹⁰⁰⁵ T. 17 Jan. 2003, p. 12.

¹⁰⁰⁶ Exhibit 3D145; T. 16 Jan. 2003, p. 39.

ties to Ngeze. For these reasons, the Chamber does not find the testimony of Witness RM 14 to be credible.¹⁰⁰⁷

Discussion of Evidence

871. Apart from Witness DM, who turned hostile and has been found by the Chamber not to be credible, all the Prosecution witnesses whose testimony is summarized above were cross-examined on their connection to Ibuka and whether they had been told by Ibuka what to say in their testimony. Several witnesses acknowledged their membership in Ibuka but said that the organization was one which assisted survivors and that they did not discuss their testimony with anyone in Ibuka. Many of them said that the fact that they were going to testify before the ICTR was not even known to Ibuka.

872. The Chamber has reviewed the testimony of the Defence witnesses, particularly those who named Prosecution witnesses as having been influenced by Ibuka. None of these Prosecution witnesses, when asked about Ibuka, said they were paid or otherwise influenced to testify falsely. Some said they were members of Ibuka, and some said they were not members of Ibuka. The Chamber notes that the Defence witnesses, apart from reciting their belief that Prosecution witnesses gave false testimony, provided no specifics, such as in what respect these witnesses had lied. Witness RM 200, a close relative of Ngeze, acknowledged that she had not had direct conversations with the persons she named. Rather she overheard them talking. In light of her relationship to Ngeze and the manner in which she testified, the Chamber believes her evidence to be contrived. The Chamber has found the testimony of Witness RM 14 to be not credible, as set forth in paragraph 870.

873. Prosecution witnesses were thoroughly cross-examined on their affiliations with Ibuka and any possible influence the organization might have had on their testimony. The Chamber is satisfied by their responses and their demeanor that they were testifying to events they witnessed. The testimony under oath of the Prosecution witnesses has far more weight than the untested hearsay of those same witnesses as reported by others.

Factual Findings

874. The Chamber finds that although several Prosecution witnesses are members or Ibuka or otherwise have links with the organization, none of these witnesses was influenced in their testimony by Ibuka, which is a non-governmental organization assisting survivors of both Hutu and Tutsi ethnicity in the aftermath of the killings that took place in 1994.

7.6 Evaluation of Ngeze's Testimony

875. In addressing the charges against him, Ngeze evidenced little awareness of the lack of consistency in his testimony, often altering or contradicting what he had said within minutes of saying it. When cross-examined, for example, on the publication of

¹⁰⁰⁷ T. 13 Jan. 2003, p. 43.

Modeste Tabaro's name in *Kangura*, initially Ngeze stated that it could have been another Modeste as the last name was not listed. When questioned by the Chamber, he then acknowledged that he knew that it was Modeste Tabaro. With regard to his alibi for 7 April 1994, Ngeze gave different accounts of his arrest, and of the letter that he wrote to Colonel Nsengiyumva, dated 10 April 1994 but with internally inconsistent references to dates relating to his arrest. The Prosecution maintained that this letter was forged by Ngeze to support his alibi, a possibility accepted by the Chamber. The Chamber considers Ngeze's testimony that the photograph on the back page of *Kangura* No. 35, in which many of those pictured are wearing CDR T-shirts or caps, was a photograph of a football match to be obviously untrue. The photograph was acknowledged to be a CDR meeting by Nahimana, who is himself pictured in the photograph.

876. Ngeze wavered back and forth in his testimony on fundamental issues, as well as virtually every detail of his evidence. He stated several times that he was responsible for *Kangura* as its founder, owner and editor, but in response to particular questions about the contents of *Kangura*, Ngeze often stated that he had not seen the article before it was published, that someone else wrote it, or that he was in prison when it was published. Witness AHA, who worked for *Kangura*, lived in Ngeze's house in Kigali, and described himself as a close friend of Ngeze – like a brother – testified that there was a meeting to discuss each issue of *Kangura* and that Ngeze had the last word on editorial decisions. The Chamber finds this to be the case. Ngeze denied having any connection to the website bearing his name, although it has information on it that could only have come from him and although he himself includes the website on his letterhead in his correspondence with the Tribunal. In his testimony, he first denied and later conceded that bank documents shown to him were his account.

877. Finally, the Chamber notes that during the course of the trial, Hassan Ngeze engaged in various conduct relating to the proceedings that had an impact on his credibility. Prosecution Witness Omar Serushago produced a copy of a typed anonymous letter in Kinyarwanda, which had been given to him by the Imam at the UNDF who said that it was from Ngeze. The letter is a threatening one. It says, "I am writing to you this letter to remind you that our life on this earth is very short", subsequently making reference to his children.¹⁰⁰⁸ The letter continues, noting "during my entire life there has never been any problem between you and me and between my family and yours". The author recalled in the letter that in Nairobi he had given Serushago one of his best suits to wear and Serushago's wife \$200 to live on, which Serushago testified Ngeze had done. He asked Serushago not to testify against him and mentioned the names of Kayonga, as well as Jef and Rejis. He asked whether it was not true that he had had no discussions with Serushago from 6 April 1994.¹⁰⁰⁹ Ngeze denied having written this letter, a denial that seems absurd especially as it is written in the first person.

878. Ngeze uses, distorts and fabricates information freely, marshalling it for other ends. In his testimony, as well as his other conduct during the proceedings, Ngeze

¹⁰⁰⁸ Exhibit P72.

¹⁰⁰⁹ T. 19 Nov. 2001, pp.108-112.

demonstrated a thorough disregard for the truth, and for the solemnity of his declaration to testify truthfully.

8. Interactions Among the Accused

8.1 Personal Meetings and Public Presentations

879. Witness AHA, a journalist who worked for *Kangura*, described himself as a very close friend of Hassan Ngeze, in fact like a "brother". He described Nahimana as a friend also. The witness testified that he did not know Barayagwiza well. He met him several times when he was with Ngeze, who went to meet Barayagwiza in his office in the Ministry of Foreign Affairs and at his home in Kivoyu. He described these meetings with Barayagwiza as follows:

And the first time we went to see him, we talked about the setting up of the CDR, the Committee for the Defence of the Republic and when we went to his home we talked about politics about the struggle we were engaged in within Kangura and RTLM, the struggle of the Hutu against any overt threats by the Tutsis and so we talked about the ways and means of properly conducting the struggle.¹⁰¹⁰

According to Witness AHA, these ways and means were firstly to set up a party in which the Hutu would be sure that there was no infiltration by the Tutsi.

880. *Kangura* No. 42, published in May 1993, included an article entitled "*Who will stand up to the Inyenzi when they enter in the country*". One paragraph in the article talks about Ngeze and Barayagwiza as follows:

Who is going to stand up to them? It is clear that it is Hassan Ngeze who will continue to stand up to the *Inyenzi* in the area of information - in the field of information. He will defy them when it comes to explaining the rules of democracy as well as in the defence of the interest of the Hutus. And, in particular, he will uncover - unveil the wickedness of the *Inyenzi*. On his part, Barayagwiza is awaiting the opportunity to actually implement the competencies, that even the Tutsis know that he possesses in order to stand up to the *Inyenzi*s, by explaining to the *Inyenzi*s, that the plan consisting of killings will not have a place. He will also explain to them that even if they killed him, they will never be able to exterminate the Hutus. Barayagwiza will be powerful in an extraordinary way.¹⁰¹¹

881. In *Kangura* No. 55, published in January 1994, Hassan Ngeze wrote an article reporting on an incident involving Barayagwiza and the assistance he received through RTLM. The article, entitled *Belgian ingeniousness almost eliminated Jean Bosco Barayagwiza*, described an altercation between Barayagwiza and UNAMIR, in which Barayagwiza telephoned RTLM. As a consequence of this call, the majority people (the *rubanda nyamwinshi*) rushed to his house in order to assist him. The last part of the

¹⁰¹⁰ T. 2 Nov. 2000, pp. 159-160.

¹⁰¹¹ T. 14 May 2002, pp. 147-148.

article, recounted by Prosecution Expert Witness Marcel Kabanda, compared the situation of UNAMIR to that of US troops in Somalia, constituting a threat by analogy to the killing of American marines in Mogadishu.¹⁰¹²

882. Witness AHA testified in cross-examination that *Kangura* on occasion criticized Nahimana, attributing this to a personal quarrel between Nahimana and Ngeze which was subsequently settled. He said that Ngeze was angry because Nahimana had suspended all advertisement of *Kangura* on Radio Rwanda when he was the Director of ORINFOR.¹⁰¹³ In his testimony, commenting generally on *Kangura*, Nahimana described some of the articles as very good and characterized some as "extremist" and "revolting".¹⁰¹⁴ Ngeze testified to having been unable to get an appointment with Nahimana when Nahimana was Director of ORINFOR. He described purchasing a red Peugeot 504, the same car that ORINFOR had, and he wrote in *Kangura* on the car, just to disturb Nahimana.¹⁰¹⁵

883. Witness AGK, a Hutu man who worked in the Ministry of Foreign Affairs, named Katumba, Mutombo and Hassan Ngeze as CDR members who visited Barayagwiza at the Ministry during 1992 and 1993. He said Ngeze came twice to visit Barayagwiza in March 1993. He also said he would see Ferdinand Nahimana when he came to visit Barayagwiza in 1990, 1992 and 1993. He said he saw Nahimana twice in 1993.¹⁰¹⁶

884. Witness MK, a Tutsi civil servant, testified that many clandestine meetings were held by the CDR and MRND parties, which she said were a single party, in the offices of the Minister of Transport. They were attended by government officials of several ministries including the Director of ONTRACOM, the national office of public transportation, as well as Nahimana, the Director of RTLM, and Barayagwiza. The meetings would be held on Mondays, Wednesdays and Thursdays after working hours.¹⁰¹⁷ In cross-examination, Witness MK clarified that she did not herself participate in the meetings to which she testified but rather heard about them from her friend who was the personal secretary of a top ministry official.¹⁰¹⁸ She acknowledged that her friend did not participate in these meetings either, explaining that she had an office just adjacent which allowed her to see who was coming and going. Also, as a personal secretary she had access to information. Witness MK said that although ONATRACOM was a separate agency from the Ministry of Transport, if the Minister asked the Director of ONATRACOM, a government appointee, for something, he would have to comply. The two were on good terms and belonged to the same political parties. On request from the Minister, ONTRACOM buses were used to transport *Interahamwe* to MRND meetings in 1993 and 1994.¹⁰¹⁹ Authority was also given to RTLM to use the Ministry's vehicles,

¹⁰¹² T. 14 May 2002, pp. 149-152.

¹⁰¹³ T. 7 Nov. 2000, pp. 84-86.

¹⁰¹⁴ T. 14 Oct. 2002, p. 70.

¹⁰¹⁵ T. 27 Mar. 2003, p. 88.

¹⁰¹⁶ T. 21 June 2001, pp. 66-71, 86.

¹⁰¹⁷ T. 7 Mar. 2001, pp. 99-103; T. 7 Mar. 2001 (Fr.), p. 113; T. 8 Mar. 2001, pp. 40-41.

¹⁰¹⁸ T. 8 Mar. 2001, pp. 16-22, 106-108.

¹⁰¹⁹ T. 7 Mar. 2001, pp. 103-109.

pursuant to a letter requesting such authorization written by the Director of RTLM, Nahimana.¹⁰²⁰

Credibility of Witnesses

885. The testimony of Witness AHA and Witness AGK has been found credible by the Chamber in paragraph 132 and paragraph 710, respectively.

886. **Witness MK** was questioned about her workplace, the people who worked there and her ability to read confidential mail. She provided clear answers and explained that she knew things because she would overhear telephone calls in her friend's office.¹⁰²¹ The witness had not mentioned her friend's name in her first statement in 1996. She said that she was afraid but was forced to mention it by investigators the second time around in 1998. She acknowledged that she had not mentioned Nahimana and Barayagwiza in her first statement. The witness remembered their names when she was giving her second statement. Asked if she was forced to mention Nahimana's name the second time she was interviewed, she denied this and said that no one told her to put names into her statement; she remembered the names as she was giving her statement. She maintained that she had seen these things herself and lived through them.¹⁰²² Witness MK stated that she was neither working for the *Inkotanyi*, nor a sympathizer of them.¹⁰²³ Confronted with mistakes in her statements, she attributed these mistakes to the persons who had recorded them.¹⁰²⁴ She explained that she had refused to sign her statements out of fear for her safety.¹⁰²⁵ During cross-examination, the witness asked Counsel at times not to ask her the questions they did. She asked them why they were trying to hurt her or would tell them not to say a name that had been put to her.¹⁰²⁶ Sometimes the witness failed to answer a question directly, preferring argumentative responses or long responses that avoided a straightforward answer. The Chamber notes that Witness MK was not cooperative, although she did eventually answer most questions put to her. The mistakes referred to in her written statement were minor in nature, such as the year in which she started her job. The Chamber notes that the witness is an indirect source of information regarding much of her testimony but this goes to the weight accorded her evidence, rather than its credibility. For these reasons the Chamber finds the testimony of Witness MK to be credible.

Discussion of Evidence

887. The Chamber notes that several witnesses testified to having seen various of the Accused together at meetings. Witness MK testified that Nahimana and Barayagwiza participated in clandestine meetings at the Ministry of Transport. Witness AGK testified that both Ngeze and Nahimana came to visit Barayagwiza at his office. In the view of the

¹⁰²⁰ T. 8 Mar. 2001, p. 144.

¹⁰²¹ *Ibid.*, pp. 66-70, 104.

¹⁰²² *Ibid.*, pp. 128-131.

¹⁰²³ *Ibid.*, p. 6.

¹⁰²⁴ *Ibid.*, pp. 46-49.

¹⁰²⁵ *Ibid.*, p. 52.

¹⁰²⁶ *Ibid.*, pp. 23-28.

Chamber, the fact that these men met does not have particular significance absent information as to the content of their meetings. In this regard, the meeting of Ngeze and Barayagwiza described by Witness AHA, who was present, is significant. According to Witness AHA, Barayagwiza and Ngeze discussed the CDR, *Kangura* and RTLM all in the context of the Hutu struggle against the Tutsi. The content of this meeting indicates that Ngeze and Barayagwiza viewed and talked of CDR, *Kangura* and RTLM as each having a role to play in this struggle.

888. Nahimana and Barayagwiza worked very closely together in the management of RTLM. Barayagwiza and Ngeze worked very closely together in the CDR. The Chamber notes that Nahimana and Ngeze were not seen together as much as they were each seen with Barayagwiza. Nevertheless, as evidenced by the conversation between Ngeze and Barayagwiza, an institutional link among them all was perceived. At a personal level, the point of connection for the three Accused was Jean-Bosco Barayagwiza.

Factual Findings

889. Ferdinand Nahimana and Jean-Bosco Barayagwiza worked closely together in the management of RTLM, and Barayagwiza worked closely together with Hassan Ngeze in the CDR. Barayagwiza and Ngeze discussed CDR, *Kangura* and RTLM as all playing a role in the Hutu struggle against the Tutsi.

8.2 1993 MRND Meeting

890. Witness FS, a Tutsi trader from Gisenyi, testified that he went to an MRND Power meeting with his brother sometime in 1993, in Kigali at Nyamirambo stadium. He could not recall the date or even the month of the meeting. It was after his brother moved to Kigali, which was in early 1993, and he said it was just after RTLM had begun broadcasting, which was in July 1993. Subsequently, he clarified that RTLM had already been created when the meeting took place, and it was sometime after this but in the course of the same year. Witness FS heard the meeting announced on RTLM, as well as Radio Rwanda. When he arrived at the stadium entrance, at around 9.30 a.m., people were selling clothes and insignia of the MRND and CDR parties including CDR caps and audiocassettes of the music of the singer Simon Bikindi, with songs in praise of MRND. The witness already had a Bikindi cassette, and one of the songs on it was playing at the stadium with people singing along.¹⁰²⁷

891. The witness testified that Mathieu Ngirumpatse, the President of MRND, opened the meeting. Standing at the podium, he thanked the participants and expressed happiness that they had come to join in the fight against the *Inyenzi*. He then introduced important personalities in the Hutu Power movement, including Nahimana, Barayagwiza, Félicien Kabuga and RTLM journalists, as well as Ngeze and the *Kangura* journalists. Nahimana was additionally introduced as the Director of RTLM. Also present at the meeting were Frodouald Karamira of the MDR party and Justin Mugenzi of the PL Party. Kabuga spoke next, thanking the members of Hutu Power who were present and saying that he

¹⁰²⁷ T. 7 Feb. 2001, pp. 10-18; T. 8 Feb. 2001, pp. 56-58, 64-66, 89.

would make a lot of funds available for RTLM, which was to be used to disseminate the ideas of Hutu Power. He asked people to support RTLM, which was their radio, the radio of the members of Hutu Power, and said that Radio Rwanda was collaborating with the *Inyenzi*.¹⁰²⁸

892. Witness FS testified that Nahimana spoke after Kabuga at the meeting. He said Nahimana was publicly known at the time as Director of ORINFOR, before he was appointed Director of RTLM. On cross-examination, he affirmed that it was Ferdinand Nahimana and not another Nahimana, noting that there was only one Nahimana who was Director of RTLM. At the meeting, Nahimana said that the people had just received their radio station, which belonged to Hutu Power and should be used to disseminate the ideas of Hutu Power. He added that the radio was having financial difficulties and requested that the people help by contributing to it. Nahimana repeated an account number that had been mentioned by Kabuga in his speech, to which monies were to be paid. Some people present at the meeting contributed money. Barayagwiza spoke next and said that Hutu Power should collaborate with the CDR and work together to fight the *Inyenzi*. He spoke of using RTLM to fight against the *Inyenzi* and said that the *Inyenzi* were not far away, and were even there among them. At that point, around midday, Witness FS and his brother left the meeting.¹⁰²⁹

893. According to Witness FS, the crowd responded enthusiastically to Nahimana's and Barayagwiza's speeches. He said there were 15,000 people at the meeting. They had been transported there by official buses from ONATRACOM, the government-run public transportation company. *Interahamwe* and *Impuzamugambi* were at the meeting, having been transported by these buses. The witness said that *Impuzamugambi* referred to the *Interahamwe* acting together with CDR members and that the word meant "to rally together for a predetermined objective". Following the meeting, Witness FS said there was an atmosphere of tension among Rwandans and that one's Hutu neighbour changed because of this meeting and because of RTLM, which reported on the meeting and broadcast Nahimana's speech. After hearing about the meeting, people became angry and distrustful and started to hate the moderate Hutu.¹⁰³⁰

894. Witness FS said that he could not be a member of the Hutu Power movement as they referred to all Tutsi as *Inyenzi*. He was not a sympathizer with the movement as he was opposed to their murderous activities. He attended the meeting to listen to the ideas being discussed. This was the only Hutu Power meeting he attended. On cross-examination, Witness FS was asked why he attended an MRND rally as he said he was not interested in politics, and why he said he read *Kangura* as it disseminated ideas he opposed. He explained that when one is aware that he is not liked by another, it is good to hear what that person has to say. He also clarified that he was in Kigali and happened to hear of the meeting on RTLM when he had time in his schedule. He did not come to Kigali for the meeting.¹⁰³¹

¹⁰²⁸ T. 7 Feb. 2001, pp. 20-26.

¹⁰²⁹ *Ibid.*, pp. 26-27, 31-33.

¹⁰³⁰ *Ibid.*, pp. 31-33.

¹⁰³¹ *Ibid.*, pp. 27-30; T. 8 Feb. 2001, pp. 49-56, 69-70.

895. On cross-examination, Witness FS testified to his affiliation with *Ibuka* and the work of that organization. The witness drew a distinction between “genocide”, referring to the killing of Tutsi, and “massacres”, referring to the killing of Hutu opponents to MRND and CDR. He said that Tutsi who joined the *Interahamwe* tried to hide their identity. He also said that he did not consider Tutsi who joined the *Interahamwe* to be Tutsi, citing Robert Kajuga as an example. Witness FS testified that after RTLM broadcast his brother’s name on the day after President Habyarimana’s plane was shot down, his brother was killed together with his wife and seven children.¹⁰³² He also testified that while he was in hiding during this time, his wife and child were killed. The witness testified that neither he nor his brother was a member of the RPF.¹⁰³³

896. Witness ABE testified that he attended an MRND meeting in 1993 at Nyamirambo stadium, which was chaired by the MRND President, Mathew Ndirumpatse. Present also at the meeting were Felicien Kabuga, the President of the Board and main financier of RTLM, as well as Barayagwiza and Nahimana. Nahimana was introduced as the Director of RTLM. Ndirumpatse spoke first and explained that he had called the meeting to announce that he had just acquired another radio station, which was different from Radio Rwanda. He told them that they should no longer listen to the *Inyenzi/Inkotanyi* radio, referring to Radio Rwanda, and he encouraged them to listen to RTLM. Witness ABE said that as he was not happy with this message, he left immediately after Ndirumpatse spoke. Other people spoke at the meeting, and the majority of the speeches were broadcast on RTLM, but he did not hear them. It was well known, he said, that Barayagwiza and Nahimana also spoke at the meeting.¹⁰³⁴

897. In cross-examination, Witness ABE was questioned as to the date of the meeting, and he affirmed that it took place in 1993. He said the reason for the meeting was that RTLM had just been established and they wanted to introduce the radio station. When asked what month it was, he said sometime between April and December, subsequently stating that he thought it was a few months after the creation of RTLM. The witness could not recall whether the meeting took place before or after the killing of Burundian President Ndaydaye in October 1993, or before or after the signing of the Arusha Accords in August 1993. He could not estimate the number of people at the meeting but said it was a large crowd. The meeting took place in the morning, during the weekend. He did not recall whether *Kangura* had reported on the meeting or whether it was reported in any other newspaper, but he repeated that speeches from the meeting had been broadcast on RTLM.¹⁰³⁵ Asked by the Chamber whether any mention was made at the meeting of Hutu Power, Witness ABE recalled that he left early but said he had not heard any such mention in the introductory speech. He said he did not see Karamira at the meeting.¹⁰³⁶

¹⁰³² T. 7 Feb. 2001, pp. 67-68, 94-108.

¹⁰³³ T. 8 Feb. 2001, p. 114; T. 7 Feb. 2001, pp. 109-110.

¹⁰³⁴ T. 23 Feb. 2001, pp. 55-60.

¹⁰³⁵ T. 27 Feb. 2001, pp. 109-125.

¹⁰³⁶ T. 28 Feb. 2001, pp. 9-10.

898. Nahimana testified that the term "Hutu Power" was launched by Karamira at the October 1993 meeting, acknowledging that the Hutu Power movement was evolving from July to November 1993. When asked to respond to the allegation that he had participated in a Hutu Power rally at Nyamirambo Stadium in 1993, Nahimana testified that he had never participated in any meeting or rally organized by Hutu Power. On cross-examination, he said he could not have been introduced at an MRND/Hutu Power/RTLM meeting, as Witness FS testified, because no such meeting would have been held before October 1993. It was put to him that Witness FS could not recall the month in which the meeting was held, and he commented on the testimony of Witness FS on this point.¹⁰³⁷

899. Ngeze testified initially in response to the testimony of Witness FS that he never attended any meeting as a member of Hutu Power and that he was never introduced in any meeting. He said that the witness was a liar and did not see him because he was not at that meeting or any meeting. Ngeze then said he used to cover meetings as a journalist and report on them, with his camera, but that nobody ever introduced him. He said he did not see how the President of MRND could have introduced him as he was not a member of the MRND party. When asked by the Chamber whether he was present at the meeting as a journalist, Ngeze replied that he could not say whether he was there or not because as a journalist one covers different events every day. He said if he was there he was there as a journalist because he could not see how he could be a member of MRND.¹⁰³⁸

Credibility of Witnesses

900. The Chamber has found the testimony of Witness ABE to be credible, as set forth in paragraph 332.

901. **Witness FS** was questioned by Defence Counsel on the likelihood of his having attended the MRND Power meeting in light of the fact that he was not interested in politics and opposed the views of the party holding the meeting. The Chamber accepts that the witness attended the meeting and was interested in hearing what those who were against people like him had to say, which is also his explanation for reading *Kangura*. Witness FS happened to be in Kigali and heard about the meeting when he had time in his schedule. The Chamber notes that he left the meeting before it ended, while Barayagwiza was speaking and because of what he was saying. Defence Counsel also challenged the testimony of Witness FS on a number of procedural grounds, including the fact that he did not return to complete his cross-examination by Counsel for Ngeze and that no Counsel for Barayagwiza was present during his testimony. These matters have already been ruled upon by the Chamber, as is the claim that the witness is a member of an organization related to Ibuka. Counsel for Ngeze suggested in cross-examination that the witness might be lying about the death of his wife and child but presented no evidence in support of this allegation. He submits that the witness was unable to name his brother's seven children who were killed. The Chamber notes that the witness was not asked to name his brother's seven children. He was asked to write down the names of

¹⁰³⁷ T. 19 Sept. 2002, pp. 109-113; T. 14 Oct. 2002, pp. 48-49.

¹⁰³⁸ T. 1 Apr. 2003, pp. 14-16.

his deceased wife and children, which he did.¹⁰³⁹ The Chamber observes that Witness FS was consistent in his testimony. He answered questions clearly and patiently, despite the provocative nature of some of the questions put to him. For these reasons, the Chamber finds the testimony of Witness FS to be credible.

Discussion of Evidence

902. Defence Counsel challenged the testimony of Witness FS with regard to the MRND meeting on the grounds that the witness said the term Hutu Power was used at the meeting, yet placed the meeting in the early part of 1993 before the term was first publicly used by Froduald Karamira at a rally in October 1993. In her testimony, Prosecution Expert Witness Alison Des Forges noted that the term was first announced at a meeting in Gitarama, but that it drew widespread support at the October 1993 rally.¹⁰⁴⁰ She dated the meeting in Gitarama as a month before the October rally.¹⁰⁴¹ In his testimony, Nahimana acknowledged that the Hutu Power movement was evolving from July to November 1993.

903. The Chamber questioned Witness FS on these dates in an effort to clarify the reference points used by him to place the meeting in time. The witness said that he knew the meeting was after his brother moved to Kigali, which was in early 1993, but he did not say that the meeting was in early 1993. He also said that the meeting took place just after RTLM was created but clarified in this questioning that it was after the creation of RTLM but in the course of the same year.

904. The Chamber is of the view that the MRND meeting in 1993 at Nyamirambo stadium attended by Witness ABE was the same MRND meeting as attended by Witness FS. They both placed the meeting after the creation of RTLM and sometime during the course of 1993. They both described the meeting as a meeting primarily about RTLM, related to its creation, with Kabuga, Nahimana and Barayagwiza in attendance. Witness FS testified that Kabuga and Nahimana solicited funds for RTLM and that the RTLM journalists were introduced. Their accounts of the introductory speech by Ngirumpatse are consistent in reporting that he asked people to support RTLM and oppose the *Inyenzi*. They both testified that speeches made at the meeting were broadcast subsequently on RTLM.

905. Witness FS testified that the term "Hutu Power" was used at the meeting, and he quotes the term as having been said many times. Witness ABE testified that he did not hear this term used but noted that he left after the introductory speech by Ngirumpatse. According to Witness FS, Ngirumpatse used the term when he asked people to support RTLM, which was their radio, the radio of the members of Hutu Power. Nahimana was also quoted by Witness FS as having said the people had their radio station, which belonged to Hutu Power and should be used to disseminate the idea of Hutu Power. The Chamber notes that Witness FS repeatedly interposed the term Hutu Power in his account

¹⁰³⁹ Exhibit 3D128.

¹⁰⁴⁰ Exhibit P158A, p. 31 (28124).

¹⁰⁴¹ T. 22 May 2002, p. 85.

of what was said at the meeting, almost belaboring it and casting some doubt on the accuracy of his account that the term was used as frequently as he stated. As the term Hutu Power was used prior to October 1993, although perhaps not widely, and as the witnesses do not maintain that the meeting was necessarily prior to October 1993, the Chamber considers that it is possible that the term Hutu Power was used at the meeting. It is also possible that the term was not used precisely in the manner reported by Witness FS but that he labeled as Hutu Power what he heard as a strong message with the same content, although the term was not in use at the time.

906. When asked about the meeting to which Witness FS testified, Nahimana replied that he never participated in any meeting or rally organized by Hutu Power. According to Witness FS, the meeting was organized by MRND and opened by the President of MRND. In the view of the Chamber, Nahimana's answer does not preclude his presence at this meeting. The credibility of Nahimana's testimony is discussed in more detail in section 5.4. With regard to Ngeze's testimony, the Chamber notes that he first said he was not at this meeting and ended by explaining that if he was there, it was there as a journalist, after saying that he never attended any meeting. He mentioned several times the fact that he was not an MRND member as a reason for why he could not have been at, or introduced at, the meeting. The Chamber does not find this a compelling argument as it is clear from the testimony of Witness FS that the meeting was not for MRND members only. The credibility of Ngeze's testimony is discussed in more detail in section 7.6.

Factual Findings

907. The Chamber finds that Nahimana, Barayagwiza and Ngeze participated in an MRND meeting in 1993 at Nyamirambo Stadium in Kigali. The meeting was attended by about 15,000 people, including *Interahamwe* and *Impuzamugambi*, who were transported to the meeting by ONATRACOM government-run buses. Nahimana, Barayagwiza and Ngeze were introduced, as were Félicien Kabuga, RTLM and *Kangura* journalists. The President of MRND, Ndirumpatse, spoke first and referred to RTLM as a radio they had acquired. He urged the crowd to listen to RTLM rather than Radio Rwanda, which he referred to as an *Inyenzi* radio. When he spoke to the crowd, Kabuga also introduced RTLM as their radio, and asked them to support it. Nahimana spoke at the meeting. He said RTLM should be used to disseminate their ideas relating to Hutu empowerment, and he requested that people support RTLM with financial contributions. Barayagwiza spoke about collaboration with the CDR and working together to fight the *Inyenzi*. He also spoke of using RTLM to fight against the *Inyenzi*. He said the *Inyenzi* were not far, and were even there among them. RTLM reported on the meeting and broadcast many of the speeches, including Nahimana's. The meeting and the RTLM report of it had an impact on people, generating an atmosphere of tension and hostility among Rwandans.

8.3 Meetings at Hotel des Milles Collines and Hotel Diplomat

908. Witness WD testified that as a bartender and waiter at Hotel des Milles Collines in Kigali in 1993, he would often see Barayagwiza and Nahimana. He described Nahimana as the Director of ORINFOR and a member of MRND, and Barayagwiza as a Director in the Ministry of Foreign Affairs and member of MRND, later CDR. Sometime in September 1993, around 5 p.m., when he served the two, he overheard them talking about the war. According to Witness WD, Nahimana said that if the Tutsi were killed, there would be an outcry from the international community but the outcry would stop as it did in the cases of Bugesera and Kibuye. Barayagwiza's reply was that Rwanda belonged to the Hutu as they were in the majority, not to the Tutsi minority.¹⁰⁴²

909. Witness WD testified that in 1994 he was working at Hotel Diplomat as a waiter. On 7 April 1994, Colonel Bagosora met with Mugenzi, Barayagwiza, Nzirorera and Colonel Bizimungu at the hotel at 2 p.m. The witness did not know what was discussed. In the evening around 8 p.m., Bagosora returned to the hotel and met with Mugenzi, Niyitegeka, Barayagwiza, Munsenya, Archbishop Nsengiyumva and others.¹⁰⁴³ At this time, the witness heard Bagosora say that "our parent", President Habyarimana, had been killed by the Inyenzi or the Tutsi,¹⁰⁴⁴ and it was necessary to start "that task" immediately. Bagosora said roadblocks were to be set up everywhere in the country, beginning with Mulindi, Byumba and Gabiro. He added that if there were no more Tutsi in Rwanda, there would be no problems in Rwanda. The witness testified that Barayagwiza said that Rwanda belonged to the Hutu majority, not the Tutsi minority, a phrase he enjoyed saying. During the conversation, the word "*Gutsemba*" was used, meaning to eradicate a living thing. Prior to 7 April 1994, this word was used by the *Interahamwe* in their songs.¹⁰⁴⁵

910. On 9 April 1994, according to Witness WD, a meeting of the Interim Government was held at the Hotel Diplomat around midnight, which was attended by Bagosora, Mugenzi, Nahimana and Karamira. At this meeting, Bagosora said that they had to exterminate the Tutsi and their Hutu accomplices. The witness testified that he saw Barayagwiza every day at the hotel from 7 April 1994 until the Interim Government left the hotel on the morning of 12 April 1994. Witness WD saw Nahimana three times, once in the company of Bagosora.¹⁰⁴⁶

911. Nahimana testified that he and his family were at the French Embassy from 7 April to 12 April 1994, when they were evacuated to Bujumbura. During that period, he left the embassy once on 8 April 1994 to accompany his wife to her shop for food, after having received authorization from the embassy to leave.¹⁰⁴⁷ His wife, Defence Witness Laurence Nyirabagenzi, also testified that they were at the embassy from 7 to 12 April

¹⁰⁴² T. 5 Feb. 2001, pp. 42-43, 50-61.

¹⁰⁴³ *Ibid.*, pp. 66-70.

¹⁰⁴⁴ The witness testified that the term "*Inyenzi*" referred to the RPF opposition but he heard people say that it covered all Tutsi. The consequence of being called an *Inyenzi* was death (T. 5 Feb. 2001, pp. 95-96).

¹⁰⁴⁵ T. 5 Feb. 2001, pp. 74-79; T. 6 Feb. 2001, p. 40.

¹⁰⁴⁶ T. 5 Feb. 2001, pp. 86-90.

¹⁰⁴⁷ T. 24 Sept. 2002, pp. 12-19.

1994. They left the embassy once, on 8 or 9 April 1994, to get food from her shop, after obtaining authorization from the embassy. Apart from that one occasion, she did not think that Nahimana left the embassy before 12 April.¹⁰⁴⁸

Credibility of Witnesses

912. **Witness WD** testified to having overheard snippets of conversation of an incriminating nature when he happened to be serving Barayagwiza, Nahimana and others. Nahimana spoke of the killing of Tutsi and said that the outcry from the international community would be short-lived; Bagosora announced plans to exterminate the Tutsi on two occasions, and twice recited his favourite phrase "Rwanda belongs to the Hutu majority, not the Tutsi minority". Witness WD's presence, and within earshot, on three separate occasions at two different venues in September 1993, and 7 and 9 April 1994, happening to hear only these few words, would be an extraordinary coincidence in the view of the Chamber. The Chamber notes that Witness WD by his own admission was a member of the RPF from 1993.¹⁰⁴⁹ He paid dues and attended meetings with six other RPF members in his cellule once a week during September 1993. In his statement, the witness affirmed his loyalty to the RPF.¹⁰⁵⁰ He said his Tutsi ethnicity and RPF leanings were suspected by his colleagues, and were known to Bagosora's brother-in-law, Alloys Ngirabatware, the Chief of the *Interahamwe* of Remera.¹⁰⁵¹ The Chamber considers that these circumstances make it even more unlikely that the witness, as a known RPF member, would have been able to serve Bagosora, as well as the Accused and others, while they were talking about exterminating the Tutsi on 7 and 9 April 1994.¹⁰⁵² The evidence of Witness WD is not corroborated. In light of these circumstances, the Chamber finds the testimony of Witness WD not credible.

Discussion of Evidence

913. Witness WD was the sole witness to the conversations about which he testified. The Chamber cannot rely on his evidence, for the reasons cited above, and is therefore unable to make a factual finding with regard to the allegations concerning these meetings at the Hotel des Mille Collines and the Hotel Diplomat.

8.4 Kangura and CDR

914. Prosecution Expert Witness Marcel Kabanda testified that from November 1991, with the publication of *Kangura* No. 25, the newspaper began advertising for a party known as the PDR, inviting readers who wanted to join this party to get information from the editorial office of *Kangura*. The PDR was also advertised in *Kangura* No. 26 and *Kangura* No. 27. In 1992, when the CDR was established, *Kangura* dedicated a special unnumbered issue to the birth of the party. Kabanda noted that *Kangura* did not do this

¹⁰⁴⁸ T. 30 Oct. 2002, pp. 21-24.

¹⁰⁴⁹ T. 6 Feb. 2001, pp. 42-44.

¹⁰⁵⁰ *Ibid.*, pp. 101-103.

¹⁰⁵¹ T. 5 Feb. 2001, pp. 121-129; T. 6 Feb. 2001, p. 50.

¹⁰⁵² Defence Closing Brief (Nahimana), pp. 112-113.

for any other party. An editorial in the special issue, signed by Hassan Ngeze, informed readers that the CDR was the party previously spoken of in *Kangura* as the PDR. He said the "P" had been replaced with "C" because of another party that had been formed with practically the same acronym. Although the letter had changed, the ideology had not changed. Kabanda testified that *Kangura* considered the CDR as the first step toward unification of the Hutu and practically called on the other parties to join the CDR.¹⁰⁵³

915. The special issue, which printed the CDR insignia on its front cover and a full page photo of CDR President Martin Bucyana on its back cover, contained the CDR Statute and the speeches of its President, as well as a Manifesto setting forth the party's political programme and a provisional enrollment form for CDR members. The headlines on the cover of the issue read, "Let Us Acquaint Ourselves with the Manifestos and Statutes of the Majority People's Parties", "Where Will the *Inyenzi* and their Accomplices Seek Refuge Since the Hutu Party is Officially Born?", and "The Tutsi Should Know Henceforth that Their Rights End Where Those of the Hutu Majority Begin". In the *Kangura* editorial, Ngeze welcomed the CDR as coming at the right time to defend the interests of the Hutu, just as the PL was defending the interests of the Tutsi. The MRND and the MDR had deserted the Hutu, he said, and were vying with each other in breaking their promises. The editorial closed by telling readers, "Dear Hutu, this is therefore your party".

916. In an article entitled "Grab Your Oars Hutu", signed by *Kangura* and published in May 1992 in *Kangura* No. International Version 10, the CDR was dubbed the "mental Revolution Island" and Hutu readers were encouraged to join this revolution:

Nothing, really, nothing in nature can move the Tutsi who has a desiccated heart where the Nazi worm nibbles in tranquility. In spite of this illness, the ideal thing to do would be to calm him. Calm him through a mental revolution similar to yours. And through what other means?

Hutus, henceforth, a chasm threatens. On one side you have the abyss which you dare not look into because its depths will make you dizzy. The chasm is "controlled" by the Liberal Party, which is now joining the government....The abyss that you dare not look at is of course the Rwandan Patriotic Front for it has just obtained new power by joining the government through the Liberal Party. However, do not give up. Help is on its way. Call your brothers, all of you, board a boat and sail towards the mental Revolution Island.

The island is none other than the CDR. So now grab your oars, Hutus. Your disembarkment would no doubt be synonymous with vigilance and you will never again experience mental, administrative and economic domination.¹⁰⁵⁴

917. An article in *Kangura* International Version No. 9, entitled "CDR: the only hope for the Hutus in the face of the Tutsi threat", said about the CDR:

¹⁰⁵³ T. 14 May 2002, pp. 135-139.

¹⁰⁵⁴ Exhibit P116B, p. 33 or 25124, citing *Kangura* No. 10 (International Version), pp. KA021215-1234.

There is still hope, sublime hope for improvement in the near future and there are already signs of that with the birth of the political Messiah, that is the CDR, the grassroots party for the defence of the Republic and the reinforcement of the inalienable accomplishments of the Revolution.¹⁰⁵⁵

918. In *Kangura* No. 47, published in August 1993, an article on the Arusha Accords set forth ten concerns about what would happen under the Arusha Accords – the Hutu would have to relinquish their property, pay taxes to the *Inyenzi*, surrender their weapons, and give up their government posts. After each concern was set forth, the refrain “That does not concern me, I am CDR” was repeated. The article was signed by Hassan Ngeze.¹⁰⁵⁶

919. Kabanda testified that *Kangura* would publish announcements or *communiqués* of the CDR.¹⁰⁵⁷ He stated that Stanislas Simbizi, a member of the CDR Information Committee, was on the editorial board of *Kangura*. Shyirambere Barahinyura published many articles in *Kangura* in support of the CDR, signing some articles as the representative of the CDR in Germany.¹⁰⁵⁸ Kabanda pointed out a photograph on the last page of *Kangura* No. 41, published in March 1993, of three men on a platform, one speaking into a microphone, with the caption “J.B. Barayagwiza, H. Ngeze and Perezida Bucyana of CDR”.¹⁰⁵⁹ He also introduced into evidence a document, dated 24 September 1992, addressed to the Council of Ministers from Stanislas Mbonampeka, who according to Kabanda was the Minister of Justice in 1992. The subject line of the document reads: “Authorisation for the suspension on the one hand of the publication of the written press *Kangura*, and on the other, the political formation known as CDR.” The document refers to a letter from the Prosecutor dated 10 August 1991 concerning various offences of *Kangura's* Editor-in-Chief, Hassan Ngeze and says the following about Ngeze, CDR and *Kangura*:

As for charges against Hassan Ngeze who is an ideologist of the CDR party and director of the *Kangura* written press publication - the position of the Minister of Defence, in his letter - in his aforementioned letter of 15th August 1992, in which reference is made to the provocation of Burundi by *Kangura* newspaper allegedly was corroborated by various facts, including those mentioned in our previous letters. Furthermore, the *Kangura* newspaper allegedly served as a relay to the CDR message, for which it has just been proven that it contributed to the disintegration of the national community, and to the negotiation of the Rwandan nation. No. 5: We, therefore, solicit from the cabinet -- the government's cabinet that it requests the Minister for the Interior to utilise Article 26 of the Laws No. 28/91 of 18th June 1991, regarding political parties and concerning CDR party, with regard to *Kangura* newspaper and authorise its

¹⁰⁵⁵ Exhibit P116 B, p. 63 or 25094, citing *Kangura* No. 9 (International Version), p. 11; Exhibit P118, p. KA022112. The title in French reads: “Le Hutu face à la menace Tutsi un seul espoir, le CDR”.

¹⁰⁵⁶ Exhibit P116 B, p. 71 or 25086.

¹⁰⁵⁷ T. 14 May 2002, pp. 135-139.

¹⁰⁵⁸ *Ibid.*, pp 11-12, 63.

¹⁰⁵⁹ Exhibit P 119; T. 14 May 2002, p. 140.

suspension while awaiting the completion of the criminal proceedings which are under way against Hassan Ngeze, its editor.¹⁰⁶⁰

920. Hassan Ngeze testified that he published CDR communiqués in *Kangura* because he wanted the money they paid for the advertising.¹⁰⁶¹ It was put to him that he himself had signed CDR communiqués in *Kangura*, and one such instance on page 8 of *Kangura* No. 39 was cited as an example. Ngeze testified that this was an article under which his name appeared, and not a CDR communiqué. Above his name were written the words "CDR, we are vigilant". He explained that that was CDR's motto and as he was writing about CDR policy, he had included the phrase in the article. He maintained that it did not indicate that he stood for the CDR position and disagreed that that would be the impression conveyed to readers. With regard to what was put to him as another CDR communiqué on page 2 of the same issue, Ngeze stated that this was not a communiqué but rather a letter from him to President Habyarimana. He called himself CDR adviser but said he was not writing on behalf of the party.¹⁰⁶² On the back page of *Kangura* No. 41 is written that Ngeze was a counsellor of CDR. Ngeze repeated that the title "counsellor" or "adviser" was given to those who had helped to establish the party.¹⁰⁶³ In *Kangura* No. 54, on page 3 *Kangura* was said to enjoy the support of the CDR.¹⁰⁶⁴

921. Ngeze was questioned in cross-examination about a photograph on the back page of *Kangura* No. 35 of a group of people wearing CDR T-shirts, among them Ngeze's mother. Three people in the photograph are wearing CDR T-shirts, while others are wearing CDR caps. Ferdinand Nahimana is present, wearing neither a CDR T-shirt nor cap. Counsel for the Prosecution asked Ngeze what was the occasion that brought these people together. Ngeze answered that it was a football match attended by these people as supporters. In his testimony, Nahimana acknowledged that the photograph was taken at a CDR meeting. Underneath the photograph is a caption written by Ngeze which read: "The party of the people, CDR, condemns the government made up of accomplices. For instance, Minister Ngurinzira who is the Minister of Foreign Affairs, in two months this government must resign."¹⁰⁶⁵ Ngeze denied that he was expressing the view of the people in the photograph, since Nahimana was not a CDR member, but a MRND member. He said another person present in the photograph, an Emmanuel, was an RPF member. However, he acknowledged that the caption represented CDR's position as he understood it from CDR communiqués. Ngeze stated that the journalists of *Kangura* published photographs of CDR to demonstrate to the Habyarimana authorities that Ngeze was a founder of CDR, and not a member of the RPF or *Inkotanyi*, as he was being arrested at the time under these suspicions.¹⁰⁶⁶

¹⁰⁶⁰ Exhibit P107/42; T. 16 May 2002, pp. 58-64.

¹⁰⁶¹ T. 1 Apr. 2003, p. 88.

¹⁰⁶² *Ibid.*, pp. 89-92.

¹⁰⁶³ *Ibid.*, pp. 77-78.

¹⁰⁶⁴ *Ibid.*, pp. 95-96.

¹⁰⁶⁵ The original Kinyarwanda reads: "Ishyaka Rya Rubanda CDR Riramagana Guverinoma Igizwe N'Ibyitso. Byagaragariye Kuri Ministri Ngurinzira Ushinzwe Ububanyi N'Amahanga. Mu Mezi Abiri Igomba Kuba Yeguye."

¹⁰⁶⁶ T. 8 Apr. 2003, pp. 46-47.

922. Defence Witness B3, a CDR member, was asked in cross-examination about an article in *Kangura* No. 38, signed by student members of the CDR. The article, which was read out in its entirety, was entitled "Are we going to allow the Tutsis to rule us again and to put us back in chains?" It was explicitly addressed to "Hutu men, Hutu women, wherever you may be", and after reminding readers of the centuries of Tutsi rule, under which the Hutu lived in chains, and the overthrow of Tutsi rulers in 1959, it addressed the threat of a return of the Tutsi regime. "Are we again going to allow them to take over 50 per cent of the positions - refer to the CDR communiqué of 21 July 1992 - whereas they do not account for more than 10 per cent?", it asked, suggesting that if the *Inyenzi* became part of the government 100% of the civil service posts would be occupied by Tutsi. The danger of this future to readers and the role of the CDR, with a call to support it, read as follows:

Well, it will be 100 per cent because they would have overthrown you, and do not forget that they do not forgive. They will not only limit themselves to taking over your positions, they will strangle you, you and all your children. Above all, do not think that when they would have restored our place to us in chains, they will start with the ordinary people. Far from it. You will be the first target. However, if you thought wisely, you would free the masses, and in so doing you would be freeing yourselves. There is one surprising thing, namely, that there are Hutus collaborating with Tutsis in order to fight against the CDR party. There is a fact which is implicit in the following statement: The death or what will cause the death of the dog starts with selling its nose. That is why, Hutu men, Hutu women, you who have a forum or a place where you can express yourself, we are asking you to openly support the CDR and to support it with all your strength. It is the only party that provides an objective analysis of the problems of Rwanda.¹⁰⁶⁷

923. Witness B3 acknowledged that this article could be considered extremist in nature.¹⁰⁶⁸ It was put to him that CDR was engaged in false propaganda by passing a judgment that Tutsi had all the money, and he replied that he did not have the relevant information to conclude whether Tutsi had all the wealth in Rwanda in 1992 and 1993.¹⁰⁶⁹ During re-examination, the witness stated that he had not read the article, nor discussed its contents with the authors, before its publication.¹⁰⁷⁰ Witness B3 denied that *Kangura* was the mouthpiece of CDR. He said that *Kangura* was an independent newspaper, not under the influence of any party.¹⁰⁷¹

924. Ngeze testified in cross-examination that some of his employees from *Kangura* joined CDR. He said that his deputy Editor-in-Chief, Issa Nyabyenda, had signed on to CDR at its establishment but, like himself, was not a card-carrying member of CDR although he may have been a CDR sympathiser.¹⁰⁷² Ngeze's own role in CDR is discussed elsewhere.

¹⁰⁶⁷ T. 3 Dec. 2002, pp. 76-79.
¹⁰⁶⁸ *Ibid.*, p. 81.
¹⁰⁶⁹ *Ibid.*, pp. 98-100.
¹⁰⁷⁰ T. 4 Dec. 2002, p. 42.
¹⁰⁷¹ T. 3 Dec. 2002, pp. 46-47.
¹⁰⁷² T. 3 Apr. 2003, pp. 51-53.

Discussion of Evidence

925. The Chamber notes that there are various indicators of the close relationship between *Kangura* and the CDR. Ngeze maintained in his testimony that he was paid for the publication of CDR communiqués, but even if true, this does not explain the publication of an entire issue to commemorate the creation of CDR, with an editorial welcoming the birth of the party and claiming it as a long-standing *Kangura* initiative under the name of PDR. A cover title urged readers to become acquainted with the CDR and a provisional membership form in the special issue provided an opportunity for *Kangura* readers to join the party.

926. The Chamber considers that the publication in *Kangura* No. 38 of a letter signed by CDR members, urging readers to support the party, is not in itself evidence of an affiliation between *Kangura* and the authors of the letter. However, the Chamber cannot accept Ngeze's contention that the words "CDR, we are vigilant", written just above his name, would not be taken by readers as an indication that he stood for the CDR position. Similarly his article about the Arusha Accords, with the refrain "I am CDR" is an explicit identification, as are the photographs in *Kangura* of Ngeze wearing a CDR tie. His explanation that the photographs of him wearing the CDR tie was an indication that he was in jail, is not convincing. Signing letters with the title of CDR adviser and otherwise noting this affiliation of his to the party in *Kangura*, would have further conveyed to readers that Ngeze represented the CDR. Ngeze himself testified that *Kangura* published CDR photographs to demonstrate to the authorities that he was a founder of CDR, indicating that he not only recognized the message conveyed but that in fact it was intentional. The Chamber rejects as clearly untrue, Ngeze's contention that the photograph published in *Kangura* No. 35 was a photograph of a football match rather than a CDR rally, as Nahimana testified it was and as the caption of the photograph clearly indicates.

927. With regard to the staff of *Kangura*, the Chamber considers that the party affiliation of journalists working for the publication is not in itself an indication of the publication's connection to the party, except to the extent that such journalists used *Kangura* to promote the party. Ngeze was a founding member of and active in the CDR, and held the title of adviser, identifying himself as such in *Kangura*.

Factual Findings

930. *Kangura* supported the CDR, claiming the party as its own, publishing a special issue on the occasion of its creation, with a membership application form, and urging its readers to join the party. In *Kangura*, Hassan Ngeze publicly acknowledged his formal role as an adviser to the CDR, and through editorials, photographs, and the publication of letters and communiqués, *Kangura* endorsed and actively promoted the CDR.

8.5 RTLM and Kangura

931. When RTLM began broadcasting in July 1993, Hassan Ngeze welcomed the new radio station in *Kangura*. In an article entitled *RTLM: No Chance for the Tutsi*, published in *Kangura* No. 46 in July 1993, Ngeze wrote the following:

Unity is strength. The Hutus' dream is finally coming true, for they have been able to set up a free radio and television station whose creation was announced more than a year ago. Many were wondering why it was only the Inyenzi who had that monopoly. As such, we, the Hutu majority quickly examined the possibilities of setting up a free radio and television station. As the days went by, we saw various small groups of people advocating for the speedy creation of the station.

The small groups became very many, brought their ideas together and decided on one thing: the setting up of a radio and television station... Rich Hutus of all political persuasions and natives of all the regions of the country... bought several shares in this company named RTLM.

The country's intellectuals and top-ranking authorities from all over the country and members of all the political parties also bought shares. Surprisingly, however, no single Tutsi has bought shares in RTLM. But that is understandable. At the general meeting held at Amahoro Hotel in Remera on 11 July 1993, even though the participants continued to insist on the commercial aspect of RTLM, it was only a matter of words ... [illegible]...the participants were worried that not only did the *Inyenzi* have their own radio station, Radio Muhabura, but they and their accomplices had infiltrated Radio Rwanda. It was obvious that all the shareholders agreed on one thing: that this radio and television station be a symbol of solidarity for the Hutus. It was, moreover, this venture that made them agree for the first time and work as a team.

So, that is the situation with regard to a radio and television station that will help *Kangura* further the Hutu objectives. On the frontline, the Rwandan Armed Forces have scored successes, *Kangura* has won in the written media and now our radio and television station has just won. This station is also referred to as the station for the people fighting for the defence of the Republic... Let RTLM be for us a symbol of solidarity, let it be a voice to arouse awareness in the majority of the population and protect their interests.¹⁰⁷³

932. On the cover of this issue of *Kangura* is a cartoon in which Nahimana, Barayagwiza and Ngeze were sitting at a table marked "RTLM" in front of microphones, together with RTLM journalist Noël Hitimana. Witness AHA, who helped create the cartoon, clarified that it was situated in a television studio and was not intended to be a depiction of the founding meeting of RTLM, although he described the figures in it as founding members of RTLM. In the cartoon, Ngeze says that RTLM should be the way to protect the people in its fight with those who did not accept the Republic. Barayagwiza

¹⁰⁷³ Exhibit P6, K0151189-90.

says that RTLM should be the banner of collaboration between the Hutu. Nahimana says that RTLM should be a forum for Hutu intellectuals who are working for the masses.¹⁰⁷⁴

933. Witness AFB heard *Kangura* advertisements on both Radio Rwanda and RTLM.¹⁰⁷⁵ According to Prosecution Witness GO, *Kangura* was advertised in RTLM in such a manner that people would know what each issue contained. Asked whether it was not just advertising, he replied that it was not advertising to increase sales. Every single issue of *Kangura* was commented on by RTLM journalists, who would say that this was the newspaper of the majority people. In particular the comments he recalled related to the role of the newspaper in helping to vanquish the enemy and its accomplices. The goal was not only sales, he said, "they were seeking to mobilize".¹⁰⁷⁶

934. On 21 January 1994, Noël Hitimana broadcast the following description of *Kangura* on RTLM:

Now read *Kangura* No. 54. . . Number 54 of *Kangura* would show you how your newspaper -- how the newspaper, *Kangura*, won the fight to unite the Hutus. Today the Hutus speak the same language and on all issues. . . The content of *Kangura* 54, is a reminder for all Rwandans who saw how the war started, and how it ended with the defeat of the Inyenzi. We find number 54 of *Kangura* across the whole country, and it cost only a hundred francs. Read, and get people to read *Kangura*, and you will know how they said Yusuf, alias Kiwani was going to kill Mugenzi Justen. This is the content of the *Kangura* newspaper. We see Ngeze naked. He is seated. All his clothes are taken off, and they say, "We have got you." "You dog, ha." He had just been told that if ever a Hutu is killed in ...[illegible]... if a Hutu dies in the demonstrations, he was also going to die. I see a lot of cartoon in *Kangura*, Ya. Twagiramungu Faustin alias Rukokoma is dancing, I don't know. But with whom is he dancing, ah, I see. He has been able to lay hands on a girl, (he is surprised). It's really incomprehensible. It's a scandal. There are things that are surprising and you really need to look at this *Kangura*, this issue of *Kangura*, because I realised that things are serious. They are grotesque images. You, *Kangura*, is really *Kangura*. It is a real newspaper.¹⁰⁷⁷

935. Several witnesses described hearing RTLM broadcast information that was published in *Kangura*. Witness AGX, a Tutsi man from Gisenyi, testified that he listened to RTLM in 1993 and read *Kangura*, and that the information broadcast by the radio was basically the same as what was published in the newspaper. He cited as an example an RTLM broadcast he heard saying that the general who headed UNAMIR was seen at the Chez Lando hotel, surrounded by women, who were referred to as *Ibizurengezi*. Subsequently, in Ngeze's newspaper, he saw a picture of the general, said to be at Chez Lando, surrounded by women showing him their breasts and putting their breasts into his mouth.¹⁰⁷⁸ Witness ABE, a Tutsi man from Kigali, noted in his testimony that RTLM and

¹⁰⁷⁴ Exhibit P6; T. 2 Nov. 2000, p. 145.
¹⁰⁷⁵ T. 6 Mar. 2001, p. 23.
¹⁰⁷⁶ T. 6 June 2001, pp. 121-122.
¹⁰⁷⁷ T. 11 Apr. 2001, pp. 36-37.
¹⁰⁷⁸ T. 11 June 2001, pp. 53-54.

Kangura were running the same propaganda campaign to define the *Inyenzi/Inkotanyi* as the Tutsi.¹⁰⁷⁹

936. Prosecution Witness AHA, a journalist who worked for *Kangura*, testified that there were no direct relations between RTLM and *Kangura*. He noted that colleagues from the two media were friends but said there was not exchange of information. He described the relationship of *Kangura* and RTLM as complementary, both being in the same group that was working for the Hutu and for the regime in the fight to avoid Tutsi domination. Witness AHA said they had separate editorial teams, and there were no common meetings for preparation of articles, but that their work was in the same direction. "It was sort of like a coalition", he said, noting that there was a coalition among Tutsi on the one hand and Hutu on the other.¹⁰⁸⁰

937. In *Kangura* No. 54, published in January of 1994, Hassan Ngeze signed an article reading as follows:

Kangura has been supported by CDR and then RTLM radio station was established. The *Interahamwes*, the *Impuzamugambis*, the *Inkuba* of the MDR also stated that we are ready in order to fight for our country. The entire Hutu youth now have been taught how the Hutu youth can confront the *Inyenzis* the day the *Inyenzis* raise their head, unless before that time the *Inyenzis* come to terms with the fact that they will not succeed, *Kangura* has done everything possible; *Kangura* has said everything. Only history will actually reward us for our efforts. We have just finished the first phase -- that is, to prevent the *Inyenzis* from enslaving us. We are now embarking on the second phase, and this one is to ask all Hutus to share all the achievements brought about by the revolution. Should we accept that Hutus should share death and misery and that the benefits, the achievements, be accumulated by a tiny group of people whose names we do not want to mention? He has been warned, but he who refuses to listen will have to face the consequences of his refusal to listen. We of the *Kangura* team have demonstrated our courage and history will reward us as we deserve.¹⁰⁸¹

938. Kabanda testified that this issue *Kangura* was advertised on RTLM and listeners were asked to buy it.¹⁰⁸²

939. In March 1994, *Kangura* undertook a competition, in conjunction with RTLM, as discussed in section 2.3.

Discussion of Evidence

940. The Chamber notes that both *Kangura* and RTLM referred to each other in a manner conveying their sense of joint purpose. *Kangura* welcomed RTLM as an initiative it had been part of establishing. The Chamber recalls that *Kangura* institutionally owned one share of RTLM, perhaps in a show of symbolic support and

¹⁰⁷⁹ T. 28 Feb. 2002, p. 27.

¹⁰⁸⁰ T. 2 Nov. p.168; T. 6 Nov 2000, p. 21.

¹⁰⁸¹ T. 16 May 2002, pp. 175-176.

¹⁰⁸² *Ibid.*, p. 177.

unity. The word “solidarity” is used repeatedly by *Kangura* and it is explicitly a Hutu solidarity that precludes Tutsi participation, as evidenced by the title of the article “RTLM: No Chance for the Tutsi” and the comment made in it that there were, not surprisingly, no Tutsi shareholders of RTLM. This article goes beyond the traditional scope of news and commentary, in the view of the Chamber. *Kangura* publicly identified itself with RTLM in this manner and, as illustrated by the cartoon on the cover of *Kangura* No. 46, Ngeze projected the image that he was part of the common effort to create a framework for Hutu collaboration. The cartoon on this cover depicts all three Accused together in a television studio, discussing the creation of RTLM, indicating the existence or creation of a public perception that the Accused were collaborators in a common initiative.

941. Similarly, RTLM promoted *Kangura* in a manner that went beyond traditional forms of media interaction, in the Chamber’s view. The 21 January 1994 RTLM broadcast by Noël Hitimana is not in the form of an advertisement by *Kangura*. It is an advertisement by RTLM for *Kangura*, in which RTLM, in its own voice, urged listeners repeatedly to buy *Kangura*. The *Kangura* competition in March 1994 was similarly promoted by RTLM, and in other ways also constituted a joint venture.

942. The Chamber notes the testimony of Witness AHA that *Kangura* and RTLM did not exchange information or have joint editorial meetings. He described the relationship as complementary and expressed his sense that *Kangura* and RTLM were part of a coalition. The Chamber considers this to be an accurate characterization of the relationship between *Kangura* and RTLM, which is affirmed by the evidence cited above. In the article published in January 1994, in *Kangura* No. 54, Ngeze placed CDR in this coalition as well. His sense of progression is captured by the sentence: “*Kangura* has been supported by CDR and then RTLM radio station was established.” That this coalition had fulfilled its purpose is evidenced by the sentence, “The entire Hutu youth now have been taught how the Hutu youth can confront the *Inyenzis*...” The purpose, a joint purpose, was to mobilize the Hutu against the enemy, repeatedly stated and understood to be the Tutsi population.

Factual Findings

943. *Kangura* and RTLM functioned as partners in a Hutu coalition, of which CDR was also a part. *Kangura* and RTLM presented a common media front, publicly interacting and promoting each other through articles, broadcasts, and the joint initiative represented by the *Kangura* competition in March 1994. *Kangura* portrayed all three of the Accused in a common undertaking relating to RTLM. The purpose of the coalition was to mobilize the Hutu population against the Tutsi ethnic minority.

CHAPTER IV

LEGAL FINDINGS

1. Introduction

944. A United Nations General Assembly Resolution adopted in 1946 declares that freedom of information, a fundamental human right, "requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to see the facts without prejudice and to spread knowledge without malicious intent".¹⁰⁸³

945. This case raises important principles concerning the role of the media, which have not been addressed at the level of international criminal justice since Nuremberg. The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences.

2. Genocide

946. Count 2 of the Indictments charge the Accused with genocide pursuant to Article 2(3)(a) of the Statute, in that they are responsible for the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such.

947. Article 2(3) of the Statute defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

948. The Trial Chamber in *Akayesu* interpreted "as such" to mean that the act must be committed against an individual because the individual was a member of a specific group and specifically because he belonged to this group, so that the victim is the group itself, not merely the individual.¹⁰⁸⁴ The individual is the personification of the group. The Chamber considers that acts committed against Hutu opponents were committed on account of their support of the Tutsi ethnic group and in furtherance of the intent to destroy the Tutsi ethnic group.

¹⁰⁸³ UN General Assembly Resolution 59 (I) (1946).

¹⁰⁸⁴ *Akayesu* (TC) para. 521.

RTLM

949. The Chamber found, as set forth in paragraph 486, that RTLM broadcasts engaged in ethnic stereotyping in a manner that promoted contempt and hatred for the Tutsi population and called on listeners to seek out and take up arms against the enemy. The enemy was defined to be the Tutsi ethnic group. These broadcasts called explicitly for the extermination of the Tutsi ethnic group. In 1994, both before and after 6 April, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents who supported the Tutsi ethnic group. In some cases these persons were subsequently killed. A specific causal connection between the RTLM broadcasts and the killing of these individuals - either by publicly naming them or by manipulating their movements and directing that they, as a group, be killed - has been established (see paragraph 487).

Kangura

950. The Chamber found, as set forth in paragraphs 245 and 246, that *The Appeal to the Conscience of the Hutu* and *The Ten Commandments*, published in *Kangura* No. 6 in December 1990, conveyed contempt and hatred for the Tutsi ethnic group, and for Tutsi women in particular as enemy agents, and called on readers to take all necessary measures to stop the enemy, defined to be the Tutsi population. Other editorials and articles published in *Kangura* echoed the contempt and hatred for Tutsi found in *The Ten Commandments* and were clearly intended to fan the flames of ethnic hatred, resentment and fear against the Tutsi population and Hutu political opponents who supported the Tutsi ethnic group. The cover of *Kangura* No. 26 promoted violence by conveying the message that the machete should be used to eliminate the Tutsi, once and for all. This was a call for the destruction of the Tutsi ethnic group as such. Through fear-mongering and hate propaganda, *Kangura* paved the way for genocide in Rwanda, whipping the Hutu population into a killing frenzy.

CDR

951. The Hutu Power movement, spearheaded by CDR, created a political framework for the killing of Tutsi and Hutu political opponents. The CDR and its youth wing, the *Impuzamugambi*, convened meetings and demonstrations, established roadblocks, distributed weapons, and systematically organized and carried out the killing of Tutsi civilians. The genocidal cry of "*tubatsembatsembe*" or "let's exterminate them", referring to the Tutsi population, was chanted consistently at CDR meetings and demonstrations. As well as orchestrating particular acts of killing, the CDR promoted a Hutu mindset in which ethnic hatred was normalized as a political ideology. The division of Hutu and Tutsi entrenched fear and suspicion of the Tutsi and fabricated the perception that the Tutsi population had to be destroyed in order to safeguard the political gains that had been made by the Hutu majority.

Causation

952. The nature of media is such that causation of killing and other acts of genocide will necessarily be effected by an immediately proximate cause in addition to the communication itself. In the Chamber's view, this does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication.

953. The Defence contends that the downing of the President's plane and the death of President Habyarimana precipitated the killing of innocent Tutsi civilians. The Chamber accepts that this moment in time served as a trigger for the events that followed. That is evident. But if the downing of the plane was the trigger, then RTLM, *Kangura* and CDR were the bullets in the gun. The trigger had such a deadly impact because the gun was loaded. The Chamber therefore considers the killing of Tutsi civilians can be said to have resulted, at least in part, from the message of ethnic targeting for death that was clearly and effectively disseminated through RTLM, *Kangura* and CDR, before and after 6 April 1994.

Acts of Jean-Bosco Barayagwiza

954. As found in paragraph 730, Barayagwiza came to Gisenyi, one week after 6 April, with a truckload of weapons that were distributed to the local population and used to kill individuals of Tutsi ethnicity. Barayagwiza played a leadership role in the distribution of these weapons, which formed part of a predefined and structured plan to kill Tutsi civilians. From Barayagwiza's critical role in this plan, orchestrating the delivery of the weapons to be used for destruction, the Chamber finds that Barayagwiza was involved in planning this killing. As set forth in paragraph 719, Barayagwiza supervised roadblocks manned by the *Impuzamugambi*, established to stop and kill Tutsi.

Acts of Hassan Ngeze

955. As found in paragraph 836, Hassan Ngeze on the morning of 7 April 1994 ordered the *Interahamwe* in Gisenyi to kill Tutsi civilians. Many were killed in the attacks that happened immediately thereafter and later on the same day, among whom were Witness EB's mother, brother and pregnant sister, whose body was sexually violated with an umbrella rod. On the basis of these acts, the Chamber finds that Ngeze ordered the killing of Tutsi civilians.

956. As found in paragraph 837, Hassan Ngeze helped secure and distribute, stored, and transported weapons to be used against the Tutsi population. He set up, manned and supervised roadblocks in Gisenyi in 1994 that identified targeted Tutsi civilians who were subsequently taken to and killed at the *Commune Rouge*. On the basis of these acts, the Chamber finds that Ngeze aided and abetted the killing of Tutsi civilians.

Genocidal Intent

957. In ascertaining the intent of the Accused, the Chamber has considered their individual statements and acts, as well as the message they conveyed through the media they controlled.

958. On 15 May 1994, the Editor-in-Chief of RTLM, Gaspard Gahigi, told listeners:

...they say the Tutsi are being exterminated, they are being decimated by the Hutu, and other things. I would like to tell you, dear listeners of RTLM, that the war we are waging is actually between these two ethnic groups, the Hutu and the Tutsi.¹⁰⁸⁵

959. The RTLM broadcast on 4 June 1994 is another compelling illustration of genocidal intent:

They should all stand up so that we kill the *Inkotanyi* and exterminate them...the reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small nose and then break it.¹⁰⁸⁶

960. Even before 6 April 1994, RTLM was equating the Tutsi with the enemy, as evidenced by its broadcast of 6 January 1994, with Kantano Habimana asking, "Why should I hate the Tutsi? Why should I hate the *Inkotanyi*?"

961. In an article published by *Kangura* in January 1994, Hassan Ngeze wrote:

Let's hope the *Inyenzi* will have the courage to understand what is going to happen and realize that if they make a small mistake, they will be exterminated; if they make the mistake of attacking again, there will be none of them left in Rwanda, not even a single accomplice. All the Hutus are united...¹⁰⁸⁷

962. In perhaps its most graphic expression of genocidal intent, the cover of *Kangura* No. 26 answered the question "What Weapons Shall We Use To Conquer The *Inyenzi* Once And For All?" with the depiction of a machete. That the Tutsi ethnic group was the target of the machete was clear from another question on the same cover: "How about re-launching the 1959 Bahutu revolution so that we can conquer the *Inyenzi-Ntutsi*." The same cover also bore the headline "The Batutsi, God's Race!"¹⁰⁸⁸

963. *Kangura* and RTLM explicitly and repeatedly, in fact relentlessly, targeted the Tutsi population for destruction. Demonizing the Tutsi as having inherently evil qualities, equating the ethnic group with "the enemy" and portraying its women as seductive

¹⁰⁸⁵ See paragraph 392.

¹⁰⁸⁶ See paragraph 396.

¹⁰⁸⁷ See paragraph 215.

¹⁰⁸⁸ See paragraph 160.

enemy agents, the media called for the extermination of the Tutsi ethnic group as a response to the political threat that they associated with Tutsi ethnicity.

964. The genocidal intent in the activities of the CDR was expressed through the phrase “*tubatsembembe*” or “let’s exterminate them”, a slogan chanted repeatedly at CDR rallies and demonstrations. At a policy level, CDR communiques called on the Hutu population to “neutralize by all means possible” the enemy, defined to be the Tutsi ethnic group.

965. The editorial policies as evidenced by the writings of *Kangura* and the broadcasts of RTLM constitute, in the Chamber’s view, conclusive evidence of genocidal intent. Individually, each of the Accused made statements that further evidence his genocidal intent.

966. Ferdinand Nahimana, in a Radio Rwanda broadcast on 25 April 1994, said he was happy that RTLM had been instrumental in awakening the majority people, meaning the Hutu population, and that the population had stood up with a view to halting the enemy. At this point in time, mass killing – in which RTLM broadcasts were playing a significant part - had been ongoing for almost three weeks. Nahimana associated the enemy with the Tutsi ethnic group. His article *Current Problems and Solutions*, published in February 1993 and recirculated in March 1994, referred repeatedly to what he termed as the “Tutsi league”, a veiled reference to the Tutsi population as a whole, and associated this group with the enemy of democracy in Rwanda. As the mastermind of RTLM, Nahimana set in motion the communications weaponry that fought the “war of media, words, newspapers and radio stations” he described in his Radio Rwanda broadcast of 25 April as a complement to bullets. Nahimana also expressed his intent through RTLM, where the words broadcast were intended to kill on the basis of ethnicity, and that is what they did.

967. Jean-Bosco Barayagwiza said in public meetings, “let’s exterminate them” with “them” being understood by those who heard it as a reference to the Tutsi population. After separating the Tutsi from the Hutu and humiliating the Tutsi by forcing them to perform the *Ikinyemera*, their traditional dance, at several public meetings, Barayagwiza threatened to kill them and said it would not be difficult. From his words and deeds, Barayagwiza’s ruthless commitment to the destruction of the Tutsi population as a means by which to protect the political gains secured by the Hutu majority from 1959 is evident.

968. Hassan Ngeze wrote many articles and editorials, and made many statements that openly evidence his genocidal intent. In one such article he stated that the Tutsi “no longer conceal the fact that this war pits the Hutus against the Tutsis”.¹⁰⁸⁹ His Radio Rwanda broadcast of 12 June 1994 called on listeners not to mistakenly kill Hutu rather than Tutsi. Crass references to the physical and personal traits of Tutsi ethnicity permeate *Kangura* and his own writings in *Kangura*. Ngeze harped on the broad nose of the Hutu as contrasted with the aquiline nose of the Tutsi, and he incessantly described the Tutsi as evil. His role in saving Tutsi individuals whom he knew does not, in the Chamber’s view, negate his intent to destroy the ethnic group as such. Witness LAG heard him say, “[I]f

¹⁰⁸⁹ See paragraph 181.

Habyarimana were also to die, we would not be able to spare the Tutsi.” Witness AEU heard Ngeze on a megaphone, saying that he was going to kill and exterminate all the *Inyenzi*, by which he meant the Tutsi, and as set forth above, Ngeze himself ordered an attack on Tutsi civilians in Gisenyi, evidencing his intent to destroy the Tutsi population.

969. Based on the evidence set forth above, the Chamber finds beyond a reasonable doubt that Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze acted with intent to destroy, in whole or in part, the Tutsi ethnic group. The Chamber considers that the association of the Tutsi ethnic group with a political agenda, effectively merging ethnic and political identity, does not negate the genocidal animus that motivated the Accused. To the contrary, the identification of Tutsi individuals as enemies of the state associated with political opposition, simply by virtue of their Tutsi ethnicity, underscores the fact that their membership in the ethnic group, as such, was the sole basis on which they were targeted.

Individual Criminal Responsibility

970. The Chamber has considered the individual criminal responsibility of Ferdinand Nahimana and Jean-Bosco Barayagwiza for RTLM broadcasts, by virtue of their respective roles in the creation and control of RTLM. As found in paragraph 567, Nahimana and Barayagwiza were, respectively, “number one” and “number two” in the top management of the radio. They represented the radio at the highest level in meetings with the Ministry of Information; they controlled the finances of the company; and they were both members of the Steering Committee, which functioned in effect as a board of directors for RTLM. Nahimana chaired the Program Committee of this board, and Barayagwiza chaired its Legal Committee. While the Chamber recognizes that Nahimana and Barayagwiza did not make decisions in the first instance with regard to each particular broadcast of RTLM, these decisions reflected an editorial policy for which they were responsible. Phocas Habimana, Gaspard Gahigi and all the RTLM broadcasters down the chain of command were ultimately accountable to the Steering Committee, which functioned as a board of directors for RTLM. Nahimana’s contention that the board did not intervene directly at the level of journalists has no legal relevance to his and Barayagwiza’s exercise of authority at the highest decision-making level. They intervened at a higher managerial level.

971. The broadcasts collectively conveyed a message of ethnic hatred and a call for violence against the Tutsi population. This message was heard around the world. “Stop that radio” was the cry Alison Des Forges heard from Rwanda during the killings, and it was the cry conveyed to the United Nations by Reporters Without Borders in May 1994. As board members responsible for RTLM, including its programming, Nahimana and Barayagwiza were responsible for this message and knew it was causing concern, even before 6 April 1994 and as early as October 1993 when they received a letter from the Rwandan Minister of Information. Their supervisory role in RTLM was acknowledged and exercised by them in their defence of the radio at meetings in 1993 and 1994 with the Minister. In the face of his concern, both Barayagwiza and Nahimana knew that RTLM programming was generating concern defended the programming in their meetings with

him. To the extent that they acknowledged there was a problem and tried to address it, they demonstrated their own sense of responsibility for RTLM programming. Ultimately, the concern was not addressed and RTLM programming followed its trajectory, steadily increasing in vehemence and reaching a pitched frenzy after 6 April.

972. After 6 April 1994, although the evidence does not establish the same level of active support, it is nevertheless clear that Nahimana and Barayagwiza knew what was happening at RTLM and failed to exercise the authority vested in them as office-holding members of the governing body of RTLM, to prevent the genocidal harm that was caused by RTLM programming. That they had the *de facto* authority to prevent this harm is evidenced by the one documented and successful intervention of Nahimana to stop RTLM attacks on UNAMIR and General Dallaire. Nahimana and Barayagwiza informed Dahinden when they met him in June 1994 that RTLM was being moved to Gisenyi. Together with Barayagwiza's jovially competitive remark about Dahinden's radio initiative, this conversation indicates the sense of continuing connection with RTLM that Nahimana and Barayagwiza maintained at that time.

973. For these reasons, the Chamber finds that Nahimana and Barayagwiza had superior responsibility for the broadcasts of RTLM. The Chamber notes that Nahimana has not been charged for genocide pursuant to Article 6(3) of its Statute. Only Barayagwiza is so charged. For his active engagement in the management of RTLM prior to 6 April, and his failure to take necessary and reasonable measures to prevent the killing of Tutsi civilians instigated by RTLM, the Chamber finds Jean-Bosco Barayagwiza guilty of genocide pursuant to Article 6(3) of its Statute.

974. The Chamber notes Nahimana's particular role as the founder and principal ideologist of RTLM. RTLM was a creation that sprang from Nahimana's vision more than anyone else. It was his initiative and his design, which grew out of his experience as Director of ORINFOR and his understanding of the power of the media. The evidence indicates that Nahimana was satisfied with his work. In a broadcast on Radio Rwanda on 25 April 1994, he said, "I am very happy because I have understood that RTLM is instrumental in awakening the majority people." His communications with Dahinden in June 1994 do not indicate that he and Barayagwiza felt otherwise. Although Nahimana disclaimed responsibility for RTLM broadcasting after 6 April, the Chamber considers this disclaimer too facile. Nahimana's interview on Radio Rwanda took place while the genocide was underway; the massacre of the Tutsi population was ongoing. Nahimana was less actively involved in the daily affairs of RTLM after 6 April 1994, but RTLM did not deviate from the course he had set for it before 6 April 1994. As found in paragraph 486, the broadcasts intensified after 6 April and called explicitly for the extermination of the Tutsi population. The programming of RTLM after 6 April built on the foundations created for it before 6 April. RTLM did what Nahimana wanted it to do. It was "instrumental in awakening the majority population" and in mobilizing the population to stand up against the Tutsi enemy. RTLM was Nahimana's weapon of choice, which he used to instigate the killing of Tutsi civilians. For this reason the Chamber finds Nahimana guilty of genocide pursuant to Article 6(1) of its statute.

975. As found in paragraphs 276, 301, 339-341, Jean Bosco Barayagwiza was one of the principal founders of CDR and played a leading role in its formation and development. He was a decision-maker for the party. The CDR had a youth wing, called the *Impuzamugambi*, which undertook acts of violence, often together with the *Interahamwe*, the MRND youth wing, against the Tutsi population. The killing of Tutsi civilians was promoted by the CDR, as evidenced by the chanting of "*tubatsembatsembe*" or "let's exterminate them" by Barayagwiza himself and by CDR members in his presence at public meetings and demonstrations. The reference to "them" was understood to mean the Tutsi population. Barayagwiza supervised roadblocks manned by the *Impuzamugambi*, established to stop and kill Tutsi. The Chamber notes the direct involvement of Barayagwiza in the expression of genocidal intent and in genocidal acts undertaken by members of the CDR and its *Impuzamugambi*. Barayagwiza was at the organizational helm. He was also on site at the meetings, demonstrations and roadblocks that created an infrastructure for and caused the killing of Tutsi civilians. For this reason, the Chamber finds Jean-Bosco Barayagwiza guilty of instigating acts of genocide committed by CDR members and *Impuzamugambi*, pursuant to Article 6(1) of its Statute.

976. The Chamber notes that in *Musema*, the Tribunal found that superior responsibility extended to non-military settings, in that case to the owner of a tea factory.¹⁰⁹⁰ The Chamber has considered the extent to which Barayagwiza, as leader of the CDR, a political party, can be held responsible pursuant to Article 6(3) of its Statute for acts committed by CDR party members and *Impuzamugambi*. The Chamber recognizes that a political party and its leadership cannot be held accountable for all acts committed by party members or others affiliated to the party. A political party is unlike a government, military or corporate structure in that its members are not bound through professional affiliation or in an employment capacity to be governed by the decision-making body of the party. Nevertheless, the Chamber considers that to the extent that members of a political party act in accordance with the dictates of that party, or otherwise under its instruction, those issuing such dictates or instruction can and should be held accountable for their implementation. In this case, CDR party members and *Impuzamugambi* were following the lead of the party, and of Barayagwiza himself, who was at meetings, at demonstrations, and at roadblocks, where CDR members and *Impuzamugambi* were marshaled into action by party officials, including Barayagwiza or under his authority as leader of the party. In these circumstances, the Chamber holds that Barayagwiza was responsible for the activities of CDR members and *Impuzamugambi*, to the extent that such activities were initiated by or undertaken in accordance with his direction as leader of the CDR party.

977. The Chamber finds that Barayagwiza had superior responsibility over members of the CDR and its militia, the *Impuzamugambi*, as President of CDR at Gisenyi Prefecture and from February 1994 as President of CDR at the national level. He promoted the policy of CDR for the extermination of the Tutsi population and supervised his subordinates, the CDR members and *Impuzamugambi* militia, in carrying out the killings and other violent acts. For his active engagement in CDR, and his failure to take necessary and reasonable measures to prevent the killing of Tutsi civilians by CDR

¹⁰⁹⁰ *Musema* (TC), paras. 148 and 905.

members and *Impuzamugambi*, the Chamber finds Barayagwiza guilty of genocide pursuant to Article 6(3) of its Statute.

977A. As founder, owner and editor of *Kangura*, a publication that instigated the killing of Tutsi civilians, and for his individual acts in ordering and aiding and abetting the killing of Tutsi civilians, the Chamber finds Hassan Ngeze guilty of genocide, pursuant to Article 6(1) of its Statute.

3. Direct and Public Incitement to Commit Genocide

Jurisprudence

978. The Tribunal first considered the elements of the crime of direct and public incitement to commit genocide in the case of *Akayesu*, noting that at the time the Convention on Genocide was adopted, this crime was included “in particular, because of its critical role in the planning of a genocide”. The *Akayesu* judgement cited the explanatory remarks of the delegate from the USSR, who described this role as essential, stating, “It was impossible that hundreds of thousands of people should commit so many crimes unless they had been incited to do so.” He asked “how in these circumstances, the inciters and organizers of the crime should be allowed to escape punishment, when they were the ones really responsible for the atrocities committed.”¹⁰⁹¹

979. The present case squarely addresses the role of the media in the genocide that took place in Rwanda in 1994 and the related legal question of what constitutes individual criminal responsibility for direct and public incitement to commit genocide. Unlike *Akayesu* and others found by the Tribunal to have engaged in incitement through their own speech, the Accused in this case used the print and radio media systematically, not only for their own words but for the words of many others, for the collective communication of ideas and for the mobilization of the population on a grand scale. In considering the role of mass media, the Chamber must consider not only the contents of particular broadcasts and articles, but also the broader application of these principles to media programming, as well as the responsibilities inherent in ownership and institutional control over the media.

980. To this end, a review of international law and jurisprudence on incitement to discrimination and violence is helpful as a guide to the assessment of criminal accountability for direct and public incitement to genocide, in light of the fundamental right of freedom of expression.

The International Military Tribunal at Nuremberg

Streicher

981. Characterized by the Tribunal in its *Akayesu* judgment as the “most famous conviction for incitement” and noted in the Tribunal’s *Ruggiu* judgment as “particularly

¹⁰⁹¹ *Akayesu* (TC) para. 551.

relevant” is the case of Julius Streicher, who was sentenced to death by the International Military Tribunal at Nuremberg for the anti-Semitic articles that he published in his weekly newspaper *Der Stürmer*. Known widely as “Jew-Baiter Number One”, Julius Streicher was the publisher of *Der Stürmer* from 1923 to 1945 and served as its editor until 1933. In its judgement, the Nuremberg Tribunal quoted Streicher’s own writing, articles he published, and a letter he published from one of the newspaper’s readers, all calling for the extermination of Jews. The Nuremberg judgement found that although in his testimony at trial, Streicher denied any knowledge of mass executions of Jews, in fact he continually received information on the deportation and killing of Jews in Eastern Europe. However, the judgment does not explicitly note a direct causal link between Streicher’s publication and any specific acts of murder. Rather it characterizes his work as a poison “injected in to the minds of thousands of Germans which caused them to follow the National Socialists’ policy of Jewish persecution and extermination”.¹⁰⁹²

Although Streicher was found by the Nuremberg Tribunal not to have been within Hitler’s inner circle of advisers or even connected to the formulation of policy, he was convicted of crimes against humanity for his incitement to murder and extermination of Jews, which was found to have constituted the crime of “persecution” as defined by the Charter of the International Military Tribunal.

Fritzsche

982. Also charged with incitement as a crime against humanity, Hans Fritzsche was acquitted by the International Military Tribunal. Head of the Radio Section of the Propaganda Ministry during the war, Fritzsche was well-known for his weekly broadcasts. In his defense, Fritzsche asserted that he had refused requests from Goebbels to incite antagonism and arouse hatred, and that he had never voiced the theory of the “master race”. In fact, he had expressly prohibited the term from being used by German press and radio that he controlled. He also testified that he had expressed his concern over the content of the newspaper *Der Stürmer*, published by Julius Streicher, and that he had tried twice to ban it. In its judgement for acquittal, the Tribunal found that Fritzsche had not had control over the formulation of propaganda policies, that he had merely been a conduit to the press of directives passed down to him. With regard to the charge that had incited the commission of war crimes by deliberately falsifying news to arouse passions in the German people, the Tribunal found that although he had sometimes spread false news, it had not been established that he knew it to be false.

United Nations Conventions

983. International law protects both the right to be free from discrimination and the right to freedom of expression. The Universal Declaration of Human Rights provides in Article 7 that “All are entitled to equal protection against any discrimination . . . and against any incitement to such discrimination.” Article 19 states: “Everyone has the right to freedom of opinion and expression.” Both of these principles are elaborated in

¹⁰⁹² Nazi Conspiracy and Aggression, Opinion and Judgment (October 1, 1946), OFFICE OF THE U.S. CHIEF OF COUNSEL FOR PROSECUTION OF AXIS CRIMINALITY 56 (1947).

international and regional treaties, as is the relation between these two fundamental rights, which in certain contexts may be seen to conflict, requiring some mediation.

984. The International Covenant on Civil and Political Rights (ICCPR) provides in Article 19(2) that “Everyone shall have the right to freedom of expression,” while noting in Article 19(3) that the exercise of this right “carries with it special duties and responsibilities” and may therefore be subject to certain necessary restrictions: “for respect of the rights or reputations of others”, and “for the protection of national security or of public order (ordre public), or of public health or morals”. In its interpretation of this language, in a General Comment on Article 19, the United Nations Human Rights Committee has stated, “It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual’s right.”¹⁰⁹³ The Committee also noted in its General Comment that permissible restrictions on the right to freedom of expression “may relate either to the interests of other persons or to those of the community as a whole”.¹⁰⁹⁴

985. By virtue of Article 20 of the ICCPR, certain speech not only may but in fact must be restricted. Article 20(2) provides that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Similarly, Article 4(a) of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) requires States Parties to declare as an offence punishable by law “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.” Article 4(b) of CERD further requires the prohibition of organizations and all other organized propaganda activities that “promote and incite racial discrimination”, and the recognition of participation in such organizations or activities as an offence punishable by law.

986. The jurisprudence on Article 19 of the ICCPR affirms the duty to restrict freedom of expression for the protection of other rights. In *Ross v. Canada*, the Human Rights Committee upheld the disciplinary action taken against a school teacher in Canada for statements he made that were found to have “denigrated the faith and beliefs of Jews and called upon true Christians to not merely question the validity of Jewish beliefs and teachings but to hold those of the Jewish faith and ancestry in contempt as undermining freedom, democracy and Christian beliefs and values”.¹⁰⁹⁵ The Human Rights Committee noted in its views the finding of the Canadian Supreme Court that “it was reasonable to anticipate that there was a causal link between the expressions of the author and the poisoned atmosphere”.¹⁰⁹⁶

¹⁰⁹³ Human Rights Committee, General Comment 10, para. 3.

¹⁰⁹⁴ *Ibid.*, para. 4.

¹⁰⁹⁵ *Ross v. Canada* (736/1997, views adopted October 2000), para. 11.5.

¹⁰⁹⁶ *Ibid.*, para. 11.6.

987. Another case from Canada, *J.R.T. and the W.G. Party v. Canada*, a complaint alleging a violation of the right to freedom of expression under Article 19, was declared inadmissible by the Human Rights Committee. The authors of the complaint had been precluded from using public telephone services after using them to circulate messages warning of the dangers of international Jewry leading the world into wars, unemployment and inflation and the collapse of world values and principles. The Human Rights Committee determined that the opinions being disseminated “clearly constitute the advocacy of racial or religious hatred which there is an obligation under art 20(2) to prohibit.”¹⁰⁹⁷ In effect, it found that there was no scope to consider the complaint under the Article 19 right of a state to restrict freedom of expression because in this case the restriction was required under Article 20 of the ICCPR.

988. In *Robert Faurisson v. France*, the Human Rights Committee considered the meaning of the term “incitement” in Article 20(2) of the ICCPR. The author of the complaint challenged as a violation of his right to freedom of expression under Article 19 of the ICCPR his conviction in France for publishing his view doubting the existence of gas chambers for extermination purposes at Auschwitz and other Nazi concentration camps. The French government took the position that “by challenging the reality of the extermination of Jews during the Second World War, the author incites his readers to anti-semitic behaviour”, arguing more generally that “racism did not constitute an opinion but an aggression, and that every time racism was allowed to express itself publicly, the public order was immediately and severely threatened”. The Committee held in the case that the restriction on publication of these views did not violate the right to freedom of expression in Article 19 and in fact that the restriction was necessary under Art 19(3).¹⁰⁹⁸

989. A concurring opinion in the *Faurisson* case highlighted evidence that the motivating purpose of the author of the complaint was not an interest in historical research, as he claimed, and it expressed the view that it was important to “link liability with the intent of the author”.¹⁰⁹⁹ The opinion noted the “tendency of the publication to incite to anti-semitism”, relying on this tendency to distinguish the author’s work from *bona fide* historical research that should be protected against restriction “even when it challenges accepted historical truths and by so doing offends people”. Citing the language of the author, such as his references to “particularly Jewish historians” or the “magic gas chamber” and the context, i.e. a challenge to well-documented historical facts with the implication “under the guise of impartial academic research that the victims of Nazism were guilty of dishonest fabrication”, to support its finding of anti-semitic purpose, the opinion concluded: “The restrictions placed on the author did not curb the core of his right to freedom of expression, nor did they in any way affect his freedom of research; they were intimately linked to the value they were meant to protect - the right to be free from incitement to racism or anti-semitism.”

¹⁰⁹⁷ *J.R.T. and the W.G. Party v. Canada*, Case No. 104/1981 (declared inadmissible 6 April 1983).

¹⁰⁹⁸ *Robert Faurisson v. France*, CCPR/C/58/D/550/1993 (1996).

¹⁰⁹⁹ *Ibid.*, Concurring Opinion by Elizabeth Evatt and David Kretzmer, joined by Eckart Klein.

990. While endorsing the state's right to restrict freedom of expression in this case under Article 19(3) as necessary for the respect of the rights of others, the concurring opinion noted that the crime for which the complainant was convicted did not expressly include the element of incitement, and the statements for which he was convicted did not "fall clearly within the boundaries of incitement, which the State party was bound to prohibit" under Article 20(2) of the ICCPR. Nevertheless, the opinion suggested:

However, there may be circumstances in which the right of a person to be free from incitement to discrimination on grounds of race, religion or national origins cannot be fully protected by a narrow, explicit law on incitement that falls precisely within the boundaries of article 20, paragraph 2. This is the case where, in a particular social and historical context, statements that do not meet the strict legal criteria of incitement can be shown to constitute part of a pattern of incitement against a given racial, religious or national group, or where those interested in spreading hostility and hatred adopt sophisticated forms of speech that are not punishable under the law against racial incitement, even though their effect may be as pernicious as explicit incitement, if not more so.¹¹⁰⁰

The European Convention on Human Rights

991. At the regional level, the European Convention on Human Rights has given rise to extensive jurisprudence on the proper balancing of the right to freedom of expression, guaranteed by Article 10(1) of the Convention, and the right to restrict such freedom *inter alia* "in the interests of national security" and "for the protection of the reputation or rights of others", pursuant to Article 10(2) of the Convention. The approach to this balancing test, much like the one used for the ICCPR, review (i) whether the restrictions are prescribed by law; (ii) whether their aim is legitimate; and (iii) whether they can be considered necessary in a democratic society, taken to imply the existence of a "pressing social need" and an intervention "proportionate to the legitimate aims pursued". While the language of Article 10 of the European Convention is comparable to the language of Article 19 of the ICCPR, the European Convention has no provision comparable to Article 20 of the ICCPR, prohibiting incitement of discrimination, hostility or violence based on national, racial or religious grounds. Nevertheless, many of the cases that have been adjudicated by the European Court of Human Rights under Article 10 arise in connection with national laws that prohibit such incitement.

992. A number of the European Court cases address the role of journalists, as well as editors and publishers, and their responsibility for the dissemination of views promoting discrimination. In *Jersild v. Denmark*¹¹⁰¹, the Court overturned the conviction of a journalist for the Danish Broadcasting Corporation, based on his interview of three "Greenjackets", members of a racist youth group in Denmark. The interview was broadcast on *Sunday News Magazine*, described by the Court as a "serious television programme intended for a well-informed audience, dealing with a wide range of social and political issues, including xenophobia, immigration and refugees". In the interview, the Greenjackets identified themselves as racist and made extremely offensive remarks

¹¹⁰⁰ *Ibid.*, para. 4.

¹¹⁰¹ *Jersild v. Denmark*, European Court of Human Rights (ECHR), Judgment of 22 August 1994.

about black people and immigrants. Together with them, the journalist who interviewed them was convicted by Denmark under its law prohibiting “dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin...” In the interview, the journalist had asked one or two questions suggesting that there were very accomplished black people and in the introduction the youth had been clearly identified as racist. The program was presented as an exploration of their thinking and background, but there was no explicit condemnation of them.

993. In the decision of the Court holding that the journalist’s conviction violated Article 10 of the European Convention, the program’s introduction was a critical factor. The Court stated, “an important factor in the Court’s evaluation will be whether the item in question, when considered as a whole, appeared from an objective point of view to have had as its purpose the propagation of racist views and ideas.” The Court cited the introduction and expressed the view that with regard to the journalist the program “clearly disassociated him from the persons interviewed”, noting that he described them as “extremist youths” and that he rebutted some of their statements. Using the same analytical framework, two dissenting opinions expressed the view that the conviction of the journalist should be upheld, as not enough was said in the program to condemn the racist views of the youth. While the majority decision affirmed that it was “undisputed that the purpose of the applicant in compiling the broadcast in question was not racist”, the decisive issue in the case was how much he distanced himself from the racist views and condemned them. One dissenting opinion stated, “Neither the written text of the interview... nor the video film we have seen makes it clear that the remarks of the Greenjackets are intolerable in a society based on respect for human rights.”¹¹⁰² The other dissent concluded that the statements made “without any significant reaction on the part of the commentator, did indeed amount to incitement to contempt... While appreciating that some judges attach particular importance to freedom of expression, ... we cannot accept that this freedom should extend to encouraging racial hatred, contempt for races other than the one to which we belong, and defending violence against those who belong to the races in question.”¹¹⁰³

994. The European Court of Human Rights has also considered extensively in its jurisprudence the extent to which national security concerns justify restrictions on the right to freedom of expression. In a series of cases from Turkey, the Court has explored the extent to which Article 10 of the European Convention protects the right to express support for, and to disseminate expression of support for, political goals that are identified with violent means used in an effort to attain them. In *Zana v. Turkey*¹¹⁰⁴, the Court considered the “fair balance” between an individual’s right to freedom of expression and a democratic society’s right to protect itself from the activities of terrorist organizations. The court upheld the conviction of the applicant, a former mayor of Diyarbakir in south-east Turkey, an area under emergency rule where violent clashes were raging between security forces and the members of the Workers’ Party of Kurdistan

¹¹⁰² *Ibid.*, Dissent of Judges Rysdal, Bernhardt, Spielmann and Loizou.

¹¹⁰³ *Ibid.*, Dissent of Judges Gölcüklü, Russo and Valticos.

¹¹⁰⁴ *Zana v. Turkey*, ECHR, Judgment of 25 November 1997.

(PKK). From prison Zana made the following statement: "I support the PKK national liberation movement, on the other hand, I am not in favour of massacres. Anyone can make mistakes, and the PKK kill women and children by mistake", which was published in the national daily newspaper and coincided with the killing of civilians by PKK militants. The Court noted that Zana's words were contradictory and ambiguous in simultaneously supporting the PKK, a terrorist organization, and opposing massacres, and in disapproving the massacre of women and children while at the same time suggesting that these are mistakes anyone could make. The Court took into account in its decision the fact that Zana was a former mayor quoted in a major national daily newspaper, coinciding with attacks. In these circumstances, the Court concluded that the statement "had to be regarded as likely to exacerbate an already explosive situation in that region".

995. In *Incal v. Turkey*¹¹⁰⁵, the European Court upheld the publication of a People's Labour Party leaflet, complaining of hostility towards citizens of Kurdish origin in İzmir and suggesting that certain measures that had been taken ostensibly to clean up the city and ease traffic congestion, such as operations against street traders, were directed against them in particular, to force them to leave the city. The applicant argued that the opinions expressed in the leaflet were based on actual events and were limited to "criticism of the discriminatory administrative and economic pressure brought to bear on citizens of Kurdish origin". The Government argued that its operations had no purpose other than prevention of disorder and that the "racial perspective of the leaflet", presenting these operations as targeting Kurdish people, was "likely to incite citizens of 'Kurdish' origin to believe that they suffered from discrimination and that, as victims of a 'special war', they were justified in acting in self-defence against the authorities by setting up 'neighbourhood committees'". The Court acknowledged the phrases urging people of Kurdish origin "to band together to raise certain political demands", and while characterizing the reference to "neighbourhood committees" as "unclear", it determined that these appeals could not, "if read in context, be taken as incitement to the use of violence, hostility or hatred between citizens". The Court noted that in other circumstances, one cannot rule out the possibility that "such a text may conceal objectives and intentions different from the ones it proclaims", but it found no evidence in the case "of any concrete action which might belie the sincerity of the aim declared by the leaflet's authors" and therefore no reason to doubt it. As well as highlighting the particular importance of protecting the freedom of expression of political parties, and the need for "the closest scrutiny" in cases involving opposition parties, the Court noted that criticism of the government should be given additional latitude.

996. The European Court further explored these issues in a series of cases from Turkey decided in July 1999, which clarify the standards of review applicable to the reporting of news relating to armed insurrection. In *Arslan v. Turkey*¹¹⁰⁶, the Court considered the contents of a book entitled *History in Mourning, 33 bullets*, for which its author had been convicted of disseminating separatist propaganda. The applicant argued that his book related to events that pre-dated the conflict in south-east Turkey and the creation of the

¹¹⁰⁵ *Incal v. Turkey*, ECHR, Judgment of 9 June 1998.

¹¹⁰⁶ *Arslan v. Turkey*, ECHR, Judgment of 8 July 1999.

PKK, and that no link could be established between his book and that conflict, that his writings did not promote secessionism, did not contain opinion tinged by hate and was not likely to arouse people against the government. The Government argued that the applicant had described the Turkish state as an aggressor, had incited readers of Kurdish origin to take up arms, and had publicly defended a terrorist organization. Noting that the book was written in the form of a "literary historical narrative," the Court found it "obvious that this was not a 'neutral' description of historical facts" and was intended to criticize the actions of Turkish authorities. Nevertheless, the Court again noted that there is little scope for restrictions on political speech or on debate on questions of public interest and that criticism of the Government must be given more latitude. While recalling that where statements incite to violence, there is a "wider margin of appreciation" for interference with freedom of expression, the Court held that with regard to the book, although certain passages were "particularly acerbic" and "paint an extremely negative picture of the population of Turkish origin", they did not constitute incitement to violence, armed resistance or uprising, which the Court characterized as "a factor which it is essential to take into consideration". The Court also distinguished the book as a literary work rather than mass media, as a factor limiting the potential impact on national security and public order.

997. In *Sürek and Özdemir v. Turkey*¹¹⁰⁷, the European Court upheld the right of a weekly review to publish an interview with the leader of the PKK, explaining the goals of the organization, the reasons it had turned to violent means in pursuing its objectives, and proclaiming its determination to continue fighting. The review also published a joint statement of several organizations, representing a call "to unite forces" against state terrorism, repression of Kurdish people, unemployment, sex discrimination, etc. Sürek, a major shareholder of the weekly review, and Özdemir, its Editor-in-Chief, maintained that neither they nor the review had any links with the PKK. They did not praise the organization or comment favorably on it, and asserted that the review was written with objectivity and in accordance with the principles of journalism, to inform the public about the PKK. They asserted that the interview did not promote terrorism or threaten public order. Sürek also pleaded that as owner of the review he had no editorial responsibility for its content. In its decision, the Court characterized statements from the interview such as "The war will go on until there is only one single individual left on our side" as a reflection of the resolve of the PKK to pursue its goals and commented: "Seen in this vein, the interviews had a newsworthy content which allowed the public both to have an insight into the psychology of those who are the driving force behind the opposition to official policy in south-east Turkey and to assess the stakes involved in the conflict." Noting the delicate balance of rights and responsibilities in situations of conflict and tension, the Court expressed the following view:

Particular caution is called for when consideration is being given to the publication of the views of representatives of organisations which resort to violence against the State lest the media become a vehicle for the dissemination of hate speech and the promotion of violence. At the same time, where such views cannot be categorised as such, Contracting States cannot with reference to

¹¹⁰⁷ *Sürek and Özdemir v. Turkey*, ECHR, Judgment of 8 July 1999.

the protection of territorial integrity or national security or the prevention of crime or disorder restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media.¹¹⁰⁸

998. In a concurring opinion, five judges of the Court suggested that less attention should be given to the form of the words used and more attention to the general context in which the words were used and their likely impact. The key questions put forward by the concurring opinion were, "Was the language intended to inflame or incite to violence?" and "Was there a real and genuine risk that it might actually do so?"

999. In contrast, in *Sürek v. Turkey (No.1)*¹¹⁰⁹, the European Court of Human Rights upheld the conviction of Sürek for the publication in his weekly review of two letters from readers, vehemently condemning the military actions of the authorities in south-east Turkey and accusing them of brutal suppression of Kurdish people. One letter entitled "Weapons cannot win against freedom" referred to two massacres that the writer claimed were intentionally committed by the authorities as part of a strategic campaign to eradicate the Kurds and concluded by reaffirming the Kurds' determination to win their freedom. The second letter, entitled "It is our fault" alleged that the Turkish authorities connived in imprisonment, torture and killing of dissidents in the name of the protection of democracy and the Republic. In its judgment in this case, the Court found a clear intent to stigmatise the authorities through use of labels such as "the fascist Turkish army", the "TC murder gang" and "the hired killers of imperialism", and determined that strong language in the letters such as "massacres", "brutalities", and "slaughter" amounted to "an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices which have manifested themselves in deadly violence". Noting that one of the letters "identified persons by name, stirred up hatred for them and exposed them to the possible risk of physical violence", the Court reiterated that while the mere fact that information or ideas offend, shock or disturb does not justify restriction on freedom of expression, at issue in the case was "hate speech and the glorification of violence". The Court addressed the question of shareholder responsibility as well, holding:

While it is true that the applicant did not personally associate himself with the views contained in the letters, he nevertheless provided their writers with an outlet for stirring up violence and hatred. The Court does not accept his argument that he should be exonerated from any criminal liability for the content of the letters on account of the fact that he only has a commercial and not an editorial relationship with the review. He was an owner and as such had the power to shape the editorial direction of the review. For that reason, he was vicariously subject to the "duties and responsibilities" which the review's editorial and journalistic staff undertake in the collection and dissemination of information to the public and which assume an even greater importance in situations of conflict and tension.¹¹¹⁰

¹¹⁰⁸ *Ibid.*

¹¹⁰⁹ *Sürek v. Turkey (No.1)*, ECHR, Judgment of 8 July 1999.

¹¹¹⁰ *Ibid.*

Discussion of General Principles

1000. A number of central principles emerge from the international jurisprudence on incitement to discrimination and violence that serve as a useful guide to the factors to be considered in defining elements of “direct and public incitement to genocide” as applied to mass media.

Purpose

1001. Editors and publishers have generally been held responsible for the media they control. In determining the scope of this responsibility, the importance of intent, that is the purpose of the communications they channel, emerges from the jurisprudence – whether or not the purpose in publicly transmitting the material was of a *bona fide* nature (e.g. historical research, the dissemination of news and information, the public accountability of government authorities). The actual language used in the media has often been cited as an indicator of intent. For example, in the *Faurisson* case, the term “magic gas chamber” was seen by the UN Human Rights Committee as suggesting that the author was motivated by anti-Semitism rather than pursuit of historical truth. In the *Jersild* case, the comments of the interviewer distancing himself from the racist remarks made by his subject were a critical factor for the European Court of Human Rights in determining that the purpose of the television program was the dissemination of news rather than propagation of racist views.

1002. In the Turkish cases on national security concerns, the European Court of Human Rights carefully distinguishes between language that explains the motivation for terrorist activities and language that promotes terrorist activities. Again, the actual language used is critical to this determination. In *Sürek (No.1)*, the Court held a weekly review responsible for the publication of letters from readers critical of the Government, citing the strong language in these letters, which led the Court to view the letters as “an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices...” In contrast, in *Sürek and Özdemir* the European Court upheld the right of the same weekly review to publish an interview with a PKK leader, in which he affirmed his determination to pursue his objective by violent means on the grounds that the text as a whole should be considered newsworthy rather than as “hate speech and the glorification of violence”. The sensitivity of the Court to volatile language goes to the determination of intent, as evidenced by one of the questions put forward in a concurring opinion in this case: “Was the language intended to inflame or incite to violence?”

1003. In determining the scope of liability for editors and publishers, the content of a text is taken to be more important than its author. In *Sürek (No.1)*, even letters from readers are treated without distinction as subject to liability. Moreover, publishers and editors are regarded as equally responsible on the grounds that they are providing a forum and that owners have “the power to shape the editorial direction...” A critical distance was identified as the key factor in evaluating the purpose of the publication.

Context

1004. The jurisprudence on incitement highlights the importance of taking context into account when considering the potential impact of expression. In *Faurisson*, the Human Rights Committee noted that, in context, the impact of challenging the existence of gas chambers, a well-documented historical fact, would promote anti-Semitism. Similarly in the *Zana* case, the European Court of Human Rights considered the general statement made about massacres by the former mayor of Diyarbakir in the context of the fact that massacres were taking place at that time, which in the Court's view made the statement "likely to exacerbate an already explosive situation..."

1005. In several cases, as in the *Incal* decision of the European Court, it is noted that a text may "conceal objectives and intentions different from the ones it proclaims". In that case, where distribution of a leaflet highlighting the particular impact on Kurdish people of regulatory measures taken by the authorities was at issue, the Court found no evidence on which to challenge the sincerity of the author. Nevertheless, the Court acknowledged the theoretical possibility that such expression might in fact be intended to inflame terrorist activity taking place elsewhere in furtherance of the aims of Kurdish independence. It is a question of evidence and judicial determination of the actual intent of the expression, taking the context into account.

1006. Other factors relating to context that emerge from the jurisprudence, particularly that of the European Court, include the importance of protecting political expression, particularly the expression of opposition views and criticism of the government. On the other hand, in cases where there are issues of national security and where statements incite to violence, a "wider margin of appreciation" is given to the discretion of authorities to restrict freedom of expression. The context is taken into account in determining the potential impact on national security and public order. In *Arslan*, for example, the Court distinguished the publication of a book from mass media, suggesting that a literary work would have less of an impact.

Causation

1007. In considering whether particular expression constitutes a form of incitement on which restrictions would be justified, the international jurisprudence does not include any specific causation requirement linking the expression at issue with the demonstration of a direct effect. In the *Streicher* case, there was no allegation that the publication *Der Stürmer* was tied to any particular violence. Much more generally, it was found to have "injected in to the minds of thousands of Germans" a "poison" that caused them to support the National Socialist policy of Jewish persecution and extermination. In the Turkish cases considered by the European Court of Human Rights, no specific acts of violence are cited as having been caused by the applicant's expression. Rather, the question considered is what the likely impact might be, recognizing that causation in this context might be relatively indirect.

1008. The Chamber notes that international standards restricting hate speech and the protection of freedom of expression have evolved largely in the context of national initiatives to control the danger and harm represented by various forms of prejudiced communication. The protection of free expression of political views has historically been balanced in the jurisprudence against the interest in national security. The dangers of censorship have often been associated in particular with the suppression of political or other minorities, or opposition to the government. The special protections developed by the jurisprudence for speech of this kind, in international law and more particularly in the American legal tradition of free speech, recognize the power dynamic inherent in the circumstances that make minority groups and political opposition vulnerable to the exercise of power by the majority or by the government. These circumstances do not arise in the present case, where at issue is the speech of the so-called "majority population", in support of the government. The special protections for this kind of speech should accordingly be adapted, in the Chamber's view, so that ethnically specific expression would be more rather than less carefully scrutinized to ensure that minorities without equal means of defence are not endangered.

1009. Similarly, the Chamber considers that the "wider margin of appreciation" given in European Court cases to government discretion in its restriction of expression that constitutes incitement to violence should be adapted to the circumstance of this case. At issue is not a challenged restriction of expression but the expression itself. Moreover, the expression charged as incitement to violence was situated, in fact and at the time by its speakers, not as a threat to national security but rather in defence of national security, aligning it with state power rather than in opposition to it. Thus there is justification for adaptation of the application of international standards, which have evolved to protect the right of the government to defend itself from incitement to violence by others against it, rather than incitement to violence on its behalf against others, particularly as in this case when the others are members of a minority group.

1010. Counsel for Ngeze has argued that United States law, as the most speech-protective, should be used as a standard, to ensure the universal acceptance and legitimacy of the Tribunal's jurisprudence. The Chamber considers international law, which has been well developed in the areas of freedom from discrimination and freedom of expression, to be the point of reference for its consideration of these issues, noting that domestic law varies widely while international law codifies evolving universal standards. The Chamber notes that the jurisprudence of the United States also accepts the fundamental principles set forth in international law and has recognized in its domestic law that incitement to violence, threats, libel, false advertising, obscenity, and child pornography are among those forms of expression that fall outside the scope of freedom of speech protection.¹¹¹¹ In *Virginia v. Black*, the United States Supreme Court recently

¹¹¹¹ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1941); *Watts v. United States*, 394 U.S. 705 (1969); *Miller v. California*, 413 U.S. 15 (1973); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771-73 & n. 24 (1976); *Posadas de Puerto Rico Assocs. v. Tourism Co.*, 478 U.S. 328 (1986); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969); *New York v. Ferber*, 458 U.S. 747 (1982); *F.C.C. v. Pacifica Foundation*, 438 U.S. 726 (1978); *Beauharnais v. Illinois*, 343 U.S. 250, 251 (1952).

interpreted the free speech guarantee of the First Amendment of the Constitution to permit a ban on cross burning with intent to intimidate. The historical terrorization of African Americans by the Ku Klux Klan through cross burnings, in the Court's view, made the burning of a cross, as a recognized symbol of hate and a "true threat", unprotected as symbolic expression. Intimidation was held to be constitutionally proscribable "where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death".¹¹¹² In the immigration context, adherents of National Socialism have been stripped of citizenship and deported from the United States on the basis of their anti-semitic writings.¹¹¹³

ICTR Jurisprudence

1011. The ICTR jurisprudence provides the only direct precedent for the interpretation of "direct and public incitement to genocide". In *Akayesu*, the Tribunal reviewed the meaning of each term constituting "direct and public incitement". With regard to "incitement", the Tribunal observed that in both common law and civil law systems, "incitement", or "provocation" as it is called under civil law, is defined as encouragement or provocation to commit an offence. The Tribunal cited the International Law Commission as having characterized "public" incitement as "a call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example, radio or television".¹¹¹⁴ While acknowledging the implication that "direct" incitement would be "more than mere vague or indirect suggestion", the Tribunal nevertheless recognized the need to interpret the term "direct" in the context of Rwandan culture and language, noting as follows:

...[T]he Chamber is of the opinion that the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as 'direct' in one country, and not so in another, depending on the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit...

The Chamber will therefore consider on a case-by-case basis whether, in light of the culture of Rwanda and the specific circumstances of the instant case, acts of incitement can be viewed as direct or not, by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.¹¹¹⁵

1012. In *Akayesu*, the Tribunal defined the *mens rea* of the crime as follows:

The *mens rea* required for the crime of direct and public incitement to commit genocide lies in the intent to directly prompt or provoke another to commit genocide. It implies a desire on the part of the perpetrator to create by his actions

¹¹¹² *Virginia v. Black*, 123 S. Ct. 1536 (2003).

¹¹¹³ *United States v. Sokolov*, 814 F.2d 864 (1987); *United States v. Ferenc Koreh*, *aff'd.*, 59 F.3d 431 (2d Cir., 1995).

¹¹¹⁴ *Akayesu* (TC) footnote 126.

¹¹¹⁵ *Akayesu* (TC) paras. 557-558.

a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. That is to say that the person who is inciting to commit genocide must have himself the specific intent to commit genocide, namely, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.¹¹¹⁶

1013. The *Akayesu* judgement also considered whether the crime of direct and public incitement to commit genocide can be punished even where such incitement was unsuccessful and concluded that the crime should be considered as an inchoate offence under common law, or an *infraction formelle* under civil law, i.e. punishable as such. The Tribunal highlighted the fact that "such acts are in themselves particularly dangerous because of the high risk they carry for society, even if they fail to produce results" and held that "genocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator".¹¹¹⁷

1014. In determining more precisely the contours of the crime of direct and public incitement to commit genocide, the Trial Chamber notes the factual findings of the Tribunal in *Akayesu* that the crowd addressed by the accused, who urged them to unite and eliminate the enemy, the accomplices of the Inkotanyi, understood his call as a call to kill the Tutsi, that the accused was aware that what he said would be so understood, and that there was a causal relationship between his words and subsequent widespread massacres of Tutsi in the community.

1015. In *Akayesu*, the Tribunal considered in its legal findings on the charge of direct and public incitement to genocide that "there was a causal relationship between the Defendant's speech to [the] crowd and the ensuing widespread massacres of Tutsis in the community". The Chamber notes that this causal relationship is not requisite to a finding of incitement. It is the potential of the communication to cause genocide that makes it incitement. As set forth in the Legal Findings on Genocide, when this potential is realized, a crime of genocide as well as incitement to genocide has occurred.

Charges Against the Accused

1016. Count 3 of the Nahimana Indictment and Count 4 of the Barayagwiza and Ngeze Indictments charge the Accused with direct and public incitement to commit genocide pursuant to Article 2(3)(c) of the Statute, in that they are responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnic or racial group as such.

1017. The Chamber notes, as discussed in paragraphs 100-104, that the crime of direct and public incitement to commit genocide, like conspiracy, is an inchoate offence that continues in time until the completion of the acts contemplated. The Chamber

¹¹¹⁶ *Ibid.*, para. 560.

¹¹¹⁷ *Ibid.*, para. 562.

accordingly considers that the publication of *Kangura*, from its first issue in May 1990 through its March 1994 issue, the alleged impact of which culminated in events that took place in 1994, falls within the temporal jurisdiction of the Tribunal to the extent that the publication is deemed to constitute direct and public incitement to genocide. Similarly, the Chamber considers that the entirety of RTLM broadcasting, from July 1993 through July 1994, the alleged impact of which culminated in events that took place in 1994, falls within the temporal jurisdiction of the Tribunal to the extent that the broadcasts are deemed to constitute direct and public incitement to genocide.

1018. The Chamber further notes, as found in paragraph 257, that the competition published in *Kangura* twice in March 1994 was intended to direct the attention of readers to back issues of the publication and effectively brought back these back issues into circulation in Rwanda in March 1994.

1019. In its review of *Kangura* and RTLM, the Chamber notes that some of the articles and broadcasts highlighted by the Prosecution convey historical information, political analysis, or advocacy of an ethnic consciousness regarding the inequitable distribution of privilege in Rwanda. Barayagwiza's RTLM broadcast of 12 December 1993, for example, is a moving personal account of his experience of discrimination as a Hutu. Prosecution Expert Witness Alison Des Forges, in cross-examination, would not comment on the propriety of this particular broadcast, citing as her concern the repeated emphasis and priority given to ethnicity, rather than any single broadcast. She stated her view that undue emphasis on ethnicity and presentation of all issues in ethnic terms exacerbated ethnic tensions.¹¹¹⁸

1020. The Chamber considers that it is critical to distinguish between the discussion of ethnic consciousness and the promotion of ethnic hatred. This broadcast by Barayagwiza is the the former but not the latter. While the impact of these words, which are powerful, may well have been to move listeners to want to take action to remedy the discrimination recounted, such impact would be the result, in the Chamber's view, of the reality conveyed by the words rather than the words themselves. A communication such as this broadcast does not constitute incitement. In fact, it falls squarely within the scope of speech that is protected by the right to freedom of expression. Similarly, public discussion of the merits of the Arusha Accords, however critical, constitutes a protected exercise of free speech.

1021. The Chamber considers that speech constituting ethnic hatred results from the stereotyping of ethnicity combined with its denigration. The Accused have maintained in their defence that certain communications made by them about the Tutsi population were simply true, for example the broadcast stating that 70% of the taxis in Rwanda were owned by people of Tutsi ethnicity. The accuracy of this statement was not established one way or the other by the evidence presented, but the statement is informational in nature. Its impact, if true, might well be to generate resentment over the inequitable distribution of wealth in Rwanda. However, this impact, in the Chamber's view, would be a result of the inequitable distribution of wealth in Rwanda, the information conveyed

¹¹¹⁸ T. 27 May 2002, pp. 28-29.

by the statement rather than the statement itself. If it were not true, the inaccuracy of the statement might then be an indicator that the intent of the statement was not to convey information but rather to promote unfounded resentment and inflame ethnic tensions. The RTLM broadcast stating about the Tutsi that "they are the ones who have all the money" differs from the statement about taxi ownership in that it is a generalization that has been extended to the Tutsi population as a whole. The tone of the broadcast is different and conveys the hostility and resentment of the journalist, Kantano Habimana. While this broadcast, which does not call on listeners to take action of any kind, does not constitute direct incitement, it demonstrates the progression from ethnic consciousness to harmful ethnic stereotyping.

1022. On cross-examination, Ferdinand Nahimana said he could not judge a statement made in Nazi Germany that the Jews have all the money, suggesting that his judgement would depend on the facts and accordingly the accuracy of the statement. In the Chamber's view, the accuracy of the statement is only one factor to be considered in the determination of whether a statement is intended to provoke rather than to educate those who receive it. The tone of the statement is as relevant to this determination as is its content. That Nahimana was aware of the relevance of tone to culpability was evidenced by his reluctance to acknowledge the text of the broadcast, "they are the ones who have all the money", when he was questioned on it. Eventually, he said about it that he would not have used such language but would have expressed the same reality in a different way. The Chamber also considers the context in which the statement is made to be important. A statement of ethnic generalization provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal environment. It would be more likely to lead to violence. At the same time the environment would be an indicator that incitement to violence was the intent of the statement.

1023. Even-handedness was presented in defence of both *Kangura* and RTLM. That *Kangura* reprinted the *19 Commandments* of the Tutsi and that RTLM broadcast an interview with an RPF leader were cited by Defence as distancing the channel of communication from the harmful effects attributed to it. The Chamber notes that in both of these cases, the examples cited do not in fact establish the even-handedness suggested, largely due to the tone and manner in which they were presented. As published, the *19 Commandments* and *The Ten Commandments* are greatly differentiated; *Kangura's* rejection of the former is as apparent as its support of the latter. The clear intent of the publication is through the *19 Commandments* to spread the fear that the Tutsi endanger the Hutu, and then in *The Ten Commandments* to tell the Hutu how to protect themselves from that danger. The message, and the denigration of the Tutsi population, is the same. Similarly, the manner in which RTLM journalist Kantano Habimana presented the RPF, with derogatory references to the tall, milk-drinking Tutsi, hardly suggests even-handedness. The journalist exudes scorn and contempt for the Tutsi while boasting that "even" the *Inkotanyi* can speak on RTLM. *Kangura* and RTLM were not open or neutral fora. They had a well-defined perspective for which they were known.

1024. The Chamber recognizes that some media are advocacy-oriented and considers that the issue of importance to its findings is not whether the media played an advocacy

role but rather the content of what it was actually advocating. In cases where the media disseminates views that constitute ethnic hatred and calls to violence for informative or educational purposes, a clear distancing from these is necessary to avoid conveying an endorsement of the message and in fact to convey a counter-message to ensure that no harm results from the broadcast. The positioning of the media with regard to the message indicates the real intent of the message, and to some degree the real message itself. The editor of *Kangura* and the journalists who broadcast on RTLM did not distance themselves from the message of ethnic hatred. Rather they purveyed the message.

1025. The Accused have also cited in their defence the need for vigilance against the enemy, the enemy being defined as armed and dangerous RPF forces who attacked the Hutu population and were fighting to destroy democracy and reconquer power in Rwanda. The Chamber accepts that the media has a role to play in the protection of democracy and where necessary the mobilization of civil defence for the protection of a nation and its people. What distinguishes both *Kangura* and RTLM from an initiative to this end is the consistent identification made by the publication and the radio broadcasts of the enemy as the Tutsi population. Readers and listeners were not directed against individuals who were clearly defined to be armed and dangerous. Instead, Tutsi civilians and in fact the Tutsi population as a whole were targeted as the threat.

1026. Both *Kangura* and RTLM, as well as CDR in its communiqués, named and listed individuals suspected of being RPF or RPF accomplices. In their defence, the Accused stated that these individuals were, at least in some cases, RPF members. Nahimana pointed out that the RTLM broadcast of 14 March 1994 included reading from a letter explicitly addressed to an RPF brigade. The letter does indicate, as he noted, that RPF brigades existed. This is not contested. In this broadcast, it was the naming of family members, who were subsequently killed, that was at issue, and even Nahimana conceded that he did not like the practice of broadcasting names, especially when it might bring about their death. Ngeze established with regard to some of the lists published in *Kangura* that the names came from government sources and were therefore official suspects. The Chamber accepts that the publication of official information is a legitimate function of the media. Not all lists and names published or broadcasts came from such sources, however. To the contrary, the evidence reviewed by the Chamber indicates a pattern of naming people on vague suspicion, without articulated grounds, or in those cases where the grounds were articulated they were highly speculative or in some cases entirely unfounded. In these cases, the only common element is the Tutsi ethnicity of the persons named, and the evidence in some cases clearly indicates that their ethnicity was in fact the reason they were named.

1027. Both Nahimana and Ngeze professed a commitment to the truth and defended their communications on that basis. The Chamber questions this commitment and notes the testimony of Nahimana regarding the false RTLM report of the death of Kanyarengwe and Bizimungu. "When there is war, there is war", he said, "and propaganda is part of it". Ngeze's relationship to the truth is reviewed in detail by the Chamber in its discussion of his testimony in paragraphs 875-878. The Chamber considers that the Accused understood their media initiative in the context of war

propaganda, and the truth was subservient to their objective of protecting the population from the RPF through the destruction of the Tutsi ethnic group.

1028. The names published and broadcast were generally done so in the context of a threat that varied in explicitness. An official list of 123 names of suspects was published in *Kangura* No. 40 with an express warning to readers that the government was not effectively protecting them from these people and that they needed to organize their own self-defence to prevent their own extermination. This message classically illustrates the incitement of *Kangura* readers to violence: by instilling fear in them, giving them names to associate with this fear, and mobilizing them to take independent, proactive measures in an effort to protect themselves. In some instances, names were mentioned by *Kangura* without such an explicit call to action. The message was nevertheless direct. That it was clearly understood is overwhelmingly evidenced by the testimony of witnesses that being named in *Kangura* would bring dire consequences. François-Xavier Nsanzuwera called *Kangura* "the bell of death" (see paragraph 237). Similarly, RTLM broadcast a message of fear, provided listeners with names, and encouraged them to defend and protect themselves, incessantly telling them to "be vigilant", which became a coded term for aggression in the guise of self-defence.

1029. With regard to causation, the Chamber recalls that incitement is a crime regardless of whether it has the effect it intends to have. In determining whether communications represent an intent to cause genocide and thereby constitute incitement, the Chamber considers it significant that in fact genocide occurred. That the media intended to have this effect is evidenced in part by the fact that it did have this effect.

1030. The ICTR Appeals Chamber has affirmed that distinct crimes may justify multiple convictions, provided that each statutory provision that forms the basis for a conviction has a materially distinct element not contained in the other.¹¹¹⁹ With regard to incitement, the Chamber notes that instigation as an act of commission of genocide, pursuant to Article 6(1) of the Statute, does not necessarily require the existence of a public call to commit genocide, an element at the core of the crime of public and direct incitement to genocide.

RTLM

1031. RTLM broadcasting was a drumbeat, calling on listeners to take action against the enemy and enemy accomplices, equated with the Tutsi population. The phrase "heating up heads" captures the process of incitement systematically engaged in by RTLM, which after 6 April 1994 was also known as "Radio Machete". The nature of radio transmission made RTLM particularly dangerous and harmful, as did the breadth of its reach. Unlike print media, radio is immediately present and active. The power of the human voice, heard by the Chamber when the broadcast tapes were played in Kinyarwanda, adds a quality and dimension beyond words to the message conveyed. In this setting, radio heightened the sense of fear, the sense of danger and the sense of urgency giving rise to the need for action by listeners. The denigration of Tutsi ethnicity was augmented by the

¹¹¹⁹ *Musema* (AC) paras. 361-363.

visceral scorn coming out of the airwaves - the ridiculing laugh and the nasty sneer. These elements greatly amplified the impact of RTLM broadcasts.

1032. In particular, the Chamber notes the broadcast of 4 June 1994, by Kantano Habimana, as illustrative of the incitement engaged in by RTLM. Calling on listeners to exterminate the *Inkotanyi*, who would be known by height and physical appearance, Habimana told his followers, "Just look at his small nose and then break it". The identification of the enemy by his nose and the longing to break it vividly symbolize the intent to destroy the Tutsi ethnic group.

1033. The Chamber has found beyond a reasonable doubt that Ferdinand Nahimana acted with genocidal intent, as set forth in paragraph 969. It has found beyond a reasonable doubt that Nahimana was responsible for RTLM programming pursuant to Article 6(1) and established a basis for his responsibility under Article 6(3) of the Statute, as set forth in paragraphs 970-972. Accordingly, the Chamber finds Ferdinand Nahimana guilty of direct and public incitement to genocide under Article 2(3)(c), pursuant to Article 6(1) and Article 6(3) of the Statute.

1034. The Chamber has found beyond a reasonable doubt that Jean-Bosco Barayagwiza acted with genocidal intent, as set forth in paragraph 969. It has found beyond a reasonable doubt that Barayagwiza was responsible for RTLM programming pursuant to Article 6(3) of the Statute of the Tribunal, as set forth in paragraph 977. Accordingly, the Chamber finds Jean-Bosco Barayagwiza guilty of direct and public incitement to genocide under Article 2(3)(c), pursuant to Article 6(3) of its Statute.

CDR

1035. As found in paragraph 276, Jean-Bosco Barayagwiza was one of the principal founders of CDR and played a leading role in its formation and development. He was a decision-maker for the party. The killing of Tutsi civilians was promoted by the CDR, as evidenced by the chanting of "tubatsembatsembe" or "let's exterminate them", by Barayagwiza himself and by CDR members and *Impuzamugambi* in his presence at public meetings and demonstrations. The reference to "them" was understood to mean the Tutsi population. The killing of Tutsi civilians was also promoted by the CDR through the publication of communiqués and other writings that called for the extermination of the enemy and defined the enemy as the Tutsi population. The Chamber notes the direct involvement of Barayagwiza in this call for genocide. Barayagwiza was at the organizational helm of CDR. He was also on site at the meetings, demonstrations and roadblocks that created an infrastructure for the killing of Tutsi civilians. For these acts, the Chamber finds Jean-Bosco Barayagwiza guilty of direct and public incitement to genocide under Article 2(3)(c) of its Statute, pursuant to Article 6(1) of its Statute. The Chamber found in paragraph 977 above that Barayagwiza had superior responsibility over members of CDR and the *Impuzamugambi*. For his failure to take necessary and reasonable measures to prevent the acts of direct and public incitement to commit genocide caused by CDR members, the Chamber finds Barayagwiza guilty of direct and public incitement to commit genocide pursuant to Article 6(3) of its Statute.

Kangura

1036. Many of the writings published in *Kangura* combined ethnic hatred and fear-mongering with a call to violence to be directed against the Tutsi population, who were characterized as the enemy or enemy accomplices. The *Appeal to the Conscience of the Hutu* and the cover of *Kangura* No. 26 are two notable examples in which the message clearly conveyed to the readers of *Kangura* was that the Hutu population should “wake up” and take the measures necessary to deter the Tutsi enemy from decimating the Hutu. The Chamber notes that the name *Kangura* itself means “to wake up others”. What it intended to wake the Hutu up to is evidenced by its content, a litany of ethnic denigration presenting the Tutsi population as inherently evil and calling for the extermination of the Tutsi as a preventive measure. The Chamber notes the increased attention in 1994 issues of *Kangura* to the fear of an RPF attack and the threat that killing of innocent Tutsi civilians that would follow as a consequence.

1037. The Chamber notes that not all of the writings published in *Kangura* and highlighted by the Prosecution constitute direct incitement. *A Cockroach Cannot Give Birth to a Butterfly*, for example, is an article brimming with ethnic hatred but did not call on readers to take action against the Tutsi population.

1038. As founder, owner and editor of *Kangura*, Hassan Ngeze directly controlled the publication and all of its contents, for which he has largely acknowledged responsibility. The Chamber has found that Ngeze acted with genocidal intent, as set forth in paragraph 969. Ngeze used the publication to instill hatred, promote fear, and incite genocide. It is evident that *Kangura* played a significant role, and was seen to have played a significant role, in creating the conditions that led to acts of genocide. Accordingly, the Chamber finds Hassan Ngeze guilty of direct and public incitement to genocide, under Article 2(3)(c) and in accordance with Article 6(1) of the Statute.

Acts of Hassan Ngeze

1039. As set forth in paragraph 837, Hassan Ngeze often drove around with a megaphone in his vehicle, mobilizing the Hutu population to come to CDR meetings and spreading the message that the *Inyenzi* would be exterminated, *Inyenzi* meaning, and being understood to mean, the Tutsi ethnic minority. For these acts, which called for the extermination of the Tutsi population, the Chamber finds Hassan Ngeze guilty of direct and public incitement to genocide, under Article 2(3)(c) and in accordance with Article 6(1) of the Statute.

4. Conspiracy to Commit Genocide

1040. Count 1 of the Indictments charge the Accused with conspiracy to commit genocide pursuant to Article 2(3)(b) of the Statute, in that they conspired with each other, and others, to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group as such.

1041. In *Musema*, the Tribunal reviewed the history of the inclusion of the crime of conspiracy in the Convention for the Prevention and Punishment of the Crime of Genocide, noting that in view of the serious nature of the crime of genocide, it was felt that the mere agreement to commit genocide should be punishable even if no preparatory act had taken place. After considering the civil law and common law definitions of conspiracy, the *Musema* judgement defined conspiracy to commit genocide as an agreement between two or more persons to commit the crime of genocide.¹¹²⁰

1042. The requisite intent for the crime of conspiracy to commit genocide is the same intent required for the crime of genocide.¹¹²¹ That the three Accused had this intent has been found beyond a reasonable doubt and is set forth in paragraph 969.

1043. The Appeals Chamber in *Musema* has affirmed that distinct crimes may justify multiple convictions, provided that each statutory provision that forms the basis for a conviction has a materially distinct element not contained in the other.¹¹²² The Chamber notes that planning is an act of commission of genocide, pursuant to Article 6(1) of the Statute. The offence of conspiracy requires the existence of an agreement, which is the defining element of the crime of conspiracy. Accordingly, the Chamber considers that the Accused can be held criminally responsible for both the act of conspiracy and the substantive offence of genocide that is the object of the conspiracy.

1044. The Chamber notes that as set forth in paragraphs 100-104 conspiracy is an inchoate offence, and as such has a continuing nature that culminates in the commission of the acts contemplated by the conspiracy. For this reason, acts of conspiracy prior to 1994 that resulted in the commission of genocide in 1994 fall within the temporal jurisdiction of the Tribunal.

1045. The essence of the charge of conspiracy is the agreement among those charged. It is a well established principle of the Anglo-American jurisprudence on conspiracy that the existence of a formal or express agreement is not needed to prove the charge of conspiracy.¹¹²³ An agreement can be inferred from concerted or coordinated action on the part of the group of individuals. A tacit understanding of the criminal purpose is sufficient.¹¹²⁴

1046. In *Niyitegeka*, the Tribunal inferred the existence of a conspiracy to commit genocide based on circumstantial evidence, including various actions of the Accused, such as his participation and attendance at meetings to discuss the killing of Tutsi, his planning of attacks against Tutsi, his promise and distribution of weapons to attackers to

¹¹²⁰ *Musema* (TC) paras. 185-191.

¹¹²¹ *Ibid.*, para. 192.

¹¹²² *Musema* (AC) paras. 361-363.

¹¹²³ See *State v. Bond*, 49 Conn. App. 183, 195-96 (1998); *State v. Channer*, 28 Conn. App. 161, 168-69 (1992).

¹¹²⁴ See *State v. Cavanaugh*, 23 Conn. App. 667, 671 (1991); *State v. Grullon*, 212 Conn. 195, 199 (1989).

be used in attacks against Tutsi, and his leadership role in conducting and speaking at the meetings.¹¹²⁵

1047. The Chamber considers that conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework. A coalition, even an informal coalition, can constitute such a framework so long as those acting within the coalition are aware of its existence, their participation in it, and its role in furtherance of their common purpose.

1048. The Chamber further considers that conspiracy to commit genocide can be comprised of individuals acting in an institutional capacity as well as or even independently of their personal links with each other. Institutional coordination can form the basis of a conspiracy among those individuals who control the institutions that are engaged in coordinated action. The Chamber considers the act of coordination to be the central element that distinguishes conspiracy from "conscious parallelism", the concept put forward by the Defence to explain the evidence in this case.

1049. Nahimana and Barayagwiza collaborated closely as the two most active members of the Steering Committee (*Comité d' Initiative*), or provisional board, of RTLM. They were together in meetings at which they represented RTLM, and they were the two officials signing checks for the organization. They both attended clandestine meetings at the Ministry of Transport. In June 1994, they were together in Geneva and met with Prosecution Witness Dahinden, a Swiss journalist, to talk about RTLM. Barayagwiza also collaborated closely with Ngeze in the CDR. They were together at CDR meetings and demonstrations, as documented not only by the evidence of witnesses but also by various photographs of Barayagwiza and Ngeze together on podiums at CDR functions.

1050. The Chamber finds that Barayagwiza was the lynchpin among the three Accused, collaborating closely with both Nahimana and Ngeze. Nahimana and Ngeze met with Barayagwiza at his office in the Ministry of Foreign Affairs, and Ngeze also met Barayagwiza at his home. They discussed RTLM, CDR and *Kangura* as all playing a role in the struggle of the Hutu against the Tutsi. All three participated together in an MRND rally in Nyamirambo Stadium in 1993 where they were introduced within the framework of the emerging Hutu solidarity movement called "Hutu Power". All three were depicted by Ngeze on the cover of *Kangura* in connection with the creation of RTLM in a cartoon which showed the three Accused as representing the new radio initiative within the framework of advancing a common Hutu agenda.

1051. Institutionally also, there were many links that connected the Accused to each other. *Kangura* was a shareholder, albeit limited one, of RTLM, and the newspaper and radio closely collaborated. *Kangura* welcomed the creation of RTLM as an initiative in which *Kangura* had a role. RTLM promoted issues of *Kangura* to its listeners. *Kangura* and RTLM undertook a joint initiative in March 1994, a competition to make readers and listeners familiar with the contents of past issues of *Kangura* and to survey readers and

¹¹²⁵ Niyitegeka (TC) paras. 427-428.

listeners on their views regarding RTLM broadcasters. One of the prizes offered was for CDR members only.

1052. *Kangura* also worked together with CDR, welcoming its creation with a special issue devoted to it. The newspaper urged its readers to join CDR, and it publicly identified Ngeze with CDR, through editorials, photographs, and the publication of letters and communiqués. An article signed by *Kangura* in May 1992 told readers “The island is none other than the CDR. So now grab your oars, Hutus.” It called for a mental revolution among the Hutu, to deal with the intractable Tutsi “who has a desiccated heart where the Nazi worm nibbles in tranquility”.

1053. There were several triangular links as well among the three institutions effectively controlled by the three Accused. *Kangura* interacted extensively with both RTLM and CDR. Although RTLM was primarily made up of MRND shareholders, the few CDR shareholders involved in RTLM were key officials in both RTLM and CDR. In addition to Barayagwiza, who had a controlling role in both RTLM and CDR, Stanislas Simbizi, a member of the CDR Executive Committee, became a member of the RTLM Steering Committee following the General Assembly of RTLM on 11 July 1993. Simbizi was also a member of the editorial board of *Kangura*. An article signed by Ngeze and published in *Kangura* in January 1994 links all three entities: “*Kangura* has been supported by CDR and then RTLM radio station was established... The entire Hutu youth now have been taught how the Hutu youth can confront the *Inyenzis*...” As a political institution CDR provided an ideological framework for genocide, and the two media institutions formed part of the coalition that disseminated the message of CDR that the destruction of the Tutsi was essential to the survival of the Hutu.

1054. This evidence establishes, beyond a reasonable doubt, that Nahimana, Barayagwiza and Ngeze consciously interacted with each other, using the institutions they controlled to promote a joint agenda, which was the targeting of the Tutsi population for destruction. There was public presentation of this shared purpose and coordination of efforts to realize their common goal.

1055. The Chamber finds that Nahimana, Ngeze and Barayagwiza, through personal collaboration as well as interaction among institutions within their control, namely RTLM, *Kangura* and CDR, are guilty of conspiracy to commit genocide under Article 2(3)(b) and pursuant to Article 6(1) of the Statute.

5. Complicity in Genocide

1056. Count 4 of the Nahimana Indictment, Count 3 of the Barayagwiza Indictment and Count 3 of the Ngeze Indictment charge the Accused with complicity in genocide, in that they are complicit in the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group as such. The Chamber considers that the crime of complicity in genocide and the crime of genocide are mutually exclusive, as one cannot be guilty as a principal

perpetrator and as an accomplice with respect to the same offence.¹¹²⁶ In light of the finding in relation to the count of genocide, the Chamber finds the Accused not guilty of the count of complicity in genocide.

6. Crimes Against Humanity (Extermination)

1057. Count 6 of the Nahimana Indictment, Count 5 of the Barayagwiza Indictment and Count 7 of the Ngeze Indictment charge the Accused with extermination pursuant to Article 3(b) of the Statute of the Tribunal, in that they are responsible for the extermination of the Tutsi, as part of a widespread or systematic attack against a civilian population on political, racial or ethnic grounds.

1058. The Chamber notes that some RTLM broadcasts, as well as the publication of *Kangura* through March 1994, preceded the widespread and systematic attack that occurred following the assassination of President Habyarimana on 6 April 1994 (see paragraph 121). As set forth in paragraph 120, the Chamber has found that systematic attacks against the Tutsi population also took place prior to 6 April 1994. The Chamber considers that the broadcasting of RTLM and the publication of *Kangura* prior to the attack that commenced on 6 April 1994 formed an integral part of this widespread and systematic attack, as well as the preceding systematic attacks against the Tutsi population. Similarly, the activities of the CDR that took place prior to 6 April 1994 formed an integral part of the widespread and systematic attack that commenced on 6 April, as well as the preceding systematic attacks against the Tutsi population.

1059. The Chamber notes that the temporal jurisdiction of the Tribunal for crimes against humanity is limited to RTLM broadcasts in 1994. With regard to *Kangura*, as found in paragraph 257, the competition published twice in March 1994 was intended to direct the attention of readers to back issues of the publication and effectively brought these back issues into circulation in Rwanda in March 1994. Accordingly, they fall within the scope of the temporal jurisdiction of the Tribunal.

1060. As noted in paragraph 952, the nature of media is such that causation of killing will necessarily be effected by an immediately proximate cause in addition to the communication itself. In the Chamber's view, this does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication.

1061. The Chamber recalls that in *Akayesu* the Tribunal distinguished the crime of extermination from the crime of murder by saying, "Extermination is a crime which by its very nature is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction which is not required for murder."¹¹²⁷ In *Bagilishema*, the Tribunal affirmed this distinction, holding that extermination is "unlawful killing on a large scale" and that "large scale" does not

¹¹²⁶ *Akayesu* (TC) para. 532.

¹¹²⁷ *Akayesu* (TC) para. 591.

suggest a numerical minimum.¹¹²⁸ In *Ntakirutimana*, the Chamber cited *Vasiljevic* which held that extermination would be found where the Accused were responsible for the deaths of a large number of individuals, even if their part therein was remote or indirect, and that extermination “supposes the taking of a large number of lives”.¹¹²⁹ The Chamber in *Niyitegeka* adopted the same approach, citing *Akayesu* and *Vasiljevic* with approval.¹¹³⁰ In *Semanza*, the Chamber held that the “material element of extermination is the mass killing of a substantial number of civilians”.¹¹³¹ The Chamber agrees that in order to be guilty of the crime of extermination, the Accused must have been involved in killings of civilians on a large scale but considers that the distinction is not entirely related to numbers. The distinction between extermination and murder is a conceptual one that relates to the victims of the crime and the manner in which they were targeted.

1062. Both *Kangura* and RTLM instigated killings on a large-scale. The nature of media, particularly radio, is such that the impact of the communication has a broad reach, which greatly magnifies the harm that it causes. The activities of the CDR and its *Impuzamugambi*, being by nature group rampages of violence, also caused killing on a large-scale, often following meetings and demonstrations.

Individual Criminal Responsibility

1063. The role of RTLM in killing Tutsi civilians is set forth above in paragraph 949. The individual criminal responsibility of Ferdinand Nahimana for RTLM broadcasts is set forth above in paragraphs 970-974. The Chamber notes that Nahimana is not charged for extermination in relation to his superior responsibility for RTLM pursuant to Article 6(3) of its Statute. For RTLM broadcasts in 1994 that caused the killing of Tutsi civilians, the Chamber finds Nahimana guilty of crimes against humanity (extermination) under Article 3(b), pursuant to Article 6(1) of the Statute of the Tribunal.

1064. The responsibility of Jean-Bosco Barayagwiza for RTLM broadcasts is set forth above in paragraph 973. For RTLM broadcasts in 1994 that caused the killing of Tutsi civilians, the Chamber finds Barayagwiza guilty of crimes against humanity (extermination) under Article 3(b), pursuant to Article 6(3) of the Statute of the Tribunal.

1065. The responsibility of Jean-Bosco Barayagwiza for the activities of CDR is set forth in paragraph 975. For the killing of Tutsi civilians by CDR members and the *Impuzamugambi* at the direction of Barayagwiza as leader of the CDR, the Chamber finds Barayagwiza guilty of crimes against humanity (extermination) under Article 3(b), pursuant to Article 6(1) of the Statute.

1066. The Chamber found in paragraph 977 above that Barayagwiza had superior responsibility over CDR members and the *Impuzamugambi*. For his failure to take necessary and reasonable measures to prevent the killing of Tutsi civilians by CDR

¹¹²⁸ *Bagilishema* (TC) para. 87.

¹¹²⁹ *Ntakirutimana* (TC) para. 813.

¹¹³⁰ *Niyitegeka* (TC) para. 450.

¹¹³¹ *Semanza* (TC) para. 463.

members and *Impuzamugambi*, the Chamber finds Barayagwiza guilty of crimes against humanity (extermination) pursuant to Article 6(3) of its Statute.

1067. For his acts in planning the killing of Tutsi civilians, as set forth in paragraph 954, the Chamber finds Jean-Bosco Barayagwiza guilty of crimes against humanity (extermination) under Article 3(b), pursuant to Article 6(1) of its Statute.

1068. For his acts in ordering and aiding and abetting the killing of Tutsi civilians, as set forth in paragraph 954, the Chamber finds Hassan Ngeze guilty of crimes against humanity (extermination) under Article 3(b), pursuant to Article 6(1) of its Statute.

7. Crimes Against Humanity (Persecution)

1069. Count 5 of the Nahimana Indictment and Count 7 of the Barayagwiza and Ngeze Indictments charge the Accused with crimes against humanity (persecution) on political or racial grounds pursuant to Article 3(h) of the Statute, in that they are responsible for persecution on political or racial grounds, as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds.

1070. The Chamber's findings on the existence of widespread and systematic attacks against the Tutsi ethnic minority are set forth in paragraphs 120-121. The Chamber's findings that RTLM broadcasts, the publication of *Kangura*, and activities of the CDR prior to 6 April 1994 formed part of these attacks are set forth in paragraph 1058.

1071. Unlike the other acts of crimes against humanity enumerated in the Statute of the Tribunal, the crime of persecution specifically requires a finding of discriminatory intent on racial, religious or political grounds. The Chamber notes that this requirement has been broadly interpreted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) to include discriminatory acts against all those who do not belong to a particular group, i.e. non-Serbs.¹¹³² As the evidence indicates, in Rwanda the targets of attack were the Tutsi ethnic group and the so-called "moderate" Hutu political opponents who supported the Tutsi ethnic group. The Chamber considers that the group against which discriminatory attacks were perpetrated can be defined by its political component as well as its ethnic component. At times the political component predominated, as evidenced by the comment of Witness FS, citing the Tutsi leader of the *Interahamwe*, Robert Kajuga as an example, that he did not consider Tutsi who joined the *Interahamwe* to be Tutsi.¹¹³³ RTLM, *Kangura* and CDR, as has been shown by the evidence, essentially merged political and ethnic identity, defining their political target on the basis of ethnicity and political positions relating to ethnicity. In these circumstances, the

¹¹³² *Tadic* (TC) para. 652. *Tadic* (AC) para. 249. *Prosecutor v. Stevan Todorovic*, IT-95-9/1, Sentencing Judgment, para. 12 (Trial Chamber I, 31 July 2001), para. 236. In *Krnjelac* (AC) para. 187, the ICTY Appeals Chamber stated that the accused "had sufficient information to alert him to the risk that inhumane acts and cruel treatment were being committed against the non-Serb detainees because of their political or religious affiliation".

¹¹³³ Para. 895.

Chamber considers that the discriminatory intent of the Accused falls within the scope of the crime against humanity of persecution on political grounds of an ethnic character.

1072. In *Ruggiu*, its first decision regarding persecution as a crime against humanity, the ICTR applied the elements of persecution outlined by the ICTY Trial Chamber in the *Kupreskic* case.¹¹³⁴ In these cases the crime of persecution was held to require “a gross or blatant denial of a fundamental right reaching the same level of gravity” as the other acts enumerated as crimes against humanity under the Statute.”¹¹³⁵ The Chamber considers it evident that hate speech targeting a population on the basis of ethnicity, or other discriminatory grounds, reaches this level of gravity and constitutes persecution under Article 3(h) of its Statute. In *Ruggiu*, the Tribunal so held, finding that the radio broadcasts of RTLM, in singling out and attacking the Tutsi ethnic minority, constituted a deprivation of “the fundamental rights to life, liberty and basic humanity enjoyed by members of the wider society.”¹¹³⁶ Hate speech is a discriminatory form of aggression that destroys the dignity of those in the group under attack. It creates a lesser status not only in the eyes of the group members themselves but also in the eyes of others who perceive and treat them as less than human. The denigration of persons on the basis of their ethnic identity or other group membership in and of itself, as well as in its other consequences, can be an irreversible harm.

1073. Unlike the crime of incitement, which is defined in terms of intent, the crime of persecution is defined also in terms of impact. It is not a provocation to cause harm. It is itself the harm. Accordingly, there need not be a call to action in communications that constitute persecution. For the same reason, there need be no link between persecution and acts of violence. The Chamber notes that Julius Streicher was convicted by the International Military Tribunal at Nuremberg of persecution as a crime against humanity for anti-semitic writings that significantly predated the extermination of Jews in the 1940s. Yet they were understood to be like a poison that infected the minds of the German people and conditioned them to follow the lead of the National Socialists in persecuting the Jewish people. In Rwanda, the virulent writings of *Kangura* and the incendiary broadcasts of RTLM functioned in the same way, conditioning the Hutu population and creating a climate of harm, as evidenced in part by the extermination and genocide that followed. Similarly, the activities of the CDR, a Hutu political party that demonized the Tutsi population as the enemy, generated fear and hatred that created the conditions for extermination and genocide in Rwanda.

1074. The Chamber notes that freedom of expression and freedom from discrimination are not incompatible principles of law. Hate speech is not protected speech under international law. In fact, governments have an obligation under the International Covenant on Civil and Political Rights to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.¹¹³⁷ Similarly, the Convention on the Elimination of all Forms of Racial Discrimination

¹¹³⁴ *Ruggiu* (TC) para. 21.

¹¹³⁵ *Ibid.*

¹¹³⁶ *Ruggiu* (TC) para. 22.

¹¹³⁷ ICCPR, Art. 20.

requires the prohibition of propaganda activities that promote and incite racial discrimination.¹¹³⁸

1075. A great number of countries around the world, including Rwanda, have domestic laws that ban advocacy of discriminatory hate, in recognition of the danger it represents and the harm it causes. These countries include the following: The Criminal Code of Germany prohibits incitement to hatred and violence against segments of the population, including the dissemination of publications or broadcasts that attack human dignity.¹¹³⁹ A press law in Vietnam prohibits the sowing of enmity among nations and people.¹¹⁴⁰ The Russian Criminal Code prohibits incitement of hatred by attacking human dignity, insulting, or maliciously degrading segments of the population.¹¹⁴¹ The Criminal Code of Finland prohibits racist propaganda that threatens, denigrates or humiliates a group of persons.¹¹⁴² In Ireland it is an offence to publish threatening, abusive or insulting material likely to stir up hatred.¹¹⁴³ A law in Ukraine prohibits propaganda for cruelty and the broadcast of pornography and other material that causes the demeaning of human honour and dignity.¹¹⁴⁴ The Criminal Code of Iceland prohibits racial hatred, including mockery, insults, threats and defamation.¹¹⁴⁵ Press that arouses scorn or hatred of some inhabitants for others is prohibited in Monaco.¹¹⁴⁶ The Criminal Code of Slovenia prohibits incitement of inequality and intolerance.¹¹⁴⁷ China prohibits broadcasts that incite hatred on account of color, race, sex, religion, nationality or ethnic or national origin.¹¹⁴⁸

1076. The Chamber considers, in light of well-established principles of international and domestic law, and the jurisprudence of the *Streicher* case in 1946 and the many European Court and domestic cases since then, that hate speech that expresses ethnic and other forms of discrimination violates the norm of customary international law prohibiting discrimination. Within this norm of customary law, the prohibition of advocacy of discrimination and incitement to violence is increasingly important as the power of the media to harm is increasingly acknowledged.

1077. The Chamber has reviewed the broadcasts of RTLM, the writings in *Kangura*, and the activities of CDR in its Legal Findings on Direct and Public Incitement to

¹¹³⁸ CERD, Art. 4(a)

¹¹³⁹ Article 130, Criminal Code, European Commission Against Racism and Intolerance (website).

¹¹⁴⁰ Second periodic report of Vietnam to the Human Rights Committee, 05/14/2001.

¹¹⁴¹ Article 282, Russian Criminal Code, European Commission Against Racism and Intolerance (website).

¹¹⁴² Article 8, Chapter 11, Finnish Criminal Code European Commission Against Racism and Intolerance (website).

¹¹⁴³ Prohibition of Incitement to Hatred Act of 1989, Subpara. 2(1)(a) European Commission Against Racism and Intolerance (website).

¹¹⁴⁴ Fifth periodic report of Ukraine to the Human Rights Committee, 11/16/2000; web-site of the European Commission Against Racism and Intolerance.

¹¹⁴⁵ National Criminal Code, European Commission Against Racism and Intolerance (website).

¹¹⁴⁶ Initial report of Monaco to the Human Rights Committee, 8/28/2001.

¹¹⁴⁷ Criminal Code, Article 63. European Commission Against Racism and Intolerance (website).

¹¹⁴⁸ Initial report of China-Hong Kong to the Human Rights Committee, 6/1/6/99.

Genocide (see paragraphs 1019-1037). Having established that all communications constituting direct and public incitement to genocide were made with genocidal intent, the Chamber notes that the lesser intent requirement of persecution, the intent to discriminate, has been met with regard to these communications. Having also found that these communications were part of a widespread or systematic attack, the Chamber finds that these expressions of ethnic hatred constitute the crime against humanity of persecution, as well as the crime of direct and public incitement to genocide.

1078. The Chamber notes that persecution is broader than direct and public incitement, including advocacy of ethnic hatred in other forms. For example, the *Kangura* article, *A Cockroach Cannot Give Birth to a Butterfly*, and *The Ten Commandments*, independently of its placement within the *Appeal to the Conscience of the Hutu*, constitute persecution. The RTLM interview broadcast on June 1994, in which Simbona, interviewed by Gaspard Gahigi, talked of the cunning and trickery of the Tutsi, also constitutes persecution. As described by Witness ABE, the propaganda of *Kangura* contaminated the minds of people. As described by Witness GO, RTLM "spread petrol throughout the country little by little, so that one day it would be able to set fire to the whole country". This is the poison described in the *Streicher* judgement.

1079. The Chamber notes that Tutsi women, in particular, were targeted for persecution. The portrayal of the Tutsi woman as a *femme fatale*, and the message that Tutsi women were seductive agents of the enemy was conveyed repeatedly by RTLM and *Kangura*. *The Ten Commandments*, broadcast on RTLM and published in *Kangura*, vilified and endangered Tutsi women, as evidenced by Witness AHI's testimony that a Tutsi woman was killed by CDR members who spared her husband's life and told him "Do not worry, we are going to find another wife, a Hutu for you".¹¹⁴⁹ By defining the Tutsi woman as an enemy in this way, RTLM and *Kangura* articulated a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them.

1080. The Chamber notes that persecution when it takes the form of killings is a lesser included offence of extermination. The nature of broadcasts, writings, and the activities of CDR is such, however, that the same communication would have caused harm of varying degrees to different individuals. An RTLM broadcast, *Kangura* article, or CDR demonstration that led to the extermination of certain Tutsi civilians inflicted lesser forms of harm on others, constituting persecution. The Chamber considers that these actions by the Accused therefore constitute multiple and different crimes, for which they can be held separately accountable.

1081. The responsibility of Ferdinand Nahimana for the broadcasts of RTLM is set forth above in paragraphs 970-974. For RTLM broadcasts in 1994 advocating ethnic hatred or inciting violence against the Tutsi population, the Chamber finds Nahimana guilty of crimes against humanity (persecution) under Article 3(h), pursuant to Article 6(1) and Article 6(3) of the Statute.

¹¹⁴⁹ Para. 234.

1082. The responsibility of Jean-Bosco Barayagwiza for the broadcasts of RTLM is set forth above in paragraph 973. For RTLM broadcasts in 1994 advocating ethnic hatred or inciting violence against the Tutsi population, the Chamber finds Barayagwiza guilty of crimes against humanity (persecution) under Article 3(h), pursuant to Article 6(3) of the Statute of the Tribunal.

1083. The responsibility of Jean-Bosco Barayagwiza for the actions of the CDR is set forth in paragraph 975. For his own acts and for the activities of CDR that advocated ethnic hatred or incited violence against the Tutsi population, the Chamber finds Barayagwiza guilty of crimes against humanity (persecution) under Article 3(h), pursuant to Article 6(1) of the Statute. The Chamber found in paragraph 977 above that Barayagwiza had superior responsibility over CDR members and the *Impuzamugambi*. For his failure to take necessary and reasonable measures to prevent the advocacy of ethnic hatred or incitement of violence against the Tutsi population by CDR members and *Impuzamugambi*, the Chamber finds Barayagwiza guilty of crimes against humanity (persecution) pursuant to Article 6(3) of its Statute.

1084. The responsibility of Hassan Ngeze for the content of *Kangura* is set forth above in paragraphs 977 and 978. For the contents of this publication that advocated ethnic hatred or incited violence, as well as for his own acts that advocated ethnic hatred or incited violence against the Tutsi population, as set forth in paragraph 1039. The Chamber finds Ngeze guilty of crimes against humanity (persecution) under Article 3(h), pursuant to Article 6(1) of the Statute of the Tribunal.

8. Crimes Against Humanity (Murder)

1085. Count 7 of the Nahimana Indictment, Count 6 of the Barayagwiza Indictment and Count 5 of the Ngeze Indictment charge the Accused with crimes against humanity (murder), in that they are responsible for the murder of persons as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds. Pursuant to the Prosecution's concession that no evidence was presented of these crimes with respect to Nahimana and Barayagwiza, the Chamber, in its decision dated 25 September 2002, acquitted Nahimana and Barayagwiza of crimes against humanity (murder). Therefore, only Ngeze remains charged of this crime.

1086. The Prosecution alleges that Ngeze is guilty of murder under Articles 6(1) and 6(3) of the Statute. Paragraphs 7.6, 7.8 and 7.9 of the Indictment refer to killings committed by or ordered by Ngeze.

1087. The Prosecution conceded during its Closing Arguments that it was not pursuing the allegation of the shooting of the Tutsi girl (paragraph. 7.8).¹¹⁵⁰ The Chamber found that the Prosecution failed to prove that Ngeze ordered the killing of or killed Modeste

¹¹⁵⁰ T. 19 Aug. 2003, p. 86.

Tabaro (paragraph 7.9). The Prosecution also failed to prove that Ngeze killed the man in the *Commune Rouge* (paragraph 7.6).

1088. The Chamber therefore finds that Ngeze is not guilty of murder as a crime against humanity pursuant to Article 6(1) or 6(3) of the Statute.

9. Cumulative Charges and Convictions

1089. Cumulative charging is generally permissible, as it is not possible to determine which charges will be proven against an Accused prior to the presentation of the evidence.¹¹⁵¹

1090. Cumulative convictions are permissible only if the crimes involved comprise materially distinct elements.¹¹⁵² In this case, the three Accused are guilty of conspiracy to commit genocide, genocide, direct and public incitement to commit genocide and crimes against humanity (persecution and extermination). As these offences comprise materially distinct elements, discussed above in this chapter, convictions on these counts will be entered against the three Accused.

¹¹⁵¹ See eg. *Musema* (AC) paras. 346-370.

¹¹⁵² *Musema* (AC) paras. 346-370; *Delalic* (AC) para. 400.

CHAPTER V

VERDICT

1091. **FOR THE FOREGOING REASONS**, having considered all of the evidence and the arguments:

1092. **THE CHAMBER** unanimously finds Ferdinand Nahimana:

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Guilty of Direct and Public Incitement to Commit Genocide

Count 4: Not Guilty of Complicity in Genocide

Count 5: Guilty of Crimes Against Humanity (Persecution)

Count 6: Guilty of Crimes Against Humanity (Extermination)

Count 7: Not Guilty of Crimes Against Humanity (Murder)

1093. **THE CHAMBER** unanimously finds Jean-Bosco Barayagwiza:

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Not Guilty of Complicity in Genocide

Count 4: Guilty of Direct and Public Incitement to Commit Genocide

Count 5: Guilty of Crimes Against Humanity (Extermination)

Count 6: Not Guilty of Crimes Against Humanity (Murder)

Count 7: Guilty of Crimes Against Humanity (Persecution)

Count 8: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

Count 9: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II



1094. **THE CHAMBER** unanimously finds Hassan Ngeze:

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Not Guilty of Complicity in Genocide

Count 4: Guilty of Direct and Public Incitement to Commit Genocide

Count 5: Not Guilty of Crimes Against Humanity (Murder)

Count 6: Guilty of Crimes Against Humanity (Persecution)

Count 7: Guilty of Crimes Against Humanity (Extermination)



CHAPTER VI

SENTENCE

1095. Having found the three Accused guilty, the Chamber now addresses the issue of sentencing, pursuant to Article 22 of the Statute. The Chamber considers that sentencing serves the goals of retribution, deterrence, rehabilitation, and protection of society. In accordance with Article 23 of the Statute, the Chamber will consider the general prison sentencing practice in Rwanda, the gravity of the offences and the individual circumstances of the Accused. The Chamber will also take into account any other aggravating or mitigating circumstances pursuant to Rule 101 of the Rules.

1096. The Accused have been convicted of genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, and extermination and persecution as crimes against humanity. These are extremely grave crimes, which shock the conscience of humanity and threaten the foundations of society.

1097. The Prosecution has recommended life imprisonment for each count on which the Accused are convicted.¹¹⁵³ Rule 101 of the Rules states that upon conviction, an Accused may be sentenced to imprisonment for a fixed term or the remainder of his life. The Chamber considers that life imprisonment, being the highest penalty permissible at the Tribunal, should be reserved for the most serious offenders, and the principle of gradation in sentencing allows the Chamber to distinguish between crimes, based on their gravity.¹¹⁵⁴ The Chamber is mindful that it has an “overriding obligation to individualize [the] penalty”, with the aim that the sentence be proportional to the gravity of the offence and the degree of responsibility of the offender.¹¹⁵⁵ The Chamber has also considered the provisions of the Rwandan Penal Code and Rwandan Organic Law relating to sentencing, and the sentencing practices in both ad-hoc Tribunals.

Individual Circumstances of the Accused and Aggravating and Mitigating Circumstances

1098. All the three Accused occupied positions of leadership and public trust.

1099. Ferdinand Nahimana was a renowned academic. He was Professor of History at the National University of Rwanda. He was Director of ORINFOR and founded RTL radio station as an independent private radio. He was Political Adviser to the Interim Government sworn in after 6 April 1994 under President Sindikubwabo. He was fully aware of the power of words, and he used the radio – the medium of communication with the widest public reach – to disseminate hatred and violence. He was motivated by his sense of patriotism and the need he perceived for equity for the Hutu population. But instead of following legitimate avenues of recourse, he chose a path of genocide. In doing

¹¹⁵³ Prosecution Closing Brief, p. 323.

¹¹⁵⁴ *Ntakirutimana* (TC) para. 884 ; *Niyitegeka* (TC) para. 486.

¹¹⁵⁵ *Delalic* (AC) para. 717; *Kambanda* (TC) para. 58.

so, he betrayed the trust placed in him as an intellectual and a leader. Without a firearm, machete or any physical weapon, he caused the deaths of thousands of innocent civilians. No representations were made on his behalf on sentencing. The Chamber notes the representations made by Defence witnesses as to his good character and high standing in society but in the Chamber's view, these circumstances are not mitigating. They underscore his betrayal of public trust.

1100. Jean-Bosco Barayagwiza was Director of Political Affairs in the Ministry of Foreign Affairs and a founder of RTLM. He was also the founder of CDR and its President in Gisenyi Prefecture, later National President of CDR. He is a lawyer by training and in his book professes a commitment to international human rights standards. Yet he deviated from these standards and violated the most fundamental human right, the right to life. He did so both through the institutions he created, and through his own personal acts of participation in the genocide. He was the lynchpin of the conspiracy, collaborating closely with both Nahimana and Ngeze. His Counsel have made representations on mitigation of sentence.¹¹⁵⁶ The Chamber can find no mitigating circumstances in his case.

1101. Hassan Ngeze, as owner and editor of a well-known newspaper in Rwanda, was in a position to inform the public and shape public opinion towards achieving democracy and peace for all Rwandans. Instead of using the media to promote human rights, he used it to attack and destroy human rights. He has had significant media networking skills and attracted support earlier in his career from international human rights organizations who perceived his commitment to freedom of expression. However, Ngeze did not respect the responsibility that comes with that freedom. He abused the trust of the public by using his newspaper to instigate genocide. No representations as to sentence were made on his behalf by his Counsel. The Chamber notes that Ngeze saved Tutsi civilians from death by transporting them across the border out of Rwanda. His power to save was more than matched by his power to kill. He poisoned the minds of his readers, and by words and deeds caused the death of thousands of innocent civilians.

1102. The Chamber considers that all three Accused were involved in the planning of these criminal activities and were disposed to acting in a manner contrary to the duty imposed upon them by their respective positions. The Chamber has considered the way the crimes were executed, in particular the cruelty as testified to by Witnesses AEU and EB, the attacks on churches and mosques and the preparation of mass graves for victims.

1103. Having regard to the nature of the offences, and the role and the degree of participation of the Accused, the Chamber considers that the three Accused fall into the category of the most serious offenders.

1104. The Chamber notes that in the case of an Accused convicted of multiple crimes, as in the present case, the Chamber may, in its discretion, impose a single sentence or one sentence for each of the crimes. The imposition of a single sentence will usually be

¹¹⁵⁶ Defence Closing Brief (Barayagwiza), p. 149.

appropriate in cases in which the offences may be recognized as belonging to a single criminal transaction.¹¹⁵⁷

Ferdinand Nahimana

1105. Having considered all the relevant factors, the Chamber sentences Ferdinand Nahimana in respect of all the counts on which he has been convicted to imprisonment for the remainder of his life.

Jean-Bosco Barayagwiza

1106. Having considered all the relevant factors, the Chamber considers that the appropriate sentence for Jean-Bosco Barayagwiza in respect of all the counts on which he has been convicted is imprisonment for the remainder of his life. However, in its decision dated 31 March 2000, the Appeals Chamber decided:

[T]hat for the violation of his rights the Appellant is entitled to a remedy, to be fixed at the time of judgement at first instance, as follows:

- a) If the Appellant is found not guilty, he shall receive financial compensation;
- b) If the Appellant is found guilty, his sentence shall be reduced to take account of the violation of his rights.¹¹⁵⁸

1107. The Chamber considers that a term of years, being by its nature a reduced sentence from that of life imprisonment, is the only way in which it can implement the Appeals Chamber decision. Taking into account the violation of his rights, the Chamber sentences Barayagwiza in respect of all the counts on which he has been convicted to 35 years' imprisonment. Pursuant to Rule 101(D) of the Rules, Barayagwiza is further entitled to credit for time served, to be calculated from the date of his initial arrest in Cameroon, on 26 March 1996.¹¹⁵⁹ Credit for time served has been calculated as seven years, eight months and nine days. Therefore, Barayagwiza will serve twenty-seven years, three months and twenty-one days, being the remainder of his sentence, as of 3 December 2003.

¹¹⁵⁷ *Blaskic* (TC) para. 807; *Krstic* (TC) para. 725.

¹¹⁵⁸ Decision on the Prosecutor's Request for Review or Reconsideration (AC), 31 March 2000, p. 28.

¹¹⁵⁹ The Prosecutor's Closing Brief at p. 4, and Prosecution Motion to Review AC Decision dated 3/11/99, state that Barayagwiza was arrested on 28 March 1996; the Motion Based on Lack of Jurisdiction dated 19 July 2000 cites his arrest date as 26 March 1996; the Defence Memorial in Support of the Accused Person's Appeal of the Decision of Trial Chamber II on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect states that he was arrested on 27 March 1996; the Appeals Chamber Decision dated 3 November 1999 states that he was arrested on 15 April 1996. The Chamber has taken as the date of arrest that most favourable to the Accused, that is, 26 March 1996.

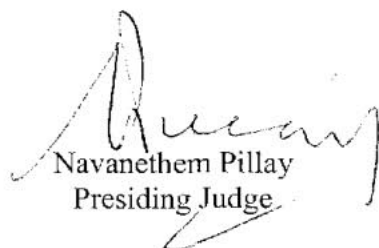
Hassan Ngeze

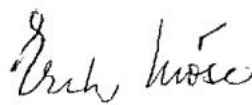
1108. Having considered all the relevant factors, the Chamber sentences Hassan Ngeze in respect of all the counts on which he has been convicted to imprisonment for the remainder of his life.


1109. Pursuant to Rules 102 (A) and 103, the three Accused shall remain in the custody of the Tribunal pending transfer to the State where they will serve their sentences.

1110. Done in English and French, the English text being authoritative.

Arusha, 3 December 2003


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

(Seal of the Tribunal)

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Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze
Case No. ICTR-99-52-T

ANNEX I

INDICTMENTS ICTR-99-52-T



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UNITED NATIONS NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

THE PROSECUTOR

AGAINST

FERDINAND NAHIMANA

AMENDED INDICTMENT

Pursuant to the decision of Trial Chamber I dated 5 November 1999
allowing the Prosecutor to amend the indictment

The Prosecutor of the International Criminal Tribunal for Rwanda,
pursuant to the authority stipulated in Article 17 of the Statute of the
International Criminal Tribunal for Rwanda (the Statute of the Tribunal)
charges:

FERDINAND NAHIMANA

with CONSPIRACY TO COMMIT GENOCIDE, GENOCIDE, DIRECT AND
PUBLIC INCITEMENT TO COMMIT GENOCIDE, COMPLICITY IN
GENOCIDE AND CRIMES AGAINST HUMANITY, all offences stipulated

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in Articles 2, and 3 of the Statute of the Tribunal, and as set forth below:

1. HISTORICAL CONTEXT

- 1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsis to die and thousands more to flee the country in the years immediately following. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain - Parti du Mouvement d'Emancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.
- 1.2 The early years of the First Republic, which were under the domination of the Hutus of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite, and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.
- 1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutus and Tutsis, prompting another exodus of the Tutsi minority from the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973, shifting power from civilian to military hands and from the Hutus of central Rwanda to Hutus of the northern *préfectures* of Gisenyi (Habyarimana's native region) and Ruhengeri.
- 1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party,

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and assumed the position of party chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteur* and *responsables de cellule*.

- 1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all but which was used increasingly to discriminate against both Tutsis and Hutus from regions outside the northwest. In fact, by the late 1980s, persons from Gisenyi and Ruhengeri occupied many of the most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the *Akazu*, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.
- 1.6 In 1990, the President of the Republic, Juvénal Habyarimana, and his party, the MRND, were facing mounting opposition from, among others, Hutus.
- 1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.
- 1.8 Following pressure from the internal opposition and the international community, and the RPF attack of 1 October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional

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government in April 1992, the MRND became a minority party for the first time in its history, with 9 ministerial portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.

- 1.9 The new government then entered into negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.
- 1.10 By the terms of the Arusha Accords, which provided for the integration of both sides' armed forces, the new national army was to be limited to 13,000 men, 60% FAR (*Forces Armées Rwandaises*) and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR.
The Gendarmerie was to be limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.
- 1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement Démocratique Républicain*), four (including the post of Prime Minister); PSD (*Parti Social-Démocrate*), three; PL (*Parti Libéral*), three; and the PDC (*Parti Démocrate-Chrétien*), one.
- 1.12 In addition, the parties to the Arusha Accords agreed to reject and fight any political ideology based on ethnic differences. Thus, the political forces that were to participate in the transitional institutions agreed to abstain from all sorts of violence and inciting violence by written or verbal communication, or by any other means, and to fight all political ideologies aimed at fostering any form of ethnic discrimination.

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- 1.13 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power-sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. At the same time, many of the military were facing massive demobilisation with the implementation of the Arusha Accords. Lastly, the constitutional statute of the Accords jeopardized the existence of the media which advocated an ideology of ethnic division.
- 1.14 From 1990, Habyarimana and several of his close associates devised a strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including that envisaged by the Arusha Accords.
- 1.15 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labelled as RPF accomplices the entire Tutsi population, and also Hutus opposed to their domination, particularly those from regions other than northwestern Rwanda. At the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition were favored by the assassination of Melchior Ndadaye, a democratically elected Hutu President in neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the "Power" faction aligned itself with the MRND.
- 1.16 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures who shared the extremist Hutu ideology, including the members of the *Akazu*. Added to the incitement to ethnic violence and extermination of the Tutsis and their accomplices was the

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organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation and broadcasting of lists of people to be eliminated, the distribution of weapons to civilians, the assassination of certain political opponents and the massacre of many Tutsis in various parts of Rwanda between October 1990 and April 1994.

- 1.17 The incitement of ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsis and urged the Hutu majority to finish off the enemy and its accomplices. A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsis and their accomplices.
- 1.18 With the intention of ensuring widespread dissemination of the calls to ethnic violence, prominent figures from the President's circle set up an effective hate media, which would exercise great influence over the Rwandan people. Thus the creation of *Radio Télévision Libre des Mille Collines (RTL)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic. As early as 1993, the Tutsis and political opponents were targeted, identified by name and threatened by these media. Many of them were among the first victims of the massacres of April 1994.
- 1.19 The creation of the youth wings of the political parties, originally intended to encourage or even force adherence to one or another party in the newly established multi-party system, provided Habyarimana's circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), were organized into militia groups, which were financed, trained and led by prominent civilians and military figures from the President of the Republic's entourage. They were issued weapons, with the complicity of certain military and civilian

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authorities. The militia groups were transported to training sites, including certain military camps, in public administration vehicles or vehicles belonging to companies controlled by the President's circle.

- 1.20 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994.
- 1.21 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the north-eastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of 1 October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe*, *Impuzamugambi* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter and questioned its purpose.
- 1.22 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the President's circle. Therein can be found the components of the strategy which culminated in the genocide of 1994, including the use of written and radio propaganda to incite the commission of the massacres.
- 1.23 In early 1994, certain prominent people from Habyarimana's circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were partially the cause

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of the postponement of the establishment of the institutions envisaged by the Arusha Accords.

- 1.24 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.
- 1.25 In the hours which followed the crash of the President's plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an army take-over. During a second meeting which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.
- 1.26 Already on the morning of 7 April and while these discussions were taking place, groups of soldiers, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and Tutsi, including the Prime Minister, some of the Ministers in her Government and the President of the Constitutional Court. At the same time, however, soldiers were evacuating prominent members of President Habyarimana's circle, including the MRND Ministers, to safe locations. The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.
- 1.27 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the "Power" wings of their respective parties. Given the political and constitutional void created by the deaths of most national political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutus, the government was sworn in on 9 April 1994. The MRND held 9 ministerial posts, plus the Presidency of the Republic, while the remaining 11 posts, including that of Prime



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Minister, went to the "Power" factions of the other parties.

- 1.28 In the hours that followed the crash of President Habyarimana's plane, military and militiamen set up roadblocks and began slaughtering Tutsis and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to execute the Tutsis and certain political opponents.
- 1.29 During the entire period of the genocide, FAR soldiers and militiamen, notably the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), actively participated in the massacres of Tutsis throughout Rwanda.
- 1.30 As soon as it was formed, the Interim Government espoused the plan of extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its accomplices, notably through the media, and some of them participated directly in the massacres.
- 1.31 Local authorities, including *préfets*, *bourgmestres*, *conseillers de secteur* and *responsables de cellule* applied the Government-issued directives in execution of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.
- 1.32 Starting on 6 April 1994, the incitement of hatred and ethnic violence promoted by the media turned into a genuine call to exterminate the Tutsis and their accomplices. At the centre of this campaign of extermination was RTL, described as "the killer radio station", playing a decisive role in the genocide. It became a genuine accomplice of the perpetrators of genocide.



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- 1.33 Having been psychologically and militarily prepared for several months, groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.



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2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

- 2.1 The crimes referred to in this indictment were committed in Rwanda between 1 January and 31 December 1994.
- 2.2 During the events to which reference is made in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.
- 2.3 During the events to which reference is made in this indictment, the Tutsi, the Hutu and the Twa were identified as racial or ethnic groups. The Belgians were a national group.
- 2.4 During the events to which reference is made in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

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3. THE POWER STRUCTURE

The Government:

- 3.1 According to the Constitution of 10 June 1991, executive power is exercised by the President of the republic, assisted by the government, composed of the Prime Minister and the ministers. The members of the government are appointed by the president of the republic upon the proposal of the Prime Minister. The Prime Minister directs Government program. The government determines and applies national policy. To that effect, it controls the civil service and the armed forces. The Prime Minister decides the functions of the ministers and officials under the Prime Minister's authority. The resignation or termination of tenure of the Prime Minister, for whatever reason, causes the government to resign.
- 3.2 The Ministers implement Government policy, under the direction of the Prime Minister, head of government. In carrying out their duties, the Ministers have at their disposal the central and local administration.
- 3.3 The Minister of Information is in charge of implementing Government policy with regard to information. The Minister manages and controls the activities of the services coming under his authority, including the public and private press divisions. The Rwandan Information Agency (ORINFOR), is under the authority of the Minister of Information.

The Rwandan Armed Forces:

- 3.4 The *Forces Armées Rwandaises (FAR)* were composed of the *Armée Rwandaise (AR)* and the *Gendarmerie Nationale (Gendarmerie Nationale)*.

The Political Parties and The Militia:

- 3.5 During the events to which reference is made in this indictment, the main political parties in Rwanda were the MRND (*Mouvement*

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Républicain National pour la Démocratie et le Développement), the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.

- 3.6 The CDR (*Coalition pour la Défense de la République*) was formed on 18 February 1992 to defend the republican institutions stemming from the Social Revolution of 1959. At the national level, the CDR had a General Assembly. At the local level were prefectural and communal bodies such as the Regional Assembly, which decided on all party issues for the *préfecture* and was led by a regional committee, made up of four members, including a chairman, a vice-chairman, a secretary and a treasurer, who were elected for four-year terms.
- 3.7 Most of the political parties had created a youth wing. The members of the MRND's youth wing were known as the *Interahamwe* and those of the CDR were known as the *Impuzamugambi*. Most of the MRND and CDR youth wing members subsequently received military training and were thus transformed from youth movements into militias.

The Press in Rwanda:

- 3.8 Between January and July 1994, two radio stations in Rwanda had authorization to broadcast throughout the country, i.e. Radio Rwanda and RTLM. In addition, Radio Muhabura, the RPF's radio station, could be received in certain regions of Rwanda.
- 3.9 Between January and December 1994, several press publications were available in Rwanda, including the newspaper *Kangura* with its edition in *Kinyarwanda*. An International version of *Kangura* was published in French.
- 3.10 Pursuant to Law No. 54/91 of 15 November 1991 on the press in Rwanda, anyone wishing to found or operate a radio broadcasting company must sign an agreement of establishment and operation with the Rwandan government.

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- 3.11 This law punished anyone who used the press to commit offences against individuals or groups, such as defamation (Article 44) or public slander (Article 45), or accomplices to such offences (Article 46). Further, Article 166 of the Rwandan Penal Code, provided punishment for any speech made at public meetings or in public places, designed to cause the citizens to rise up against one another. Lastly, Article 49 of the press law to which reference is made in paragraph 3.10 above, determined the persons who may be responsible for offences committed through the press.
- 3.12 The Rwandan Information Agency (ORINFOR), is a public institution with financial and administrative autonomy, responsible for radio and television broadcasts, the print media, cinema and photography services nationwide.

4. THE ACCUSED

- 4.1 Ferdinand Nahimana was born on June 15, 1950 at Gatonde commune, in Ruhengeri Prefecture, Rwanda.
- 4.2 At the time of the events to which reference is made in this indictment, he was a member of the "Comité d'Initiative", the founding body of "Radio Télévision Libre des Mille Collines", (RTLTM), s.a. He was a shareholder of the RTLTM s.a. and the ideologue behind the creation of the RTLTM s.a. He became a senior official of the RTLTM radio station. He was also a member of the group known as "Hutu Power" and a member of the MRND and later on CDR political parties. He was named Minister of Higher Education, Scientific Research and Culture under the Peace Accords signed in Arusha on 3 August 1993.
- 4.3 Ferdinand Nahimana was also a member of the *Comité de Salut*, at the National University of Ruhengeri, professor in the National University in Butare, and Director of the Rwandan Information Agency (ORINFOR).
- 4.4 Ferdinand Nahimana was an important and influential person,



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closely associated with the persons in power, such as president Habyarimana, president Sindikubwabo, Colonel Bagosora, Jean-Bosco-Barayagwiza, Robert Kajuga and others.

5. CONCISE STATEMENT OF THE FACTS: PREPARATION

- 5.1 From 1990 until December 1994, Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze and Georges Ruggiu conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate the moderate Hutu. The components of this plan consisted of, among other things, the broadcasting of messages of ethnic hatred and incitement to violence, the training of and distribution of weapons to militiamen, as well as the preparation of lists of people to be eliminated and the broadcasting of their identities. In executing the plan, they organized and ordered the massacres perpetrated against the Tutsi population and moderate Hutu, and at the same time incited, aided and participated in them.

Incitement and Broadcasts:

- 5.2 The incitement of ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the genocide, by politicians and businessmen, members of the Government and local authorities, and by elements of the FAR.
- 5.3 The 1990s saw the development of several publications in Rwanda which were designed to ensure that the message of ethnic hatred and incitement to violence was disseminated. In 1990, individuals in President Habyarimana's circle, including Ferdinand Nahimana, Jean-Bosco Barayagwiza and Joseph Nzirorera, formed the newspaper *Kangura* for the purpose of defending the extremist Hutu ideology. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Casimir Bizimungu took part in editing some articles published in the *Kangura*.
- 5.4 Hassan Ngeze, a founding member of the CDR and a close collaborator of Jean-Bosco Barayagwiza, was appointed editor-in-



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chief of the newspaper *Kangura*. In December 1990, the newspaper published the *Ten Commandments of the Bahutus*, which was not only an outright call to show contempt and hatred for the Tutsi minority but also to slander and persecute Tutsi women.

- 5.5 On 4 December 1991, at the conclusion of a meeting chaired by the Head of State, Juvénal Habyarimana, a military commission was given the task of finding an answer to the following question: *What do we need to do in order to defeat the enemy militarily, in the media and politically?* The newspaper *Kangura* wrote approvingly of the meeting.
- 5.6 The report produced by the commission defined the main enemy as follows: *The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.* The secondary enemy was defined as: *Anyone providing any kind of assistance to the main enemy.* The document specified that the enemy was being recruited from within certain social groups, notably: *the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi women...* Among the activities the enemy was accused of, the document mentioned *the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor.*
- 5.7 On 21 September 1992, an excerpt from the report was circulated among the troops. The following day, the CDR, issued a press statement in which it listed the names of individuals described as enemies and traitors to the nation.
- 5.8 The characterization of the Tutsis as the enemy and of members of the opposition as their accomplices was echoed by politicians, notably by Léon Mugesera, MRND Vice-Chairman for Gisenyi *préfecture*. In a speech he made on 22 November 1992, broadcast on Radio Rwanda and therefore reaching a much larger audience, Léon Mugesera called for the extermination of the Tutsi population and their accomplices.
- 5.9 The idea of the creation of a radio in order to defend the extremist



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Hutu ideology and to promote the use of incitement of hatred and fear of the Tutsi minority was born after the creation of the Law of the Press in 1991. As Director of ORINFOR, Ferdinand Nahimana participated in the discussions. In 1992, Ferdinand Nahimana started to collect funds in Ruhengeri University, for the establishment of the RTLM.

- 5.10 On 19 October 1992, before the Statutes of RTLMs.a. had been signed, traditional weapons were purchased through a bank account in the company's name.
- 5.11 From July 1993 to July 1994, RTLM broadcasts echoed the description of the Tutsis as the enemy and the members of the opposition as their accomplices, regularly using contemptuous expressions such as *Inyenzi* or *Inkotanyi* and referring to them as enemies or traitors who deserved to die.
- 5.12 In addition, RTLM and the newspaper *Kangura* conducted a campaign against the Arusha Accords, which both stipulated power-sharing with the Tutsi minority and rejected any ideology based on ethnic identity. *Kangura's* attacks targeted in particular the Government representative at the negotiations, Minister of Foreign Affairs Boniface Ngulinzira. On 11 April 1994, Boniface Ngulinzira was assassinated by the military. RTLM announced the news of his death in the following words: "*We have exterminated all RPF accomplices. Mr. Boniface Ngulinzira will no longer go to Arusha to sell the country to the RPF. The peace Accords are nothing but scraps of paper as our father Habyrimana had predicted.*"
- 5.13 Between October 1993 and May 1994, Ferdinand Nahimana took part in political debates on RTLM and Radio Rwanda, in which he made extremist remarks about the Tutsis and the Hutus in the opposition and incited the population to fight them.
- 5.14 Between May 1993 and July 1994, Ferdinand Nahimana, as head, or part of official delegations, took part in political debates, summits and press conferences abroad in order to defend the extremist policies of the government of president Habyarimana. During the



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same period, Ferdinand Nahimana organized a campaign, for the creation of RTLM.

- 5.15 In March 1994, Ferdinand Nahimana addressed the population in a letter in which he referred to his article of February 1993, entitled "*Rwanda: Actual Problems and Solutions*", calling on the population to find a final solution to the problem of Rwanda and inciting the youth to organize self defence groups to fight against the RPF.
- 5.16 Furthermore, during the same period, Ferdinand Nahimana chaired meetings of MRND members in Ruhengeri. The purpose of the meetings was to discuss the elimination of the Tutsis and moderate Hutus.
- 5.17 Between 1979 and 1994, Ferdinand Nahimana wrote and published articles and books inciting the population against the Tutsis and the moderate Hutus, and espoused the superiority of Hutus from the north.
- 5.18 Between January and July 1994, Ferdinand Nahimana, together with his brother, Munyambibi Venant, organised meetings with the *interahamwe* in Ruhengeri Prefecture. The purpose of the meetings was to establish the future actions of the *interahamwe*.
- 5.19 On 29 March 1994, in Busengo Sub-Prefecture, in Ruhengeri Prefecture, Ferdinand Nahimana attended an MRND and *interahamwe* meeting. At this meeting Ferdinand Nahimana gave orders for the *interahamwe* to kill Tutsis from Nyarutovu commune.
- 5.20 About 12 April 1994, Ferdinand Nahimana held another meeting with the *interahamwe* and MRND members in Gatonde commune in the commune office. After this meeting, the killing of Tutsis started immediately in the commune.

Establishment of Lists:

- 5.21 In 1993, Ferdinand Nahimana participated in a meeting in Nyamirambo, Kigali, where the *Interahamwe* prepared lists with

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names of Tutsis to be killed.

5.22 From January to July 1994, RTLM broadcast lists of people identified as "*the enemy*." From 7 April to late July, military and militiamen massacred members of the Tutsi population and moderate Hutus by means of pre-established lists and names broadcast on RTLM.

5.23 From April 1994, Ferdinand Nahimana, participated in secret meetings organized by the *Interahamwe* in the office of Andre Ntagerura, Minister of Transport.

Precursors Revealing A Deliberate Course Of Action:

5.24 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bagogwe (1991), and those of Bugesera (1992), were instigated, facilitated and organized by civilian and military authorities. On each occasion, a campaign of incitement of ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

5.25 As Director of ORINFOR and University professor, Ferdinand Nahimana persecuted Tutsis working under his authority, because of their ethnicity. Most of them lost their jobs.

5.26 In 1992, Ferdinand Nahimana, as Director of ORINFOR with responsibility over Radio Rwanda, ordered the broadcast of a press statement which incited the population against the Tutsis in Bugesera. As a result, a large number of Tutsis were killed. With pressure from moderate members of government, Ferdinand Nahimana was dismissed from the post of Director of ORINFOR.

Modus Operandi:

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- 5.27 By 7 April 1994, throughout Rwanda, Tutsis and certain moderate Hutus, began to flee their homes to escape the violence to which they were victims. They sought refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, who had promised to protect them. In the initial days, the refugees were protected by a few gendarmes and communal police in these various locations, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect the refugees.
- 5.28 Furthermore, soldiers, militiamen and gendarmes raped or sexually assaulted or committed other crimes of a sexual nature against Tutsi women and girls, sometimes after having first kidnapped them.



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6. CONCISE STATEMENT OF THE FACTS: RTLM

- 6.1 The idea of the creation of RTLM was implemented on 8 April 1993 with the signing of the statutes by Ferdinand Nahimana, Jean-Bosco Barayagwiza, Félicien Kabuga, André Ntagerura, Georges Rutaganda, Joseph Nzirorera, Simon Bikindi and others. Ferdinand Nahimana became a shareholder of RTLMs.a.
- 6.2 A *comité d'initiative* was set up and some of its members, including notably Félicien Kabuga, the chairman, Ferdinand Nahimana and Jean-Bosco Barayagwiza, acted as officials of RTLM. RTLM broadcast throughout Rwanda from 8 July 1993 until late July 1994. Hassan Ngeze welcomed the creation of the RTLM in *Kangura*, describing it as the birth of a partner in the fight for Hutu unification.
- 6.3 On 30 September 1993, an agreement to establish and operate a radio station was signed by the Government of Rwanda and *Radio Télévision libre des Mille Collines* (RTLM). Article 5(2) of the agreement stipulated notably that RTLM agreed not to broadcast programs that would incite hatred, violence or any form of division.
- 6.4 In 1993, at an RTLM fund raising meeting organized by the MRND, Félicien Kabuga publicly defined the RTLM's purpose as the defence of "Hutu Power". He made these remarks in the presence of Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze, Froduald Karamira, Justin Magenzi, Mathieu Ngirumpatse and the journalists Kantano Habimana, Valérie Bemeriki, Noël Hitimana, Gaspard Gahigi and others.
- 6.5 RTLM received logistical support from Radio Rwanda, and also from President Habyarimana, as the station was connected to the power generators at the President's Office, thus enabling it to continue to operate in the event of power failure.

Content and Impact of RTLM Broadcasts:



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- 6.6 RTLM's objectives were to promote the extremist Hutu ideology. Its strategy of broadcast evolved from music and other popular programs in 1993 to the incitement of the extermination of the Tutsis and elimination of the Hutus in the opposition in 1994. As from 7 April 1994, RTLM became a weapon in the execution of the genocide, by aiding, abetting and inciting the population and the militiamen to commit massacres. Ferdinand Nahimana was the ideologue and the strategist of the RTLM.
- 6.7 As from April 1994, RTLM broadcast messages inciting the population and the militia groups to exterminate all the Tutsis and eliminate the moderate Hutus and Belgian nationals, by using such expressions as: "go work", "go clean", "to each his own Belgian", "the graves are not yet full", "the revolution of 1959 is not over and must be carried through to its conclusion".
- 6.8 Thus, during this period, Georges Henri Yvon Ruggiu, in his capacity as a reporter and employee of RTLM since 1 January 1994, presented programs in French that incited the people and the *Interahamwe* militiamen "to work" and "complete the revolution of 1959". These messages of incitement were designed to bring about the extermination of the Tutsi population and the elimination of moderate Hutus and certain Belgian nationals.
- 6.9 Between January and July 1994, other reporters such as Valérie Bemeriki, Kantano Habimana, Gaspard Gahigi and Noël Hitimana also incited the population and the *Interahamwe* to exterminate the Tutsis and moderate Hutus. The same reporters slandered and denigrated Tutsi women over the RTLM airwaves.
- 6.10 Thus, on 2 July 1994, the reporter Kantano Habimana incited the people to rise up, stand fast and fight the *Inkotanyi* using stones, machetes and spears, while rejoicing that in the end the *Inkotanyi* would be exterminated.
- 6.11 Also, in June 1994, Valérie Bemeriki incited the people to set up roadblocks everywhere in order to monitor the *Inyenzi-Inkotanyi*

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effectively and expressed satisfaction at the large number of *Inyenzi* killed in the country.

- 6.12 Between April and July 1994, RTLM broadcast interviews, messages and speeches by political and government figures which incited the extermination of the Tutsis and moderate Hutus.
- 6.13 In April, May and June 1994, Hassan Ngeze, co-founder of the CDR, along with Jean-Bosco Barayagwiza, was interviewed on RTLM and Radio Rwanda. During those interviews, Hassan Ngeze called for the extermination of the Tutsis and Hutus in the opposition. He also defended the extremist Hutu ideology of the CDR.
- 6.14 In addition, members of the government and the political parties used the media to incite the massacre of the Tutsi population and moderate Hutus. On 21 April 1994, in particular, the Prime Minister of the Interim Government, Jean Kambanda, stated that the RTLM broadcasts were "a crucial weapon in the fight against the enemy".
- 6.15 From the end of 1993 through July 1994, RTLM identified the locations where the Tutsis had sought refuge and told the *Interahamwe* militiamen to attack those locations. Several of the locations were attacked and the Tutsis there were massacred. In certain cases, RTLM identified certain individuals who were described as accomplices and told the militiamen to find and execute them.
- 6.16 As from 10 April 1994, RTLM and notably two of its employees, Valérie Bemeriki and Noël Hitimana, incited the militiamen to attack the Kadafi mosque in Nyamirambo. The reporters named certain individuals who had sought refuge there and gave orders to eliminate them. In the days that followed, Kadafi mosque was attacked and several refugees were executed.
- 6.17 Between April and July 1994, Georges Ruggiu made broadcasts on RTLM that incited the youth and militiamen to commit massacres of the civilian Tutsi population. In the broadcasts he called on them to continue to "work" and mobilize themselves at roadblocks and at

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night rounds.

- 6.18 While the massacres were being carried out, RTL M on several occasions encouraged the militiamen, including those manning the roadblocks, to exterminate the Tutsis and murder the Hutu opponents, and congratulated the killers, praising their vigilance and telling them to continue their "work" with greater vigour.
- 6.19 Following the messages and speeches to which reference is made in this indictment, many members of the Tutsi population, as well as moderate Hutus and certain Belgian nationals, were eliminated.

Control of the Broadcasts:

- 6.20 Between January and July 1994, Ferdinand Nahimana, Jean-Bosco Barayagwiza and Félicien Kabuga exercised authority and control over RTL M s.a., RTL M radio reporters, announcers and all other employees, like Georges Ruggiu, Valerie Bemmeriki, Gahigi Gaspard, and others.
- 6.21 Ferdinand Nahimana, Jean-Bosco Barayagwiza and Félicien Kabuga were aware of the content of RTL M broadcasts. On 26 November 1993 and on 10 February 1994, Ferdinand Nahimana, Jean-Bosco Barayagwiza, Félicien Kabuga and Phoca Habimana, in their capacity as RTL M officials, were summoned to see the Minister of Information, Faustin Rucogoza, and told to stop airing messages inciting ethnic hatred and violence. The broadcasts were in violation of the Arusha Accords, the law of 15 November 1991 governing the press and the agreement of establishment signed by RTL M and the government.
- 6.22 During these two meetings, Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Félicien Kabuga defended the content of the broadcasts and their reporters. The broadcasts to which reference was made in the two meetings continued.
- 6.23 Between January and July 1994, Ferdinand Nahimana knew or had reason to know that his subordinates, including the reporters,

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announcers and all other RTLM employees, were broadcasting messages inciting, aiding and abetting the population and the militia groups in exterminating the Tutsis and eliminating the moderate Hutus and Belgian nationals, and did not take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

- 6.24 In addition, throughout the period of the broadcasts, Ferdinand Nahimana knew or had reason to know that the programs, speeches or messages broadcast by RTLM resulted in widespread massacres of the Tutsi population and the murder of numerous moderate Hutus and certain Belgian nationals.
- 6.25 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of victims died because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because they were considered to be Tutsi accomplices, were linked to the Tutsi through marriage or were opposed to the extremist Hutu ideology.
- 6.26 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, including Ferdinand Nahimana, Hassan Ngeze and Jean-Bosco Barayagwiza, who agreed to exterminate the Tutsi population.
- 6.27 Ferdinand Nahimana, in his position of authority, acting in concert with notably Jean-Bosco Barayagwiza and Hassan Ngeze, participated in the planning, preparation or execution of a common scheme, strategy or plan to commit the crimes set forth above. The crimes were committed by him personally, by persons he assisted, or by his subordinates, including militiamen and the reporters, announcers and all other RTLM employees who acted on his orders or with his knowledge and consent.

7. CHARGES.

COUNT 1:

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CONSPIRACY TO COMMIT GENOCIDE:

By the acts described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 4.2, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 6.1 and 6.2;

conspired together with Jean-Bosco Barayagwiza, Hassan Ngeze, Georges Ruggiu and with others to kill and cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy in whole or in part, that ethnic or racial group as such, and thereby committed Conspiracy to Commit Genocide, stipulated in Article 2(3)(b) of the Statute as a crime, for which he is individually responsible pursuant to Article 6, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 2:

GENOCIDE:

By the acts described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 5.19, 5.20, 5.21, 5.22, 6.6, 6.19, 6.24, 6.25, 6.26 and 6.27;

is responsible for the killing and causing of serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, that ethnic or racial group as such, and thereby committed GENOCIDE, stipulated in Article 2(3)(a) of the Statute as a crime, for which he is individually responsible pursuant to Article 6, and

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which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 3:

DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE:

By the acts and omissions described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 5.11, 5.12, 5.15, 5.16, 5.17, 5.19, 5.22, 6.7, 6.13 and 6.14;

pursuant to Article 6(3), paragraphs 6.8, 6.9, 6.10, 6.11, 6.12, 6.15, 6.16, 6.17, 6.18, 6.20, 6.21, 6.22, 6.23 and 6.24;

is responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population, with intent to destroy in whole or in part, that ethnic or racial group as such, and thereby committed Direct and Public Incitement to Commit Genocide, stipulated in Article 2(3)(c) of the Statute as a crime, for which he is individually responsible pursuant to Article 6, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 4:

COMPLICITY IN GENOCIDE:

By the acts and omissions described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 5.19, 5.20, 5.22, 6.6, 6.15, 6.16, 6.17, 6.18, 6.19, 6.24, 6.25, 6.26 and 6.27;

is complicit in the killing and causing of serious bodily or mental harm

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to members of the Tutsi population, with intent to destroy, in whole or in part, that ethnic or racial group as such, and thereby committed Complicity in Genocide, stipulated in Article 2(3)(e) of the Statute as a crime, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 5 :

CRIME AGAINST HUMANITY: PERSECUTION

By the acts and omissions described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 5.11, 5.12, 5.15, 5.16, 5.17, 5.19, 5.22, 6.7, 6.9, 6.10, 6.13, and 6.14;

pursuant to Article 6(3), paragraphs 5.20, 6.8, 6.9, 6.10, 6.11, 6.12, 6.15, 6.16, 6.17, 6.18, 6.20, 6.21, 6.22, 6.23 and 6.24;

is responsible for persecution on political or racial grounds, as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a Crime Against Humanity, stipulated in Article 3(h) of the Statute as a crime, for which he is individually responsible pursuant to Article 6, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 6:

CRIME AGAINST HUMANITY: EXTERMINATION

By the acts and omissions described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 5.19,

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5.20, 5.21, 5.22, 6.6, 6.19, 6.25, 6.26 and 6.27;

is responsible for the extermination of the Tutsis, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a Crime Against Humanity, stipulated in Article 3(b) of the Statute as a crime, for which he is individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

COUNT 7:

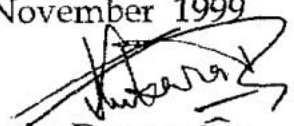
CRIME AGAINST HUMANITY : MURDER

By the acts and omissions described in paragraphs 4.1 to 6.27 and more specifically in the paragraphs to which reference is made hereinbelow:

Ferdinand Nahimana: pursuant to Article 6(1), paragraphs 5.19,
5.20, 5.21, 5.22, 6.6, 6.19, 6.25, 6.26 and 6.27;

is responsible for the murder of Tutsis and certain Hutus as part of a widespread or systematic attack against a civilian population, on political, ethnic or racial grounds, and thereby committed a Crime Against Humanity stipulated in Article 3(a) of the Statute as a crime, for which he is individually responsible pursuant to Article 6, and which is punishable in reference to Articles 22 and 23 of the Statute of the Tribunal.

15 November 1999


For the Prosecutor
N. Sankara Menon
Senior Trial Attorney





UNITED NATIONS
NATIONS UNIES



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Office of The Prosecutor
Bureau du Procureur

THE PROSECUTOR

AGAINST

JEAN-BOSCO BARAYAGWIZA

ICTR
COURT REGISTRY
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2000 APR 14 A 8:51

AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the Statute of the Tribunal) charges:

JEAN-BOSCO BARAYAGWIZA

with GENOCIDE, CONSPIRACY TO COMMIT GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, COMPLICITY IN GENOCIDE, CRIMES AGAINST HUMANITY and SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS and of ADDITIONAL PROTOCOL II, all offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal, and as set forth below:

1. HISTORICAL CONTEXT

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1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsis to die and thousands more to flee the country in the following years. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain - Parti du Mouvement d'Emancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.

1.2 The early years of the First Republic, which was under the domination of the Hutus of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite, and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.

1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutus and Tutsis, prompting another exodus of the Tutsi minority from the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973, shifting power from civilian to military hands and from the Hutus of central Rwanda to Hutus of the northern *préfectures* of Gisenyi (Habyarimana's native region) and Ruhengeri.

1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party, and assumed the position of party chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteur* and *responsables de cellule*.

1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all but which was used increasingly to discriminate against both Tutsis and Hutus from regions outside the northwest. In fact, by the late 1980s, persons from Gisenyi and Ruhengeri occupied many of the

most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the *Akazu*, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.

1.6 In 1990, the President of the Republic, Juvénal Habyarimana, and his single party, the MRND, were facing mounting opposition, including from other Hutus.

1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.

1.8 Following pressure from the internal opposition and the international community, and the RPF attack of October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional government in April 1992, the MRND became a minority party for the first time in its history, with nine ministerial portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.

1.9 The new government then entered into negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.

1.10 By the terms of the Arusha Accords, which provided for the integration of both sides' armed forces, the new national army was to be limited to 13,000 men, 60% FAR (*Forces Armées Rwandaises*) and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR. The Gendarmerie was to be

limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.

1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement Démocratique Républicain*), four (including the post of Prime Minister); PSD (*Parti Social-Démocrate*), three; PL (*Parti Libéral*), three; and the PDC (*Parti Démocrate-Chrétien*), one.

1.12 In addition, the parties to the Arusha Accords agreed to reject and fight any political ideology based on ethnic differences. Thus, the political forces that were to participate in the transitional institutions agreed to abstain from all sorts of violence and inciting violence by written or verbal communication, or by any other means, and to fight all political ideologies aimed at fostering any form of ethnic discrimination.

1.13 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power-sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. At the same time, many of the military were facing massive demobilisation with the implementation of the Arusha Accords. Lastly, the constitutional statute of the Accords jeopardized the existence of the media which advocated an ideology of ethnic division.

1.14 From 1990, Habyarimana and several of his close associates devised a strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including the one envisaged by the Arusha Accords.

1.15 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labelled as RPF "accomplices" the entire Tutsi population, and also Hutus opposed to their domination, particularly those from regions other than northwestern Rwanda. At

the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition following by the assassination of Melchior Ndadaye, a democratically elected Hutu President in neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the "Power" faction aligned itself with the MRND.

1.16 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures who shared the extremist Hutu ideology, including the members of the *Akazu*. Added to the incitement to ethnic violence and extermination of the Tutsis and their "accomplices" was the organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation and broadcasting of lists of people to be eliminated, the distribution of weapons to civilians, the assassination of certain political opponents and the massacre of many Tutsis in various parts of Rwanda between October 1990 and April 1994.

1.17 The incitement to ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsis and urged the Hutu majority to "finish off the enemy and its accomplices". A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsis and their "accomplices".

1.18 With the intention of ensuring widespread dissemination of the calls to ethnic violence, prominent figures from the President's circle set up an effectif hate media, which would exercise great influence over the Rwandan people. Thus the creation of *Radio Télévision Libre des Mille Collines (RTLM)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic. As early as 1993, the Tutsis and political opponents were targetted, identified by name and threatened by these media. Many of them were among the first victims of the massacres of April 1994.

1.19 The creation of the youth wings of the political parties, originally intended to encourage or even force adherence to one or another party in the newly established multi-party system, provided Habyarimana's circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), were organized into militia groups, which were financed, trained and led by prominent civilians and military figures from the President of the Republic's entourage. They were issued weapons, with the complicity of certain military and civilian authorities. The militia groups were transported to training sites, including certain military camps, in public administration vehicles or vehicles belonging to companies controlled by the President's circle.

1.20 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994.

1.21 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the north-eastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe*, *Impuzamugambi* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter and questioned its purpose.

1.22 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the President's circle. Therein can be found the components of the strategy which culminated in the genocide of 1994, including the use of written and radio propaganda to incite the commission of the massacres.

1.23 In early 1994, certain prominent people from Habyarimana's circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.

1.24 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.

1.25 In the hours which followed the crash of the President's plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an Army take-over. During a second meeting which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.

1.26 Already on the morning of 7 April and while these discussions were taking place, groups of military, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and Tutsi, including the Prime Minister, some of the Ministers in her Government and the President of the Constitutional Court. At the same time, however, the military were evacuating prominent members of the dead President's circle, including the MRND Ministers, to safe locations. The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.

1.27 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the "Power" wings of their respective parties. Given the political and constitutional void created by the deaths of most national

political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutus, the government was sworn in on 9 April 1994. The MRND held nine ministerial posts, plus the Presidency of the Republic, while the remaining 11 positions, including that of Prime Minister, went to the "Power" factions of the other parties.

1.28 In the hours that following the crash of President Habyarimana's plane, military and militiamen set up roadblocks and began slaughtering Tutsi and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to execute the Tutsis and certain political opponents.

1.29 During the entire period of the genocide, FAR military and militiamen, notably the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), actively participated in the massacres of Tutsis throughout Rwanda.

1.30 As soon as it was formed, the Interim Government espoused the plan for extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its "accomplices", notably through the media, and some of them participated directly in the massacres.

1.31 Local authorities, including *préfets*, *bourgmestres*, *conseillers de secteur* and *responsables de cellule* applied the Government-issued directives in execution of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.

1.32 Starting on 6 April, the incitement to hatred and ethnic violence conveyed by the media turned into a genuine call to exterminate the Tutsis and their accomplices. At the centre of this campaign of extermination was RTLM, which became known as "the killer radio station", which played a decisive role in the genocide and became a genuine accomplice of its perpetrators.

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1.33 Having been psychologically and militarily prepared for several months, the groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.

2.2 During the events referred to in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.

2.3 During the events referred to in this indictment, the Tutsi, the Hutu and the Twa were identified as racial or ethnic groups. The Belgians were considered to be a national group.

2.4 During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

2.5 During the events referred to in this indictment, a state of non-international armed conflict existed in Rwanda. The victims referred to in this indictment were protected persons, according to the provisions of Article 3 common to the Geneva Conventions and of Additional Protocol II.

3. THE POWER STRUCTURE

The Government

3.1 According to the Constitution of 10 June 1991, executive power is exercised by the President of the Republic, assisted by the Government, composed of the Prime Minister and the ministers. The members of the Government are appointed by the President of the Republic upon the proposal of the Prime Minister. The Prime Minister directs the Government's program. The Government determines and applies national policy. To that effect, it controls the civil service and the armed forces. The Prime Minister decides the functions of the ministers and

officials under the Prime Minister's authority. The resignation or termination of tenure of the Prime Minister, for whatever reason, causes the Government to resign.

3.2 The Ministers implement the Government's policy, as defined by the Prime Minister. They are answerable to the Head of the Government for doing so. In carrying out their duties, they have at their disposal the government and local administration corresponding to their functions.

3.3 The Minister of Information is in charge of implementing the Government's policy with regard to information. The Minister manages and controls the activities of the services coming under his authority, including the public and private press divisions. ORINFOR is under the authority of the Minister of Information.

The Forces Armées Rwandaises

3.4 The *Forces Armées Rwandaises (FAR)* were composed of the *Armée Rwandaise (AR)* and the *Gendarmerie Nationale (Gendarmerie Nationale)*.

The Political Parties and The Militia

3.5 During the events referred to in this indictment, the main political parties in Rwanda were the MRND (*Mouvement Républicain National pour la Démocratie et le Développement*), the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.

3.6 The CDR (*Coalition pour la Défense de la République*) was formed on 18 February 1992 to defend the republican institutions stemming from the Social Revolution of 1959. At the national level, the CDR had a General Assembly. At the local level were prefectural and communal bodies such as the Regional Assembly, which decided on all party issues for the *préfecture* and was led by a regional committee, made up of four members, including a chairman, a vice-chairman, a secretary and a treasurer, who were elected for four-year terms.

3.7 Most of the political parties had created a youth wing. The members of the MRND's youth wing were known as the "Interahamwe" and those of the CDR were known as the "Impuzamugambi". Most of the MRND and CDR youth wings' members subsequently received military training and were thus transformed from youth movements into militias.

The Press in Rwanda

3.8 Between January and July 1994, two radio stations in Rwanda had authorization to broadcast throughout the country, i.e. Radio Rwanda and RTL. In addition, Radio Muhabura, the RPF's radio station, could be picked up in certain regions of Rwanda.

3.9 Between January and December 1994, several written press publications were available in Rwanda, including the newspaper *Kangura* with his edition in Kinyarwanda. The International version of *Kangura* was in french.

3.10 Pursuant to Law No. 54/91 of 15 November 1991 on the press in Rwanda, anyone wishing to found or operate a radio broadcasting company must to sign an agreement of establishment and operation with the Rwandan government.

3.11 Furthermore, this law punishes anyone who uses the press to commit offences against individuals or groups, such as defamation (Article 44) or public slander (Article 45), or who is an accomplice to such offences (Article 46). Further, Article 166 of the Rwandan Penal Code, the penalties of which apply to Article 46 above, punishes any speech made at public meetings or in public places which is designed to cause the citizens to rise up against one another. Lastly, Article 49 of this law determines the individuals who are responsible for offences committed through the press.

3.12 The *Office Rwandais de l'Information* (ORINFOR), (Rwandan Information Agency) is a public institution with financial and administrative authority, responsible for radio and television broadcasts, print media, cinema and photography services nationwide.

4. THE ACCUSED

Jean-Bosco Barayagwiza

4.1 **Jean-Bosco Barayagwiza** was born in 1950 in Mutara *commune*, Gisenyi *préfecture*, Rwanda.

4.2 At the time of the events referred to in this indictment, **Jean-Bosco Barayagwiza**, a founding member of the *Coalition pour la Défense de la République* (CDR) party, was the chairman of the CDR regional committee for Gisenyi *préfecture*. In addition, **Jean-Bosco Barayagwiza** was a member of the *comité d'initiative* for the private company *Radio Télévision Libre des Mille Collines* (RTL) s.a., and a senior official at its radio station, RTL. **Jean-Bosco Barayagwiza** had previously been a member of the MRND and political director in the Ministry of Foreign Affairs.

4.3 **Jean-Bosco Barayagwiza** was an important and influential person, closely associated with the persons in power, such as colonel Bagosora, the president Sindikubwabo and others.

4.4. As an official in the CDR and a former member of the MRND, **Jean-Bosco Barayagwiza** exercised authority over the members of the CDR and the *Impuzamugambi* (CDR) and *Interahamwe* (MRND) militiamen. In addition, as a senior official at the radio station RTL, **Jean-Bosco Barayagwiza** exercised authority and had control over RTL and its employees, including the announcers, broadcasters and reporters.

5. CONCISE STATEMENT OF THE FACTS: PREPARATION

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5.1 From 1990 until December 1994, **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, Félicien Kabuga, Hassan Ngeze and Georges Ruggiu conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition. The components of this plan consisted of, among other things, the broadcasting of messages of ethnic hatred and incitement to violence, the training of and distribution of weapons to militiamen, as well as the preparation of lists of people to be eliminated and the broadcasting of their identities. In executing the plan, they organized and ordered the massacres perpetrated against the Tutsi population and moderate Hutu, and at the same time incited, aided and participated in them.

Incitement and Broadcasts

5.2 The incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the genocide, by politicians and businessmen, members of the Government and local authorities, and by elements of the FAR.

5.3 The 1990s saw the development of several publications in Rwanda which were designed to ensure that the message of ethnic hatred and incitement to violence was disseminated. In 1990, individuals in President Habyarimana's circle, including **Jean-Bosco Barayagwiza**, Ferdinand Nahimana and Joseph Nzirorera, formed the newspaper *Kangura* for the purpose of defending the extremist Hutu ideology.

5.4 Hassan Ngeze, a founding member of the CDR and a close collaborator of **Jean-Bosco Barayagwiza**, was appointed editor-in-chief of the newspaper *Kangura*. In December 1990, the newspaper published the "*Ten Commandments of the Bahutus*", which was not only an outright call to show contempt and hatred for the Tutsi minority but also to slander and persecute Tutsi women.

5.5 On 4 December 1991, at the conclusion of a meeting chaired by the Head of State, Juvénal Habyarimana, a military commission was given the task of finding an answer to the following question: "*What do we need to do in order to defeat the enemy militarily in the media and politically?*" The newspaper *Kangura* wrote approvingly of the meeting.

5.6 The report produced by the commission defined the main enemy as follows: *"The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms."* The secondary enemy was defined as: *"Anyone providing any kind of assistance to the main enemy"*. The document specified that the enemy was being recruited from within certain social groups, notably: *"the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi women..."*. Among the activities the enemy was accused of, the document mentioned *"the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor"*.

5.7 On 21 September 1992, an excerpt from the report was circulated among the troops. The following day, the CDR, issued a press communique in which it listed the names of individuals described as enemies and traitors to the nation.

5.8 The characterization of the Tutsis as the enemy and of members of the opposition as their accomplices was echoed by politicians, notably by Léon Mugesera, MRND Vice-Chairman for Gisenyi *préfecture*, in a speech he made on 22 November 1992, broadcasted on the Radio Rwanda and therefore reaching a much larger audience, Léon Mugesera's speech already at that time was an incitement to exterminate the Tutsi population and their "accomplices".

5.9 In 1993, in order to defend the extremist Hutu ideology and promote the use of incitement to hatred and fear of the Tutsi minority, **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, Félicien Kabuga, André Ntagerura, Joseph Nzirorera, Georges Rutaganda, Joseph Serugendo and Simon Bikindi agreed among themselves and with others to form a limited company called RTLM s.a., notably in order to operate a radio station, RTLM. A statute was signed on 8 April 1993 and the radio station began broadcasting on 8 July 1993.

5.10 From July 1993 to April 1994, RTLM's broadcasts echoed the description of the Tutsis as the enemy and the members of the opposition as their accomplices, regularly using contemptuous expressions such as *"Inyenzi"* or *"Inkotanyi"* and referring to them as "enemies" or "traitors" who deserved to die.

5.11 In addition, RTLM and the newspaper *Kangura* conducted a campaign against the Arusha Accords, which both stipulated power-sharing with the Tutsi minority and rejected any ideology based on ethnic identity. *Kangura's* attacks targetted in particular the Government representative at the negotiations, Minister of Foreign Affairs Boniface Ngulinzira. On 11 April 1994, Boniface Ngulinzira was assassinated by the military. RTLM announced the news of his death in the following words: "*We have exterminated all RPF accomplices. Mr. Boniface Ngulinzira will no longer go to Arusha to sell the country to the RPF. The peace Accords are nothing but scraps of paper as our father Habyrimana had predicted.*"

5.12 After the signing of the Arusha Accords, **Jean-Bosco Barayagwiza**, Hassan Ngeze and other CDR members organized demonstrations in Gisenyi to protest against the Accords.

5.13 In late 1993 and in 1994, **Jean-Bosco Barayagwiza** took part in political debates on RTLM, Radio Rwanda and television, in which he made extremist remarks about the Tutsis, describing them as *Inyenzi* and *Inkotanyi* and referring to the Hutus in the opposition as accomplices.

5.14 In February 1994, **Jean-Bosco Barayagwiza** sent a fax to Gisenyi in which he called on the CDR youth wing to kill all the Tutsis, even the children, when the time came. The fax was distributed to the *Interahamwe* leaders by a CDR official in Gisenyi, Barnabé Sanvura. Furthermore, during the same period, **Jean-Bosco Barayagwiza** chaired a meeting of all CDR members in Gisenyi; the purpose of the meeting was to discuss the elimination of the Tutsis and moderate Hutus.

Training and Distribution of Weapons to the Militia Groups

5.15 In order to ensure that, when the time came, the extermination of the enemy and its "accomplices" would be carried out swiftly and effectively, it was necessary to create a militia that was structured, armed and complementary to the Armed Forces. As from 1993, and even before that date, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide military training to those members most devoted to their extremist cause and to other idle youths. Furthermore, weapons were distributed to them.

5.16 On 19 October 1992, before the Statutes of RTLM s.a. had even been signed, traditional weapons were purchased through a bank account in the company's name.

5.17 Between June 1993 and July 1994, in Gisenyi *préfecture*, the *Interahamwe* and the CDR militiamen, the *Impuzamugambi*, underwent military training and received weapons from **Jean-Bosco Barayagwiza** and Hassan Ngeze, an *Interahamwe* leader.

5.18 Towards the end of 1993, in an open letter broadcast on national radio, the Bishop of the diocese of Nyundo, in Gisenyi *préfecture*, denounced the distribution of weapons in that *préfecture*.

Establishment of Lists

5.19 Having identified the Tutsis as the main enemy and the members of the opposition as their accomplices, civilian authorities, political figures and militiamen established lists of people to be executed. In 1993, at the instigation of **Jean-Bosco Barayagwiza**, the *bourgmestres* and *conseillers de secteur* in Gisenyi *préfecture* drew up lists bearing the names of Tutsis and moderate Hutus to be eliminated.

5.20 From January and July 1994, RTLM broadcast lists of people identified as the enemy. From 7 April to late July, military and militiamen massacred members of the Tutsi population and moderate Hutus by means of pre-established lists and names broadcast on RTLM, among other things.

Precursors Revealing A Deliberate Course of Action

5.21 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bagogwe (1991), and those of Bugesera (1992), were instigated, facilitated and organized by civilian and military authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.

5.22 In 1991, **Jean-Bosco Barayagwiza**, in collaboration with Hassan Ngeze and others, planned the killings of the Bagogwe Tutsis in Mutura *commune*, Gisenyi *préfecture*, and in Bugesera. They distributed weapons and money to the

Interahamwe and *Impuzamugambi* militiamen who committed the massacres.

5.23 During the same period, **Jean-Bosco Barayagwiza** chaired meetings at which he incited the militia groups and the civilian population to kill the Tutsis. Following those meetings, Tutsis were attacked and killed.

Modus Operandi

5.24 Finally, as of 7 April 1994, throughout Rwanda, Tutsis and certain moderate Hutus, began to flee their homes to escape the violence to which they were victims on their hills and to seek refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, who had promised to protect them. For the initial days, the refugees were protected by a few gendarmes and communal police in these various locations, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect the refugees.

5.25 Furthermore, soldiers, militiamen and gendarmes raped or sexually assaulted or committed other crimes of a sexual nature against Tutsi women and girls, sometimes after having first kidnapped them.

6. CONCISE STATEMENT OF THE FACTS: RTLM

6.1 The idea of creation of RTLM was conceived on, or about 13 July 1992 and implemented on 8 April 1993 with the signing of the statutes by **Jean-Bosco Barayagwiza**, Félicien Kabuga, Ferdinand Nahimana, André Ntagerura, Georges Rutaganda, Joseph Nzirorera, Simon Bikindi and others.

6.2 A *comité d'initiative* was set up and some of its members, including notably Félicien Kabuga, the chairman, Ferdinand Nahimana and **Jean-Bosco Barayagwiza**, continued to act as officials of RTLM. RTLM broadcasted throughout Rwanda from 8 July 1993 until late July 1994. Hassan Ngeze welcomed the formation of RTLM in *Kangura*, describing it as the birth of a partner in the fight for Hutu unification.

6.3 Thereafter, on 30 September 1993, an agreement to establish and operate a radio station was signed by the Government of Rwanda and *Radio Télévision des Mille Collines* (RTLM). Article 5(2) of the agreement stipulated notably that

RTLM agreed not to broadcast programs that would incite to hatred, violence or any form of division. In addition, RTLM agreed to abide by the provisions of the national and international instruments government telecommunications.

6.4 In 1993, at an RTLM fundraising meeting organized by the MRND, Félicien Kabuga publicly defined the RTLM's purpose as the defence of 'Hutu Power'. He made these remarks in the presence of **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, Hassan Ngeze, Froduald Karamira, Justin Magenzi, Mathieu Ndirumpatse and the reporters Kantano Habimana, Valérie Bemmeriki, Noël Hitimana, Gaspard Gahigi and others.

6.5 RTLM received logistical support from Radio Rwanda, and also from President Habyarimana, as the station was connected to the power generators at the President's Office, thus enabling it to continue operation in case of power failure.

Content and Impact of RTLM's Broadcasts

6.6 RTLM's objectives were to promote the extremist Hutu ideology. Its strategy of broadcast evolved from music and other popular programs in 1993 to incite extermination of the Tutsis and elimination of the Hutus in the opposition in 1994. As from 7 April 1994, RTLM became an weapon in the execution of the genocide, by aiding, abetting and inciting the general public and the militiamen to commit massacres.

6.7 As from April 1994, RTLM broadcast messages inciting the general public and the militia groups to exterminate all the Tutsis and eliminate the moderate Hutus and Belgian nationals, by using such expressions as: "*go work*", "*go clean*", "*to each his own Belgian*", "*the graves are not yet full*", "*the revolution of 1959 is not over and must be carried through to its conclusion*".

6.8 Thus, during this period, Georges Henri Yvon Ruggiu, in his capacity as a reporter, broadcaster or announcer and employee of RTLM since 1 January 1994, presented programs in French that incited the people and the *Interahamwe* militiamen to "work and complete the revolution of 59". These messages of incitement were designed to bring about the extermination of the Tutsi population and the elimination of moderate Hutus and certain Belgian nationals.

6.9 Between January and July 1994, other reporters, broadcasters or announcers, such as Valérie Bemeriki, Kantano Habimana, Gaspard Gahigi and Noël Hitimana also incited the general public and the *Interahamwe* to exterminate the Tutsis and moderate Hutus. The same reporters slandered and denigrated Tutsi women over the RTLM airwaves.

6.10 Thus, on 2 July 1994, the reporter Kantano Habimana incited the people to rise up, stand fast and fight the *Inkotanyi* using stones, machetes and spears, while rejoicing that in the end the *Inkotanyi* would be exterminated.

6.11 Also, in June 1994, Valérie Bemeriki incited the people to set up roadblocks everywhere in order to monitor the *Inyenzi-Inkotanyi* effectively and expressed satisfaction at the large number of *Inyenzi* killed in the country.

6.12 Between April and July 1994, RTLM broadcast interviews, messages and speeches by political and government figures which incited the extermination of the Tutsis and moderate Hutus.

6.13 In April, May and June 1994, Hassan Ngeze, co-founder of the CDR, along with **Jean-Bosco Barayagwiza**, was interviewed on RTLM and Radio Rwanda. During those interviews, he called for the extermination of the Tutsis and Hutus in the opposition. He also defended the extremist Hutu ideology of the CDR.

6.14 In addition, members of the government and the political parties used the media to incite the massacre of the Tutsi population and moderate Hutus. On 21 April 1994, in particular, the Prime Minister of the Interim Government, Jean Kambanda, stated that the RTLM broadcasts were "a crucial weapon in the fight against the enemy".

6.15 From end of 1993 through July 1994, RTLM identified the locations where the Tutsis had sought refuge for their own protection and told the *Interahamwe* militiamen to attack those locations. Several of the locations were attacked and the Tutsis there were massacred. In certain cases, RTLM identified certain individuals who were described as accomplices and told the militiamen to find and execute them.

6.16 As from 10 April 1994, RTLM and notably two of its employees, Valérie Bemeriki and Noël Hitimana, incited the militiamen to attack the Kadafi mosque in Nyamirambo. The reporters named certain individuals who had sought refuge there and gave orders to eliminate them. In the days that followed, Kadafi mosque was in fact attacked and several refugees killed.

6.17 On 18 June 1994, Georges Ruggiu made an announcement on RTLM that the Tutsis at Gitwe had not yet been killed. He also asked that the roadblocks be strengthened so that no one could flee. Following that broadcast, on 20 June 1994, the *Interahamwe* went to Gitwe hill, in Mutara *commune*, in the company of *Bourgmestre* Rutaganda, and killed the members of more than 70 families, primarily Tutsis.

6.18 While the massacres were being carried out, RTLM on several occasions encouraged the militiamen, including those manning the roadblocks, to exterminate the Tutsis and murder the Hutu opponents, and congratulated the killers, praising their vigilance and telling them to continue their work with greater vigour.

6.19 Following the messages and speeches referred to in paragraphs 6.1 to 6.17 above, which incited and encouraged violence and ethnic hatred, many members of the Tutsi population, as well as moderate Hutus and certain Belgian nationals, were eliminated.

Control of the Broadcasts

6.20 Between January and July 1994, **Jean-Bosco Barayagwiza**, Félicien Kabuga and Ferdinand Nahimana exercised authority and control over RTLM s.a., RTLM radio reporters, announcers and all other employees, like Georges Ruggiu, Valerie Bemeriki and others.

6.21 **Jean-Bosco Barayagwiza**, Félicien Kabuga and Ferdinand Nahimana were aware of the content of RTLM's broadcasts. On 26 November 1993 and on 10 February 1994, **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, Félicien Kabuga and Phoca Habimana, in their capacity as RTLM officials, were summoned to see the Minister of Information, Faustin Rucogoza, and told to stop airing messages inciting ethnic violence and hatred. The broadcasts were in violation of the Arusha Accords, the law of 15 November 1991 governing the press and the agreement of establishment signed by RTLM and the government.

6.22 During these two meetings, **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, and Félicien Kabuga defended the content of the broadcasts and their reporters. **Jean-Bosco Barayagwiza**, Ferdinand Nahimana and Félicien Kabuga

subsequently allowed the broadcasts and their reporters to continue spreading their message inciting violence and ethnic hatred.

6.23 Between January and July 1994, **Jean-Bosco Barayagwiza** knew or had reason to know that his subordinates, including the reporters, announcers and all other RTLM employees, were broadcasting messages inciting, aiding and abetting the general public and the militia groups in exterminating all the Tutsis and eliminating the moderate Hutus and Belgian nationals, and did not take reasonable steps to prevent or punish the perpetrators.

6.24 In addition, during the period referred to in this indictment, **Jean-Bosco Barayagwiza** knew or had reason to know that the programs, speeches or messages broadcast by RTLM resulted in widespread massacres of the Tutsi population and the murder of numerous moderate Hutus and certain Belgian nationals.

7. CONCISE STATEMENT OF THE FACTS: OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

7.1 As from 7 April 1994, massacres of the Tutsi population and the murder of numerous political opponents were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives of some of these authorities, including **Jean-Bosco Barayagwiza**.

Kigali

7.2 As of the night of 6 to 7 April, in the capital, elements of the Presidential Guard and the Para-Commando battalion set up roadblocks, reinforced with armored vehicles, on the major roads, controlling people's movements. Militiamen subsequently joined them or set up roadblocks of their own. At these places, Tutsis or those identified as such were summarily executed.

7.3 After 6 April 1994, **Jean-Bosco Barayagwiza** supervised the roadblocks located between Kiyovu hotel and the *Cerle Sportif de Kigali*, in the neighbourhood in which he resided. He supervised these roadblocks along with a member of the Presidential Guard. **Jean-Bosco Barayagwiza** instructed the CDR militiamen and members who were manning the roadblocks to eliminate all the Tutsis and Hutu opponents.

7.4 During the same period, **Jean-Bosco Barayagwiza** ordered the CDR militiamen and members to search houses in the Kiyovu neighbourhood in order to search out and eliminate Tutsis.

Gisenyi

7.5 Gisenyi, the *préfecture* of origin of the deceased President, Juvénal Habyarimana, is located in northwestern Rwanda. From the time of the coup d'état in 1973, Gisenyi was the bastion of the *Mouvement Républicain National pour la Démocratie et le Développement* (MRND) and the *Coalition pour la Défense de la République* (CDR). Several prominent civil and military figures who had espoused the extremist Hutu ideology were from this *préfecture*. After 1990, the *préfecture* was the theatre for much inter-ethnic tension and violence, causing the death of many Tutsis. This was the case with the *Bagogwe* in 1991. In early June 1994, the Interim Government moved to Gisenyi.

7.6 After his election as chairman of the CDR regional committee for Gisenyi on 6 February 1994, **Jean-Bosco Barayagwiza** worked to plan, prepare and organize the massacres of the Tutsi population of Gisenyi. Before April 1994, **Jean-Bosco Barayagwiza** held meetings and issued directives to his subordinates, including Barnabé Sanvura, a CDR leader in Gisenyi, to prepare lists of Tutsis to be eliminated and to incite the militiamen to kill the Tutsis when the time came. Hassan Ngeze and Barnabé Sanvura passed those directives on to those in charge of the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR).

7.7 Starting on 7 April 1994, in Gisenyi, members of the CDR, including Hassan Ngeze, militiamen and military personnel gave orders to set up roadblocks; they also distributed weapons and incited, aided and abetted the people in exterminating the Tutsis and eliminating the moderate Hutus.

7.8 Between April and July 1994, roadblocks were set up by the militiamen in Gisenyi *préfecture*, in order to identify the Tutsi and their "accomplices" and kill them on the spot or take them to *Commune Rouge* to execute them there. In certain cases, the Tutsis at *Commune Rouge* were forced to undress before being killed. Hassan Ngeze was present at this time.

7.9 Between April and July 1994, the most active groups of militiamen in Gisenyi *préfecture*, led by CDR officials, including Hassan Ngeze and Mabuye Twagirayezu, and MRND officials, including Bernard Munyagishari and Omar

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Serushago, hunted down, abducted and killed several members of the Tutsi population and moderate Hutus in Gisenyi. In addition, many houses belonging to Tutsis were looted, destroyed or burned down by the *Interahamwe*.

7.10 During the entire period of April to July 1994, **Jean-Bosco Barayagwiza** knew or had reason to know that his subordinates, notably the CDR and MRND militiamen, had committed widespread massacres of the Tutsi population and numerous moderate Hutus.

Responsibility

7.11 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu ideology.

7.12 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, such as **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, Hassan Ngeze and Georges Ruggiu, who conspired to exterminate the Tutsi population.

7.13 **Jean-Bosco Barayagwiza**, in his position of authority, acting in concert with, notably Ferdinand Nahimana, Hassan Ngeze, Georges Ruggiu, Omar Serushago, Bernard Munyagishari, Mabye Twagirayezu and Barnabé Sanvura, participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. The crimes were committed by him personally, by persons he assisted, or by his subordinates, including militiamen and the reporters, announcers and all other RTLM employees, who acted under his orders and with his knowledge or consent.

8. COUNTS

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COUNT 1:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 5.10, 5.12, 5.13, 5.14, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 7.3, 7.9, 7.10, 7.11, 7.12, 7.13

conspired with Ferdinand Nahimana, Hassan Ngeze, Barnabé Sanvura, Joseph Nzirorera, Georges Ruggiu, Bernard Munyagishari, Omar Serushago and others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6(1) and which is punishable in reference to Articles 22 and 23 of the Statute

COUNT 2:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.12, 5.14, 5.18, 6.18, 7.1, 7.2, 7.4, 7.5, 7.11, 7.12, 7.13

-pursuant to Article 6(3), according to paragraphs: 6.15, 6.16, 6.20, 6.21, 6.22, 6.23, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which they are individually responsible

pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: - pursuant to Article 6(1), according to paragraphs: 5.1, 5.12, 5.14, 5.18, 6.18, 7.1, 7.2, 7.4, 7.5, 7.7, 7.8, 7.11, 7.12, 7.13

-pursuant to Article 6(3), according to paragraphs: 6.15, 6.16, 6.20, 6.21, 6.22, 6.23, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.7, 5.8, 5.9, 5.11, 5.12, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.15 to 6.23, 7.11, 7.12, 7.13

-pursuant to Article 6(3), according to paragraphs: 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.15, 6.19, 6.20, 6.21, 6.22, 6.23, 7.11, 7.12, 7.13

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is responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 5:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.5, 5.12, 5.16, 5.18, 5.19, 7.1, 7.2, 7.4, 7.5, 7.11, 7.12, 7.13

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.16, 5.18, 5.19, 6.10, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 7.4, 7.5, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13

is responsible for the **extermination** of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of the Statute of Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 6:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.5, 5.12, 5.16, 5.18, 5.19, 7.1, 7.2, 7.4, 7.5, 7.11, 7.12, 7.13

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.16, 5.18, 5.19, 6.10, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 7.4, 7.5, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13

is responsible for the **murder** of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 7:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.7, 5.8, 5.9, 5.10, 5.11, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.15 to 6.23, 7.11, 7.12, 7.13

-pursuant to Article 6(3), according to paragraphs: 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.15, 6.19, 6.20, 6.21, 6.22, 6.23, 7.11, 7.12, 7.13

is responsible for **persecution** on political, racial or religious grounds, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(h) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 8:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.3, 5.4, 5.5, 5.16, 5.20, 5.21, 5.23, 5.24, 6.8, 6.13, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 7.8, 7.9, 7.10, 7.11, 7.12, 7.13

is responsible for outrages upon personal dignity, in particular humiliating and degrading treatment, as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (e) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 9:

By the acts or omissions described in paragraphs 5.1 to 7.13 and more specifically in the paragraphs referred to below:

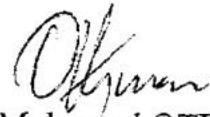
JEAN-BOSCO BARAYAGWIZA: -pursuant to Article 6(3), according to paragraphs: 5.1, 5.2, 5.4, 5.5, 5.6, 5.14, 5.20, 5.21, 5.23, 7.1, 7.6, 7.8, 7.10, 7.11, 7.12, 7.13

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is responsible for pillage, as part of an armed internal conflict, and thereby committed **SERIOUS VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND ADDITIONAL PROTOCOL II**, a crime stipulated in Article 4 (f) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

13 April 2000
Kigali

For the Prosecutor



Mohamed OTHMAN
Chief of Prosecutions





International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

THE PROSECUTOR

AGAINST

HASSAN NGEZE

AMENDED INDICTMENT

In conformity with the decision of 5 November 1999, of Trial Chamber I authorizing the Prosecutor to amend the indictment.

The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the Statute of the Tribunal) charges:

HASSAN NGEZE

with **CONSPIRACY TO COMMIT GENOCIDE, GENOCIDE, COMPLICITY IN GENOCIDE, DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, and CRIMES AGAINST HUMANITY** all offences stipulated in Articles 2, 3 and 4 of the Statute of the Tribunal, and as set forth below:

1. HISTORICAL CONTEXT

- 1.1** The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsis to die and thousands more to flee the country in the years immediately following. The revolution resulted in the abolition of the Tutsi monarchy and the proclamation of the First Republic in early 1961, confirmed in a referendum held in the same year. Legislative elections held in September 1961 confirmed the dominant position of the MDR-PARMEHUTU (*Mouvement Démocratique Républicain - Parti du Mouvement d'Emancipation Hutu*), led by Grégoire Kayibanda, who was subsequently elected President of the Republic by the Legislative Assembly on 26 October 1961.

A handwritten signature in black ink, appearing to be the initials 'M'.

- 1.2 The early years of the First Republic, which was under the domination of the Hutus of central and southern Rwanda, were again marked by ethnic violence. The victims were predominantly Tutsi, the former ruling elite, and those related to them, who were killed, driven to other regions of Rwanda or forced to flee the country. The gradual elimination of the opposition parties in those early years confirmed the MDR-PARMEHUTU as the single party, the only party to present candidates in the elections of 1965.
- 1.3 The early part of 1973 in Rwanda was again marked by ethnic confrontations between the Hutus and Tutsis, prompting another exodus of the Tutsi minority from the country, as had occurred between 1959 and 1963. This new outburst of ethnic and political tension between the North and South resulted in a military coup by General Juvénal Habyarimana on 5 July 1973, shifting power from civilian to military hands and from the Hutus of central Rwanda to Hutus of the northern *préfectures* of Gisenyi (Habyarimana's native region) and Ruhengeri.
- 1.4 In 1975, President Habyarimana founded the *Mouvement Révolutionnaire National pour le Développement* (MRND), a single party, and assumed the position of party chairman. The administrative and party hierarchies were indistinguishable in this single party state from the level of the *Préfet* to the *bourgmestres*, and down to that of the *conseillers de secteur* and *responsables de cellule*.
- 1.5 From 1973 to 1994, the government of President Habyarimana used a system of ethnic and regional quotas which was supposed to provide educational and employment opportunities for all but which was used increasingly to discriminate against both Tutsis and Hutus from regions outside the northwest. In fact, by the late 1980s, persons from Gisenyi and Ruhengeri occupied many of the most important positions in the military, political, economic and administrative sectors of Rwandan society. Among the privileged elite, an inner circle of relatives and close associates of President Habyarimana and his wife, Agathe Kanziga, known as the *Akazu*, enjoyed great power. This select group, almost exclusively Hutu, was supplemented by individuals who shared its extremist Hutu ideology, and who came mainly from the native region of the President and his wife.
- 1.6 In 1990, the President of the Republic, Juvénal Habyarimana, and his single party, the MRND, were facing mounting opposition, including from other Hutus.



- 1.7 On 1 October 1990, the Rwandan Patriotic Front (RPF), made up mainly of Tutsi refugees, attacked Rwanda. Within days the government began arresting thousands of people, presumed to be opponents of Habyarimana and suspected of being RPF accomplices. Although the Tutsi were the main target, Hutu political opponents were also arrested.
- 1.8 Following pressure from the internal opposition and the international community, and the RPF attack of October 1990, President Habyarimana permitted the introduction of multiple political parties and the adoption of a new constitution on 10 June 1991. The *Mouvement Révolutionnaire National pour le Développement* (MRND) was renamed *Mouvement Républicain National pour la Démocratie et le Développement* (MRND). The first transitional government was made up almost exclusively of MRND members, following the refusal of the main opposition parties to take part. With the second transitional government in April 1992, the MRND became a minority party for the first time in its history, with nine ministerial portfolios out of 19. On the other hand, the MRND retained its domination over the local administration.
- 1.9 The new government then entered into negotiations with the RPF, which resulted in the signing of the Arusha Accords on 4 August 1993. The Accords provided for a new system of sharing military and civilian power between the RPF, the opposition parties and the MRND.
- 1.10 By the terms of the Arusha Accords, which provided for the integration of armed forces of both sides, the new national army was to be limited to 13,000 men, 60% FAR (*Forces Armées Rwandaises*) and 40% RPF. The posts of command were to be shared equally (50%-50%) between the two sides, with the post of Chief of Staff of the Army assigned to the FAR. The Gendarmerie was to be limited to 6,000 men, 60% FAR and 40% RPF, with the posts of command shared equally (50%-50%) between the two sides and the post of Chief of Staff of the Gendarmerie assigned to the RPF.
- 1.11 As regards representation within the government, the Arusha Accords limited the number of ministerial portfolios to be held by the MRND to five, plus the Presidency. The other portfolios were to be shared as follows: RPF, five; MDR (*Mouvement Démocratique Républicain*), four (including the post of Prime Minister); PSD (*Parti Social-Démocrate*), three; PL (*Parti Libéral*), three; and the PDC (*Parti Démocrate-Chrétien*), one.
- 1.12 In addition, the parties to the Arusha Accords agreed to reject and fight any

political ideology based on ethnic differences. Thus, the political forces that were to participate in the transitional institutions agreed to abstain from all sorts of violence and inciting violence by written or verbal communication, or by any other means, and to fight all political ideologies aimed at fostering any form of ethnic discrimination.

1.13 For the men and women close to President Habyarimana, including the members of the *Akazu*, who held positions of prominence in the various sectors of Rwandan society, this new power-sharing plan, as demanded by the political opposition and as stipulated in the Arusha Accords, meant a relinquishment of power and the loss of numerous privileges and benefits. At the same time, many of the military were facing massive demobilisation with the implementation of the Arusha Accords. Lastly, the constitutional statute of the Accords jeopardized the existence of the media that advocated an ideology of ethnic division.

1.14 From 1990, Habyarimana and several of his close associates devised a strategy of inciting hatred and fear of the Tutsi minority as a way of rebuilding solidarity among Hutu and keeping themselves in power. They strongly opposed any form of power sharing, including the one envisaged by the Arusha Accords.

1.15 Determined to avoid the power sharing prescribed by the Arusha Accords, several prominent civilian and military figures pursued their strategy of ethnic division and incitement to violence. They targeted and labeled as RPF accomplices the entire Tutsi population, and also Hutus opposed to their domination, particularly those from regions other than northwestern Rwanda. At the same time, they sought to divide Hutu opposition parties, attracting some of their members back to the support of Habyarimana. These efforts to divide the Hutu opposition were favored by the assassination of Melchior Ndadaye, a democratically elected Hutu President in neighboring Burundi, by Tutsi soldiers of the Burundi army. By late 1993, two of the three major parties opposed to the MRND had each split into two factions. The faction of each known as the 'Power' faction aligned itself with the MRND.

1.16 The strategy adopted in the early 1990s, which culminated in the widespread massacres of April 1994, comprised several components, which were carefully worked out by the various prominent figures that shared the extremist Hutu ideology, including the members of the *Akazu*. Added to the incitement to ethnic violence and extermination of the Tutsis and their 'accomplices' was the organization and military training of the youth wings of the political parties, notably the *Interahamwe* (youth wing of the MRND), the preparation and

broadcasting of lists of people to be eliminated, the distribution of weapons to civilians, the assassination of certain political opponents and the massacre of many Tutsis in various parts of Rwanda between October 1990 and April 1994.

- 1.17 The incitement to ethnic hatred took the form of public speeches by people sharing the extremist ideology. These political and military figures publicly appealed to hatred and fear of the Tutsis and urged the Hutu majority to 'finish off the enemy and its accomplices'. A perfect illustration is the speech made in November 1992 by Léon Mugesera, vice-chairman of the MRND for Gisenyi *préfecture*, who at the time was already inciting the public to exterminate the Tutsis and their 'accomplices'.
- 1.18 With the intention of ensuring widespread dissemination of the calls to ethnic violence, prominent figures from the President's circle set up true hate media, which would exercise great influence over the Rwandan people. Thus the creation of *Radio Télévision Libre des Mille Collines (RTL)* and of the newspaper *Kangura* was a part of the strategy and pursued the same logic. As early as 1993, the Tutsis and political opponents were targeted, identified by name and threatened by these media. Many of them were among the first victims of the massacres of April 1994.
- 1.19 The creation of the youth wings of the political parties, originally intended to encourage or even force adherence to one or another party in the newly established multi-party system, provided Habyarimana's circle with a large, devoted and effective workforce to implement the adopted strategy. These youth organizations, which were affiliated to the political parties, were soon manipulated as part of the anti-Tutsi campaign. Some of the members of these organizations, notably the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), were organized into militia groups, which were financed, trained and led by prominent civilians and military figures from the President of the Republic's entourage. They were issued weapons, with the complicity of certain military and civilian authorities. The militia groups were transported to training sites, including certain military camps, in public administration vehicles or vehicles belonging to companies controlled by the President's circle.
- 1.20 During the mass arrests of October 1990, the civilian and military authorities followed lists that had been drawn up in order to identify and locate the presumed accomplices of the RPF, the majority of whom were Tutsi. Later, Army, Gendarmerie, local authorities and *Interahamwe* were given orders to prepare new lists or update the existing ones, which were subsequently used during the massacres of 1994.

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- 1.21 Towards the end of 1991, certain Rwandan authorities distributed weapons to certain civilians in the northeastern region of the country as part of a civil self-defence campaign, in reaction to the RPF attack of October 1990. Later, some authorities distributed weapons nationwide, notably to the *Interahamwe*, *Impuzamugambi* and carefully selected individuals, even in regions distant from the war zone. Towards the end of 1993, the Bishop of Nyundo criticized the distribution of weapons in a public letter and questioned its purpose.
- 1.22 The pursuit of the strategy thus described played a catalytic role in the political and ethnic violence of the time, which climaxed in the April 1994 massacres. The early part of the 90s was marked by numerous political assassinations and large massacres of the Tutsi minority, including the one in Kibilira (1990), that of the Bagogwe (1991) and the one in Bugesera (1992). The massacres were instigated and organized by local authorities with the complicity of certain prominent persons from the President's circle. Therein can be found the components of the strategy, which culminated in the genocide of 1994, including the use of, written and radio propaganda to incite the commission of the massacres.
- 1.23 In early 1994, certain prominent people from Habyarimana's circle instigated violent demonstrations in Kigali aimed at preventing the implementation of the Arusha Accords. Soldiers in civilian clothes and militiamen took part, seeking to provoke confrontations with the Belgian UNAMIR soldiers. These incidents were partially the cause of the postponement of the establishment of the institutions foreseen by the Arusha Accords.
- 1.24 On 6 April 1994, the plane carrying, among other passengers, the President of the Republic of Rwanda, Juvénal Habyarimana, was shot down on its approach to Kigali airport.
- 1.25 In the hours that followed the crash of the President's plane, the senior officers of the FAR convened to assess the situation. Those who shared the extremist Hutu ideology, generally from the North, proposed an Army take-over. During a second meeting, which took place on the morning of 7 April, that option was rejected in favour of setting up an interim Government.
- 1.26 Already on the morning of 7 April and while these discussions were taking place, groups of military, lists in hand, proceeded to arrest, confine and carry out systematic assassinations of a large number of political opponents, both Hutu and Tutsi, including the Prime Minister, some of the Ministers in her

Government and the President of the Constitutional Court. At the same time, however, the military were evacuating prominent members of the dead President's circle, including the MRND Ministers, to safe locations. The Belgian UNAMIR soldiers sent to protect the Prime Minister were disarmed, arrested and taken to Kigali military camp, where they were massacred, prompting the withdrawal of the Belgian contingent in the days that followed. After the withdrawal of the Belgian troops, the UN Security Council drastically reduced the number of UNAMIR personnel in Rwanda.

- 1.27 The leaders of various political parties not targeted in the assassinations assembled at the request of military officers. Other than members of the MRND, most participants were members of the 'Power' wings of their respective parties. Given the political and constitutional void created by the deaths of most national political authorities, they set up a government based on the 1991 constitution. Composed solely of Hutus, the government was sworn in on 9 April 1994. The MRND held nine ministerial posts, plus the Presidency of the Republic, while the remaining 11 positions, including that of Prime Minister, went to the 'Power' factions of the other parties.
- 1.28 In the hours that following the crash of President Habyarimana's plane, military and militiamen set up roadblocks and began slaughtering Tutsi and members of the Hutu opposition in Kigali and in other parts of Rwanda. At the roadblocks, they checked the identity cards of passers-by and killed those or most of those who were identified as Tutsi. Military patrols, often involving militiamen, scoured the city, lists in hand, to execute the Tutsis and certain political opponents.
- 1.29 During the entire period of the genocide, FAR military and militiamen, notably the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR), actively participated in the massacres of Tutsis throughout Rwanda.
- 1.30 As soon as it was formed, the Interim Government espoused the plan for extermination put in place. Throughout the period of the massacres, the Government made decisions and issued directives to aid and abet in the extermination of the Tutsi population and the elimination of the Hutu political opponents. Members of the Government incited the population to eliminate the enemy and its 'accomplices', notably through the media, and some of them participated directly in the massacres.
- 1.31 Local authorities, including *préfets*, *bourgmestres*, *conseillers de secteur* and *responsables de cellule* applied the Government-issued directives in execution

of the plan for the extermination of the Tutsi population. They incited and ordered their subordinates to perpetrate the massacres and took a direct part in them.

- 1.32 Starting on 6 April, the incitement to hatred and ethnic violence conveyed by the media turned into a genuine call to exterminate the Tutsis and their accomplices. At the centre of this campaign of extermination was RTLM, described as 'the killer radio station', which played a decisive role in the genocide and became a genuine accomplice of its perpetrators.
- 1.33 Having been psychologically and militarily prepared for several months, the groups of militiamen spearheaded the execution of the extermination plan and were directly involved in the massacres of the civilian Tutsi population and of moderate Hutus, thus causing the deaths of hundreds of thousands of people in less than 100 days.

2. TERRITORIAL, TEMPORAL AND MATERIAL JURISDICTION

- 2.1 The crimes referred to in this indictment took place in Rwanda between 1 January and 31 December 1994.
- 2.2 During the events referred to in this indictment, Rwanda was divided into 11 *préfectures*: Butare, Byumba, Cyangugu, Gikongoro, Gisenyi, Gitarama, Kibungo, Kibuye, Kigali-Ville, Kigali-Rural and Ruhengeri. Each *préfecture* was subdivided into *communes* and *secteurs*.
- 2.3 During the events referred to in this indictment, the Tutsi, the Hutu and the Twa were identified as racial or ethnic groups. The Belgians were considered to be a national group.
- 2.4 During the events referred to in this indictment, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

3. THE POWER STRUCTURE

The Government

- 3.1 According to the Constitution of 10 June 1991, executive power is exercised by

the President of the Republic, assisted by the Government, composed of the Prime Minister and the ministers. The members of the Government are appointed by the President of the Republic upon the proposal of the Prime Minister. The Prime Minister directs the Government's program. The Government determines and applies national policy. To that effect, it controls the civil service and the armed forces. The Prime Minister decides the functions of the ministers and officials under the Prime Minister's authority. The resignation or termination of tenure of the Prime Minister, for whatever reason, causes the Government to resign.

- 3.2 The Ministers implement the Government's policy, as defined by the Prime Minister. They are answerable to the Head of the Government for doing so. In carrying out their duties, they have at their disposal the government and local administration corresponding to their functions.
- 3.3 The Minister of Information is in charge of implementing the Government's policy with regard to information. The Minister manages and controls the activities of the services coming under his authority, including the public and private press divisions. ORINFOR is under the authority of the Minister of Information.

The Forces Armées Rwandaises

- 3.4 The *Forces Armées Rwandaises (FAR)* were composed of the *Armée Rwandaise (AR)* and the *Gendarmerie Nationale (Gendarmerie Nationale)*.

The Political Parties and The Militia

- 3.5 During the events referred to in this indictment, the main political parties in Rwanda were the MRND (*Mouvement Républicain National pour la Démocratie et le Développement*), the CDR (*Coalition pour la Défense de la République*), the MDR (*Mouvement Démocratique Républicain*), the PSD (*Parti Social-Démocrate*) and the PL (*Parti Libéral*). The RPF (Rwandan Patriotic Front) was a politico-military opposition organization.
- 3.6 The CDR (*Coalition pour la Défense de la République*) was formed on 18 February 1992 to defend the republican institutions stemming from the Social Revolution of 1959. At the national level, the CDR had a General Assembly. At the local level were prefectural and communal bodies such as the Regional Assembly, which decided on all party issues for the *préfecture* and was led by a regional committee, made up of four members, including a chairman, a vice-

chairman, a secretary and a treasurer, who were elected for four-year terms.

- 3.7 Most of the political parties had created a youth wing. The members of the MRND's youth wing were known as the '*Interahamwe*' and those of the CDR were known as the '*Impuzamugambi*'. Most of the MRND and CDR youth wings' members subsequently received military training and were thus transformed from youth movements into militias.

The Press in Rwanda

- 3.8 Between January and July 1994, two radio stations in Rwanda had authorization to broadcast throughout the country, i.e. Radio Rwanda and RTLM. In addition, Radio Muhabura, the RPF's radio station, could be picked up in certain regions of Rwanda.
- 3.9 Between January and December 1994, several written press publications were available in Rwanda, including the newspaper *Kangura* with its edition in *kyniarwanda*. The International version of *Kangura* was in French.
- 3.10 Pursuant to Law No. 54/91 of 15 November 1991 on the press in Rwanda, anyone wishing to found or operate a radio broadcasting company must sign an agreement of establishment and operation with the Rwandan government. Pursuant to article 9 of the same law, before launching a new written press publication, the Director of the publication must submit a declaration to the Prosecutor's office for the Prefecture (*Parquet de la Republique*).
- 3.11 Furthermore, this law punishes anyone who uses the press to commit offences against individuals or groups, such as defamation (Article 44) or public slander (Article 45), or who is an accomplice to such offences (Article 46). Further, Article 166 of the Rwandan Penal Code, the penalties of which apply to Article 46 above, punishes any speech made at public meetings or in public places which is designed to cause the citizens to rise up against one another. Lastly, Article 49 of this law determines the individuals who are responsible for offences committed through the press.
- 3.12 The office Rwandais de l'Information (ORINFOR), Rwandan Information Agency, is a public institution with financial and administrative authority, responsible for the radio and television broadcasts, print media, cinema and photography services nationwide.

4. THE ACCUSED

HASSAN NGEZE

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- 4.1 **Hassan Ngeze** was born in 1962 in Nyakabungo *cellule*, Gisenyi *secteur*, Rubavu *commune*, Gisenyi *préfecture*, Rwanda.
- 4.2 At the time of the events referred to in this indictment, **Hassan Ngeze** was editor-in-chief of the newspaper *Kangura*. One of the founding members of the *Coalition pour la Défense de la République* (CDR) party, **Hassan Ngeze** was an influential member of the CDR party and an militia leader in Gisenyi *préfecture*. **Hassan Ngeze** had previously been a member of the *Mouvement Révolutionnaire National pour le Développement* (MRND).
- 4.3 As editor-in-chief of the newspaper *Kangura*, **Hassan Ngeze** had authority and control over his editorial staff, including the reporters. In addition, as an influential member of the CDR, former member of the MRND, and one of the militia leaders in Gisenyi, **Hassan Ngeze** exercised authority over the *Interahamwe* (MRND) and *Impuzamugambi* (CDR) militiamen.

5. CONCISE STATEMENT OF THE FACTS: PREPARATION

- 5.1 From 1990 until December 1994, **Hassan Ngeze**, Jean-Bosco Barayagwiza, Ferdinand Nahimana, and Georges Ruggiu conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition. The components of this plan consisted of, among other things, the broadcasting of messages of ethnic hatred and incitement to violence, the training of and distribution of weapons to militiamen, as well as the preparation of lists of people to be eliminated and the broadcasting of their identities. In executing the plan, they organized, ordered and executed the massacres perpetrated against the Tutsi population and moderate Hutu, and at the same time incited, aided and participated in them.

Incitement and Broadcasts

- 5.2 The incitement to ethnic hatred and violence was a fundamental part of the plan put in place. It was articulated, before and during the widespread of massacres in 1994, by politicians and businessmen, members of the Government and local

authorities, and by elements of the FAR.

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- 5.3 The 1990s saw the development of several publications in Rwanda, which were designed to ensure that the message of ethnic hatred and incitement to violence was disseminated. In 1990, individuals in President Habyarimana's circle, including Jean-Bosco Barayagwiza, Ferdinand Nahimana and Joseph Nzirorera, formed the newspaper *Kangura* for the purpose of defending the extremist Hutu ideology. **Hassan Ngeze**, became editor-in-chief of the newspaper *Kangura*.
- 5.4 In one of its first issues, published in December 1990, *Kangura* published the '*Ten Commandments of the Bahutus*', which was not only an outright call to show contempt and hatred for the Tutsi minority but also to slander and persecute Tutsi women.
- 5.5 Between May 1990 and December 1994, *Kangura* echoed the description of the Tutsis as the enemy and the members of the opposition as their accomplices, regularly using contemptuous expressions such as '*Inyenzi*' or '*Inkotanyi*' and referring to them as 'enemies' or 'traitors' who deserved to die. In addition, *Kangura* stated that 'the social and political revolution of 1959 is not over; it is irreversible', which constitutes a call to eliminate the Tutsis.
- 5.6 On 4 December 1991, at the conclusion of a meeting chaired by the Head of State, Juvénal Habyarimana, a military commission was given the task of finding an answer to the following question: '*What do we need to do in order to defeat the enemy militarily, in the media and politically?*' The newspaper *Kangura* wrote approvingly of the meeting.
- 5.7 The report produced by the commission defined the main enemy as follows: '*The Tutsis from inside or outside the country, who are extremists and nostalgic for power, who do not recognize and have never recognized the realities of the Social Revolution of 1959, and are seeking to regain power in Rwanda by any means, including taking up arms.*' The secondary enemy was defined as '*Anyone providing any kind of assistance to the main enemy*'. The document specified that the enemy was being recruited from within certain social groups, notably: '*the Tutsis inside the country, Hutus who are dissatisfied with the present regime, foreigners married to Tutsi women...*'. Among the activities the enemy was accused of, the document mentioned '*the diversion of national opinion from the ethnic problem to the socio-economic problem between the rich and the poor*'. On 21 September 1992, an excerpt from the report was circulated among the troops. The following day, the CDR,

which was founded by **Hassan Ngeze**, Jean-Bosco Barayagwiza and others issued a press communique in which it listed the names of individuals described as enemies and traitors to the nation.

- 5.8 The characterization of the Tutsis as the enemy and of members of the opposition as their accomplices was echoed by politicians, notably by Léon Mugesera, MRND Vice-Chairman for Gisenyi *préfecture*, in a speech he made on 22 November 1992. Broadcast on the Radio Rwanda and therefore reaching a much larger audience, Léon Mugesera's speech already at that time was an incitement to exterminate the Tutsi population and their 'accomplices'.
- 5.9 In 1993, in order to defend the extremist Hutu ideology and promote the use of incitement to hatred and fear of the Tutsi minority, Jean-Bosco Barayagwiza, Ferdinand Nahimana, Félicien Kabuga, André Ntagerura, Joseph Nzirorera, Joseph Serugendo and Simon Bikindi agreed among themselves and with others to form a limited company called RTLM s.a., notably in order to operate a radio station, RTLM. As Editor-in-chief of *Kangura*, **Hassan Ngeze** welcomed the formation of RTLM in the newspaper, describing it as the birth of a partner in the fight for Hutu unification. **Hassan Ngeze** and *Kangura* newspaper became shareholders in RTLM.
- 5.10 From the moment it was formed, RTLM and *Kangura* newspaper collaborated closely in inciting ethnic hatred and in preparing lists of names of members of the Tutsi population and moderate Hutus who were to be exterminated. The editor-in-chief of *Kangura*, **Hassan Ngeze**, send information from Gisenyi, for RTLM, while Noël Hitimana, originally a *Kangura* reporter, became one of RTLM's most vigilant reporters. Certain RTLM reporters published articles in *Kangura* newspaper inciting to ethnic hatred and violence. RTLM made an announcement on air whenever an issue of *Kangura* was published.
- 5.11 In addition, in 1993, **Hassan Ngeze** took part in a meeting organized by the MRND in Nyamirambo to raise funds on behalf of RTLM. At the meeting, Félicien Kabuga, in the presence of Jean-Bosco Barayagwiza, Ferdinand Nahimana, Froduald Karamira, Justin Mugenzi, Mathieu Ngirumpatse and the reporters Kantano Habimana, Valérie Bemeriki, Noël Hitimana, Gaspard Gahigi and others, publicly defined the purpose of RTLM as being the defence of 'Hutu Power'. By not disagreeing with this meeting he rendered his support of 'Hutu Power'.
- 5.12 The newspaper *Kangura* and RTLM conducted a campaign against the Arusha Accords, which stipulated power sharing with the Tutsi minority and rejected

any ideology based on ethnic identity. *Kangura's* attacks targeted in particular the Government representative at the negotiations, Minister of Foreign Affairs Boniface Ngulinzira. In one of its articles, the newspaper *Kangura* said that what Ngulinzira called the 'Arusha Accords' was nothing other than complicity with the enemy. On 11 April 1994, Boniface Ngulinzira was assassinated by the military. RTLM announced the news of his death in the following words: '*We have exterminated all RPF accomplices. Mr. Boniface Ngulinzira will no longer go to Arusha to sell the country to the RPF. The peace Accords are nothing but scraps of paper as our father Habyarimana had predicted.*' The extremist press had been announcing that Boniface Ngulinzira had sold the country out.

- 5.13 Between late 1993 and early 1994, **Hassan Ngeze**, Jean-Bosco Barayagwiza and other CDR members organized demonstrations in Gisenyi to protest against the Accords.
- 5.14 In April, May and June 1994, **Hassan Ngeze** was interviewed on RTLM and Radio Rwanda. During those interviews, he called for the extermination of the Tutsis and the Hutus in the opposition. He also defended the extremist Hutu ideology of the CDR.
- 5.15 In addition, members of the government and the political parties used the media to incite the massacre of the Tutsi population and moderate Hutus. On 21 April 1994, in particular, the Prime Minister of the Interim Government, Jean Kambanda, stated that the RTLM broadcasts were '*a weapon in the fight against the enemy*'.
- 5.16 Between January and April 1994, **Hassan Ngeze** distributed tracts in Gisenyi *préfecture* threatening the Tutsi population and referring to them as *Inyenzi*. Jean-Bosco Barayagwiza, president of the CDR regional committee for Gisenyi *préfecture*, sent some of the tracts.
- 5.17 During the same period, **Hassan Ngeze** spread ethnically biased propaganda and incited the youth members of the CDR to eliminate the Tutsi population.

Training and Distribution of Weapons to the Militia Groups

- 5.18 In order to ensure that, when the time came, the extermination of the enemy and its 'accomplices' would be carried out swiftly and effectively, it was necessary to create a militia that was structured, armed and complementary to

the Armed Forces. As from 1993, and even before that date, the leaders of the MRND, in collaboration with officers of the FAR, decided to provide military training to those members most devoted to their extremist cause. Furthermore, weapons were distributed to them.

- 5.19 Between June 1993 and July 1994, in Gisenyi *préfecture* the militiamen underwent military training and received weapons from **Hassan Ngeze** and Jean-Bosco Barayagwiza.
- 5.20 Thus, shortly before the President's plane crash, **Hassan Ngeze** used his own vehicle to distribute arms in Gisenyi *préfecture*.
- 5.21 Towards the end of 1993, in an open letter broadcast on national radio, the Bishop of the diocese of Nyundo, in Gisenyi *préfecture*, denounced the distribution of weapons in that *préfecture*.

Establishment and Distribution of Lists

- 5.22 Having identified the Tutsis as the main enemy and the members of the opposition as their accomplices, civilian authorities, political figures and militiamen established lists of people to be executed. In 1993, at the instigation of Jean-Bosco Barayagwiza, the *bourgmestres* and *conseillers de secteur* in Gisenyi *préfecture* drew up lists bearing the names of Tutsis and moderate Hutus to be eliminated.
- 5.23 **Hassan Ngeze** took part in distributing those lists in Gisenyi *préfecture* and knew the names of the Tutsis marked for death.
- 5.24 Between January and July 1994, RTLM broadcast the names of people identified as the enemy. As an RTLM informer in Gisenyi, **Hassan Ngeze** sent the name of an individual from Gisenyi to RTLM, which broadcast the individual's name in April 1994.
- 5.25 Between January and December 1994, *Kangura* newspaper published lists of names of the members of the Tutsi population and moderate Hutus to be eliminated.
- 5.26 From 7 April to late July 1994, military and militiamen massacred members of the Tutsi population and moderate Hutus by means of pre-established lists and names broadcast on RTLM and published in *Kangura* newspaper.

Precursors Revealing A Deliberate Course of Action

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- 5.27 The political and ethnic violence of the early 1990s was characterized by the use of the elements of the strategy, which achieved its finality in the genocide of April 1994. The massacres of the Tutsi minority at that time, including those in Kibilira (1990), in Bugesera (1992), and of Bagogwe (1991), were instigated, facilitated and organized by civilian and military authorities. On each occasion, a campaign of incitement to ethnic violence, conducted by local authorities, was followed by massacres of the Tutsi minority, perpetrated by groups of militiamen and civilians, armed and assisted by the same authorities and by certain military personnel. On each occasion, these crimes remained unpunished and the authorities implicated were generally not taken to task.
- 5.28 In 1991, **Hassan Ngeze**, in collaboration with Jean-Bosco Barayagwiza and others, planned the killings of the Bagogwe Tutsis in Mutura *commune*, Gisenyi *préfecture*. They distributed weapons and money to the *Interahamwe* and *Impuzamugambi* militiamen who committed the massacres.
- 5.29 During the same period, **Hassan Ngeze** took part in meetings chaired by Jean-Bosco Barayagwiza, at which the latter incited the militia groups and the civilian population to kill the Tutsis. Following those meetings, Tutsis were attacked and killed.

Modus Operandi

- 5.30 Finally, as of 7 April 1994, throughout Rwanda, Tutsis and certain moderate Hutus, began to flee their homes to escape the violence to which they were victims on their hills and to seek refuge in places where they had traditionally felt safe, notably churches, hospitals and other public buildings such as *commune* and *préfecture* offices. On several occasions, gathering places were indicated to them by the local authorities, which had promised to protect them. For the initial days, a few gendarmes and communal police in these various locations protected the refugees, but subsequently, the refugees were systematically attacked and massacred by militiamen, often assisted by the same authorities who had promised to protect the refugees.
- 5.31 Furthermore, soldiers, militiamen and gendarmes raped or sexually assaulted or committed other crimes of a sexual nature against Tutsi women and girls,

sometimes after having first kidnapped them.

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6. CONCISE STATEMENT OF THE FACTS: KANGURA NEWSPAPER

- 6.1 The newspaper *Kangura* was established in 1990 to defend and promote the extremist Hutu ideology and unite all Hutus in order to 'heal' Rwanda. The founders were people from President Habyarimana's circle, including Jean-Bosco Barayagwiza, Ferdinand Nahimana, Joseph Nzirorera, certain military personnel such as Anatole Nsengiyumva, and others. **Hassan Ngeze** became editor-in-chief of the newspaper.
- 6.2 Before he became editor-in-chief of *Kangura*, **Hassan Ngeze** was the Gisenyi correspondent and distributor of another newspaper, called *Kanguka*. *Kanguka* was a satirical newspaper which expressed anti-ethnic ideas and criticized the regime, notably the military. Its editor-in-chief was arrested and imprisoned.
- 6.3 *Kangura* began publishing in May 1990. The first issue was financed in entirety by the intelligence service in the Office of the President. The newspapers were distributed throughout Rwanda and particularly in the intellectual centers of the country, Kigali and Butare, until at least December 1994. In many *communes*, the military, the bourgmestres and the conseillers de secteur distributed the newspaper. The newspaper was published in Kinyarwanda, with some French excerpts. The international version was published entirely in French.
- 6.4 The newspaper *Kangura* was printed at the national printing press (*Imprimerie Nationale du Rwanda*) and was financed in large part by certain merchants in Gisenyi as well as the President's Office.

Content and Impact of *Kangura* Publications

- 6.5 *Kangura* newspaper published articles and cartoons designed to create division, called for ethnic hatred and published the names and photographs of supposed accomplices of the enemy. Some of these articles bore the signature of **Hassan Ngeze**, Noel Hitimana and other journalists.
- 6.6 As editor-in-chief of *Kangura*, **Hassan Ngeze** worked in close collaboration with Ferdinand Nahimana and Jean-Bosco Barayagwiza in preparing the articles published in the newspaper. The editorial for the first issue was given by military personnel such as Anatole Nsengiyumva and bore the signature of

Hassan Ngeze.

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- 6.7 In December 1990, *Kangura* published the 'Appeal to the Conscience of the Bahutus', including the 'Ten Commandments', which was not only an outright call to show contempt and hatred for the Tutsi minority but also to slander and persecute Tutsi women. The Ten Commandments stipulated for example that 'Every Muhutu must know that the umututsikazi (Tusi woman), wherever she may be is working on behalf of her Tutsi ethnic group. Therefore, any Muhutu who marries a Mututsikazi or has a mistress who is Mututsikazi is a traitor"
- 6.8 In December 1990, *Kangura* expressed satisfaction at the extremist direction taken by Radio Rwanda's broadcasts under the leadership of Ferdinand Nahimana, the new director of ORINFOR. In the opinion of *Kangura*, the radio station had become 'the voice of the people which tells the truth and instills fear into the Inkotanyi and their accomplices.'
- 6.9 Further, before December 1994, the newspaper published articles inciting the people and militia groups to ethnic hatred and violence, by attacking the Tutsi population and the CDR's political opponents, notably the moderate Hutus, and by using expressions such as 'erase the enemy within', 'prevent the Inyenzi from returning us to the monarchist regime', 'the minority is meat for the crows'.
- 6.10 From its first issues, *Kangura* published lists bearing the names of members of the Tutsi population and moderate Hutus. These names were later broadcast by RTL, to incite the population against them.
- 6.11 In December 1990, *Kangura* No7 published a letter signed by the *Préfet* of Kigali, Tharcisse Renzaho, and sent to the President of the Republic, which contained the names and addresses of the Tutsi merchants who were to be persecuted, as well as the members of their families, being collaborators of 'Inyenzi'.
- 6.12 In February 1993, *Kangura* published a list of names of the young people in Cyangugu who had joined the 'Inkotanyi', as well as the names of their relatives, and incited the people to defend themselves against them using guns and to supplement the list with other names.
- 6.13 In addition, *Kangura* incited the people against Belgian nationals and the UN representatives in the country, as well as against the Arusha Accords, which

'justified' their presence in the country.

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- 6.14 From its establishment until December 1994, *Kangura* published interviews, messages and speeches by political and government figures which incited to exterminate the Tutsis and moderate Hutus.
- 6.15 Between 1990 and 1994 *Kangura* published the names, the home *communes* and *préfectures* of Tutsi and encouraged the people to exterminate them. In fact, several of these locations were attacked and the Tutsis who were there were massacred. In some cases, *Kangura* identify certain people who were termed accomplices and asked the militiamen to find and execute them.
- 6.16 Following the messages and speeches of incitement and encouragement to ethnic violence and hatred referred to in paragraphs 6.1 to 6.16 above, numerous members of the Tutsi population, as well as moderate Hutus and certain Belgian nationals, were eliminated.

Control of the Publications

- 6.17 Between January and December 1994, **Hassan Ngeze**, as editor-in-chief, was responsible for the contents of *Kangura* newspaper.
- 6.18 Further, between January and December 1994, **Hassan Ngeze** knew or had reason to know that the articles published in *Kangura* were inciting, aiding and abetting the local population and the militia groups to exterminate all the Tutsis, the moderate Hutus and Belgian nationals, and failed to take the necessary and reasonable measures to prevent such acts or to punish his subordinates such as Noel HITIMANA, Nabantu SIBOMANA, Simbisi STANISLAS, and other journalists
- 6.19 Further, between January and December 1994, **Hassan Ngeze** knew or had reason to know that the articles, speeches or interviews published in *Kangura* resulted in widespread massacres of the Tutsi population and the murder of numerous moderate Hutus and certain Belgian nationals.

7. CONCISE STATEMENT OF THE FACTS: OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

- 7.1 As from 7 April 1994, massacres of the Tutsi population and the murder of

numerous moderate Hutu were perpetrated throughout the territory of Rwanda. These crimes, which had been planned and prepared for a long time by prominent civilian and military figures who shared the extremist Hutu ideology, were carried out by militiamen, military personnel and gendarmes on the orders and directives of some of these authorities, including **Hassan Ngeze**.

- 7.2 Gisenyi, the *préfecture* of origin of the deceased President, Juvénal Habyarimana, is located in northwestern Rwanda. From the time of the coup d'état in 1973, Gisenyi was the bastion of the *Mouvement Républicain National pour la Démocratie et le Développement* (MRND) and the *Coalition pour la Défense de la République* (CDR). Several prominent civil and military figures that had espoused the extremist Hutu ideology were from this *préfecture*. After 1990, the *préfecture* was the theatre for much inter-ethnic tension and violence, causing the death of many Tutsis. This was the case with the *Bagogwe* in 1991. In early June 1994, the Interim Government moved to Gisenyi.
- 7.3 Before April 1994, in the company of **Hassan Ngeze**, Jean-Bosco Barayagwiza held meetings and issued directives to his subordinates to prepare lists of Tutsis to be eliminated and to incite the militiamen to kill the Tutsis when the time came. **Hassan Ngeze** and Barnabé Sanvura passed those directives on to those in charge of the *Interahamwe* (MRND) and the *Impuzamugambi* (CDR).
- 7.4 Starting on 7 April 1994, in Gisenyi, members of the CDR, including **Hassan Ngeze**, militiamen and military personnel gave orders to set up roadblocks; they also distributed weapons and incited, aided and abetted the people in exterminating the Tutsis and eliminating the moderate Hutus.
- 7.5 Following these events, the militiamen in Gisenyi *préfecture* set up roadblocks. As leader of the *Interahamwe*, **Hassan Ngeze** traveled around in his car inspecting the roadblocks in order to identify the Tutsi and their 'accomplices' and kill them on the spot or take them to *Commune Rouge* to execute them there. The *Interahamwe* and **Hassan Ngeze** transported most of the Tutsis to that location. Many of these Tutsis at *Commune Rouge* were forced to undress before being killed. **Hassan Ngeze** was present at this time.
- 7.6 **Hassan Ngeze** took part in killing of Tutsi at *Commune Rouge*. He supervised the mass graves, commended the *Interahamwe* on their 'good work' and encouraged them to continue the killing.
- 7.7 In addition, in May 1994, **Hassan Ngeze**, along with Well as Banzi and

Mathias Nyagasaza, held a meeting with the local population and the *Interahamwe* at Gisenyi stadium to collect funds to purchase weapons and ammunition for the *Interahamwe* and the soldiers, in accordance with the instructions given by Félicien Kabuga at a meeting held at the Méridien hotel.

- 7.8 On 10 April 1994, **Hassan Ngeze** shot a Tutsi girl in the side. The *Interahamwe* who were accompanying him and for whom he was responsible then stoned the girl to death. Afterwards, **Hassan Ngeze** ordered the *Interahamwe* to begin conducting searches for other *Inyenzi*.
- 7.9 On 21 April 1994, in Gisenyi town, **Hassan Ngeze** ordered the *Interahamwe* to kill Modeste Tabaro, a Tutsi and a member of an opposition political party.
- 7.10 Between April and July 1994, **Hassan Ngeze**, one of *interahamwe* leaders in Gisenyi, incited the militiamen to commit rape and sexual assault against Tutsi women and girls in Gisenyi prefecture.
- 7.11 Between April and July 1994, the most active groups of militiamen in Gisenyi *préfecture*, led by CDR officials, including **Hassan Ngeze** and Mabyuc Twagirayezu, and MRND officials, including Bernard Munyagishari and Omar Serushago, hunted down, abducted and killed several members of the Tutsi population and moderate Hutus in Gisenyi. In addition, many houses belonging to Tutsis were looted, destroyed or burned down by the *Interahamwe*.
- 7.12 During the entire period of April to July 1994, **Hassan Ngeze** knew or had reason to know that his subordinates, notably the CDR and MRND militiamen, had committed widespread massacres of the Tutsi population and numerous moderate Hutus, and failed to take the necessary and reasonable measures to prevent them from doing so or to punish them for their acts.

Responsibility

- 7.13 From April to July 1994, several hundred thousand people were massacred throughout Rwanda. The majority of the victims were killed solely because they were Tutsi or appeared to be Tutsi. The other victims, nearly all Hutu, were killed because they were considered Tutsi accomplices, were linked to them through marriage or were opposed to the extremist Hutu ideology.
- 7.14 The massacres thus perpetrated were the result of a strategy adopted and elaborated by political, civil and military authorities in the country, such as

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Hassan Ngeze, Jean-Bosco Barayagwiza, and Ferdinand Nahimana, who conspired to exterminate the Tutsi population.

7.15 Hassan Ngeze, in his position of authority, acting in concert with, notably Jean-Bosco Barayagwiza, Ferdinand Nahimana, Omar Serushago, Bernard Munyagishari, Mabuyc Twagirayezu and Barnabé Sanvura, participated in the planning, preparation or execution of a common scheme, strategy or plan, to commit the atrocities set forth above. He committed the crimes personally, by persons he assisted, or by his subordinates, including militiamen and the reporters, announcers and all other Kangura employees, who acted under his orders and with his knowledge or consent.

8. THE CHARGES

COUNT 1:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.2, 5.3, 5.4, 5.5,5.6, 5.7, 5.9, 5.10, 5.11, 5.12, 5.13, 5.16, 5.18, 6.1, 6.3, 6.5, 6.6, 7.1, 7.3, 7.4, 7.13, 7.14, 7.15

conspired with Ferdinand Nahimana, Jean-Bosco Barayagwiza, Barnabé Sanvura, André Ntagerura, Joseph Nzirorera, Froduald Karamira, Bernard Munyagishari, Omar Serushago and others to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **CONSPIRACY TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(b) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6(1) and which is punishable in reference to Articles 22 and 23 of the Statute

COUNT 2:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 5.30, 7.1, 7.5, 7.6, 7.7, 7.8, 7.9,

7.11, 7.13, 7.14, 7.15

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-pursuant to Article 6(3), according to paragraphs: 7.3, 7.4, 7.5, 7.6, 7.8, 7.9, 7.12, 7.13, 7.14, 7.15

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **GENOCIDE**, a crime stipulated in Article 2(3)(a) of the Statute of the Tribunal, for which they are individually responsible pursuant to Article 6 and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 3:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: - pursuant to Article 6(1), according to paragraphs: 5.1, 5.7, 5.9, 5.10, 5.11, 5.16, 5.19, 5.23, 6.15, 6.16, 7.1, 7.7, 7.8, 7.12, 7.13, 7.14, 7.15

-pursuant to Article 6(3), according to paragraphs: 7.1, 7.3, 7.4, 7.5, 7.6, 7.11, 7.12, 7.13, 7.14, 7.15

is responsible for killing and causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **COMPLICITY IN GENOCIDE**, a crime stipulated in Article 2(3)(e) of the Statute of the Tribunal, for which they are individually responsible pursuant to the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 4:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.10, 5.12, 5.13, 5.14, 5.17, 5.29, 6.1, 6.5, 6.6, 6.9, 6.10, 6.13, 6.14, 6.15, 7.10

-pursuant to Article 6(3), according to paragraphs: 5.2, 5.5, 6.5, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.17, 6.18, 6.19

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is responsible for direct and public incitement to kill and cause serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, and thereby committed **DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE**, a crime stipulated in Article 2(3)(c) of the Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 5:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: - pursuant to Article 6(1), according to paragraphs:
5.1, 5.23, 5.26, 7.6, 7.7, 7.8, 7.9, 7.11, 7.13, 7.14, 7.15
-pursuant to Article 6(3), according to paragraphs:
5.1, 6.15, 6.17, 6.18, 6.19, 7.6, 7.7, 7.8, 7.9, 7.11, 7.13, 7.14, 7.15

is responsible for the **murder** of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(a) of the Statute of Tribunal, for which they are individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 6:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: -pursuant to Article 6(1), according to paragraphs:
5.23, 5.24, 5.25, 5.26, 6.11, 6.17, 6.18, 6.19, 7.13, 7.14, 7.15
-pursuant to Article 6(3), according to paragraphs: 5.1,
5.22, 5.23, 5.24, 5.25, 6.7, 6.8, 6.9, 6.10, 6.11, 6.17, 6.18, 6.19, 7.13, 7.14, 7.15

is responsible for the **persecution** of persons as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(h) of the Statute of Tribunal, for which he is individually responsible pursuant to Article 6 of



the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

COUNT 7:

By the acts or omissions described in paragraphs 5.1 to 7.15 and more specifically in the paragraphs referred to below:

HASSAN NGEZE: -pursuant to Article 6(1), according to paragraphs: 5.1, 5.23, 5.25, 5.26, 6.16, 7.1, 7.3, 7.4, 7.5, 7.6, 7.8, 7.11, 7.13, 7.14, 7.15

-pursuant to Article 6(3), according to paragraphs: 5.1, 5.25, 6.15, 6.17, 6.18, 6.19, 7.1, 7.3, 7.4, 7.5, 7.6, 7.8, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15

is responsible for **extermination** on political, racial or religious grounds, as part of a widespread and systematic attack against a civilian population on political, ethnic or racial grounds, and thereby committed a **CRIME AGAINST HUMANITY**, a crime stipulated in Article 3(b) of Statute of the Tribunal, for which he is individually responsible pursuant to Article 6 of the Statute and which is punishable in reference to Articles 22 and 23 of the Statute.

10 November 1999
Kigali

For the Prosecutor
(signed)

N. Sankara Menon
Senior Trial Attorney



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ANNEX II

INDEX OF ABBREVIATIONS

1. ICTR Judgements

<i>Akayesu</i> (TC)	<i>The Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-96-4-T, Trial Chamber I, Judgment, 2 September 1998
<i>Akayesu</i> (AC)	<i>The Prosecutor v. Jean Paul Akayesu</i> , Case No. ICTR-96-4-A, Judgment on Appeal, 1 June 2001
<i>Bagilishema</i> (TC)	<i>The Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-95-1A-T, Trial Chamber I, Judgment, 7 June 2001
<i>Bagilishema</i> (AC)	<i>The Prosecutor v. Ignace Bagilishema</i> , Case. ICTR-95-1A-A, Motifs de l'Arrêt [du 3 juillet 2002], 13 décembre 2002 (Reasons for the Judgment delivered orally on 3 July 2002, English translation pending as of writing of this Judgment)
<i>Kambanda</i> (TC)	<i>The Prosecutor v. Jean Kambanda</i> , Case No. ICTR-97-23-S, Trial Chamber I, Judgment and Sentence, 4 September 1998
<i>Kambanda</i> (AC)	<i>The Prosecutor v. Jean Kambanda</i> , Case No. ICTR-97-23-A, Judgment on Appeal, 19 October 2000
<i>Musema</i> (TC)	<i>The Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Trial Chamber I, Judgment and Sentence, 27 January 2000
<i>Musema</i> (AC)	<i>The Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-A, Judgment on Appeal, 16 November 2001
<i>Niyitegeka</i> (TC)	<i>The Prosecutor v. Eliézer Niyitegeka</i> , Case No. ICTR-96-14-T, Trial Chamber I, Judgment and Sentence, 16 May 2003
<i>Ntakirutimana</i> (TC)	<i>The Prosecutor v. Elizaphan and Gérard Ntakirutimana</i> , Cases No. ICTR-96-10-T & ICTR-96-17-T, Trial Chamber I, Judgment and Sentence, 21 February 2003
<i>Ruggiu</i> (TC)	<i>The Prosecutor v. Georges Ruggiu</i> , Case No. ICTR-97-32-I, Trial Chamber I, Judgment and Sentence, 1 June 2000
<i>Semanza</i> (TC)	<i>The Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-T, Trial Chamber III, Judgment and Sentence, 15 May 2003



2. ICTY Judgements

<i>Blaskic</i> (TC)	<i>The Prosecutor v. Tihomir Blaskic</i> , Case No. IT-95-14, Trial Chamber I, Judgement, 3 March 2000
<i>Delalic</i> (TC)	<i>The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landžo</i> , Case No. IT-96-21, Judgement, 16 November 1998
<i>Delalic</i> (AC)	<i>The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landžo</i> , Case No. IT-96-21, Judgement on Appeal, 20 February 2001
<i>Krnjelac</i> (TC)	<i>The Prosecutor v. Milorad Krnjelac</i> , Case No. IT-97-25, Trial Chamber II, Judgment, 15 March 2002
<i>Krstic</i> (TC)	<i>The Prosecutor v. Radislav Krstic</i> , Case No. IT-98-33, Trial Chamber I, Judgement, 2 August 2001
<i>Tadic</i> (TC)	<i>The Prosecutor v. Dusko Tadic</i> , Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997
<i>Tadic</i> (AC)	<i>The Prosecutor v. Dusko Tadic</i> , Case No. IT-94-1-A, Judgement, 15 July 1999
<i>Todorovic</i>	<i>Prosecutor v. Stevan Todorovic</i> , Case No. IT-95-9/1, Trial Chamber I, Sentencing Judgment, 31 July 2001
<i>Vasiljevic</i> (TC)	<i>The Prosecutor v. Mitar Vasiljevic</i> , Case No. IT-98-32-T, Trial Chamber II, Judgment, 29 November 2002



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Upon signature of the detainee, please return this sheet to the originator as proof of service.
Formulaire à être renvoyé à l'expéditeur dûment signé par le détenu.

Date: 08-12-2003		Case Name / Affaire: The Prosecutor vs. - Ferdinand NAHIMANA - Hassan NGEZE - Jean-Bosco BARAYAGWIZA		
		Case No / Affaire No: ICTR-99-52-T		
To: A:	Name of detainee / nom du détenu NGEZE	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
		I confirm reception of the document(s) listed below. <i>Je confirme réception du/des documents mentionné(s) ci-dessous.</i>	Signature	Date, Time / Heure
Via:	Security Officer Commanding Officer, UNDF	Print name / nom <i>S. Guindo</i> S. Guindo	Signature <i>[Signature]</i>	Date, Time / Heure <i>12/12/03</i>
From: De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input checked="" type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals) <input type="checkbox"/> Other / Autre	<i>[Handwritten Signature]</i>		
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	Case No / Affaire No: ICTR-99-52-T			
To: A:	Name of detainee / nom du détenu NAHIMANA	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
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Via:	Security Officer Commanding Officer, UNDF	Print name / nom S. Guindo	Signature 	Date, Time / Heure 12/12/03
From: De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input checked="" type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals) <input type="checkbox"/> Other / Autre			
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From: Chamber *En Bwamba* (name) Defence (name) Prosecutor's Office (name) Other: (name)

Case Name: The Prosecutor vs. *AKAYENDU KAYIHO* **Case Number:** *ICTR-98-52-T*

Date: Transmitted: *5/12/03* Document's date: *3/12/03* No. of Pages: *43*

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