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Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 7 December 2007

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THE PROSECUTOR

v.

François KARERA

Case No. ICTR-01-74-T

JUDGEMENT AND SENTENCE

The Prosecution

Charles Adeogun-Phillips
Adesola Adeboyejo
Peter Tafah
Memory Maposa
Florida Kabasinga

The Defence

Carmelle Marchesault
Steven Kelliher

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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CHAPTER I: INTRODUCTION

1. Overview

1. The Accused, François Karera, was officially appointed the prefect of Kigali-Rural prefecture on or around 17 April 1994 and held that position until mid-July 1994. He was previously a sub-prefect at Kigali-Rural prefecture. From 1975 to 1990, Karera was *bourgmestre* of Nyarugenge urban commune, an administrative unit which was later replaced by Kigali-Ville prefecture. He was also during a certain period president of the MRND party in Nyarugenge commune.

2. The Amended Indictment of 19 December 2005 ("the Indictment") charges Karera with genocide or, in the alternative, complicity in genocide, and extermination and murder as crimes against humanity. He is charged with perpetration of the crimes under Article 6 (1) of the Statute and superior responsibility under Article 6 (3). The Indictment is attached as an Annex to this Judgement.

3. The Prosecution accuses Karera of ordering, authorizing and failing to prevent crimes against Tutsi civilians. The crimes were allegedly committed between April and mid-July 1994 in three distinct areas: Nyamirambo sector, in Nyarugenge commune, Kigali-Ville prefecture (II.4); Ntarama sector, in Kanzenze commune, Kigali-Rural prefecture (II.5); and Rushashi commune in Kigali-Rural prefecture (II.6). The Prosecution also introduced evidence concerning events in August 1994 in Katale refugee camp in Zaire (II.8). It does not seek to convict Karera on this basis but argues that his conduct while in Zaire shows his intent to commit genocide or complicity in genocide.

4. The Defence denies the allegations. It presented evidence in support of an alibi, according to which Karera stayed at a university campus in Nyakinama, Ruhengeri prefecture, from 7 to 19 April 1994 (II.7). This period covers most of the crimes allegedly committed in Nyamirambo and Ntarama sectors by Karera or his subordinates. Karera claims that in Rushashi commune he merely tried to maintain security and protect the Tutsis and that the allegations concerning Zaire are incorrect.

5. The Defence raises several objections to the form of the Indictment and claims that certain evidence should be excluded for lack of proper notice. Chapter I addresses these issues and Karera's background. In Chapter II, the Chamber will review the evidence heard during the trial and reach factual findings in respect of each of the allegations against Karera, whereas Chapter III contains the legal findings.

2. Preliminary Matters

2.1. Introduction

6. The Defence challenges the form of the Indictment, arguing that some allegations are pleaded too vaguely, or not pleaded at all. Evidence introduced in their support should be excluded on grounds of lack of notice. The Defence argues that the Indictment lacks clarity with respect to the modes of criminal participation attributed to Karera and his involvement in a joint criminal enterprise. The Chamber will below review the Indictment in light of applicable legal principles and determine whether any defects in the Indictment may have prejudiced Karera's ability to prepare his defence.

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7. The Defence also argues that evidence about events in Zaire in August 1994 should be excluded as they were outside the time frame of the Indictment. This is addressed in connection with the Chamber's analysis of the events in Zaire (II.8). Furthermore, the Defence requests the Chamber to disregard allegations which were pleaded in the Indictment but not supported by the evidence. This will be considered under the specific events.

2.2. Modes of Participation

8. The Defence submits that "it is unclear which mode of participation is alleged in relation to a particular criminal act" and argues that this is inadequate.¹

9. The Chamber recalls that "[a]n indictment that fails to 'indicate in relation to each individual count precisely and expressly the particular nature of the responsibility alleged' may be ambiguous and could be found defective. In particular, it is essential that the indictment specifies on what legal basis of the Statute an individual is being charged (Article 6(1) and/or 6(3))."²

10. The Chamber does not consider the Indictment ambiguous. It specifically pleads the forms of participation alleged under each count. Furthermore, the Indictment specifies whether Karera is charged under Article 6 (1) or 6 (3) of the Statute.

11. Moreover, according to the Defence, the Indictment lacks clarity regarding Karera's involvement in a joint criminal enterprise.³ However, it follows from the Indictment, Pre-Trial Brief and Closing Brief that the Prosecutor is not seeking to convict Karera on this basis, and therefore the Chamber need not address this argument.

2.3. Lack of Notice

(i) The Law

12. Article 20 (4)(a) of the Statute guarantees an accused the fundamental right "to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her". The Appeals Chamber has interpreted this provision as placing an obligation on the Prosecution "to state the material facts underpinning the charges in the indictment, but not the evidence by which such material facts are to be proven".⁴

13. The appropriate enquiry is whether the Indictment sets out the Prosecution case in sufficient detail "to inform an accused clearly of the charges against him or her so that the

¹ Defence Closing Brief, para. 52.

² Ntabakuze Appeals Chamber Decision, para. 27 (citations omitted); *Kvočka et al.*, Judgement (AC), para. 29 ("if an indictment merely quotes the provisions of [ICTY Statute] Article 7(1) without specifying which mode or modes of responsibility are being pleaded, then the charges against the accused may be ambiguous ... the indictment will be defective either because it pleads modes of responsibility which do not form part of the Prosecution's case, or because the Prosecution has failed to plead material facts for the modes of responsibility it is alleging."); *Blaškić*, Judgement (AC), para. 212; *Kronjelic*, Judgement (AC), para. 138.

³ Defence Closing Brief, paras. 29-30 and 59-60.

⁴ *Kupreškić et al.*, Judgement (AC), para. 88.

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accused may prepare a defence”.⁵ Allegations of physical perpetration of a criminal act by an accused must appear in an Indictment.⁶ The legal basis on which an individual is being charged, meaning individual criminal responsibility under Article 6 (1) of the Statute or command responsibility under Article 6 (3), must also be explicitly set forth in the Indictment.⁷

14. The nature of the Prosecution case will determine the level of specificity with which material facts must be pleaded:

Where the Prosecution alleges that an accused personally committed the criminal acts in question, it must, so far as possible, plead the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed ‘with the greatest precision’. However, less detail may be acceptable if the ‘sheer scale of the alleged crimes makes it impracticable to require a high degree’ of specificity in such matters as the identity of the victims and the dates for the commission of the crimes’. Where it is alleged that the accused planned, instigated, ordered, or aided and abetted the alleged crimes, the Prosecution is required to identify the ‘particular acts’ or ‘the particular course of conduct’ on the part of the accused which forms the basis for the charges in question.⁸

15. Defects in an Indictment may be “cured” in exceptional circumstances if the Prosecution subsequently provides the accused with “timely, clear and consistent information detailing the factual basis underpinning the charges against him or her”.⁹ Omission of a count or charge from the Indictment cannot be cured but “omission of a material fact underpinning a charge in the Indictment can, in certain cases, be cured by the provision of timely, clear and consistent information”.¹⁰ Finding that a defect in the Indictment has been cured depends on “whether the accused was in a reasonable position to understand the charges against him or her”.¹¹ The presence of a material fact somewhere in the Prosecution disclosures during the course of a case does not suffice to give reasonable notice; rather, it must be evident that the material fact will be relied upon as part of the Prosecution case.¹² Mere service of witness statements by the Prosecution as part of its disclosure requirements is generally insufficient to provide notice to an accused.¹³ However, the Prosecution Pre-Trial Brief (together with any annexes and charts of witnesses) and the Prosecution’s opening statement are adequate sources of disclosure.¹⁴

⁵ *Naletilić and Martinović*, Judgement (AC), para. 23.

⁶ *Kupreškić et al.*, Judgement (AC), para. 89. See also *Krnojelac*, Judgement (AC), para. 132; *Kvočka et al.*, Judgement (AC), para. 28; *Naletilić and Martinović*, Judgement (AC), para. 24; *Niyitegeka*, Judgement (AC), para. 193; *Ntakirutimana*, Judgement (AC), para. 32; *Ntagerura et al.*, Judgement (AC), para. 23; *Gacumbitsi*, Judgement (AC), para. 49.

⁷ *Krnojelac*, Judgement (AC), para. 138.

⁸ *Naletilić and Martinović*, Judgement (AC), 3 May 2006, para. 24 (relying on *Kupreškić et al.*, Judgement, para. 89). See also *Ntagerura et al.*, Judgement (AC), para. 23.

⁹ *Kupreškić et al.*, Judgement (AC), para. 114; *Naletilić and Martinović*, Judgement (AC), para. 26.

¹⁰ *Bagosora et al.*, Ntabakuze Appeals Chamber Decision, para. 29.

¹¹ *Naletilić and Martinović*, Judgement (AC), para. 27.

¹² *Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006, para. 7 (referring to the *Muvunyi* Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005, para. 22).

¹³ *Naletilić and Martinović*, Judgement (AC), para. 27. See also *Niyitegeka*, Judgement (AC), para. 197.

¹⁴ *Bagosora et al.*, Ntabakuze Appeals Chamber Decision, para. 35.

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16. The Appeals Chamber has found that a defect in the Indictment may also be cured through a Prosecution motion for the addition of a witness, "provided any possible prejudice to the Defence was alleviated by, for example, an adjournment to allow the Defence time to prepare for cross-examination of the witness".¹⁵ It further recognized that defects in an indictment "may arise at a later stage of the proceedings because the evidence turns out differently than expected".¹⁶ In these instances, the Chamber must assess the timing of the information designed to cure the defect, the impact of the newly-discovered information on the Prosecution case, and the importance of the new information to the ability of the accused to prepare his or her defence.¹⁷ The Chamber must then decide "whether a fair trial requires an amendment of the indictment, an adjournment, or the exclusion of evidence outside the scope of the indictment".¹⁸

17. Objections play an important role in ensuring that the trial is conducted on the basis of evidence which is relevant to the charges against the accused.¹⁹ They should be specific and timely. Ordinarily, this means that an objection must be raised at the time the impugned evidence is sought to be introduced. However, the Appeals Chamber has noted that it is not always possible to do so and has clarified that the timeliness of an objection depends on the precise circumstances of the situation:

[W]hen an objection based on lack of notice is raised at trial (albeit later than at the time the evidence was adduced), the Trial Chamber should determine whether the objection was so untimely as to consider that the burden of proof has shifted from the Prosecution to the Defence in demonstrating whether the accused's ability to defend himself has been materially impaired. In doing so, the Trial Chamber should take into account factors such as whether the Defence has provided a reasonable explanation for its failure to raise its objection at the time the evidence was introduced and whether the Defence has shown that the objection was raised as soon as possible thereafter.²⁰

(ii) Application

18. The Defence claims that several allegations relating to events in Nyamirambo and Rushashi are too vague or not mentioned in the Indictment, or relate only to Count 4 (murder). Evidence in support of these allegations should therefore be excluded or considered only with respect to the murder charge.²¹

19. The Chamber notes that the Defence did not object to any of this evidence at the time it was admitted or at the close of the Prosecution case. Nor did it make a general pre-trial objection. Rather, the Defence makes these exclusion requests for the first time in its closing submissions. It offers no explanation for failing to object to this evidence at the time it was admitted or at a later point during the trial proceedings. The Chamber finds that there is no reasonable explanation for the Defence's lack of objections at an

¹⁵ *Id.*

¹⁶ *Naletilić and Martinović*, Judgement (AC), 3 May 2006, para. 25.

¹⁷ *Niyitegeka*, Judgement, para. 197.

¹⁸ *Naletilić and Martinović*, Judgement (AC), para. 25.

¹⁹ *Bagosora et al.*, Ntabakuze Trial Chamber Decision, para. 7; *Bagosora et al.*, Decision on Kabiligi Motion for Exclusion of Evidence (TC), para. 9; *Bagosora et al.*, Decision on Nsengiyumva Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006, para. 8.

²⁰ *Bagosora et al.*, Ntabakuze Appeals Chamber Decision, para. 45. *Gacumbitsi*, Judgement (AC), para. 54; *Naletilić and Martinović*, Judgement (AC), para. 22.

²¹ Defence Closing Brief, paras. 193-197, 318-319; T. 24 November 2006 pp. 12-14 (closing arguments).

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earlier stage in the trial. In the exercise of its discretion, it holds that the burden of proof has shifted to the Defence to demonstrate that the lack of notice prejudiced the Accused in the preparation of his defence.

20. The Chamber will address the Defence submissions concerning vagueness in connection with its analysis of the evidence related to the various events in Nyamirambo (II.4) and Rushashi (II.6).

3. François Karera

21. François Karera was born in 1938, in Huro sector, Musasa commune, Kigali-Rural prefecture. He attended primary school in Musasa, and secondary schools in Rulindo and Zaza. After obtaining a certificate in pedagogy, he was a teacher at the training college in Byumba (1958-1960), the intermediary school in Rwankuba parish (1960-1964) and the St. André College in Nyamirambo (1964-1966). From 1966 until December 1972, he was the director of primary education in Musasa and Rushashi.²²

22. In 1972, Karera began serving at the *caisse d'épargne du Rwanda* (Rwanda savings bank), where he managed the accounts of all Rwandan teachers. In 1974, he worked for a few months at the *Caisse sociale du Rwanda* (Rwanda social fund). During that year, Karera was transferred to the Ministry of Internal Affairs. As a head of bureau there, he assisted the legal services of the Ministry in translating legal texts into Kinyarwanda. At the end of 1974, he was appointed as sub-prefect in Byumba prefecture.²³

23. On 28 July 1975, Karera became *bourgmestre* of Nyarugenge urban commune.²⁴ In that capacity, he administered the Kigali city (then called Nyarugenge urban commune).²⁵ He was in this position for 15 years, until his appointment as sub-prefect in Kigali-Rural prefecture.²⁶ As *bourgmestre*, Karera had the authority to appoint commune employees.²⁷

24. On 5 October 1990, Nyarugenge urban commune was replaced by Kigali-Ville prefecture, and Colonel Tharcisse Renzaho became its first prefect.²⁸ On 9 November 1990, Karera was officially appointed as sub-prefect in Kigali-Rural prefecture, where he

²² T. 21 August 2006 pp. 2-3; T. 23 August 2006 pp. 34, 39, 41-42, 44-45, 54; Defence Closing Brief, para. 5.

²³ T. 21 August 2006 pp. 2-3; Defence Closing Brief, para. 5.

²⁴ T. 21 August 2006 pp. 3, 5-6, 10, 37-38; T. 22 August 2006 p. 34; T. 23 August 2006 pp. 2-3; Prosecution Closing Brief, paras. 66, 123; Defence Closing Brief, para. 5.

²⁵ T. 21 August 2006 pp. 3, 5-6, 10, 37-38; T. 22 August 2006 p. 34; T. 23 August 2006 pp. 2-3; Prosecution Closing Brief, paras. 66, 123; Defence Closing Brief, para. 5.

²⁶ T. 21 August 2006, pp. 4, 7-8, 11; T. 22 August 2006 p. 38; T. 23 August 2006 p. 33; Prosecution Closing Brief, para. 124; Defence Closing Brief, paras. 5, 7, 118.

²⁷ According to Karera, prefects lacked this power, as prefecture employees were appointed by the President or the Minister for Public Service. He was accorded an official residence and had access to an international telephone line, privileges which sub-prefects lacked. Furthermore, as *bourgmestre* of Nyarugenge urban commune, Karera interacted with members of the diplomatic community, including the ambassadors of the United States, France, and Belgium. His position was so powerful that he regarded his subsequent appointment as sub-prefect as a demotion. T. 21 August 2006 p. 9; T. 22 August 2006 pp. 35-36, 38, 44; T. 23 August 2006 pp. 33, 46, 53.

²⁸ T. 21 August 2006 pp. 3, 5-6, 9, 10, 37-38; T. 22 August 2006 pp. 34, 38, 44; T. 23 August 2006 pp. 2-3, 33; Defence Closing Brief, paras. 7, 117-118.

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was in charge of economic and technical affairs.²⁹ In late 1991, he became chairman of the MRND party in Nyarugenge commune.³⁰ On or around 17 April 1994, Karera was officially appointed by the Interim Government as the prefect of Kigali-Rural prefecture.³¹ He left for Zaire (presently the Democratic Republic of Congo) in early July 1994, and eventually settled in Nairobi.³² During the 1994 events in Rwanda, Karera was married and had eight children.³³ His wife and three of his children died in a refugee camp in Zaire.³⁴

25. Karera was active in a number of organizations.³⁵ From 1980, he chaired the Association for the Promotion of Education, a national entity with activities in Butare, Kigali, Ruhengeri and Rushashi. The association established the Rwankuba secondary school in Bumbogo region and the Rushashi agro-veterinary school.³⁶ In 1964, he helped establish the Kiyovu Sport soccer team in Kigali and was its chairman until 1992 or 1993.³⁷ He was also a council member and music director at Kigali's St. Michael parish, and a member of the Kigali Choir.³⁸

²⁹ T. 21 August 2006, pp. 4, 7-8, 11; T. 22 August 2006 p. 38; T. 23 August 2006 p. 33; Defence Exhibit 69; Prosecution Closing Brief, para. 124; Defence Closing Brief, paras. 5, 7, 118.

³⁰ T. 21 August 2006 pp. 42-47, 52; Prosecution Closing Brief, para. 92; Defence Closing Brief, para. 160.

³¹ T. 21 August p. 67; T. 22 August 2006 p. 3; Prosecution Closing Brief, para. 68; Defence Closing Brief, paras. 5, 8, 118, 125, 149.

³² T. 22 August 2006 pp. 28-29; T. 23 August 2006 p. 33; Defence Closing Brief, paras. 8-9.

³³ T. 8 May 2006 pp. 9-12 (Witness KD); T. 8 May 2006 pp. 35, 37 (Witness BBK).

³⁴ Defence Closing Brief, para. 8.

³⁵ *Id.*, para. 6.

³⁶ T. 21 August 2006 p. 41; T. 22 August 2006 p. 4.

³⁷ T. 21 August 2006 p. 40.

³⁸ *Id.* pp. 41-42.

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CHAPTER II: FACTUAL FINDINGS

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1. Introduction

26. As mentioned above (I.3), it is undisputed that Karera was *bourgmestre* of Nyarugenge urban commune from 1975 to 1990, president of the MRND party in Nyarugenge commune since late 1991, and appointed as prefect of Kigali-Rural on 17 April 1994. The parties disagree whether he was still MRND president after 1992, and whether he was acting prefect before his formal appointment. These two general issues will be considered below (II.2 and 3), followed by the specific events in Nyamirambo (II.4), Ntarama (II.5) and Rushashi (II.6), taking into account Karera's alibi (II.7). Finally, the Chamber will discuss certain subsequent events in Zaire (II.8).

2. Was Karera MRND President in Nyarugenge After 1992?

27. The parties agree that Karera held the MRND's presidency in Nyarugenge commune since late 1991, following the advent of multi-party politics in Rwanda.³⁹ It is the Prosecution case that he held this post "at all times during the events charged in the indictment", and that this, together with his other positions, gave him "power, influence and authority" in particular over the *Interahamwe* militia (which allegedly mostly comprised members of the youth wing of the MRND) and the Hutu population in Kigali-Ville and Kigali-Rural prefectures, as well as local administrators and law enforcement officials.⁴⁰

28. The Defence submits that Karera resigned from the post in April 1992 "because it was incompatible with the new protocol signed on 7 April 1992 by the different political parties". Further, a national commission was established to ensure neutrality among the civil servants of the administration.⁴¹

Evidence

Protocol of Understanding

29. The Protocol of Understanding between Political Parties Participating in the Transitional Government, signed on 7 April 1992, does not explicitly bar administrative officials from holding offices within political parties. However, Article 1 (3) states that one objective of the Protocol is to promote the neutrality of the administration.⁴²

30. Karera testified that the 1992 Protocol was an agreement by the parties in the

³⁹ T. 21 August 2006 p. 43; Defence Closing Brief, para. 160.

⁴⁰ This is not specified in the Indictment but follows from the Prosecution Closing Brief, paras. 92-94, 133, 140-141, 149-150, 154-156, 383. The Prosecution also draws the Chamber's attention to the fact that Nyarugenge was the Headquarters of the MRND party.

⁴¹ Defence Closing Brief, paras. 160-175; T. 23 November 2004 pp. 68-69 (Defence closing arguments): "resignation from the MRND did not become mandatory after the protocol, but rather, it was a good thing to do, considering "which way the political winds are blowing", Karera "did not want to suffer the potential career consequences in the de-politicisation".

⁴² Defence Exhibit 50 (*Protocole d'entente entre les parties politiques appelés à participer au gouvernement de transition*, 7 April 1992), article 1 (3): "Evaluer et assainir toutes les administrations de l'Etat, notamment l'administration préfectorale et communale, l'organisation de la défense nationale et des missions diplomatiques et consulaires rwandaises, afin d'assurer leur efficacité et leur neutralité."

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transitional government, which required the administration to be politically neutral. In late April or early May 1992, he resigned from his position in the MRND, while maintaining his membership in the party. Karera sent a letter of resignation from the MRND office to the party's prefectural chairman and to his immediate administrative superior, Bagambiki, the Kigali-Rural prefect. He did not have a copy of the letter.⁴³ Elections were difficult to organize at the time, so Hamad Nshimiyimana, the party's vice-president for Nyarugenge, automatically replaced Karera as chairman.⁴⁴ Karera said that the 1992 Protocol did not prevent him from holding an administrative and a political post concurrently. He added that Witness MZE's evidence (below) that government officials were excluded from political activities, was limited to Gitarama.⁴⁵

31. Defence Witness MZE, a high-ranking official of a commune in Gitarama prefecture, testified that after 1991, Karera could not have held an official position in the MRND party because of the agreement between the political parties which prohibited officials of the transitional government from engaging in political activities. The witness heard of the agreement on the radio. He said that the prohibition was communicated by the prefects to the *bourgmestres*, but did not know if this principle was applied in all communes. Witness MZE did not know whether Karera was a member of the MRND and admitted that he was not well acquainted with him.⁴⁶

32. Defence Witness MZR, a high ranking official of Kigali-Rural prefecture, did not know whether Karera held an office in a political party. However, after the establishment of the multiparty system, it was no longer possible to hold an administrative and political office concurrently. This was in accordance with the memorandum of understanding prepared by the political parties and with the 1991 Rwandan Constitution. The witness admitted that an exception to the prohibition was made in the case of Jean Nepomuscene Nayinzira, who was both a sub-prefect and the chairman of the PDC party.⁴⁷

Report of the National Commission

33. The National Commission for Evaluation of State Agents submitted a report in early May 1993. It was critical of the lack of an official prohibition on holding an administrative and political office concurrently.⁴⁸ The Commission recommended the removal from office of certain administrative officials who were too politically "partisan". For example, it proposed that the prefect of Kigali-Rural, Côme Bizimungu, be replaced by someone "less partisan, less hesitant and more dynamic".⁴⁹

34. Karera testified that after the Protocol was signed, the Commission was established by a prime ministerial order to monitor the authorities and ascertain their neutrality. The Commission received complaints and conducted inquiries. The RPF complained about

⁴³ T. 21 August 2006 pp. 43-46; T. 22 August 2006 p. 43.

⁴⁴ T. 21 August 2006 p. 45.

⁴⁵ T. 21 August 2006 pp. 41-45, 48-49, 52; T. 22 August 2006 pp. 41-43.

⁴⁶ T. 11 May 2006 pp. 20-21, 30, 36-38, 44-45, 51, 53-55.

⁴⁷ T. 15 May 2006 pp. 26, 36-37, 39-40.

⁴⁸ Defence Exhibit 72 (*Commission nationale d'évaluation des agents de l'état, rapport intérimaire, administration territoriale*, dated 3 May 1993, below referred to as "*Commission nationale*"). Its chairman, Célestin Kabanda, submitted the report to the Prime Minister on 5 May 1993. The Commission's view on the combination of political and administrative positions follows from p. 36.

⁴⁹ *Id.* p. 17.

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Côme Bizimungu, Alexis Kanyamibwa and Faustin Sekagina. Kanyamibwa was cleared of suspicion by the Commission and remained sub-prefect until July 1994. Faustin Sekagina was replaced.⁵⁰ With respect to Côme Bizimungu, two of the Commission's members proposed that he be replaced.⁵¹ He was officially removed from office as prefect of Kigali-Rural prefecture on 4 August 1993, but vacated the post *de facto* in July 1993.⁵²

35. Defence Witness MZR testified that the Commission was established pursuant to the Protocol to evaluate state employees. Its members included the general prosecutor, Jean-Marie Vianney, Célestin Kabanda, Nkubito and another person. *Bourgmestres* and sub-prefects were removed from their duties following the Commission's report. The witness's knowledge was based on what he heard on the radio and in discussions, and what he saw while on duty. He did not know whether the Commission published a report stating that high officials could not assume political functions.⁵³

Prosecution Expert Report

36. The report of the Prosecution Expert does not specifically deal with the Protocol and the Commission, but contains the following general statement:

"One of the first government decisions after the new constitution that introduced multi-party politics consisted, precisely, in ending the functional co-identification of Party and State: with effect from 12 July 1991, the *bourgmestres* and *préfets* no longer represented the MRND in their respective administrative units and official party representatives were appointed in their stead. But, in reality, this was far from being the case, and most of them retained their positions and did not play the game."⁵⁴

Prosecution Witness BMA

37. Witness BMA was an official of Nyarugenge from 1992 to early July 1994, and previously held an official post in the MRND prefectural committee. In order to appear impartial, he left his position in the party when he became an administrative official. He resigned on his own initiative and not because of the 1992 Protocol.⁵⁵

38. According to the witness, Karera was the president of the MRND party in Nyarugenge commune from 1991 to 3 July 1994. He organized the party's rallies and exercised authority over the *Interahamwe* in the commune. In his official capacity, the witness authorized several MRND rallies and was informed that Karera chaired rallies and meetings of the party prior to 6 April 1994.⁵⁶

39. In late 1991 or early 1992, Witness BMA attended an MRND meeting, where Karera promised to promote a strong *Interahamwe* organization in Nyarugenge. In January or February 1992, Karera cooperated with the MRND prefectural and national

⁵⁰ T. 21 August 2006 pp. 44-45, 48-51.

⁵¹ Defence Exhibit 72 (Commission nationale), p. 17.

⁵² T. 21 August 2006 pp. 19, 22-23, 47-49; T. 22 August 2006 p. 52.

⁵³ T. 15 May 2006 pp. 38, 40.

⁵⁴ Prosecution Exhibit 31 (Report of Expert Witness: Local Government in Rwanda by Professor André Guichaoua), p. 38.

⁵⁵ T. 19 January 2006 pp. 10, 65.

⁵⁶ *Id.* pp. 12, 14-15, 23, 28-29, 34, 44.

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officials to establish *Interahamwe* organs in Nyarugenge. He was also among the financiers of the *Interahamwe*.⁵⁷ Karera was highly respected by them.⁵⁸

40. Witness BMA explained that the *Interahamwe*, the MRND youth wing, consisted of unemployed illiterate youths, who were involved in many violent incidents, particularly during and after political rallies. They participated in military training, engaged in fighting and perpetrated the genocide. Most of them wore a *kitenge* uniform (an African garment often wrapped around the waist). Witness BMA never entered Karera's office but often noticed that *Interahamwe* were inside it.⁵⁹

41. After mid-April 1992, monthly meetings of the Nyarugenge security committee started taking place. Karera frequently attended the meetings and often defended the *Interahamwe*. For example, in a discussion about certain lootings committed by the *Interahamwe* between June and August 1992, Karera claimed that they were not involved. The witness participated in these meetings from April 1992. He recalled only one such meeting between 1 January and 6 April 1994, but did not remember whether Karera attended.⁶⁰

Prosecution Witness BLX

42. In 1994, Witness BLX was an official of a sector in Nyarugenge commune. He had occupied this post for many years. The witness was a member of the MRND party and worked with Karera while he was *bourgmestre* of Nyarugenge.⁶¹ Witness BLX testified that Karera was elected as MRND president in Nyarugenge commune in late 1991. In April 1994, he still occupied this post and a man named Hamadi Nshimiyimana was his vice-president. In this capacity, Karera was a member of the national congress. He also coordinated the communal activities of the MRND and its youth wing, the *Interahamwe*. In 1994, the *Interahamwe* engaged in killings.⁶²

43. Witness BLX testified that in 1994, Karera exercised authority and control over the *Interahamwe* and had their respect. Karera advised them, convened their meetings, organized their activities and received reports about their conduct. According to the witness, Karera "could prevent the *Interahamwes* from doing what they were doing. And they would have obeyed him, particularly in the area in which he lived. The *Interahamwes* respected him. And on the basis of the party directives, the members of the youth wings of the party had to obey their leaders."⁶³

⁵⁷ T. 19 January 2006 pp. 24-27, 53; Defence Exhibit 10 (Witness BMA's statement of 31 May 2004). The meeting took place at the building of the MRND offices. Mathieu Ngirumpatse, a high MRND official, introduced two members of the national *Interahamwe* committee: Kajuga and Jean Pierre Turatsinze. He asked the participants to cooperate with the two in recruiting MRND members to the *Interahamwe*, and to establish *Interahamwe* committees in the communes.

⁵⁸ T. 19 January 2006 pp. 16, 23, 28.

⁵⁹ *Id.* pp. 14, 19, 24-25, 28-29.

⁶⁰ *Id.* pp. 12, 16-19, 21-23.

⁶¹ T. 18 January 2006 pp. 56-57, 70-71.

⁶² *Id.* pp. 58-61.

⁶³ *Id.* pp. 59-60, 75-76, 81-82 (with the quote).

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Prosecution Witness BMU

44. Prosecution Witness BMU, an official of Nyamirambo sector, worked with Karera while he was *bourgmestre*. The witness had known him since 1980. He testified that in 1991, Karera became MRND president in Nyarugenge commune but did not indicate the duration of his presidency.⁶⁴

Prosecution Witnesses BME, BMG, BMH and BMF

45. In April 1994, Witnesses BME, BMG, BMH and BMF were Karera's neighbours in Nyamirambo. Witness BME testified that Karera was the MRND representative in Kivugiza cellule from 1990 or 1991 and "up to the time [the] war broke out". She regarded him as the *Interahamwe* representative in the area.⁶⁵ Witness BMG said that Karera was the MRND president at the prefectural level without specifying when he held this post.⁶⁶

46. Witnesses BMH and BMF, who were friends of Karera's children, testified that Karera was a member of the MRND party.⁶⁷ Witness BMH assumed that he held an important post, given his high position in the administration and his possession of MRND uniforms.⁶⁸ In April 1994 or in the preceding period, Witness BMF learned from Karera's children that he was a MRND member. Around that time, she also saw scarves in his wardrobe bearing the MRND colours.⁶⁹ She heard from Karera's children that MRND scarves and berets were brought to his house by Agathe Habyarimana, the President's wife. Agathe's niece, Thérèse, was married to Karera's son, Ignace. The witness saw Agathe visit Karera twice in 1993, and therefore assumed he was important. She knew Agathe from newspapers and television.⁷⁰

Defence Witness MAK

47. Defence Witness MAK worked at the Amahoro Hotel, where political parties held meetings from 1991 to July 1993. He did not see Karera at the hotel and testified that Karera was neither the MRND president for Nyarugenge commune nor the chairman of the *Interahamwe*. However, the witness admitted that it was possible that Karera was the MRND president without him knowing it because he was not a supporter of that party. The witness did not attend the meetings and was unaware of the decisions taken in them.⁷¹

⁶⁴ T. 23 January 2006 pp. 4-7.

⁶⁵ T. 10 January 2006 pp. 2, 6, 8-9 (with the quote), 11, 46. The witness perceived the MRND as the enemy, and understood *Interahamwe* to mean "killers".

⁶⁶ T. 9 January 2006 pp. 7-8.

⁶⁷ T. 12 January 2006 pp. 3-4; T. 16 January 2006 p. 42.

⁶⁸ T. 12 January 2006 pp. 3-4. She testified that the MRND was a national republican movement that "made people kill each other".

⁶⁹ When the witness was asked how she learned that Karera was a member of the MRND party in April 1994 or in the preceding period, she replied that "his children ... said they were members of the MRND. In addition to that, I could see the umbrella that he had at his house, as well as other items. He also had a wardrobe in his house ... There were scarves in that wardrobe, and they ... bore, rather, the MRND colours. We used to play hide and seek inside that wardrobe". T. 16 January 2006 p. 42.

⁷⁰ T. 16 January 2006 pp. 42-45.

⁷¹ T. 15 May 2006 pp. 27, 47, 50, 54-56; T. 16 May 2006 pp. 56-60.

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Deliberations

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48. The Chamber finds that the principle of political neutrality in the administration was adopted after the introduction of multi-party politics, but that there was no official prohibition on holding an administrative and political office concurrently. This follows from the 1992 Protocol, the Report of the Commission, and the report of the Prosecution Expert Witness. Karera's evidence confirms this, as he testified that the protocol did not bar him *per se* from holding both types of posts.⁷²

49. Consequently, the Chamber does not accept Defence Witnesses MZE's and MZR's testimony that the 1992 Protocol made it impossible to hold an administrative and a political post concurrently. Karera suggested that Witness MZE's evidence was limited to Gitarama.⁷³ Witness MZR confirmed that it did occur in rare cases that officials continued to hold political positions. Witness BMA testified that after becoming an administrative official in April 1992, he resigned from his office in the MRND out of his own choice and not because of the Protocol.

50. Even though there was no general prohibition on holding an administrative and political office simultaneously, Karera may still have chosen to step down from the presidency because of the spirit of the Protocol and the new political situation. He testified that his resignation letter was sent to Bakambiki and to the prefectural party chairman, in late April or early May 1992. However, the Defence did not present this letter.

51. Prosecution Witnesses BME, BMG, BMH and BMF were, as Karera's neighbours in Nyamirambo, in a good position to observe his activities. They all testified that Karera had a high position in the MRND but did not specify until when he held it.⁷⁴ Their evidence does not provide a sufficient basis for concluding that he remained president after April 1992.

52. Only Witnesses BMA and BLX testified that Karera was still MRND president in April 1994. Witness BMA placed him in security meetings related to Nyarugenge commune after April 1992 and explained that political and administrative officials participated in these meetings. These two witnesses were officials of Nyarugenge in 1994 and knew Karera well. However, their testimonies may have been influenced by a wish to positively affect proceedings against them in Rwanda. Witness BMA pleaded guilty to genocide in Rwanda and is currently on provisional release while his plea awaits approval.⁷⁵ Witness BLX has received a death sentence for genocide, his appeal to the

⁷² T. 22 August 2006 p. 41: "The term 'barred' is not correct. It was, rather, an issue of personal choice. If I wanted to hold the two positions concurrently, I may have had to suffer the consequences thereof ... what I'm telling you is as follows: I received an instruction. I was told to choose, so it was possible for someone who had received a special authorisation. In this connection I have given you one example -- the lone example in Rwanda, and it is the one of Népomuscène Nayinzira ..."

⁷³ T. 21 August 2006 pp. 44-45, 52; T. 22 August 2006 pp. 41-43.

⁷⁴ T. 10 January 2006 pp. 2, 6, 8-9.

⁷⁵ T. 19 January 2006 pp. 9, 46. In particular, the witness admitted to having distributed five guns he received from the prefect, and may have an interest in "shifting" guilt.

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Appeals Court was rejected and his case is currently before Rwanda's Supreme Court.⁷⁶ The Chamber therefore considers their evidence with caution.

53. The Defence submits that Witness BMA is not credible.⁷⁷ The Chamber observes that according to a previous statement to Tribunal investigators, the witness said that he did not see Karera during the war. Furthermore, he did not mention Karera in connection with the MRND leadership. The witness testified that he thought he was asked about a different Karera, and also said that he believed he was asked whether he saw him specifically in Nyamirambo. The reason why he did not mention Karera's name in connection with the MRND leadership was because he was not specifically asked about him. He thought he was asked about national and not regional MRND leaders. Finally, the witness explained that he may have forgotten certain details when he gave his statements, or did not wish to reveal the entire truth at the time. He recalled that he mentioned Karera in his statements when discussing the *Interahamwe*'s financiers and a meeting held by Renzaho on 10 or 11 April 1994.⁷⁸ The Chamber does not find this part of Witness BMA's testimony consistent.

54. In relation to Witness BLX, the Defence submits that his evidence that Hamadi Nshimiyimana was the vice-president of the MRND in Nyarugenge in April 1994 contradicts his testimony in another trial before the ICTR, *Karemera et al.*, where he stated that Hamadi Nshimiyimana was the MRND president in that commune.⁷⁹ The witness denied that he had said that and suggested that there may have been an error in the record. He stressed that Hamadi was never the MRND president in Nyarugenge and repeated that Karera was in that position.⁸⁰ The Chamber observes that according to the English and French transcripts in *Karemera et al.*, the witness testified that Hamadi was the MRND president in Nyarugenge in connection with an explanation regarding a 1994 event. However, the video-tape shows that in Kinyarwanda, the witness also said that Hamadi was the MRND vice-president. There is therefore no clear discrepancy between his testimony in *Karera* and *Karemera et al.*⁸¹

⁷⁶ T. 18 January 2006 pp. 83-87; T. 4 May 2006 pp. 1-11, 14-15, 31; Defence Exhibit 30 (Judgement rendered in the case against Witness BLX in Rwanda, dated 7 July 1997). The witness testified that he was falsely accused in Rwanda, *inter alia*, for killing the wife and children of Karera's nephew, Alphonse Sagashya. In addition, a prosecution witness in his trial, Albert Lavie, falsely accused him of having supervised certain killings. Lavie, according to the witness, was a policeman in Nyarugenge, subordinate to Karera, who was trying to shift guilt to others to avoid being prosecuted.

⁷⁷ Defence Closing Brief, paras. 171-173.

⁷⁸ T. 19 January 2006 pp. 32-33, 37, 41-45, 47, 52-56; Defence Exhibits 7, 8, 10, 11 (statements of Witness BMA dated, respectively: 14 February 2000; 15 October 2002; 31 May 2004; and 30 August 2005).

⁷⁹ Defence Closing Brief, para. 166; T. 23 November 2004 p. 69 (Defence oral submissions regarding Witness BLX, requesting the Chamber to listen to the tape recording in the *Karemera et al.* trial).

⁸⁰ T. 4 May 2006 pp. 22-26; Defence Exhibit 31 (English and French transcripts in the *Karemera et al.* case).

⁸¹ The witness mentioned Hamadi twice, see *Karemera et al.*, T. 10 March 2006 p. 18. On the first occasion (line 11 of the English version), the transcripts read as follows: "He was the president of MRND party in Nyarugenge." In Kinyarwanda, the witness said: "He was the president, eeeh vice-president of MRND party in Nyarugenge" (emphasis added). On the second occasion (line 20), he said that Hamadi was "president of the party in Nyaryugenge". The exact position of Hamadi was not in focus in the *Karemera et al.* trial.

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55. Only Witness BMA and BLX testified that Karera was the MRND president in Nyarugenge commune in 1994. Having considered the totality of the evidence, the Chamber concludes that it has not been established beyond reasonable doubt that Karera continued to be president after April 1992.

56. This finding does not exclude that Karera exercised authority over the *Interahamwe* in 1994, based on his previous presidency and continuing membership in the MRND, combined with his importance as previous *bourgmestre* and subsequent functions as sub-prefect and prefect. Some of the evidence above points in this direction, in particular from Witnesses BMA and BLX concerning Karera's support to the *Interahamwe* in 1991 and 1992, which appears credible. Testimonies in connection with the specific events in Nyamirambo, Ntarama and Rushashi (II.4 to 6 below) also show that Karera exercised such authority.

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3. Did Karera Act as Prefect before 17 April 1994?

57. As mentioned above (I.3), Karera was appointed sub-prefect in Kigali-Rural prefecture on 9 November 1990. On 17 April 1994, he was officially appointed as prefect of Kigali-Rural prefecture. It is also undisputed that his predecessor, Côme Bizimungu, left the post of prefect of Kigali-Rural in 1993, when he was assigned to the Planning Ministry.

58. It is the Prosecution case that Karera held the position of acting prefect from 25 August 1993 until his official appointment. The Defence claims that no one was appointed in August 1993 to replace Bizimungu as prefect. In their submissions, the parties refer to a letter by Bizimungu, legislative provisions, correspondence signed by Karera and testimonies.⁸²

59. Whether Karera acted as prefect between August 1993 and mid-April 1994 is primarily relevant to charges in the Indictment concerning events which took place between 7 and 17 April 1994. As sub-prefect, he was responsible for economic and technical affairs, whereas as a prefect, or acting prefect, he had general responsibility for the entire prefecture, including maintenance of law and order.

Evidence

Bizimungu's Letter

60. On 24 August 1993, Côme Bizimungu wrote a letter to Karera, copied to the Interior Minister, sub-prefects and *bourgmestres*. It reads as follows:

Your designation as *préfet ad interim*

As I must assume my new functions at the Ministry of Planning on this day, 25 August 1993, you are hereby designated *préfet ad interim* of Kigali *préfecture* to continue to act as you did during my leave which expires today.

You are requested to kindly make yourself available for the handing-over ceremony in the presence of your *préfecture* colleagues.⁸³

61. The Prosecution claims that Bizimungu was empowered to delegate his powers as prefect to Karera by virtue of Article 12 of Legislative Decree No. 10/75 of 11 March

⁸² Prosecution Closing Brief, paras. 67-91, T. 23 November 2006 pp. 2, 11-21, 34, 49 (closing arguments); Defence Closing Brief, paras. 119-134, T. 23 November 2004 pp. 65-68 (closing arguments).

⁸³ Prosecution Exhibit 15 (Personal dossier of Karera), p. 10. The authenticity of the letter is undisputed. The French original reads as follows:

Objet: Votre désignation pour assurer l'intérim du Préfet.

Monsieur le Sous-Préfet,

Comme je dois commencer mes nouvelles fonctions au Ministère du Plan ce 25/08/1993, vous êtes désigné pour assurer l'intérim du Préfet de Préfecture Kigali en prolongement de celui que vous assuriez pendant mon congé qui expire aujourd'hui.

Vous êtes donc prié de vous disponibiliser à 16 heures pour la cérémonie de remise-reprise en présence de vos collègues de la Préfecture.

Le Préfet de Préfecture

BIZIMINGU Côme.

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1975 (Structure and Functioning of the Prefecture).⁸⁴ There could not be a vacuum in the administrative structure for over eight months. Article 12 reads:

The prefect can delegate, in writing and under his responsibility, certain of his powers to one or several officials of the prefecture.⁸⁵

62. According to the Defence, Article 12 only authorizes a prefect to delegate powers to “officials” of the prefecture. As Karera’s appointment was “executive”, not “administrative”, only the President of the Republic could assign him as acting prefect. Furthermore, a prefect could delegate “certain” of his powers, but not all of them. The Defence also refers to Articles 17 to 19 of Legislative Decree No. 10/75:

Art. 17: The prefect is assisted in the administration of the prefecture by as many sub-prefects as needed. The sub-prefects are hierarchically subordinate to the prefect. If he is in charge of a sub-prefecture, the sub-prefect represents the prefect in all its functions. He exercises them under the responsibility and authority of the prefect.

Art. 18: The sub-prefect is nominated and discharged under the same conditions as the prefect.

Art. 19: Compensation and other benefits of the sub-prefect are determined by legislative decree.⁸⁶

63. The Defence also submits that in any event, Bizimungu lacked authority to designate Karera as acting prefect. Bizimungu was no longer prefect on 24 August 1993. This follows from the Official Gazette of October 1993, which states that by “Presidential Order no. 404/14 of 4 August 1993 ... the appointment of Mr. Bizimungu Côme as Prefect is terminated”.⁸⁷ The Prosecution submits that if Bizimungu lacked such authority his action should have been challenged at the time.⁸⁸

64. Karera testified that he and the other sub-prefects at the Kigali-Rural prefecture office received Bizimungu’s letter of 24 August 1993, but they disregarded it since he was no longer prefect after 4 August 1993. The position of prefect of Kigali-Rural remained vacant and was not handed over to anyone else. Karera received certain files from Bizimungu, but there was no handover ceremony on 25 August 1993, and Karera

⁸⁴ Décret-loi n° 10/75 du 11 mars 1975 déterminant l’organisation et le fonctionnement de la préfecture, included in Prosecution Exhibit 14 (*Textes organiques*) and Defence Exhibit 68.

⁸⁵ Prosecution Exhibit 14 and Defence Exhibit 68. French text: *Le préfet peut déléguer, par écrit et sous sa responsabilité, certains de ses pouvoirs à un ou plusieurs fonctionnaires de la préfecture.*

⁸⁶ Prosecution Exhibit 14 and Defence Exhibit 68. French text:

Article 17: Le préfet est assisté dans l’administration de la préfecture par autant de sous-préfets que de besoin. Les sous-préfets sont hiérarchiquement subordonnés au préfet. S’il est chargé d’une sous-préfecture, le sous-préfet représente le préfet dans toutes ses attributions. Il les exerce sous la responsabilité et l’autorité du préfet.

Article 18: Le sous-préfet est nommé et démis de ses fonctions dans les mêmes conditions que le préfet.

Article 19: Les indemnités de fonction et autres avantages du sous-préfet sont déterminées par voie de décret-loi.

⁸⁷ Defence Exhibit 49 (Rwandan Official Gazette No. 20, dated 15 October 1993). The French text reads: *Par arrêté présidentiel n° 404/14 du 4 août 1993, il a été mis fin ... à la nomination de Préfet de Monsieur BIZIMUNGU Côme ...*

⁸⁸ T. 23 November 2006 p. 13 (closing arguments).

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did not act as the interim prefect.⁸⁹ Karera said that according to Article 12, “the *préfet* may delegate his powers to officials of the *préfecture* and not to the *sous-préfet*. Because in the *préfecture* there are *sous-préfets* as well as other officials.”⁹⁰ Article 17 provides that prefects are assisted by sub-prefects, but “here we are not talking of delegation of authority”.⁹¹

65. According to Karera, Kigali-Rural had three sub-prefects of the prefecture (“*sous-préfet de la préfecture*”), who represented the prefect in a specific territory (a sub-prefecture), and four sub-prefects at the prefecture (“*sous-préfet à la préfecture*”), who were responsible for certain functions in the entire prefecture. The sub-prefects of the sub-prefectures represented the prefect in the various communes within their respective sub-prefecture and carried out functions on his behalf there. Each of the four sub-prefects based at the prefecture only assisted the prefect with specific subject matters and had no territorial jurisdiction. As sub-prefect for economic and technical services, Karera only assisted the prefect with such matters. His responsibilities included assessing compensation owed to individuals relocated due to government projects, supplying attestations for business registrations and regional planning.⁹²

66. Defence Witness MZE, the official in Gitarama prefecture, confirmed that there were two types of sub-prefects: one attached directly to the entire prefecture and one attached to each sub-prefecture, a unit of the prefecture. Each sub-prefect assigned to the prefecture was responsible for a certain subject, such as politics, administration, social or economic affairs. One sub-prefect could not assume the duties of another sub-prefect. On the other hand, sub-prefects assigned to sub-prefectures were responsible for all matters in their territorial jurisdiction. A sub-prefect attached to the prefecture could not intervene in areas under the control of a sub-prefect attached to a sub-prefecture.⁹³

67. Defence Witness MZR, the official in Kigali-Rural prefecture, testified that Bizimungu did not have the authority to appoint Karera as “interim prefect” while serving at the Planning Ministry. As Bizimungu’s letter was illegal, Karera did not become “acting prefect” in August 1993. When the prefect was on leave, he did not nominate an “interim” or “acting” prefect but rather designated one of the sub-prefects to coordinate the activities of the prefecture during his absence. This is what happened in

⁸⁹ T. 21 August 2006 pp. 20-23, 26-27; T. 22 August 2006 pp. 52, 54, 60; T. 23 August 2006 p. 4. Karera admitted that the Official Gazette was the means by which appointments and terminations of duties were communicated from the President of the Republic, and agreed further that it was customary for presidential decrees to be signed months after the factual appointment or termination was made. Nonetheless, he maintained that after 4 August 1993, Bizimungu lacked standing to write a letter in his capacity as prefect. T. 22 August 2006 p. 60.

⁹⁰ T. 22 August 2006 p. 48.

⁹¹ *Id.* pp. 44-45, 48-49.

⁹² T. 21 August 2006 pp. 11, 13-18, 36-37; T. 23 August 2006 pp. 46, 54-55. Karera stated that the other three *sous-préfets à la préfecture* were Népomuscène Nayinzira (social and cultural affairs), Athanase Minani (administrative and legal affairs), and Dancilla Mukarushema (political affairs). Her post became defunct in 1992 with the advent of multiparty politics, but she remained sub-prefect without a portfolio. See also Defence Exhibit 69 (chart prepared by Karera on the administrative organization of the Kigali-Rural prefecture: Prefects, sub-prefects and *bourgmestres* 1900-1994).

⁹³ T. 11 May 2006 pp. 21-22, 25.

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Kigali-Rural prefecture from 4 August 1993 to 17 April 1993.⁹⁴ In that period, the Kigali-Rural prefecture had no prefect and no one was assigned as “acting prefect”. Karera was a sub-prefect and did not introduce himself in the witness’s area as prefect or acting prefect.⁹⁵

68. The witness admitted that, in principle, an “interim” or “acting” prefect could be appointed when a prefect has finished his tenure. However, during his service he never heard of an “interim prefect”. When a sub-prefect was absent, his responsibilities were transferred back to the prefect. A prefect would usually designate another sub-prefect to fulfil the duties of an absent sub-prefect. *Bourgmestres* usually assigned *conseillers* to act on their behalf in their absence.⁹⁶

69. Prosecution Witness BMU, who was an official of Nyamirambo sector, testified that he was in his post on an interim basis before he was officially appointed. He was an “acting” official, replacing his ill predecessor for almost two years.⁹⁷

Karera’s Correspondence

70. The Chamber has available ten letters signed by Karera for the prefect between late August 1993 and 14 January 1994.⁹⁸

- (a): Letter with unclear date, probably late August or early September (invitation to a meeting on 3 September 1993 concerning expropriation disputes);
- (b): 17 September 1993 (decision of the prefect of Kigali-Rural prefecture on issues raised at a meeting of the *conseillers* of Shyongi commune);
- (c): 22 September 1993 (invitation to a meeting of the Security Council for Kigali-Rural prefecture);
- (d): 6 October 1993 (designation of members for the commission for nomination of council members for the pre-selection of candidates for prefects and invitation to a meeting);
- (e): 21 October 1993 (security measures for the festive season of late 1993 and early 1994);
- (f): 25 October 1993 (invitation to a meeting of the Security Council for Kigali-Rural prefecture);
- (g): 27 October 1993 (request to the Interior Minister for subsidies to communes);
- (h): 27 December 1993 (suspension of the sale of property);
- (i): 13 January 1994 (schedule of meetings for the 1994 financial year);
- (j): 14 January 1994 (invitation to the first meeting of the year for sub-prefects and *bourgmestres*);

⁹⁴ The witness testified: “Under normal circumstances, when the préfet was not available, one of the sous-préfets in the préfecture would chair meetings, and that is exactly what happened during the period from the 4th of August 1993 to the 17th of April 1993. We held meetings, but those meetings were chaired, either by Mr. François Karera, who was a sous-préfet at the préfecture, or by Mr. Athanase Minani, who was also a sous-préfet at a sub-préfecture. And there was a lady, I believe it was Madam Mukarushema, who was also a sous-préfet.” T. 16 May 2006 p. 34.

⁹⁵ T. 15 May 2006 p. 29; T. 16 May 2006 pp. 33-36, 49, 51.

⁹⁶ T. 15 May 2006 p. 29; T. 16 May 2006 pp. 30-32, 48-49, 52.

⁹⁷ T. 23 January 2006 pp. 4-6.

⁹⁸ Prosecution Exhibit 15 (personal dossier of Karera), pp. 11-23. It also contains (p. 15) a letter of 15 September 1993, concerning the organization of meetings. As only the first page is available, there is no signature or other indication as to who was its author. The Chamber will therefore disregard that letter.

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71. In connection with these letters, the parties have referred to Articles 44 and 45 of Legislative Decree No. 10/75, which read:

Article 44: Instructions ... addressed to the prefectural services are conveyed through the prefect. The prefect executes or facilitates the execution of the instructions by the competent services.

Article 45: Communications between communal and prefectural authorities, on one hand, and ministerial departments, on the other hand, are executed by the *bourgmestre*, prefect and the Interior Minister ...⁹⁹

72. The Defence submits that Karera signed the letters in his capacity as sub-prefect because Bizimungu had transferred certain files to him and because he continued to carry out his duties as sub-prefect. He would have signed as "interim" or "acting" prefect if he had held that position.¹⁰⁰ Karera explained that the letters mentioned above under (b), (g), (h), (i) and (j) involved matters falling within his duties as sub-prefect for economic and technical affairs (planning and scheduling of meetings, production output and land issues). Letter (c) should have been signed by sub-prefect Athanase Minani, but he was absent and asked Karera to sign it. Letters (d) and (e) were signed by Karera as the only sub-prefect who originated from Kigali-Rural, whereas letter (f) could have been signed by any of the sub-prefects on behalf of the prefect.¹⁰¹

73. Karera denied that he had assumed a law-enforcement role over and above his responsibilities. It was part of his duties to write directly to the Minister of Interior, as he did in some of the letters, and in the absence of the prefect it was his responsibility to convene meetings. He added that sub-prefect Minani was also empowered to sign letters on behalf of the prefect.¹⁰²

74. Defence Witness MZR testified that between 4 August 1993 and April 1994, the sub-prefects signed invitations to meetings. The only duties that Karera, as sub-prefect, had authority to carry out on behalf of the prefect were calling meetings and announcing schedules. The witness did not know whether Karera was in charge of security issues within Kigali-Rural prefecture. The witness did not know who was responsible for security and other matters generally in Kigali-Rural.¹⁰³ Witness MZR was presented with six of the letters signed by Karera on behalf of the prefect. He did not recall having seen them previously. The witness added that he did not know how an acting prefect would

⁹⁹ Prosecution Exhibit 14 (p. 104) and Defence Exhibit 68. French text: *Article 44: Les instructions adressées aux préfets passent sous le couvert du Ministre ayant l'Intérieur dans ses attributions et celles adressées aux services installés dans la préfecture, sous le couvert du préfet. Le préfet exécute ou fait exécuter lesdites instructions par les services compétents.*

Article 45: Les communications de service entre les autorités communales et les services préfectoraux, d'une part, et les différents départements ministériels, d'autre part, s'effectuent sous le couvert du bourgmestre, du préfet et du Ministre ayant l'Intérieur dans ses attributions. Ceux-ci doivent veiller à ce que lesdites communications soient transmises avec rapidité. Les communications de service entre les services locaux des établissements publics et les responsables de ces derniers se transmettent directement, le préfet étant informé.

¹⁰⁰ Defence Closing Brief, paras. 123, 125-133.

¹⁰¹ T. 21 August 2006 pp. 24, 27-30, 34-36; T. 22 August 2006 pp. 55-57; T. 23 August 2006 pp. 46, 52, 55-56.

¹⁰² T. 21 August 2006 pp. 36-37; T. 22 August 2006 pp. 57-58; T. 23 August 2006 pp. 46, 53.

¹⁰³ T. 16 May 2006 pp. 40, 43, 52.

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sign his letters, as he never knew anyone in that position.¹⁰⁴

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Deliberations

75. It is the Chamber's view that the Rwandan legislation did not prevent Bizimungu from delegating certain official powers to Karera in August 1993. Article 12 of the Legislative Decree authorizes a prefect to delegate some of his powers, in writing, to an official of the prefecture. Neither this provision nor any other article in the Decree restricts delegation of powers to certain officials. In particular, the provisions do not distinguish between sub-prefects who are responsible for a specific sub-prefecture and those in charge of certain subject matters in the entire prefecture. The wording of Articles 17 to 19 does not support the Defence submission that only the President of the Republic had the power to designate a sub-prefect as an "interim" or "acting" prefect. Witnesses MZR and BMU testified that in principle, an administrative official could substitute a superior on an interim basis and "act" in his position. Witness MZR confirmed that a prefect could designate a sub-prefect to co-ordinate the activities of the prefecture.

76. The wording of Bizimungu's letter does not use the term "delegate", but the letter clearly indicates that Bizimungu "designated" Karera as "préfet *ad interim*" with effect from 25 August 1993. It is not entirely clear for how long Bizimungu exercised his functions. According to the letter, Bizimungu had been on leave until he wrote it, and Karera had been acting prefect in this period. The letter also states that Bizimungu would assume his functions at the Ministry of planning on 25 August 1993. There is no written evidence demonstrating that the designation letter was contested, and it is difficult to believe the testimony of Karera and Witness MZR that no-one exercised the functions of the prefect in Kigali-Rural prefecture for over eight months.¹⁰⁵ Contrary to the Defence submissions, the Chamber does not consider it significant whether Karera's designation was broadcasted over the radio or whether there was any handover ceremony.¹⁰⁶ Nor does it matter that the Presidential Decree of 4 August 1993, terminating Bizimungu's functions, was published in the Official Gazette as late as in October.

77. The ten letters were signed by Karera "pour le préfet" ("for" or "p.p" the prefect).¹⁰⁷ The Chamber accepts that letters (a) (g), and (h) fell within Karera's responsibilities as sub-prefect but finds it difficult to see that letters (d), (i) and (j) did so. The last two referred to scheduling and convening of meeting in the prefecture, and also letter (b) was of a general nature. Letters (c), (e) and (f) had no relevance to Karera's responsibility as sub-prefect, as they related to the Security Council or security measures. In signing these three letters on behalf of the prefect, Karera exercised, prior to April 1994, powers beyond the capacity of a sub-prefect for economic and technical affairs. Even assuming, as stated by Karera, that other sub-prefects may have signed letters on behalf of the

¹⁰⁴ *Id.* pp. 36-43, 49.

¹⁰⁵ Witness Bangamwabo testified that Ruhengeri had no prefect from 6 April 1994 to the day in April when the radio announced the prefects' appointments. Ruhengeri's previous prefect died in Kigali during the events of 6 April 1994 (T. 17 August 2006 pp. 3-4). However, such a limited vacancy in the dramatic period in April 1994 does not affect the Chamber's finding.

¹⁰⁶ The Chamber considers it of limited significance in this context whether Karera carried out a process of "handing over" his duties to the Prefect Renzaho between 5 October and 9 November 1990. T. 23 August 2006 pp. 2-3.

¹⁰⁷ In the letters written in Kinyarwanda the formulation is "*Mu mwanya wa Perefe*".

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prefect, the correspondence shows that Karera exercised at least some of the authority which would normally have fallen under the prefect.

78. The Chamber considers it particularly important that three letters are related to security matters. This coincides with evidence relating to certain events in Nyamirambo, Rushashi and Ntarama, according to which Karera was involved in matters relating to law and order or security (for instance roadblocks), which clearly *did not* fall under his responsibility as sub-prefect for economic and technical affairs. The Chamber will revert to this below (II.4 to 6).

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4. Nyamirambo

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4.1 Introduction

79. The Prosecution case is that Karera spearheaded the campaign to kill Tutsis and destroy their homes in Nyamirambo sector in Nyarugenge commune. After he left on 9 April 1994, he continued to visit the area. Even if he left on 7 April, as argued by the Defence, he could have travelled back to Nyamirambo from Ruhengeri.¹⁰⁸ Karera exercised control over three communal policemen who were stationed at his house in Nyamirambo. They updated him about the events and committed crimes there during the relevant period.¹⁰⁹ Karera exercised his authority over the police, *Interahamwe* and others to order the destruction or sparing of Tutsi lives and houses.¹¹⁰ The Prosecution relies primarily on Witnesses BMF, BMH, BME, BMG, BMA, BMU and BLX. It submits that the Defence witnesses did not raise a reasonable doubt as to the Prosecution's case; and are not credible.¹¹¹

80. The Prosecution charges Karera with genocide, or in the alternative, complicity in genocide (paragraphs 4 to 21 of the Indictment). He is also charged with extermination (paragraphs 22 to 29) and murder (paragraphs 30 to 35). The Prosecution invokes Articles 6 (1) and 6 (3) of the Statute.¹¹²

81. The Defence submits that Karera has an alibi in relation the events in Nymirambo, as he stayed at a university campus in Nyakinama, Ruhengeri prefecture, from 7 to 19 April 1994 (II.7). The Prosecution witnesses who testified about the events in Nyamirambo did not provide a consistent account of Karera's presence there between 7 and 18 April 1994.¹¹³ They are not credible.¹¹⁴ Karera did not have effective control over the police, *Interahamwe*, or the Presidential Guards.¹¹⁵ Finally, the Prosecution case is inconsistent, as it places Karera at the same time in different locations. Considering the state of the roads, the prevailing chaos and the fact that the RPF blocked the road leading from Kigali to Ntarama, it is unlikely that he could have been in Nyamirambo and Ntarama on the same day.¹¹⁶ Similarly, Karera could not have been in Rushashi on the same day as he was allegedly observed in Nymairambo, as it was difficult to drive from Kigali to Rushashi.¹¹⁷ By 12 April 1994, Nyamirambo was occupied by the RPF and there was heavy fighting there.¹¹⁸

82. The Chamber notes that paragraph 33 of the Indictment reads as follows:

¹⁰⁸ Prosecution Closing Brief, paras. 274-275, 319-333, 386, 388, as well as paras. 254-333 (alibi).

¹⁰⁹ *Id.*, paras. 406-416, 453-460.

¹¹⁰ *Id.*, paras. 444-445, 461.

¹¹¹ *Id.*, paras. 478, 482-484, 772-773. See also paras. 254-333, regarding the credibility of the alibi witnesses.

¹¹² *Id.*, paras. 389-494 (genocide), paras. 739-741 (extermination), paras. 749-796 (murder).

¹¹³ Defence Closing Brief, paras. 89-100, in particular para. 99.

¹¹⁴ *Id.*, paras. 106, 205-225, 231-243, 250-255.

¹¹⁵ *Id.*, paras. 203, 225.

¹¹⁶ *Id.*, paras. 102-105, see also para. 229.

¹¹⁷ *Id.*, paras. 107-111.

¹¹⁸ *Id.*, paras. 230, 243. The Defence also points out that the Prosecution did not cross-examine Karera about his alleged trips to Nyamirambo after he left that area. Defence Closing Brief, paras. 101, 106, 218, 231. The Chamber considers that the Prosecution is under no obligation to cross-examine the Accused on all aspects of its case.

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33. Among those that were killed as a direct consequence of François KARERA's acts or omissions are: Rukemampunzi, Murekezi, Mazimpaka, Joseph Kahabaye, Leonard, Murekezi and his three children, Kabuguza, Enode Ndoli, John, Nana, Bosco and Kazadi who were all killed on 7 April 1994 at a roadblock in front of Francois Karera's house by *Interahamwe* and the 3 communal policemen stationed at Francois Karera's house. Marianne, Rukemampunzi's wife was killed sometime in April 1994 by the *Interahamwe* in Rwarutabura's house where she had taken refuge. Palantin Nyagatare, Félix Dix and Adolphe were killed at their respective houses sometime in April 1994. Felicien and his two children, Gangi Innocent, Renata, Kazungu, Jean Baptiste Sano and Jean Marie Joseph Gasama were also killed by the *interahamwe* sometime in April 1994 in Nyamirambo.

83. In its Closing Brief, the Prosecution conceded that in respect of the death of Rukemampunzi, Mazimpaka, Murekezi's three children, Enode Ndoli, John, Nana, Kazadi, Marianne, Adolphe, Felicien and his two children, Gangi Innocent, Renata, Kazungu, Jean Baptiste Sano and Jean Marie Joseph Gasana, it had either led no or insufficient evidence and that it made no submissions in respect of them.¹¹⁹

84. Consequently, the Prosecution case now includes the alleged murder of Murekezi, Joseph Kahabaye, Leonard Ruremesha, Kabuguza, Jean Bosco Ndugutse, Félix Dix, and Pallantin Nyagatare. According to paragraph 33 of the Indictment, the first five were allegedly killed at the roadblock in front of Karera's house on 7 April 1994, whereas Pallantin Nyagatare and Félix Dix were killed in their houses sometime in April 1994. The Prosecution submits that the killing of these individuals was a direct consequence of Karera's orders.¹²⁰

85. The Defence also argues that events which are alleged to have occurred in Nyamirambo on 7 April 1994 can only be considered in connection with Count 4 (murder) because they only appear under the "Concise Statement of Facts in support of Count 4" (except for Karera's order to spare Tutsis in paragraph 7 of the Indictment).¹²¹

86. The Chamber observes that the Indictment explicitly mentions, under all four counts, that the charges are based on acts which took place "between 6 April and 14 July". This formulation clearly includes 7 April. Similarly, Count 3 (extermination) includes paragraphs 23 and 25 which explicitly refer to or include 7 April.¹²² Moreover, many of the allegations in support of Counts 1 and 2 (genocide and complicity in genocide) refer to Karera's alleged involvement during the period referred to in the Indictment, or generally to April, May or June.¹²³ Paragraph 7 of the Indictment explicitly includes Karera's order "[o]n or about 7 April" not to destroy houses or kill their occupants. It is recalled that the Indictment must be assessed as a whole, rather than

¹¹⁹ Prosecution Closing Brief, para. 750.

¹²⁰ *Id.*, paras. 749, 792. Although the Prosecution Closing Brief in para. 750 withdraws its allegation in relation to a certain "John", paras. 430, 444 and 756 refer briefly to the killing of John Ngango. However, he is not referred to in the updated version of the Prosecution case, see paras. 749, 792, para. 774 *et seq.* ("the death of each victim *seriatim*"). His name is not mentioned in the Indictment or the Pre-Trial Brief.

¹²¹ Defence Closing Brief, paras. 193-197.

¹²² Paras. 23 ("Between 6 April and 17 July 1994 ..."), 25 ("From 7 April ...").

¹²³ For instance, paras. 8, 11, 13 ("During the events referred to in this indictment"), 9 ("During the period referred to in this indictment"), 10 ("during April and May"), para. 12 ("during April, May and June").

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examining individual paragraphs in isolation.¹²⁴ The Chamber finds it clear that Counts 1, 2 and 3 include events that occurred on 7 April.

87. Before discussing Karera's alleged orders and the specific events which according to the Prosecution constitute genocide, extermination or murder (II.4.3 to 4.14), the Chamber will consider whether he exercised authority over the police (II.4.2). His relationship with the *Interahamwe*, civilians, *gendarmes* and soldiers will be considered in connection with the specific events.

4.2 Karera's Authority Over Three Policemen

88. According to the Indictment, Karera is alleged to have had authority over "his subordinates, including soldiers, *gendarmes*, communal police, *Interahamwe*, civilian militia or civilians acting under his authority"¹²⁵ In the present context, the Chamber will consider his alleged authority over the police.¹²⁶

Evidence

Prosecution Witness BMU

89. Witness BMU, the official from Nyamirambo, testified that between 7 and 10 April 1994, a subordinate reported to him about a roadblock in front of Karera's house, which was manned by three communal policemen from Kigali-Rural prefecture: Safari, Kalimba and Thomas. The report indicated that they engaged in killings. The report also mentioned that there were other roadblocks in the area, manned by *Interahamwe*.¹²⁷ On 10 April, in the morning, the witness saw these policemen manning a roadblock two metres from the entrance to Karera's house. They were examining identification documents, allowing Hutus to pass and killing Tutsis. Among the *Interahamwe*, the witness recognized Pierre Kamana, and the 15 year old Jean Bosco Nsengiyumva.¹²⁸ He asked the policemen who was responsible for the crimes. Aware of his position, they claimed they reported to Karera and not to Renzaho, the prefect of Kigali-Ville prefecture.¹²⁹ The witness explained that according to the law, the policemen of Kigali-Ville prefecture were subordinate to the prefect. Other prefectures, however, had "communal policemen" who were under the authority of *bourgmestres*.¹³⁰

90. On 11 April 1994, Witness BMU sent a report about the crimes he had witnessed to the *bourgmestre* of Nyarugenge, Jean Bizimana, with copies to Renzaho and to the Nyamirambo brigade. Even though his report mentioned the policemen, they continued to kill people in Nyamirambo. The witness informed the *bourgmestre* that crimes were still being committed, but nothing was done to stop them. On 29 April, Witness BMU was relieved of his duties in a letter from Renzaho copied to Bizimana. The witness did not

¹²⁴ *Rutaganda*, Judgement (AC), para. 304 ("In assessing an indictment, the Chamber is mindful that each paragraph should not be read in isolation but rather should be considered in their context of the other paragraphs of the indictment.").

¹²⁵ Preambles of Counts 1, 3 and 4.

¹²⁶ Prosecution Closing Brief, paras. 406-416; Defence Closing Brief, paras. 135-154.

¹²⁷ T. 23 January 2006 pp. 6-7, 11-13, 27-29, 33-34, 38; T. 24 January 2006 pp. 7, 10-11.

¹²⁸ T. 23 January 2006 pp. 8-9, 11-13, 27; T. 24 January 2006 p. 10.

¹²⁹ T. 23 January 2006 pp. 14, 24; T. 24 January 2006 pp. 3, 6-7.

¹³⁰ T. 23 January 2006 pp. 24, 33; T. 24 January 2006 pp. 5, 9.

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have a copy of the 29 April letter, nor did he have a copy of his 11 April report. He testified that he did not keep any documents after he handed over power.¹³¹

91. According to Witness BMU, there were four roadblocks near Karera's house. One was in front of the house, another in front of Jérôme's house, a third in front of the Carmelite Sisters' Convent (near Ndabagunje's house) and a fourth near the petrol station. Throughout Nyamirambo, there were more than 30 roadblocks.¹³²

Prosecution Witness BLX

92. When Witness BLX, the official from Nyarugenge commune, passed by Karera's house in Nyamirambo in early May 1994, he saw a roadblock about two to four metres from the gate. It was manned by two armed policemen whom he recognized as "communal policemen" because of their uniforms. Armed *Interahamwe* were also at the roadblock. According to the witness, such roadblocks were erected to examine identification cards, as well as to identify and kill Tutsis. He noticed other roadblocks nearby.¹³³

Prosecution Witness BMA

93. Witness BMA, the official from Nyarugenge commune, testified that the communes in Kigali-Ville prefecture did not have "communal policemen". Rather, the policemen in that prefecture were all under the direct authority of the prefect. In April 1994, he passed by Karera's house and noticed a large crowd gathered at the roadblock in front of it. The roadblock seemed to be protecting the house. It was manned by three policemen who were guarding Karera's house. He did not know them, but knew that their names were Kalimba, Safari and Thomas. There were other roadblocks in the area.¹³⁴

Prosecution Witness BMG

94. Witness BMG, Karera's neighbour, testified that after Karera moved from Nyamirambo in April 1994, he often saw him visiting his house there. The house was guarded by three "communal policemen": Kalimba, Habimana and Kabarate.¹³⁵ They received orders from Karera to perpetrate crimes against Tutsis, and committed killings in collaboration with *Interahamwe*. The witness learned about Karera's orders from the policemen, but was unaware of their exact content. He noticed that whenever Karera arrived in the house he spoke privately to the policemen. After Karera's departure, the policemen spoke to *Interahamwe* and subsequently crimes against Tutsis in the area

¹³¹ T. 23 January 2006 pp. 18-19, 24, 29, 33-34, 38.

¹³² T. 23 January 2006 pp. 17, 30-31; T. 24 January 2006 p. 6.

¹³³ T. 18 January 2006 pp. 77-78, 80.

¹³⁴ T. 19 January 2006 pp. 65-66, 69. He testified that sometimes policemen in Kigali-Ville prefecture were assigned to protect *bourgmestres* in the prefecture, but they had no authority over the policemen and there was no cooperation between the *bourgmestres* and the police in Kigali-Ville. The witness did not refer to the policemen guarding Karera's house as "communal policemen". However, when the Prosecution asked him: "Did you know them before April '94, these three communal policemen?" he did not deny that they were communal policemen, but simply replied "I did not know them". T. 19 January 2006 p. 69.

¹³⁵ This follows from the French transcripts, T. 9 January 2006 p. 25. The English version mistakenly refers to Hitimana instead of Habimana, T. 9 January 2006 p. 26.

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intensified. Between 8 and 15 April 1994, the witness heard Karera order the policemen to destroy Tutsi-owned houses (II.4.5).¹³⁶

95. The policemen manned a roadblock about ten meters from Karera's house, towards his neighbour, Kahabaye. Accompanied by *Interahamwe*, they brought people to the roadblock and killed them. Two policemen usually went to collect the victims, while the third remained at the roadblock. The witness did not personally see Karera commit or order any of the killings but when he saw people being brought to the roadblock by the policemen, he was told that it was done pursuant to Karera's orders.¹³⁷ Furthermore, those manning the roadblock spoke to Karera when he arrived in Nyamirambo. Sometimes the witness was present. The victims killed at the roadblock were usually buried long after their death. Occasionally Karera saw the corpses on his visits. Karera did nothing to stop the killings although he had the authority to do so. Among the Tutsis killed at the roadblock were Fetus Joseph Murekezi, Gasamagera, Clement and John Ngango.¹³⁸

Prosecution Witness BMF

96. Witness BMF, an 11 year old neighbour of Karera who was a friend of his children, visited his house in Nyamirambo daily during the war. On 11 April 1994, she heard that he had left Nyamirambo. Three policemen and a young male domestic worker remained at his house, and the witness also saw Karera's son Ignace, two ladies who had become the policemen's wives and a man named Vincent. Karera continued to visit the neighbourhood. In the days around 13 April, when her brother was killed, the witness thought she only visited Karera's house once.¹³⁹

97. The policemen who were guarding Karera's house were Charles Kalimba, Habimana and Kabarate. They were armed and wore police uniforms. Kalimba and Habimana started guarding Karera's house at the end of 1993, and Kabarate arrived in 1994. The witness knew them before the war, when she played every day at Karera's house with his daughter Françoise. The policemen sometimes joined the girls.¹⁴⁰

98. During the events of 1994, Witness BMF saw and spoke with Kalimba frequently. She observed most of the murders he committed and also saw Habimana shoot and kill her brother who on 13 April was together with 19 other young Tutsi men (II.4.10).¹⁴¹ Kalimba told her that he had ordered the killing of Palatin Nyagatare, who was murdered on 24 April 1994 (II.4.11).¹⁴² Kalimba also informed the witness of three Tutsi men who

¹³⁶ T. 9 January 2006 pp. 8, 10, 12, 25-26, 31, 39, 51.

¹³⁷ *Id.* p. 39 ("I said that [Karera] called the policemen and he spoke to them. And, subsequently, the policemen boasted about what had been told to them. For example, they would tell some people about the conversation to people who were manning the roadblocks; I can even give you names of those people, and subsequent to their conversations there were massacres. So you have to understand that those orders emanated from the given sources ... The policemen did not talk to me about those things. I heard some comments made by the policemen, of course. But I heard about such things from people who participated in the killings and in the lootings ... I'm relying on what people told me, but there were comments which I personally heard.")

¹³⁸ T. 9 January 2006 pp. 12, 18-22, 24-26, 50-51.

¹³⁹ T. 17 January 2006 pp. 13, 29-30; T. 18 January 2006 pp. 43, 47-48.

¹⁴⁰ T. 17 January 2006 pp. 13-14; T. 18 January 2006 pp. 4, 32, 50-51.

¹⁴¹ T. 17 January 2006 pp. 15-19, 23-24; T. 18 January 2006 pp. 32, 42.

¹⁴² T. 17 January 2006 pp. 25, 28-29; T. 18 January 2006 p. 31.

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had tried to escape on 24 April but were killed.¹⁴³ In the second half of May 1994, Witness BMF learned from others that Kalimba and Habimana killed Kabuguza's family (see II.4.4).¹⁴⁴

99. The witness continued to visit Karera's house after her brother and another family member had been killed by the policemen. She did this to avoid being found by *Interahamwe* who came to her house, and because Kalimba helped her survive. He once rescued her from someone who tried to kill her with a club. There was a hole in a fence through which Kalimba could look into her compound. When he saw attackers, he passed through the hole and instructed them not to kill. Kalimba visited her house often between April and June 1994.¹⁴⁵

100. Several roadblocks were erected in the neighbourhood, including near the houses of Karera, Kabuguza, Jérémie and Jérôme. The one by Karera's house was about 10 metres from his compound. It was set up by the policemen who guarded his house, and manned by *Interahamwe* who received orders from the policemen. Jérémie erected the roadblock by his place, which *Interahamwe* manned.¹⁴⁶

Prosecution Witness BMH

101. When Witness BMH, Witness BMF's relative, returned home on around 19 or 20 April 1994 after about five days absence, she noticed that Karera no longer lived in the neighbourhood. A domestic worker and policemen remained at his house. The policemen led attacks, killed people, destroyed houses and looted. Roadblocks were erected in her neighbourhood around 9 or 10 April 1994, separated by small distances, in front of Karera's house, Jerome's house and in front of the concrete trench. There was a fourth roadblock nearby.¹⁴⁷ The witness noticed that the policemen were the ones issuing orders at the roadblocks. The orders, whether to spare certain individuals or kill them, would be followed.¹⁴⁸ The witness knew two of the policemen: Charles Kalimba and Habimana, who referred to Karera as "boss". She once saw Kalimba distributing machetes (II.4.14.2).¹⁴⁹ Karera continued to visit his Nyamirambo residence.¹⁵⁰

102. On 24 April 1994, Palatin Nyagatare was killed at a roadblock near Jérôme's or Jérémie's house, about 200 or 300 meters away from the victim's house. The killers included Karera's policemen (II.4.11). The witness saw Karera in his compound that day.¹⁵¹ Further, she once overheard a policeman in Karera's house talk on the home telephone with someone she believed was Karera, about killing Kabuguza and possibly

¹⁴³ T. 17 January 2006 pp. 25-26.

¹⁴⁴ T. 18 January 2006 p. 5.

¹⁴⁵ T. 17 January 2006 pp. 29-30; T. 18 January 2006 pp. 32, 51.

¹⁴⁶ T. 17 January 2006 pp. 17, 25, 36-38; T. 18 January 2006 pp. 4, 6.

¹⁴⁷ T. 16 January 2006 p.18.

¹⁴⁸ T. 12 January 2006 p. 31 ("It is true that the police officers at Karera's house organised massacres. I once saw them distributing machetes. Furthermore, we noticed they were the ones issuing orders at the roadblocks. For example, when a group of *Interahamwes* would arrive there they were also accompanied by at least one of Karera's policemen and when the policeman said, 'Don't kill this and such-and-such a person', then that person was spared. But if a policeman said, 'This person should be killed', then that person's fate would be sealed.")

¹⁴⁹ *Id.* pp. 15, 30-33.

¹⁵⁰ T. 12 January 2006 pp. 29-31; T. 16 January 2006 pp. 10, 13-14.

¹⁵¹ T. 12 January 2006 p. 29, 34; T. 16 January 2006 p. 30.

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his family (II.4.4).¹⁵² Between 10 and 15 April 1994, the witness saw Karera standing in front of his gate and ordering Kalimba and Kabimana to kill and destroy houses of Tutsis in the area (II.4.5). She recognized Karera and two of the policemen. The order was carried out.¹⁵³

Prosecution Witness BME

103. Witness BME escaped from the Khaddafi Mosque by crawling in the ditches (II.4.5) and reached the roadblock near Karera's house in the morning of 15 April. Karera was there with *Interahamwe* and the policemen who were staying at his house. She had not seen them previously, but identified them because she was told several days earlier that policemen had been protecting Karera and his house.¹⁵⁴ Karera ordered them to attack Tutsis and their homes. Later that day, from her hiding place, the witness heard the attacks being carried out.¹⁵⁵

The Accused

104. Karera said that he did not have guards at his house. This was a privilege the state did not usually accord someone of his rank. If he had had security guards, he would have taken them with him when he left Nyamirambo on 7 April 1994.¹⁵⁶ Karera recognized the name Kalimba and said he was a policeman of Nyarugenge urban commune, who was later transferred to Kigali-Rural prefecture. He did not recognize the names Habimana and Kabarate.¹⁵⁷

Defence Witnesses ATA, KD and BBK

105. Witnesses ATA, KD and BBK, who are related to Karera, testified that on 7 April 1994 Karera left Nyamirambo for Ruhengeri in a convoy. Witness ATA said that Karera did not have guards in his house in Nyamirambo between January and April 1994, and that anyone testifying about armed policemen at the house in 1993 or afterwards was lying. She did not know Kalimba, Habimana or Kabarate.¹⁵⁸ Witness KD stated that Karera did not leave guards at his Nyamirambo house when he left it, but as she was not actually there on 7 April, she could not be certain about who was left behind.¹⁵⁹ According to Witness BBK, the convoy did not have an escort.¹⁶⁰

¹⁵² T. 12 January 2006 pp. 30-31.

¹⁵³ T. 12 January 2006 pp. 15-19, 33; T. 16 January 2006 pp. 14-16, 20-21, 23-25.

¹⁵⁴ T. 10 January 2006 pp. 19-21, 40-41.

¹⁵⁵ *Id.* pp. 2, 19, 28, 35-36 (about roadblocks), 41, 45. While crawling in the ditches she had observed a roadblock at the sector office and knew there were others in the area which she could not see.

¹⁵⁶ T. 21 August 2006 p. 58; T. 23 August 2006 p. 57.

¹⁵⁷ T. 23 August 2006 p. 57 (Karera: "The name Kalimba, when that name was mentioned, it reminded me of something. He was an urban commune policeman, a policeman of Nyarugenge commune who had been transferred to Kigali préfecture. Perhaps the other names are -- were the names of new policemen. I had about a hundred policemen under my orders. Kalimba I heard, but the other names, I don't think I ever heard.")

¹⁵⁸ T. 5 May 2006 pp. 39-40.

¹⁵⁹ T. 8 May 2006 p. 20.

¹⁶⁰ *Id.* p. 42.

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Defence Witness KBG

106. In April 1994, Witness KBG, a Hutu student, passed by Karera's house in Nyamirambo about three times and never noticed anything peculiar by the house. He did not see Karera in Nyamirambo after the President's death, nor did he hear his neighbours say that they had seen Karera after that day.¹⁶¹ The witness did not see roadblocks on the secondary roads of Cyivugiza neighbourhood. He did not personally see anyone loot or kill in Nyarugenge, but said that people who manned the roadblocks attacked and looted civilians. In May 1994, he saw policemen at the Nyamirambo sector office.¹⁶²

Defence Witness KNK

107. Until January 1994, Witness KNK lived in a housing project called *Les Compagnons Bâtisseurs* area in Nyamirambo sector, initially with her mother and later with her husband. Her houses were 200 and 500 metres, respectively, from Karera's residence, where he did not stay in that period. Between January and 6 April 1994, she visited her mother, who still lived in that area, about twice weekly. The witness occasionally passed near Karera's house and never noticed roadblocks in front of it or elsewhere in the area.¹⁶³

Defence Witness ZBM

108. Witness ZBM lived in Cyivugiza, Nyamirambo sector, from September 1992 to June 1993. When he returned to the neighbourhood in August 1994 (II.4.5), he did not recall hearing anything about the involvement of policemen in the Cyivugiza killings. However, he was told that soldiers had arrived in Cyivugiza after 7 April 1994, and that perpetrators in military (not *gendarmerie*) uniform killed suspected RPF collaborators. Subsequent killings were committed by civilians in political party uniforms.¹⁶⁴

Defence Witness BMP

109. Witness BMP, a *gendarmerie* corporal stationed at Kacyiru on 6 April 1994, testified that "communal policemen" wore yellow berets and green uniforms. He was not sure what all their duties were, but said they were supposed to ensure security within their respective communes. He testified that "[t]he police was under the minister of internal affairs", and that "[a]t the *commune* level, all the police were under the *bourgmestre*".¹⁶⁵

Deliberations

110. The Chamber observes that seven witnesses testified that they observed policemen at Karera's house: the two Tutsi relatives (Witnesses BMF and BMH), another Tutsi from the neighbourhood (Witness BME), the three officials (Witnesses BMA, BMU and BLX) and the Hutu neighbour (Witness BMG).

111. All five witnesses who remembered the policemen's names testified that one of them was Kalimba. Witnesses BMU and BMA said that the other two policemen were

¹⁶¹ T. 8 May 2006 pp. 52-53, 58; T. 9 May 2006 pp. 5-9; Prosecution Exhibit 36 (three names written by Witness KBG of neighbours who never told him that they had seen Karera).

¹⁶² T. 8 May 2006 pp. 55-59; T. 9 May 2006 pp. 2, 9-10.

¹⁶³ T. 9 May 2006 pp. 29-31, 33-34, 36-37, 41.

¹⁶⁴ T. 10 May 2006 pp. 4-11, 22.

¹⁶⁵ T. 16 May 2006 pp. 2, 5.

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Safari and Thomas, whereas Witnesses BMG and BMF identified them as Habimana and Kabarate. Witness BMH remembered Habimana but did not know the third policeman's name. The Chamber does not find these testimonies inconsistent and considers it likely that Safari and Thomas were the first names of Kabarata and Habimana.¹⁶⁶

112. The testimonies of the two relatives, Witnesses BMF and BMH, are generally consistent about the police officers. They said that Karera left Nyamirambo but continued to visit there, that policemen remained at his house, regarded Karera as their superior and communicated with him by phone, that they committed crimes, distributed machetes and ordered others to commit crimes. It is of no importance that Witness BMF first stated that she visited Karera's house during the war on a daily basis and then testified that around 13 April she only went there once. The Chamber finds that she visited Karera's house frequently in April 1994. The Defence considers it odd that she remained close to Kalimba, even after he ordered her brother and another close relative to be killed.¹⁶⁷ However, as a Tutsi, she was at great risk and the Chamber accepts her explanation that she chose to secure her survival by remaining close to someone whom she knew well and who had the power to protect her. Her evidence that the policemen committed crimes and gave orders to the *Interahamwe* and that Karera visited the area after his departure is credible.

113. Witnesses BLX, BMA and BMU were officials in Nyarugenge in 1994, knew Karera personally, and were in a good position to observe the events. On the other hand, they may have been influenced by a wish to positively affect the criminal proceedings against them in Rwanda. The Chamber therefore considers their testimonies with caution (II.2).¹⁶⁸ Having considered the evidence, the Chamber is satisfied that Witness BLX recognized the policemen at the roadblock near Karera's house and that crimes against Tutsi were committed at such roadblocks.

114. The Chamber also believes that Witness BMA saw a roadblock by Karera's house in April 1994, manned by *Interahamwe* and three policemen, who were guarding Karera's house. In his prior statements, Witness BMA referred to roadblocks in Kigali in 1994, but did not mention the roadblock in front of Karera's house.¹⁶⁹ He testified that in those statements, he did not refer to all the roadblocks, but rather only to those on the most important roads.¹⁷⁰ The Chamber accepts this explanation.

¹⁶⁶ Witness BMA named the policemen: "One of them was called Kalimba, another one's name was Safari, and the third was called Thomas. But I don't know his family name." T. 19 January 2006 p. 69. Witness BMH remembered that Kalimba's first name was Charles, but only knew the surname of Habimana. T. 12 January 2006 p. 15. The only first name mentioned by Witnesses BMF was Kalimba's: "His name was Charles Kalimba. The second police officer's name was Habimana. And the name of the third policeman was Kabarate". T. 17 January 2006 p. 13. The Chamber cannot exclude that, depending on the circumstances, Safari could also be a nickname.

¹⁶⁷ Defence Closing Brief, para. 145.

¹⁶⁸ T. 18 January 2006 pp. 83-87; T. 19 January 2006 p. 46; T. 23 January 2006 pp. 21-23, 34-35; T. 24 January 2006 p. 8; T. 4 May 2006 pp. 1-11, 14-15, 31; Defence Exhibit 30 (Judgement rendered in the case against Witness BLX in Rwanda, dated 7 July 1997).

¹⁶⁹ Defence Exhibits 9 and 12 (Witness BMA's statements of 19 November 2003 and 23 October 2002, respectively).

¹⁷⁰ T. 19 January 2006 pp. 48-49, 51.

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115. In relation to Witness BMU, the Chamber observes that his prior statements of 1998 and 2002 do not mention policemen at the roadblock. He explained that he was not asked about them and added that in his 1998 statement he only described what people told him, and not what he saw.¹⁷¹ This is not quite consistent with his testimony that he had heard from a subordinate about the policemen's position at the roadblock, but the Chamber does not consider that this affects his credibility. The Chamber also accepts Witness BMU's evidence about the policemen and their crimes at the roadblock in April 1994, including that they claimed to be subordinates of Karera and not the Kigali-Ville prefect.

116. Witness BMU testified that there were more than 30 roadblocks in Nyamirambo, whereas in a statement of October 2002, he mentioned that there were five.¹⁷² He explained that in 2002 he was asked only about the number of roadblocks on the main road from the regional stadium to the centre of town. The Chamber accepts this explanation. Furthermore, in a statement of January 1998, he said he was surprised to find roadblocks when he left his house on 10 April 1994, whereas he testified that he had received reports about the roadblocks before that date.¹⁷³ The witness explained that his surprise was because the existence of the roadblocks did not conform to the administration's plan. He was also surprised that Tutsis were being killed at the roadblocks and puzzled because he was an official in the sector and yet did not know who had erected the roadblocks.¹⁷⁴ The Chamber is satisfied with these explanations, irrespective of whether other aspects of his testimony (for instance the reports to his superiors and the dismissal) are credible.

117. As for Witness BMG, it is true, as pointed out by the Defence, that he only saw Karera talking to policemen who then spoke to the *Interahamwe*, and that he did not hear what was said. He also heard people say that most of the orders to the policemen and the *Interahamwe* emanated from Karera.¹⁷⁵ But this hearsay evidence corroborates the testimony of Witnesses BMF and BMH. Furthermore, Witness BME testified that Witness BMG lived close to Karera and could see his house from his own house.¹⁷⁶ This confirms Witness BMG's familiarity with Karera and the area. The Chamber notes that Witnesses BMG, BMU and BLX gave different estimates of the distance between Karera's gate and the roadblock in front of it but does not find that this affects their credibility.

118. Witness BME's evidence regarding a meeting where Karera ordered a large crowd to destroy Tutsi-owned houses is credible (II.4.5). The witness testified that the policemen who stayed at Karera's house participated in the meeting. Her testimony corroborates the evidence by the other witnesses about Karera and the policemen.

119. Turning to the testimonies for the Defence, the Chamber recalls that it accords limited weight to the evidence of the relatives of Karera, Witnesses ATA, KD and BBK (II.7). Witness KBG, who did not notice anything peculiar, only passed by Karera's

¹⁷¹ T. 23 January 2006 pp. 27, 29-31; T. 24 January 2006 p. 6; Defence Exhibits 13 and 14 (Witness BMU's statements of 12 January 1998 and 11 October 2002, respectively).

¹⁷² Defence Exhibit 14 (Witness BMU's statement of 11 October 2002).

¹⁷³ Defence Exhibit 13 (Witness BMU's statement of 12 January 1998).

¹⁷⁴ T. 23 January 2006 pp. 27-29.

¹⁷⁵ Defence Closing Brief, para. 205, *see also* paras. 141-142, 165.

¹⁷⁶ T. 10 January 2006 pp. 33-34.

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house in Nyamirambo about three times in April. Although he did not personally see crimes being committed, he confirmed that the people who manned the roadblocks in Nyarugenge committed crimes against civilians. Witness KNK's evidence that there was no roadblock near Karera's house was based on her visits in the area between January and 6 April 1994, whereas the roadblocks were set up later. Witness ZBM lacked first-hand knowledge about the events.¹⁷⁷ His testimony that he was not told about the involvement of Karera or the policemen in the killings in Cyivugiza in 1994 carries limited weight compared to direct and consistent evidence from other witnesses implicating them in the killings.

120. The Defence submits that Karera had no authority, *de facto* or *de jure*, over the communal police, neither from the Kigali-Ville prefecture nor the Kigali-Rural prefecture. The Chamber has rejected one prong of these submissions, that Karera only exercised authority as the sub-prefect responsible for economic and technical affairs (II.3). As regards the policemen, the Chamber recalls that Rwandan law provides that the "communal police" is under the direct authority of the *bourgmestre*, but in a state of emergency can be requisitioned by the prefect.¹⁷⁸

121. Witness BMU explicitly said that the policemen at the roadblock near Karera's house belonged to Kigali-Rural prefecture. Witness BLX, also an official, confirmed that the roadblock near Karera's house in Nyamirambo was manned by two armed policemen which he recognized as "communal policemen" by their uniforms. Defence Witness BMP also mentioned the "communal policemen" and described their distinct uniform. Witness BMG referred to the policemen as "communal policemen". Witness BMA testified that the roadblock near Karera's house was manned by the three policemen who were guarding his house, without explicitly referring to them as "communal policemen".¹⁷⁹ Witness BMF, another neighbour, did not refer to them as "communal policemen" but she was very young at the time and may not have been familiar with this issue.

122. Based on the evidence, the Chamber finds that Charles Kalimba, Habimana and Kabarate were "communal policemen" under the authority of Karera, not the prefect of Kigali-Ville prefecture. In April 1994, they lived in Karera's house, received orders from

¹⁷⁷ One of Witness ZBM's sources was a Tutsi who was in hiding during the events of 1994. T. 10 May 2006 pp. 8, 18-19.

¹⁷⁸ Prosecution Exhibit 14 (*Textes Organiques*) includes *Loi du 23 Novembre 1963 portant organisation communale*. Articles 79 and 87-94 refer to the "communal police". In particular, article 79 stipulates that each commune recruits at least a secretary, an accountant and a police force. (*Chaque commune recrute au moins un secrétaire, un receveur comptable et un corps de police.*) According to Article 88, the *bourgmestre* alone has the authority over the agents of the communal police. Nevertheless, in case of public calamity or when disturbances threaten to break out or have occurred, the prefect can requisition the communal police agents and place them under his direct authority. (*Le Bourgmestre a seul autorité sur les agents de la police communale ... Toutefois, en cas de calamité publique ou lorsque des troubles menacent d'éclater ou ont éclaté, le Préfet peut réquisitionner les agents de la police communale et les placer sous son autorité directe.*)

¹⁷⁹ However, when the Prosecution asked him: "Did you know them before April '94, these three communal policemen?" he did not deny that they were communal policemen, but simply replied that he did not know them. T. 19 January 2006 p. 69. The witness also testified that sometimes policemen in Kigali-Ville prefecture were assigned to protect *bourgmestres* in the prefecture, but the *bourgmestres* had no authority over the policemen and there was no cooperation between the *bourgmestres* and the police in Kigali-Ville. T. 19 January 2006 pp. 65-66.

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him and referred to him as “boss”. It is also established that they manned a roadblock near his house. The exact acts carried out by them will be dealt with in connection with the specific events in Nyamirambo.

4.3 Attack on Karera’s Neighbours, 8 April 1994

123. Based on the evidence of Witnesses BMH and BMF, the Prosecution alleges that on 8 April 1994, Karera watched from his compound in Nyamirambo soldiers attack a neighbouring Tutsi family. The two witnesses are relatives. According to the Prosecution, Karera’s presence had an encouraging effect on the perpetrators and contradicts his alibi. The Defence disputes the witnesses’ credibility and maintains that Karera left Nyamirambo on 7 April 1994 (see below II.7 about alibi).¹⁸⁰

Evidence

Prosecution Witness BMH

124. Witness BMH was 17 years old in April 1994. On 8 April, at around 6.30 a.m. or 7.30 a.m., 30 to 40 Presidential Guard soldiers, in dark uniforms and blue or green berets, arrived at her house in military vehicles. They knocked on the back door and asked to see her father. The soldiers did not know him. The witness, her mother, two sisters, one brother and two house servants were lined up by the soldiers against an exterior wall in front of the veranda. Her father stayed near the soldiers. They asked him for money, held a radio and said: “Listen to this, because this is going to be the last music you hear”.¹⁸¹

125. One soldier began shooting the family from about four or five metres away. Two bullets hit the witness. When the third was fired, she lost her consciousness and does not remember what happened next. She was hit in the thigh, ribs and arm, her mother in the hip and stomach, her brother in the head. They entered the house to treat themselves. The two servants were killed. The witness’s sisters ran to the house after the shots started.¹⁸²

126. During the attack, the witness saw Karera standing in his backyard, watching the soldiers shoot her family through a see-through barbed wire fence. His son, Ignace, and daughter, Françoise, were with him. The fence was one and a half metres high, about 70 centimetres wide and had a low stone foundation.¹⁸³

Prosecution Witness BMF

127. Witness BMF was 11 years old in April 1994. On 8 April, between 6.00 a.m. and 7.00 a.m., soldiers knocked on the backyard door of her house and called her father’s name. He did not know them. When her father opened the door, she saw about 20 soldiers in predominantly green uniforms, who had arrived in two military pick-up trucks. The witness, her mother, two sisters, niece, one brother and the male house-help were lined up against a wall outside. Her father was asked to play the radio for his family for

¹⁸⁰ Prosecution Closing Brief, paras. 186, 389, 400-405; Defence Closing Brief, paras. 93, 207-218; T. 23 November 2006 p. 40; T. 24 November 2006 pp. 9-10. The event is not mentioned in the Indictment but in the Annex to the Pre-Trial Brief (summary of Witness BMF’s evidence).

¹⁸¹ T. 12 January 2006 pp. 10-12; T. 16 January 2006 pp. 8-10.

¹⁸² T. 12 January 2006 pp. 11-14; T. 16 January 2006 p. 11.

¹⁸³ T. 12 January 2006 pp. 4-6, 10-12; T. 16 January 2006 pp. 26, 29.

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the last time and to stand and watch them being shot. One soldier, acting on the orders of another, mounted a machine gun and fired at them from a short distance.¹⁸⁴

128. The witness's older relative was hit in the thigh, stomach and arm, her mother in the thigh and stomach, and her brother in the head. While shots were being fired, the witness ran into the house with her niece in her hands. She was not hurt. The house-help followed her. The witness testified that no one was killed.¹⁸⁵

129. During the attack, the witness saw Karera standing in his compound, watching her family being shot through a see-through barbed-wire fence with a stone foundation. About five people were with him, including his sons, Alphonse and Gahire, and daughter, Agnès. The fence was three metres high, the foundation forming the first metre.¹⁸⁶

Deliberations

130. The Chamber considers the testimonies of the two witnesses generally consistent in relation to time, method and attackers. Both stated that the attack was committed in the morning of 8 April 1994, by soldiers who did not know the father in the family. Their estimates concerning the number of soldiers did not differ much. Witness BMH's evidence that the soldiers were Presidential Guards does not contradict the testimony of her relative, who simply referred to soldiers. Both witnesses recalled that only one soldier was shooting. According to Witness BMH, he shot from four or five metres away. Witness BMF first indicated that the distance was two meters, but later stated that it was seven metres. The Chamber does not consider this disparity significant.

131. Each relative gave a different account as to whether the two servants were killed. Considering the striking similarity in their description of the injuries suffered by their family members, this discrepancy regarding the servants does not discredit their evidence. The Defence argues that it is impossible that no one was killed in an attack by professional soldiers with automatic weapons.¹⁸⁷ The Chamber recalls that only one soldier was shooting and that serious injuries occurred. Accordingly, the evidence is found reliable.

132. The fact that the close relatives described the fence as one and a half metres high and three metres high, respectively, does not discredit their evidence. Dimensions cannot always be recalled with precision, especially given the passage of time and the age of the witnesses during the event. The same reasons explain other minor discrepancies in the testimonies, related to distances and dimensions.¹⁸⁸ The Defence also submits that the two witnesses gave conflicting information about Karera's compound. The Chamber observes that while Witness BMF testified that Karera's compound had three buildings, Witness BMH mentioned that it had only two.¹⁸⁹ The Chamber does not consider this

¹⁸⁴ T. 17 January 2006 pp. 5-8, 34-35; T. 18 January 2006 pp. 9-10, 20-22, 43.

¹⁸⁵ T. 17 January 2006 pp. 6-8; T. 18 January 2006 pp. 22-23.

¹⁸⁶ T. 17 January 2006 pp. 2-3, 5-6, 8, 14; T. 18 January 2006 pp. 35-38.

¹⁸⁷ T. 24 November 2004 p. 9 (closing arguments).

¹⁸⁸ Witness BMH first testified that the fence was between 150 and 200 metres long, but later indicated it was only 20 metres long. T. 12 January 2006 p. 6; T. 16 January 2006 p. 29. Witness BMF initially testified that Karera was 15 metres away when he watched her family being shot, and later indicated that he was only six metres away. T. 17 January 2006 pp. 8-9; T. 18 January 2006 p. 38.

¹⁸⁹ T. 16 January 2006 p. 45 (Witness BMF) and T. 16 January 2006 p. 20 (Witness BMH), respectively.

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disparity significant.

133. Both witnesses testified that they saw Karera watching the attack through the fence. The Defence argues that the Chamber's site visit of 2 November 2006 established that it was impossible to see through the fence in order to identify a person standing at the gate of Karera's house.¹⁹⁰ Based on its observations during the site visit, the Chamber disagrees that it was impossible to see through the fence. However, in the circumstances of the described attack, where the entire household was being attacked by dozens of soldiers, the Chamber considers that it would have been difficult for Witnesses BMF and BMH to recognize someone standing in the neighbouring compound, beyond a fence. Furthermore, both witnesses testified that when Karera was watching the attack, he was accompanied by his family members, but each witness referred to different members. In the alibi section (II.7), the Chamber accepts that Karera, concerned with the safety of his immediate relatives, travelled with them to Ruhengeri on the afternoon of 7 April 1994. In this light, it is not likely that he would have been accompanied by family members in Nyamirambo on the following day. Accordingly, the Chamber has some doubts that Witnesses BMF and BMH saw Karera, with family members, on 8 April 1994.

134. The Defence argues that the witnesses provided inconsistent accounts about whether they had discussed the 1994 events with each other before testifying. The Chamber recalls that Witness BMH testified that she discussed the events of the war with Witness BMF on a daily basis, up to the time of her testimony. Witness BMH did not, contrary to the Defence assertion, specify that she spoke with Witness BMF about the attack against their family, on the day of her testimony.¹⁹¹ In fact, Witness BMH testified that she did not speak with Witness BMF after arriving in Arusha.¹⁹² Witness BMF did not recall discussing the 1994 events with Witness BMH after she gave her statement in October 2005.¹⁹³ In the Chambers view, this does not bear on the truthfulness of their evidence. The differences between their testimonies do not support the Defence suggestion of collusion.

135. Mindful of their ages at the relevant time, 11 and 17 years, the Chamber is satisfied that Witnesses BMH and BMF are generally credible. Some additional aspects of their testimony will be considered below (II.4.5). The Chamber finds that the attack took place as described, on 8 April 1994. However, it does not find established beyond a reasonable doubt that Karera observed the attack.

¹⁹⁰ Defence Closing Brief, para. 93.

¹⁹¹ T. 12 January 2006 p. 46; T. 16 January 2006 p. 11.

¹⁹² T. 16 January 2006 p. 17.

¹⁹³ T. 18 January 2006 p. 26.

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4.4 Order to Kill Kabuguza, 7 - 10 April 1994

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Evidence

Prosecution Witness BMH

136. Three Prosecution witnesses gave evidence concerning this event.¹⁹⁴ Witness BMH testified that one day, when she was outside Karera's house, she heard a policeman pick up the phone inside the house and say something about killing Kabuzuga's wife and children. She did not hear Karera's name mentioned, but believed it was him on the other end of the line. Kalimba, one of the policemen guarding his house, told her a few days later that they were going to kill Kabuzuga because the "boss" had decided that he should die and that his wife and children could live for now. Kalimba said that they found a photo of Kabuzuga's two sons who were members of the *Inkotanyi*.¹⁹⁵

Prosecution Witness BMF

137. Witness BMH's relative, Witness BMF, was playing outside Karera's house in the second half of May 1994 when she heard policeman Kalimba speak loudly on the phone inside the house. He explained that the only remaining families in the neighbourhood were those of Augustin, Callixte, Kabuguza and hers. After the telephone conversation, Kalimba told policeman Habimana that it was Karera who had called, asking which families were still alive. Karera had instructed him to spare the families of Callixte and Augustin because they were too poor to contribute to the RPF, and to kill Kabuguza's family before nightfall, because his two boys joined the RPF. The next morning, the witness heard from "members of the population" that Kalimba and Habimana had killed Kabuguza's family. She also testified that they forced Augustin's family to swear that they would not have contacts with Tutsis. Augustin's and Callixte's families are still alive today.¹⁹⁶

Prosecution Witness BMU

138. Witness BMU, an official in Nyamirambo, testified that between 7 and 10 April 1994 he received a telephone report from a subordinate that Karera's policemen and *Interahamwe* had killed Kabuguza and his family in their home.¹⁹⁷

Deliberations

139. Witnesses BMF and BMH gave a generally consistent account about overhearing a policeman talk on the telephone in Karera's house about killing Kabuguza. Witness BMF testified that it was Kalimba who spoke on the phone whereas her relative did not mention this. The Chamber does not consider it significant that only one of them recognized or remembered the speaker.

140. Witness BMH did not hear Karera's name being mentioned during the telephone conversation, but believed it was him on the phone because Kalimba later told her that they were going to kill Kabuguza pursuant to the decision of the "boss". Also Witness

¹⁹⁴ Prosecution Closing Brief, paras. 187, 250, 425, 444, 460, 749, 758, 780-781, 792. The Defence Closing Brief contains no specific submission regarding Kabuguza.

¹⁹⁵ T. 12 January 2006 pp. 30-31.

¹⁹⁶ T. 18 January 2006 pp. 4-5.

¹⁹⁷ T. 23 January 2006 p. 15.

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BMH heard Kalimba refer to the "boss". The Chamber has found that the policemen worked for Karera (II.4.2 above). It is satisfied that the reference to the "boss" meant Karera, and that he gave an order on the phone.

141. Witness BMH heard from Kalimba that Kabuguza should be killed several days after the phone conversation, whereas Witness BMF's testified that the killing took place the morning after the phone conversation. The Chamber does not consider that this inconsistency affects the credibility of the two witnesses. It may be explained by the passage of time, the traumatic impact of the events on the witnesses and their young age (II.4.3) at the time. However, the difference creates lack of clarity as to the time of the killing.

142. No witness observed the killing of Kabuguza. Both Witnesses BMH and BMF were told by Kalimba that it was the intention to kill him, and Witness BMH learnt from someone else that he had been killed. Witness BMU also testified that Kabuguza was killed by policemen and the *Interahamwe*. His evidence is assessed with caution (II.4.2). The Chamber accepts that the witness as an official would have received reliable reports on a regular basis from his subordinates and, in the circumstances, by telephone but notes the hearsay nature of his evidence.

143. According to paragraph 33 of the Indictment, the killing occurred on 7 April 1994. Witness BMU's testified that the killing occurred between 7 and 10 April. Witness BMH did not mention a date, but it follows from the context that it must have been in April. Witness BMF said it took place in May. However, she also testified that Kabuguza was killed with his entire family and said that his son, Jean, was killed by soldiers on 7 April. Consequently, Witness BMF must have been mistaken about the date of the phone conversation, which took place before the killing. The Chamber still finds that the time of the killing is unclear.

144. Witness BMF said that Kabuguza's entire family was killed. This was also indicated in the report to Witness BMU. According to Witness BMH, Kalimba said that the "boss" had decided that Kabuguza's wife and children could live. This adds to the lack of clarity. Furthermore, the Indictment states that the killing took place at a roadblock. Witnesses BMF and BMH did not hear where he was killed, whereas Witness BMU was informed that this took place in the family's home. This means that also the place of the killing is unclear.

145. The Chamber finds it established that Karera ordered Kabuguza killed by telephone between 7 and 10 April. However, no-one observed the alleged killing of Kabuguza. The time and place is unclear, and no-one heard anyone assume responsibility for having killed him. Under these circumstances, the Chamber cannot conclude beyond reasonable doubt that Kabuguza was actually killed by the police officers stationed at Karera's house.

4.5 Order to Kill Tutsis and Destroy Their Houses, 7-15 April 1994

146. Four Prosecution witnesses testified that between 8 and 15 April 1994, Karera gave orders to kill Tutsis and destroy their homes in Nyamirambo. Two other Prosecution witnesses said that they observed the destroyed houses in his neighbourhood. Some

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Defence witnesses specifically denied the allegations, whereas others testified that Karera was in Ruhengeri in this period (II.7).¹⁹⁸

Evidence

Prosecution Witness BME

147. Witness BME, a Tutsi, knew Karera since 1990. On 15 April 1994, between 9.00 a.m. and 10.00 a.m., she saw Karera instructing about 200 people to kill Tutsis and destroy their houses. This was at a roadblock near his house. She heard him say: "I don't want to see houses of Tutsis here. You have to kill all the survivors. You have to clean up whatever remains." The crowd applauded. The witness saw this clearly, from about 15-20 meters away. She was visible, under a bridge for cars, but the crowd faced the other way and was too distracted to notice her. After Karera started speaking, the witness entered a "a space under the bridge".¹⁹⁹ Several days earlier, she had heard that policemen were protecting Karera and his house. She saw them at the roadblock that morning. *Interahamwe* were also there, with firearms, clubs, machetes and spears.²⁰⁰ Immediately after Karera's speech, the crowd began attacking Tutsis and their homes. The only houses in the area left undamaged were one with a telephone and another in which young Hutus were trained. From the ditch, the witness heard shots fired at walls. The houses of Kahabaye, Jean Marie, Félix and others were destroyed that day. She later heard that Tutsis were killed on that occasion.²⁰¹

Prosecution Witness BMG

148. Witness BMG, a Hutu, lived in Karera's neighbourhood. On an afternoon between 8 and 15 April, he observed Karera standing at the roadblock by his house, ordering the communal policemen who were guarding his home to destroy the houses of Kahabaye and Félix Dix. The witness was about five metres away. Karera said that Tutsis should be killed and buried in a pit, their property looted and their houses destroyed. Subsequently, the houses of Kahabaye and Dix were destroyed while they were not at home. The witness heard Karera say: "Now the horizon is clear, so even the enemies who come down Mt. Rebero would be visible and it would therefore be easy to confront them."²⁰² These were the only houses in the neighbourhood which were demolished. Their contents were looted by *Interahamwe*, under the supervision of the armed policemen, and transferred to Karera's house.²⁰³ The witness later heard that Kahabaye and Dix were killed (II.4.7).

Prosecution Witness BMF

149. One morning after 8 April 1994, Witness BMF was at the water shop outside Karera's compound. She saw him leaving it with policeman Kalimba, telling him that he no longer wanted to see the "filth" of Tutsi houses in front of his house. Karera was pointing to the houses nearby, such as those of Joseph Kahabaye, Félix and Vianney

¹⁹⁸ Prosecution Closing Brief paras. 425-452; Defence Closing Brief paras. 226-243.

¹⁹⁹ T. 10 January 2006 pp. 2, 18-19, 22-24, 26-28, 37, 40-41.

²⁰⁰ *Id.* pp. 19-21, 40-41.

²⁰¹ *Id.* pp. 23-25.

²⁰² T. 9 January 2006 pp. 9, 13-15, 19, 27, 50. Karera's words were referred to three times in the testimony (pp. 9, 13 and 14). On p. 14, the witness referred to "*Inkotanyis*" and not to "enemies".

²⁰³ T. 9 January 2006 pp. 15-16.

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Hitimana. The witness was about four metres from Karera, and remained there for five minutes. Around 2.30 p.m., she returned to the site and heard Kalimba tell the *Interahamwe* that whoever destroyed the most houses would acquire the most property. They immediately began demolishing houses, not only those pointed to by Karera but also others in the area. The occupants were not home. The houses of Enode, Kalisa and Palatin were not destroyed.²⁰⁴ Kahabaye tried to seek refuge during April 1994 but was arrested and subsequently killed by *Interahamwe*. The witness heard them boasting to the policemen about having killed him.²⁰⁵

Prosecution Witness BMH

150. One morning between 10 and 15 April 1994, Witness BMH saw Karera order *Interahamwe* and policemen to destroy houses of Tutsis in the area. He said that he did not want to see any Tutsi-owned houses standing, and that he wanted their property. Karera added that the occupants should be killed. Many Tutsis lived in the area, including Kabuguza, Félix Dix, Jean-Marie Vianney, Jean-Marie Hitimana, Joseph Kahabaye, Gilly (or Julien), Gang (or Ganga), Innocent and Etienne. The witness testified that their houses were destroyed following Karera's order. Her house and that of a neighbour, Enode, remained unharmed. Charles Kalimba, the policeman guarding Karera's house, later told her that "his leader" had asked that these houses not be destroyed, as he wished to make them his own.²⁰⁶

151. Karera gave the order while standing in front of his gate, which led to the water shop in front of Callixte's house. He was about to exit the compound, accompanied by *Interahamwe* and three policemen. A small hump separated him from a roadblock. Witness BMH was in the lawn in front of her living room, where the land was slightly raised. She saw Karera, who was seven or eight metres away, through the fence described above (II.4.3). The witness heard many voices, but could only see a few people because the fence partially obstructed her view. She recognized Karera and two of the policemen, Kalimba and Kabimana, whom she personally knew. The witness identified their voices. Karera and the others did not see her because of the fence and the slightly-raised land between her and them. Karera would have noticed her had he looked attentively in her direction.²⁰⁷

Prosecution Witness BMU

152. Between 7 and 10 April 1994, Witness BMU, an official in Nyamirambo sector, received a telephone report from a subordinate that the policemen at Karera's roadblock had killed Joseph Kahabaye and Félix Dix and their families. They also destroyed their houses, accompanied by *Interahamwe*. Witness BMU knew Kahabaye and Dix, two Tutsi businessmen who lived next to each other and about four metres from Karera. On 10 April, before noon, he personally saw the ruins of their houses. That day, the witness went to the roadblock near Karera's house and met the policemen. He asked them who was responsible for the crimes in the area and they replied that they reported to Karera and not to Prefect Renzaho (whom they knew was the witness's superior). When the

²⁰⁴ T. 17 January 2006 pp. 30-32; T. 18 January 2006 pp. 16, 31.

²⁰⁵ T. 18 January 2006 pp. 6-7.

²⁰⁶ T. 12 January 2006 pp. 15-19; T. 16 January 2006 pp. 14-16, 20-21.

²⁰⁷ T. 12 January 2006 pp. 15-16, 33; T. 16 January 2006 pp. 14-16, 20-21, 23-25.

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witness arrived at the roadblock he noticed that "Joseph Kahabaye's folks" had been killed.²⁰⁸

Prosecution Witness BLX

153. Witness BLX, an official of Nyarugenge commune, passed by Karera's house on an afternoon in early May 1994, around 3.00 p.m. There was a roadblock two to four meters from the gate, manned by armed *Interahamwe* and two communal policemen. Most of the houses nearby were destroyed and there was a dead body in the area. The neighbourhood was largely inhabited by Tutsis. The destroyed houses included those of Joseph Kahabaye and the "Committal" construction company employees. The witness later learned that Kahabaye was killed. Generally, according to the witness, *Interahamwe* destroyed houses within and outside that area. Tutsis whose houses were demolished were usually killed.²⁰⁹

Defence Witness ZBM

154. Witness ZBM lived in Cyivugiza, Nyamirambo, from 1992 to 1993 and returned to the area in August 1994. He heard from Alexis Ruzigana, Evariste and Casilde Musabiyamana that the following Tutsis had been killed: Constantin Cyubahiro, Godefroid Litaranga, Semana Kajegeri and his family, Enode and Kahabaye. Alexis, a Tutsi, hid at home during the events and received the data from other Tutsis. Casilde and Evariste, Hutus who personally observed the events, corroborated Alexis' information.²¹⁰ The witness was told that youths perpetrated the killings. Casilde said that Faustin Rulibikiye, who lived in a housing project area called *Compagnons Bâtisseurs*, and Félicité were arrested in connection with the massacres.²¹¹

155. Witness ZBM did not hear that Karera was involved in the 1994 Cyivugiza killings. He lacked first-hand knowledge about the events, but testified that he heard about them from people who knew Karera well and would have informed him about his presence.²¹²

Defence Witnesses KBG, ATA and KD

156. Witness KBG, a Hutu student who lived in Nyakabanda sector, Nyarugenge (II.4.2), did not personally see anyone loot or kill in Nyarugenge, but testified that those who manned the roadblocks attacked and looted civilians. He was unaware of policemen or soldiers acting in concert with civilians to destroy houses. The witness did not know whether houses were destroyed in the Nyamirambo sector, as they were surrounded by walls.²¹³

157. In 1997, Witness ATA returned to her neighbourhood in Cyivugiza, Nyamirambo. She noticed that Karera's house had been damaged by bullets. Kahabaye's house, across the street, no longer existed. The witness recalled that the house had been there on 7 April

²⁰⁸ T. 23 January 2006 pp. 14-15, 24; T. 24 January 2006 pp. 3-4, 6-7, 9.

²⁰⁹ T. 18 January 2006 pp. 76-81.

²¹⁰ T. 10 May 2006 pp. 4-11, 18, 22.

²¹¹ *Id.* pp. 10-11.

²¹² *Id.* pp. 11, 17-18.

²¹³ T. 8 May 2006 pp. 55-59; T. 9 May 2006 pp. 9-10.

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1994. While she was in Zaire from July 1994 to December 1996, she heard that Félix Dix and Joseph Kahabaye were dead.²¹⁴

158. In 2004, Witness KD met some of Karera's former neighbours in Nyamirambo. They said that Joseph Kahabaye, who lived opposite Karera, fled and was killed in Butamwa. His relatives died in Gitarama. The witness was repairing Karera's old house. She was assisted by youths who told her that looters destroyed Kahabaye's house in late June 1994. They also said that a man who lived opposite Kahabaye fled and died.²¹⁵

Deliberations

159. The Chamber believes Witness BME's testimony. She had known Karera for several years and would easily recognize him. Minor inconsistencies in her testimony as to her distance from the meeting do not discredit her evidence, as distances are difficult to appreciate in stressful situations and considerable time has passed since the event.²¹⁶ In the Chamber's view, the observations made during the site visit confirm that 200 people could have gathered at a roadblock in front of Karera's house.²¹⁷ Even assuming that Witness BME was mistaken about the number of people, the Chamber believes she saw Karera speaking to a large crowd.

160. The Defence submits that the evidence about Karera's alleged order of 15 April 1994 is inconsistent with the allegations that Karera led an attack in Ntarama that day.²¹⁸ The Chamber disagrees. The site visit showed that it was possible to travel from Nyamirambo to Ntarama on the same day. Furthermore, it is likely that Witness BME erred regarding the precise date of the event, in view of her traumatic situation. She had been making her way through the gutters of Nyamirambo since about 13 April, when she escaped from a small house to which she was brought from the Khaddafi Mosque.²¹⁹

161. After seeing Karera, the witness hid in what she described as "a space under the bridge".²²⁰ The Defence submits that the Chamber's site visit discredits her evidence, as do the testimonies of Witnesses BMF and BMH, who testified that there was no bridge in that area.²²¹ In the Chamber's view, the sighting confirmed Witness BME's evidence about the existence of a small gutter under the road near Karera's house. A small person could hide in this gutter and perceive the road above it as a "bridge". Even though Witnesses BMH and BMF did not recall a bridge, they both testified about a ditch near Karera's house.²²²

²¹⁴ T. 5 May 2006 pp. 36-37.

²¹⁵ T. 8 May 2006 pp. 7-8.

²¹⁶ The witness initially testified that she saw the meeting from about 15-16 meters away, and on cross-examination suggested she was about 20 meters away (based on comparisons with distances in the courtroom). T. 10 January 2006 pp. 21-22, 37.

²¹⁷ See Defence closing arguments, T. 24 November 2006 p. 9.

²¹⁸ Defence Closing Brief, para. 229.

²¹⁹ T. 10 January 2006 pp. 10, 13-17, 19, 35-36, 41, 43.

²²⁰ T. 10 January 2006 p. 26.

²²¹ Defence Closing Brief, paras. 143-144. The Chamber notes that Witness BMH recalled a bridge in the neighbourhood, but not on the road. T. 16 January 2006 pp. 17-18, 25.

²²² Witness BMF recalled a one-metre deep concrete ditch located five or six metres from the roadblock in front of Karera's house. T. 18 January 2006 pp. 19, 39. Witness BMH recalled a non-concrete ditch which carried water to a concrete ditch farther away. T. 16 January 2006 pp. 17-18, 25. Different recollection as to

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162. The Chamber also considers Witness BMG's testimony credible. As a Hutu, he was able to move freely and observe the events he described. His wife was a Tutsi, and *Interahamwe* and the policemen threatened him that he could be killed if he did not assist them by reporting at the roadblock.²²³ He probably described a different event than the one mentioned by Witness BME, where Karera spoke to fewer people. The Chamber also accepts Witness BMF's evidence. The event she described did not take place at the roadblock near Karera's house, or involve 200 people. However, she said that after this event, Karera could have walked to the roadblock and issued further orders.²²⁴ Witness BMH's evidence is also found credible. Her account, involving Karera and Kalimba, was different from that of her relative, Witness BMF, who observed Karera speak to three policemen and *Interahamwe*. Witness BMH probably observed an earlier phase of the same event, or a different incident. The Chamber is satisfied that these three witnesses gave truthful accounts of what they observed.

163. The Defence argues that Witness BMH could not have seen Karera give the order to destroy houses between 10 and 15 April 1994, because she had already left the neighbourhood. During the testimony of Witness BMF, the Defence suggested that she lied about the date on which Witness BMH left their home, in an attempt to leave open the possibility that her relative could have heard Karera's order to destroy houses.²²⁵ Witness BMF testified that on 9 April 1994, she travelled to her grandmother's house and returned home on 11 April 1994.²²⁶ She said the same in a prior statement, where she also mentioned that her parents were home when she returned. However, she did not mention that her relative, Witness BMH, was there. On this basis, the Defence argues that Witness BMH left home before 11 April 1994.²²⁷

164. The Chamber observes that according to Witness BMH's statement of 1998, she left her home immediately after it was attacked by soldiers on 8 April, whereas she testified that she left on 14 or 15 April.²²⁸ The witness testified that she lied in her statement because she wanted the interviewers to leave quickly as she believed them to represent Karera.²²⁹ The Chamber accepts that if the witness thought the interviewers represented Karera, she would have wanted the interview to be short. By telling them she was absent from Nyamirambo between 8 and 14 April 1994, she would have precluded questions about that period. The Chamber believes her explanation. It also accepts Witness BMF's testimony that Witness BMH could not have left home before 13 or 14 April 1994, as she needed first to recover from the injuries which she suffered as a result of the 8 April

whether the ditch was made of concrete or not does not in the Chamber's view cast doubt on the truthfulness of Witness BME's account.

²²³ T. 9 January 2006 pp. 8, 16, 27, 31. Witness BME's testimony that Witness BMG lived on the same road as Karera and could see Karera's house from his own house corroborates Witness BMG's evidence about his familiarity with Karera and the area (II.4.2).

²²⁴ T. 18 January 2006 p. 19.

²²⁵ T. 18 January 2006 pp. 29-30.

²²⁶ T. 17 January 2006 pp. 9, 11, 14; T. 18 January 2006 p. 29.

²²⁷ Defence Closing Brief para. 237.

²²⁸ This was put to the witness by the Defence during cross-examination. T. 12 January 2006 pp. 35-38, 43-44.

²²⁹ T. 12 January 2006 pp. 14, 20-21, 28-29, 35-38, 43-44; T. 16 January 2006 p. 10; Defence Exhibit 2 (Witness BMH's statement of 19 August 1998).

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attack by soldiers (II.4.3).²³⁰

165. The evidence of Witnesses BMU and BLX should be considered with caution, as their testimonies may have been influenced by a wish to positively affect the proceedings against them in Rwanda (II.2 and 4.2). This said, the Chamber observes that it was within Witness BMU's professional obligations, as an official, to regularly receive reports about the events in Nyamirambo sector. Such reports, even if given over the telephone, would constitute reliable accounts made by officials subordinate to the witness. The witness's testimony that the policemen worked for Karera and the report about their participation in the killings and house demolitions corroborates other evidence. Also, Witness BLX's testimony supports the evidence of other Prosecution witnesses that among other houses, Kahabaye's house had been demolished, and that he was killed.

166. Witness BMU testified that the house demolitions and killings occurred between 7 and 10 April 1994. Witness BMG testified that the order to destroy houses was given by Karera between 8 and 15 April, and Witness BMF placed the order after 8 April. Witness BMH said the order was given between 10 and 15 April, and BME indicated it was issued on 15 April. In the Chamber's view, Witness BMH's testimony that Karera gave the order to destroy houses between 10 and 15 April does not contradict Witness BMU's evidence that Kahabaye's and Dix's houses had been demolished by 10 April. The evidence suggests that there was more than one order and several stages of destruction. Similarly, Witness BME's evidence about the order to destroy houses on 15 April does not exclude that Kahabaye's and Dix's houses had already been demolished. Witness BME had previously been at Khaddafi Mosque and only heard houses being damaged.

167. The testimonies of the Defence witnesses did not weaken the evidence adduced by the Prosecution witnesses. Witness KGB confirmed that, generally, those who manned the roadblocks attacked and looted civilians. Witness ATA's testimony confirms that Kahabaye's house had been destroyed between 7 April 1994 and 1997. Witness KD, who said that it was demolished in late June 1994, did not observe its destruction and her account was based on information from others and is not in conformity with evidence from other witnesses.

168. In light of the above, the Chamber finds that between 7 and 15 April 1994, Karera gave orders to kill Tutsi and destroy their houses in Nyamirambo, at locations near his house. The Chamber is satisfied that between 8 and 10 April 1994 or around these days, the policemen who guarded Karera's house destroyed the houses of Kahabaye and Dix, with the assistance of the *Interahamwe*. Their killing will be discussed below (II.4.7).

4.6 Order to Spare Certain Lives and Houses, 7-15 April 1994

169. Three Prosecution witnesses testified that Karera also gave orders that certain Tutsis and their houses should be spared. The Prosecution submits that he wanted to acquire these properties and that this process of selective elimination demonstrates his indiscriminate exercise of power. The Defence denies these allegations.²³¹

²³⁰ T. 17 January 2006 pp. 9-13, 33; T. 18 January 2006 pp. 27-31.

²³¹ Prosecution Closing Brief, paras. 167, 444, 461-468; Defence Closing Brief, paras. 220-225.

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Prosecution Witness BMG

170. Witness BMG testified that before 15 April 1994, Karera ordered the communal policemen to spare the life and house of Callixte Kalisa. He explained that Callixte could later serve as evidence of the existence of the Tutsis. When *Interahamwe* threatened to kill Callixte, Karera's policemen prevented the killing.²³² The witness testified that he learned about Karera's order to spare Callixte's house from the policemen, but later he stated that he personally heard Karera give the order at the roadblock.²³³

Prosecution Witness BMF

171. It is recalled that during the telephone conversation between Kalimba and Karera (II.4.4), Witness BMF overheard Kalimba say that the only remaining families in the neighbourhood were those of Augustin, Callixte, Kabuguza and hers. Kalimba then told Habimana that Karera had instructed him to spare the families of Callixte and Augustin because they were too poor to contribute to the RPF. The next morning, she heard that Kalimba and Habimana had killed Kabuguza's family, and forced Augustin's family to swear that they would not have contacts with Tutsis. Augustin's and Callixte's families are still alive today. Witness BMF testified that the houses of Enode, Kalisa and Palatin were not destroyed.²³⁴

Prosecution Witness BMH

172. Witness BMH testified that houses were destroyed in Nyamirambo following Karera's order between 10 and 15 April 1994 (II.4.5).²³⁵ Her house and that of her neighbour, Enode, remained unharmed. She later heard from Charles Kalimba, the policeman who guarded Karera's house, that "his leader" had asked that these houses not be destroyed, as he wished to make them his own.²³⁶

Deliberations

173. The Chamber has already found that Witness BMF overheard the phone conversation between Karera and Kalimba (II.4.4), and is satisfied that an order was given during that phone conversation, to spare the lives of Callixte and Augustin and their relatives. It also accepts Witness BMH's testimony about her house and that of Enode, as well as her conversation with Kalimba about his instructions. The Chamber concludes that in the period between 7 and 15 April 1994, Karera ordered that these houses not be destroyed.

174. The Chamber has generally considered Witness BMG's testimony credible (II.4.4 and 4.5). However, it is not clear from the testimony whether he personally heard Karera make the order, or learned about it from others. Nevertheless, the Chamber finds his evidence to corroborate that of Witness BMF about the sparing of Callixte.

²³² T. 9 January 2006 pp. 14, 18, 26-27, 50.

²³³ *Id.* pp. 18, 26-27.

²³⁴ T. 17 January 2006 p. 31; T. 18 January 2006 pp. 4-5.

²³⁵ T. 12 January 2006 pp. 16-18; T. 16 January 2006 p. 15.

²³⁶ T. 12 January 2006 pp. 18-19.

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4.7 Killings of Joseph Kahabaye and Félix Dix, 8-10 April 1994

175. The Prosecution alleges that as a consequence of the orders given by Karera between 8 and 15 April 1994, several Tutsi civilians were killed. The evidence concerning two of them, Kahabaye and Félix Dix, will be considered here. The Prosecution concedes that the evidence turned out differently than specified in the Indictment but that the Defence suffered no prejudice.²³⁷

Evidence

Prosecution Witness BME

176. Witness BME hid in the ditch while observing Karera giving orders on 15 April to kill Tutsis and destroy their houses (II.4.5). She heard shots fired at walls. The houses of Kahabaye, Jean Marie, Félix and others were destroyed that day. The witness later heard that Tutsis were killed on that occasion.²³⁸

Prosecution Witness BMG

177. Witness BMG heard that Kahabaye was killed in Butamwa, which is outside his neighbourhood, but did not know by whom. He heard that Dix was killed by a group which included the policemen guarding Karera's house.²³⁹

Prosecution Witness BMF

178. One morning after 8 April, Witness BMF observed Karera tell Kalimba that he no longer wanted to see the "filth" of Tutsi houses in front of his house, pointing to the houses nearby, such as those of Joseph Kahabaye, Félix and Vianney Hitimana (II.4.5). Kahabaye tried to seek refuge during April 1994 but was arrested and subsequently killed by *Interahamwe*. The witness heard *Interahamwe* boasting to the policemen about having killed him. She said that "they came to brief the policemen regarding the people they had killed".²⁴⁰

Prosecution Witness BMU

179. When Witness BMU received the telephone report from his subordinate between 7 and 10 April (II.4.4 and 4.5), he was told that the policemen at Karera's roadblock had killed Joseph Kahabaye and Félix Dix and their families. They also destroyed their houses, accompanied by *Interahamwe*. Witness BMU knew Kahabaye and Dix. On 10 April, before noon, he personally saw the ruins of their houses. When the witness arrived at the roadblock he noticed that "Joseph Kahabaye's folks" had been killed.²⁴¹

²³⁷ Prosecution Closing Brief, paras. 250 (Kahabaye), 425-452, 749, 753-754, 762, 786-787 (Kahabaye), 782-783 (Dix), 792. There are no specific submissions regarding Kahabaye and Dix in the Defence Closing Brief.

²³⁸ T. 10 January 2006 pp. 23-25.

²³⁹ T. 9 January 2006 pp. 14-15.

²⁴⁰ T. 18 January 2006 pp. 6-7. The witness also gave the following answer: "I heard this from the *Interahamwe*s themselves because they were reporting to the policemen. They were not telling me about the incident. They were talking to the policemen."

²⁴¹ T. 23 January 2006 pp. 14-15, 24; T. 24 January 2006 pp. 3-4, 6-7, 9. French version (p. 15): "...j'ai pu constater qu'on avait tué les gens de Kahabaye Joseph".

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Prosecution Witness BLX

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180. Witness BLX, the official of Nyarugenge commune, passed by Karera's house in early May 1994 and observed that most of the houses nearby were destroyed, including that of Joseph Kahabaye (II.4.5). The witness later learned that Kahabaye was killed. Generally, according to the witness, *Interahamwe* destroyed houses within and outside that area. Tutsis whose houses were demolished were usually killed.²⁴²

Defence Witness ATA

181. Witness ATA was in Zaire from July 1994 to December 1996 and learnt that Félix Dix and Joseph Kahabaye were dead.²⁴³ In 2004, Witness KD was informed by some of Karera's former neighbours in Nyamirambo that Joseph Kahabaye fled and was killed in Butamwa "during the events ... in April, May and June" 1994. They also said that a man who lived opposite Kahabaye fled and died.²⁴⁴

Deliberations

182. Based on Prosecution and Defence evidence, the Chamber finds it clear that Kahabaye was killed. There is limited information concerning the specific circumstances of his death. No witness observed the killing. Witness BMG was told that it took place in Butamwa, a neighbouring commune, and this is corroborated by the testimony of Witness ATA. The oral report submitted to Witness BMU by his subordinate indicated that Kahabaye was killed between 7 and 10 April and that the policemen at Karera's roadblock were involved. Witness BMF said that the *Interahamwe* reported to the policemen that they had killed Kahabaye after he had sought refuge. The Chamber believes the witness and finds it unlikely that they would have done so if they were not the perpetrators. Butamwa is not far away from Nyamirambo. Based on these two testimonies, the Chamber finds that the *Interahamwe* in Nyamirambo followed after Kahabaye, killed him in Butamwa between 8 and 10 April, and reported to Karera's policemen that the killing had taken place. The killing was a consequence of Karera's order.

183. According to paragraph 33 of the Indictment, Kahabaye was killed at the roadblock in front of Karera's house on 7 April 1994. Based on the evidence, the Chamber has found that he was killed in the neighbouring commune between 8 and 10 April. In the present case, these discrepancies had limited significance. The identity of the victim was known, there was proximity in time, and Karera gave the order to kill Tutsi at the roadblock in front of his house. As mentioned above (I.2.3), the Defence did not make any contemporaneous objection and the Chamber cannot see that the minor variance between the Indictment and the evidence at trial caused any prejudice to the Defence.

184. Turning to the killing of Dix, the Chamber notes that according to the Indictment, it took place "sometime in April" (paragraph 33). The testimonies showed that it must have occurred between 8 and 15 April, when the Tutsi houses were destroyed (II.4.5). Witness BMU's evidence suggest that his death occurred between 8 and 10 April. This range is inside the time-frame of the Indictment.

²⁴² T. 18 January 2006 pp. 76-81.

²⁴³ T. 5 May 2006 pp. 36-37.

²⁴⁴ T. 8 May 2006 pp. 7-8.

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185. Witness BMG heard that Dix was killed by a group including the policemen guarding Karera's house. Witness BMU was told by his subordinate that these policemen had killed Dix, and he saw the ruins of his and Kahabaye's house on 10 April. Even though it is clear that Dix was killed, there is only hearsay evidence suggesting that the policemen were the perpetrators. No-one heard them assume responsibility for his death. Under these circumstances, the Chamber does not have sufficient evidence to find beyond reasonable doubt that the three policemen were responsible of killing Félix Dix.

4.8 Killing of Murekezi, 8-10 April 1994

Evidence

186. Two Prosecution witnesses testified to this event.²⁴⁵ Between 8 and 15 April, Witness BMG saw policeman Kalimba force a young man to kill Fetus Joseph Murekezi, a Tutsi. Murekezi was brought to the roadblock in front of Karera's house by Kalimba and *Interahamwe*. Kalimba forced him to lie on the ground and ordered a young man to kill him. The young man initially refused, but when Kalimba threatened him with a loaded rifle, he killed Murekezi with his machete. Later on, Kalimba boasted that Karera had ordered him to go and get Murekezi and his wife, Helen, but that he did not find the wife.²⁴⁶

187. Witness BMU testified that the policemen who guarded Karera's house and *Interahamwe* killed Joseph Murekezi, a Tutsi businessman, and his two sons at the roadblock in front of that house. The information was reported to him over the telephone, between 7 and 10 April 1994, by his subordinate.²⁴⁷

Deliberations

188. Witness BMG provided a detailed and consistent first-hand testimony describing Kalimba forcing, at gun point, a young man to kill Murekezi at the roadblock in front of Karera's house. The Chamber finds his evidence credible. As a Hutu, he could move freely. Because his wife was a Tutsi he was forced to be present at the roadblock (II.4.5).

189. The Chamber considers the evidence of Witness BMU with caution, given national proceedings about him in Rwanda (II.4.2).²⁴⁸ However, his testimony corroborates the evidence of Witness BMG, and the Chamber has in relation to other events attached some weight to the oral report from his subordinate (II.4.4, 4.5 and 4.7). Accordingly, despite its hearsay nature, the Chamber finds his evidence about the killing of Murekezi reliable. It does not affect the credibility of the witness that he later in his testimony added that Murekezi was killed with his son and another young person whose identity the witness did not know. This additional information does not contradict his earlier evidence.²⁴⁹

²⁴⁵ Prosecution Closing Brief, paras. 250, 444, 749, 755, 784-785, 792; Defence Closing Brief, para. 199 (lack of cross-examination).

²⁴⁶ T. 9 January 2006 pp. 20-21.

²⁴⁷ T. 23 January 2006 pp. 15, 17; T. 24 January 2006 p. 4.

²⁴⁸ T. 23 January 2006 pp. 21-23, 34-35; T. 24 January 2006 p. 8.

²⁴⁹ The Indictment stated that Murekezi was killed with his three children. This was not pursued by the Prosecution, due to insufficient evidence (Closing Brief, para. 750).

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Based on the time-frames indicated by Witnesses BMG and BMU, the Chamber finds that the killing took place between 8 and 10 April 1994.

190. According to paragraph 33 of the Indictment, this event occurred at the roadblock on 7 April 1994, whereas Witnesses BMG and BMU indicated a time-frame of 8 to 15 April and 7 to 10 April, respectively. The Chamber does not consider that the Defence suffered any prejudice. The identity of the victim, the place where the offence was committed and the proximity in time gave sufficient notice of this allegation.

191. The Defence points out that Karera was not cross-examined about his alleged order to kill Murekezi. The Chamber considers that the Prosecution is under no obligation to cross-examine the Accused on all aspects of its case. The allegation was included in the Indictment as well as in the Pre-Trial Brief, and the Defence was well aware of it.²⁵⁰

192. The Chamber finds that policeman Kalimba forced a man to kill Murekezi, a Tutsi, at the roadblock near Karera's house, between 8 and 10 April 1994. The policeman boasted that he had carried out the killing following Karera's order.

4.9 Killing of Jean Bosco Ndingutse, 10 April 1994

Evidence

Prosecution Witness BMU

193. One Prosecution witness gave evidence about this event.²⁵¹ Witness BMU testified that on 10 April 1994, Jean Bosco Ndingutse, a Tutsi trader, was killed by Karera's policemen and *Interahamwe* near an open pit by Baziruwaha's plot. The witness received the information from his subordinate. Witness BMU knew Ndingutse, and saw him earlier that afternoon being arrested by Karera's policemen. Ndingutse told the witness he was accused of being an accomplice. The arrest took place near the Carmelite Sister's Convent, about 300 metres from Karera's house. Witness BMU saw it after having passed the roadblock near Karera's house and three other roadblocks. Ndingutse's vehicles (a minibus and a Peugeot 504) were taken by the policemen to Karera's compound.²⁵²

194. The policemen noticed that Witness BMU was watching them arrest Jean Bosco Ndingutse. They told him it was not his business, accused him of being an *Inyenzi* accomplice, threatened him that they would "settle that", and asked him to leave.²⁵³

Deliberations

195. Witness BMU's description of the arrest was comprehensive. He testified that he knew the victim and saw him being arrested by the policemen. The Chamber accepts that as an official in Nyarugenge, he knew the area and its residents. The witness did not see the killing but it was reported to him by his subordinate on the same afternoon. During

²⁵⁰ Pre-Trial Brief, para. 44. The Defence also argues lack of cross-examination in relation to the killing of Mazimpaka and Rukemampunzi. These allegations were withdrawn by the Prosecution because of insufficient evidence (Closing Brief, para. 750).

²⁵¹ Prosecution Closing Brief, para. 789, *see also* paras. 250, 444, 749, 792. The Defence made no specific submissions.

²⁵² T. 23 January 2006 pp. 15-17, 24; T. 24 January 2006 pp. 4, 8-9.

²⁵³ T. 23 January 2006 pp. 14-15, 35-36, 38; T. 24 January 2006 p. 8.

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cross-examination, the witness explained that he did not report to Karera what the policemen said to him when Ndingutse was arrested, firstly, because Karera was not his immediate superior and, secondly, because he wanted to leave the area immediately since he felt threatened. When he saw Karera later that month, at the Ministry of Defence, he greeted him but did not report this matter because "when you meet an authority you do not just go and present problems". Although the Chamber considers this witness testimony with caution (II.4.2) it believes that he gave a truthful account of what he observed on this occasion.²⁵⁴

196. According to paragraph 33 of the Indictment, the victim's name was "Bosco", and he was killed at the roadblock in front of Karera's house on 7 April 1994. According to the testimony, the full name was Jean Bosco Ndingutse, and he was killed 300 meters from the roadblock on 10 April 1994. The Chamber observes that in the Pre-trial Brief, Bosco was identified as a Tutsi businessman, whose property was looted.²⁵⁵ The Defence made no contemporaneous objection. The Chamber considers that the information provided in the Indictment, supplemented by the Pre-Trial Brief, gave the Defence sufficient notice of when and where the victim was killed (I.2.3). It concludes that Ndingutse was arrested and killed by the policemen and *Interahamwe* on 10 April 1994.

4.10 Killing of Twenty Tutsi Men, 13 April 1994

Evidence

Prosecution Witness BMF

197. Witness BMF, the only witness who provided evidence about this event, testified that Habimana, one of the policemen guarding Karera's house, attacked her brother and nineteen other young Tutsi men.²⁵⁶ On 13 April 1994, the policemen ordered all men to report to the roadblocks, otherwise they would be killed. The witness's elder brother and the other nineteen Tutsis refused to obey and stayed outside the back gate of her compound. Her father reported to the roadblock in front of Jérémie's place, three or four plots away. Policeman Habimana was there and could see her brother from the roadblock. He approached him and asked for his identity card. The brother presented the document. Habimana shot him and the others who were there, using a long rifle with a wooden butt. This occurred between 12.00 p.m. and 13.30 p.m.²⁵⁷

198. The witness was in her backyard. A see-through hedge separated her from the scene of the killing. She was about 7.5 metres away and could hear the conversation between Habimana and her brother. The witness heard many shots and left the compound. She saw dead bodies in the street. Eighteen of the twenty young men were dead. Two others pretended to be dead. She saw their dead bodies on the following day, at the roadblock in front of Jérémie's place. After the event, her father asked Habimana for his son's body in

²⁵⁴ T. 23 January 2006 pp. 21-23, 34-35; T. 24 January 2006 p. 8.

²⁵⁵ Pre-Trial Brief, para. 47.

²⁵⁶ Prosecution Closing Brief, paras. 250, 438, 444, 451. The Defence Closing Brief contains no specific submissions.

²⁵⁷ T. 17 January 2006 pp. 15-19, 35-36; T. 18 January 2006 pp. 33-34, 40-42.

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order to bury it. Habimana refused and said that the body would be dumped somewhere.²⁵⁸

Deliberations

199. This event is not included in the Indictment. The summary in the Pre-Trial Brief of Witness BMF anticipated testimony only contains a brief reference to the killing of her father and brother, not to the killing of twenty young Tutsi men. The Prosecution opening statement did not mention this incident. Under these circumstances, the Chamber will disregard this evidence in its deliberations due to lack of notice (I.2.3).²⁵⁹

4.11 Killing of Palatin Nyagatare, 24 April 1994

Evidence

200. Two Prosecution witnesses gave evidence about this event.²⁶⁰ Witness BMF testified that Palatin Nyagatare was killed on 24 April 1994. Her brother told her that he saw someone hitting Palatin with a club at a roadblock near Jérémie's house.²⁶¹ She went to the roadblock and saw Palatin's corpse about an hour after he had died. His skull had been crushed with a studded club. The witness testified that Kalimba told her that he had ordered Palatin's execution.²⁶²

201. Witness BMH, the relative of Witness BMF, testified that Palatin Nyagatare was killed by a group which included *Interahamwe* and Karera's policemen on 24 April 1994. He was a Tutsi who worked for a private Belgian company and did not hold any political posts. Palatin was killed at a roadblock in front of either Jérôme's or Jérémie's house, about 200 to 300 metres or three plots from his house.²⁶³ Many people were killed that day in the area. Subsequently, assailants arrived at his house, followed by Kalimba, who told them to spare Palatin's children as "we have just killed their father". That day, from her house, she saw Karera in his compound.²⁶⁴

²⁵⁸ T. 17 January 2006 pp. 15-19, 23-24; T. 18 January 2006 pp. 32-33, 42.

²⁵⁹ The relevant sentence in the Annex to the Pre-Trial Brief reads as follows: "The three policemen that were in front of Karera's house killed her brother and her father." No distinction was made between the two separate events (the killing of the father and brother, respectively), nor to the killing of the other nineteen Tutsis. Witness BMF's statement of 30 October 2005 contains a brief reference to Habimana shooting at the brother but not at anyone else (Defence Exhibit 6).

²⁶⁰ Prosecution Closing Brief, paras. 749, 760-761, 775-779, 792; Defence Closing Brief, para. 183.

²⁶¹ Witness BMF's sketch of the neighbourhood indicated the roadblock where Palatin was killed. She wrote "Jerôme" next to that roadblock, but subsequently drew a line through the word "Jerome" and wrote the word "Jérémie" below it. T. 17 January 2006 p. 25; Prosecution Exhibits 8 (A) and 8 (B), which are Witness BMH's original and corrected sketch, respectively.

²⁶² T. 17 January 2006 pp. 25, 28-29; T. 18 January 2006 p. 31.

²⁶³ Witness BMF testified that Palatin "was killed at the roadblock that was set up in front of Jérôme's house" (p. 30). Asked about the distance between the roadblock near Jérôme's house and Palatin's house, she replied: "There were three plots between the two points, and the roadblock was set up in front of the third plot ... There was Enode's house, Mugenzi's house, and a third house between ours, and Jérôme's, but the third belonged to Rujigo. The roadblock was in front of Jérémie or Jeremiah's place ... After Mugenzi's plot there's a small path, big enough for just one car. After that path there's another plot. It belonged to a person nicknamed Rujigo who worked for the custom's authority. His first name was Jérôme. Nickname Rujigo". T. 16 January 2006 pp. 30-31.

²⁶⁴ T. 12 January 2006 p. 29.

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Deliberations

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202. The testimony of the two relatives was consistent in relation to the time, location and perpetrators. They both testified that Palatin was killed on 24 April and heard Kalimba admitting to being involved in the killing. The Chamber recalls that the witnesses were personally acquainted with Kalimba, and that Witness BMF enjoyed his protection (II.4.2). It is also clear that Palatin was killed at a roadblock in the area, although the two witnesses confused the names of Jérémie and Jérôme. According to paragraph 33 of the Indictment, Palatin was killed "sometime in April". The Chamber cannot see that the Defence suffered any prejudice by the witnesses subsequently testifying to a precise date within this period. The identity of the victim and the location provided sufficient notice (I.2.4). The Defence made no contemporaneous objection in connection with the testimony.

203. Accordingly, the Chamber is satisfied that on 24 April 1994, Palatin Nyagatare, a Tutsi, was killed at a roadblock about three plots from his house by policeman Kalimba. This followed Karera's orders (II.4.5) to kill Tutsis in Nyamirambo.

4.12 Killing of Leonard Ruremesha

Evidence

204. When testifying about demolition of houses in Nyamirambo, Witness BMG mentioned that the decomposing corpse of Leonard Ruremesha was found in the ceiling of Leonard's home. It was not destroyed, and was far from the houses of Kahabaye and Félix Dix, which were demolished.²⁶⁵

Deliberations

205. Although the Chamber finds Witness BMG generally credible, it observes that his evidence regarding Leonard's death is unclear. The witness did not indicate any time-frame for this event but based on the context of his testimony he seemed to refer to April.²⁶⁶ He did not provide enough details to establish that Leonard was actually killed or that his death was attributable to the policemen or *Interahamwe* who were destroying houses in the area. Furthermore, the witness did not indicate how he learned that the body had been found. Consequently, the Chamber cannot make any findings to the effect that Leonard Ruremesha was killed.

²⁶⁵ T. 9 January 2006 pp. 14-15. In para. 33 of the Indictment, the victim is referred to by his first name "Leonard". The Pre-Trial Brief para. 48 (but not para. 46) also mentions his last name. Relevant submissions are found in Prosecution Closing Brief para. 788, *see also* paras. 250, 444, 749 and 792. Defence Closing Brief contains no specific submissions concerning Leonard Ruremesha.

²⁶⁶ Witness BMG testified to the killing of Félix Dix and Kahabaye and then added: "This is all I can tell you with regard to their (Dix's and Kahabaye's) deaths. There was one other person named Leonard Ruremesha, who was killed in the ceiling of his house." T. 9 January 2006 p. 14. The Chamber has found that these two persons were killed in April (II.4.5).

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4.13 Congratulations to Gasamagera's Killers, Late April - May 1994

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Evidence

206. Around the end of April or the beginning of May 1994, Witness BMG saw Kalimba and *Interahamwe* bring Gasamagera, a Tutsi, to the roadblock in front of Karera's house. They killed him there with clubs. When Karera subsequently arrived at the roadblock and saw Gasamagera's dead body, he exclaimed: "now, was this the jubilation and cries of joy which you were awaiting?" The witness understood Karera to be congratulating Gasamagera's killers.²⁶⁷

Deliberations

207. Witness BMG was the only witness who testified about this event. The Chamber has found him to be generally credible. It accepts that he saw Gasamagera being killed but is not convinced that Karera was congratulating the killers. There is no mention of this event in the Indictment, the Pre-Trial Brief and the Prosecution opening statement. Consequently, the Chamber will not draw any adverse consequences against Karera in connection with this event.

4.14 Distribution of Weapons, April 1994

208. Paragraphs 9 and 10 of the Indictment read as follows:

9. During the period referred to in this indictment, François KARERA distributed weapons to communal police or civilian militias in Nyamirambo, knowing and intending that they would be used in attacks upon civilian Tutsi.

10. As a direct consequence of the weapons distribution and the public campaign of extermination ordered and, at times, led by François KARERA, many Tutsi civilians were killed by communal police, or by civilian militias and local residents, in Nyamirambo during April and May of 1994.

As Prosecution witnesses testified to Karera's as well as policeman Kalimba's distribution of weapons, these events will be considered separately.

4.14.1 Distribution by Karera

209. The Prosecution alleges that Karera received weapons intended for distribution, at the Ministry of Defence, between 12 and 17 April 1994.²⁶⁸ It relies on the evidence of Witnesses BLX and BMA. The Chamber observes that Witness BMU's testimony may also be relevant.

²⁶⁷ T. 9 January 2006 pp. 19, 22-23, 25-26. The event is referred to in the Prosecution Closing Brief, paras. 392, 430, 431 and 444.

²⁶⁸ Prosecution Closing Brief, paras. 469-484, *see also* paras. 100-102, 109-110; Defence Closing Brief, paras. 244-255.

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Evidence

Prosecution Witness BLX

210. On 16 April 1994, Witness BLX, the official of Nyarugenge commune, attended a security meeting at the Kigali-Ville prefecture office. High-ranking officials and party leaders were present, including Karera. The participants were requested to obtain weapons from the Ministry of Defence. After the meeting, Karera, the witness, representatives of the sub-prefecture, political leaders and a major in the *gendarmerie* named Nyamuhimba went to collect weapons at the Ministry. Karera assisted soldiers to distribute weapons. He ensured that arms were also given to the *conseillers* of Nyarugenge, to certain MRND members, and prevented distribution to some individuals. Karera was accompanied by Bernard Maniragaba, who represented the *Interahamwe* in Gitega sector, and Swed Ndayitabi, on behalf of the *Interahamwe* in Biryogo sector. The witness heard Karera say that he would personally distribute weapons in Gitega sector, which neighboured Nyamirambo sector, in Nyarugenge commune, as *Interahamwe* there were unarmed. Karera took 15 guns intended for distribution in Nyamirambo, Gitega and Cyahafi sectors.²⁶⁹

211. Witness BLX received five Kalashnikovs and ammunition. He later distributed them to *cellule* leaders, who used the guns to “fulfil the objective that had already been decided upon”. Arms were also distributed to civilians to enable them to kill Tutsis. The witness estimated that there were about 80 weapons in his area. Guns distributed that day were used to kill Tutsis in Nyarugenge and throughout Rwanda.²⁷⁰

Prosecution Witness BMU

212. Between 20 and 25 April 1994, Witness BMU, the official of Nyamirambo sector, was asked for a lift to the Ministry of Defence by three MRND members: Sylvestre Bahinze (the party’s president in Nyamirambo sector), Germain Ndabagunje, and Rutarindwa. The witness’s driver, Mazimpaka, drove them all to the Ministry’s weapon-store near the Kigali-Ville prefecture office in Kiyovu neighbourhood. Upon arrival, the witness saw Karera in the company of soldiers, greeted him and entered the building. Weapons were being distributed by soldiers, allegedly to provide security, but in fact were used for killing. Bahinze, Ndabagunje and Rutarindwa received rifles. Witness BMU did not collect weapons. The four subsequently left. Karera remained there, and the witness did not know whether Karera received weapons.²⁷¹

Prosecution Witness BMA

213. Witness BMA, an official of Nyarugenge commune, testified that between 12 and 17 April 1994, he saw Karera leave Kigali-ville for Rushashi, with a Toyota Hilux carrying crates of the kind which contains guns. He assumed that Karera had received the weapons from the Ministry of Defence, as he heard from prefecture policemen that all the

²⁶⁹ T. 18 January 2006 pp. 71-75.

²⁷⁰ *Id.* pp. 74-75.

²⁷¹ T. 23 January 2006 pp. 19-21, 31-32; T. 24 January 2006 pp. 7-8.

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prefects appointed by the interim government had received weapons there for distribution in their respective prefectures.²⁷²

Deliberations

214. Of the three witnesses whose evidence links Karera to weapon distribution in Kigali-Ville, only Witness BLX testified that he was involved in weapon distribution in Nyamirambo. Witness BMU testified that between 20 and 25 April, Karera was at the Ministry of Defence in Kigali-Ville while weapons were being distributed there, but did not know whether he received any weapons on that occasion. Witness BMA's evidence indicates that Karera received guns at the Ministry of Defence in Kigali-Ville and transported them to Rushashi, between 12 and 17 April. His evidence does not suggest that Karera distributed these weapons in Nyamirambo, and it will be considered in connection with the events in Rushashi (II.6).

215. Witness BLX, who as an official knew Karera well, said he saw him receive weapons on 16 April, and that Karera expressed the intention to distribute them in several locations, including Nyamirambo. Karera assisted in distributing weapons at the Ministry. As mentioned previously (II.2), the Chamber considers his evidence with caution, as it may have been influenced by a wish to positively affect the criminal proceedings against him in Rwanda. His testimony is corroborated to a certain extent by Witnesses BMU and BMA, who placed Karera in the general context of weapon distribution.²⁷³ However, this corroboration is of limited extent, and Witness BLX is the only witness who links Karera to weapon distribution in Nyamirambo. No-one observed him doing so. Having considered the evidence, the Chamber does not find it established beyond a reasonable doubt that Karera distributed weapons in Nyamirambo in 1994.

4.14.2 Distribution by Kalimba, April 1994

Evidence

Prosecution Witness BMH

216. Between 1992 and 1994, Françoise, Karera's daughter, told Witness BMH that her family had machetes and *Interahamwe* uniforms at their house. The witness saw Kalimba distribute machetes to *Interahamwe* in the neighbourhood between 10 and 13 April 1994. She recalled that it was in the same period when she heard Karera order the destruction of

²⁷² T. 19 January 2006 pp. 28-30. He said: "When [an official] sees something, he has to ask questions. I, therefore, started wondering where those arms had come from. And the policeman of Kigali-ville *préfecture* told me that the *préfets* who had been appointed by the interim government had received weapons from the ministry of defence to distribute in the -- in their *préfectures*. And that is how come he received those weapons and took them away." T. 19 January 2006 p. 30.

²⁷³ According to para. 52 of the Pre-Trial Brief, Karera also gave two guns and five grenades to the *Interahamwe* manning the roadblock in front of his house. However, no evidence was led in support of this allegation and the Prosecution did not pursue this. Defence Closing Brief, paras. 247-248; T. 23 November 2006 p. 42.

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the houses. She assumed that the machetes distributed by Kalimba in April 1994 were taken from the stock she heard about from Françoise, at Karera's house.²⁷⁴

Deliberations

217. The Defence submits that the evidence about hearing from Françoise about the stock of machetes is unreliable, given that Witness BMH was only ten years old at the time and the evidence was "third-hand or more".²⁷⁵ The Chamber considers this witness to be generally credible, and accepts that she heard about the stock of machetes at Karera's house. On the other hand, she did not see the machetes herself.

218. In a statement from 1998, Witness BMH mentioned that Karera's children talked about firearms in their house, not machetes. She explained that this was a different matter, and that she did not mention in the statement that Françoise told her about the machetes and uniforms. The witness did not tell the investigators everything she knew as she wanted the interview to be short. The Chamber accepts her explanation.²⁷⁶

219. The Chamber finds that between 10 and 13 April 1994, Witness BMH saw Kalimba distribute machetes to *Interahamwe* in Nyamirambo. However, the evidence is not sufficient to find that these machetes were taken from Karera's stock, as assumed by the witness, nor that they were actually used in connection with killings charged in the Indictment.

²⁷⁴ T. 12 January 2006 pp. 31-33. This event is not mentioned in the Prosecution Closing Brief but in its Pre-Trial Brief para. 52 ("the three policemen at Karera's house distributing weapons to the Hutu civilians in Cyivugiza"); Defence Closing Brief, paras. 249-251.

²⁷⁵ T. 24 November 2004 p. 10 (Defence closing arguments).

²⁷⁶ T. 12 January 2006 pp. 8, 10; T. 16 January 2006 pp. 5-7, 32; Defence Exhibit 2 (Witness BMH's statement of 19 August 1998).

5. Ntarama

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5.1 Introduction

220. The Prosecution case is that between 8 and 15 April 1994, Karera visited Ntarama sector, Kigali-Rural prefecture, on several occasions. He held two meetings there on 9 and 14 April. In the last meeting, Karera encouraged Tutsi refugees to wait for protection but on 15 April he led an attack against Tutsis at the Ntarama church. The Prosecution relies primarily on the evidence of Witnesses BMK, BMJ, BML and BMI, who all lived in Ntarama. It also submits that Karera could have travelled that day from Kigali to Ntarama.²⁷⁷

221. On the basis of the evidence, the Prosecution charges Karera with genocide, or in the alternative, complicity in genocide (paragraphs 15 to 19 of the Indictment). He is also accused of extermination (paragraph 28) and murder (paragraph 35). The Prosecution invokes Articles 6 (1) and 6 (3) of the Statute.²⁷⁸

222. The Defence submits that Karera has an alibi in relation to the events in Ntarama, as he stayed continuously at the university campus in Nyakinama, Ruhengeri prefecture, from 7 to 19 April 1994 (II.7). As sub-prefect for economic and technical affairs at the time, he lacked the authority to order, prevent or punish crimes in Ntarama sector before 17 April. According to the Defence, the Prosecution case is inconsistent, as it also places Karera on 14 or 15 April 1994 in Nyamirambo sector, Kigali-Ville prefecture, giving orders to destroy houses of Tutsis. It is unlikely that Karera could have been in Nyamirambo and Ntarama on the same day.²⁷⁹

5.2 Order to Kill and Loot Tutsis, 9 April 1994

223. Paragraph 15 of the Indictment states:

15. On or about 8 April 1994 François KARERA, accompanied by sous-préfet MINANI and several *gendarmes*, approached a group of *Interahamwe* that had destroyed Tutsi homes in Ntarama secteur and stated, "instead of ransacking the properties you should kill them first so that you can enjoy all of their properties" or words to that effect.

224. In its Closing Brief, the Prosecution submits that Karera held a meeting with the Gatoro *cellule* committee around 9 April 1994 and instigated its members to kill Tutsis in Ntarama sector.²⁸⁰ The Defence argues that the testimony about this event is uncorroborated and unreliable, and that the Prosecution case is inconsistent, as Karera is also alleged to be in Nyamirambo in the same period.²⁸¹

²⁷⁷ Prosecution Closing Brief, paras. 495-588, in particular 498-514 (meetings) and 515-587 (the attack), including 578-580 (travel from Kigali).

²⁷⁸ Prosecution Closing Brief, paras. 581-588 (genocide), 739-741 (extermination), 804-809 (murder).

²⁷⁹ Defence Closing Brief, paras. 256-317, in particular 256-260, 286-288 (alibi), 261-266 (authority), 102-105, 229, 284 and 288 (inconsistency).

²⁸⁰ Prosecution Closing Brief, paras. 498-504, 521, 554.

²⁸¹ Defence Closing Brief, paras. 267-272.

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Evidence:

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Prosecution Witness BMI

225. On 9 April 1994, Witness BMI saw Karera arrive in Gatoro *cellule* in a white Hilux vehicle with a blue stripe. The witness, a Tutsi from Ntarama, knew him since 1970. Three *gendarmes* and a driver were also in the car. The *cellule* was down the road from the Ntarama church and sector office, beyond the school. About a kilometre and a half from the sector office, Karera parked outside the house of the *cellule* leader. The witness heard Karera instruct ten *cellule* committee members to kill Tutsis and loot their property and livestock. They were standing on the road. The witness was five metres away, with seven others. He was frightened by these words and returned to his *cellule* after Karera and the *gendarmes* left.²⁸²

226. During cross-examination, the witness first confirmed the accuracy of a portion of a prior statement to investigators of 2001, where he said that Minani, the sub-prefect of Kanzenze, was with Karera at the meeting in Gatoro *cellule* on 9 April 1994. He subsequently testified that his statement contained a mistake. Minani was not with Karera that day, but was present at a different meeting in Ntarama in 1992. During the 1992 event, a friend of the witness took Minani to see cattle of Tutsis that had been eaten by *Interahamwe*. The friend asked Minani to provide security but Minani declined.²⁸³

227. On 14 April 1994, Witness BMI found refuge at Ntarama school. Later that day, he visited the sector's church and then went home. He discovered that his house was burnt, and returned to the school.²⁸⁴

Deliberations

228. Witness BMI was not clear, as he not only testified to the alleged meeting in April 1994 but also included the event in 1992. During his evidence-in-chief, he said that Karera was in the company of three *gendarmes* on 9 April 1994. No mention was made of sub-prefect Minani. This was in conformity with a will-say statement of 23 January 2006 from the Prosecution, following a preparatory meeting with the witness.²⁸⁵ But in spite of this, he confirmed the accuracy of the 2001 statement during cross-examination about the meeting in 1994. According to that statement, Minani came to Ntarama in a Toyota Hilux with sub-prefect Karera and three *gendarmes*. Minani was driving the car. A friend of the witness showed Minani cows. "At that same time", he also heard Karera's words about ransacking and killing.²⁸⁶ Subsequently, the witness testified that this took place in 1992 and not in 1994. The testimony also raised other issues. According to his statement of 2001 and the will-say statement of January 2006, Karera was present in 1992 with Minani. In court he was unclear about Karera's presence in 1992.²⁸⁷

²⁸² T. 30 January 2006 pp. 37-38, 40-41; T. 31 January 2006 pp. 9-11, 31, 37.

²⁸³ T. 31 January 2006 pp. 9-14, 31, 33.

²⁸⁴ T. 30 January 2006 pp. 41-43; T. 31 January 2006 pp. 2, 9-10.

²⁸⁵ Defence Exhibit 20 (Will-say statement concerning 23 January 2006).

²⁸⁶ Defence Exhibit 19 (Statement of 4 May 2001).

²⁸⁷ The witness first talked about "the first time when Karera came with Minani" and then said that "Karera was not there. There was Minani and two *gendarmes*. But after that, Karera came with a driver ...". T. 31 January 2006 pp. 12-13.

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229. Witness BMI was not accustomed to court proceedings and had problems of communication. Some discrepancies may be ascribed to these factors.²⁸⁸ However, the Chamber is still concerned that his testimony seemed to confuse two different meetings. As he was the only witness who testified to the meeting on 9 April 1994, there is no corroboration. The Chamber has noted that Witnesses BMJ and BML also testified about a visit by Karera in Ntarama in 1992. Of these two, only Witness BML mentioned that Minani was there. That witness, similarly to Witness BMI, seemed to confuse Karera's visit to Ntarama in 1992 and a meeting he held there on 14 April 1994 (II.5.3).²⁸⁹

230. The Chamber concludes that it has not been proven beyond reasonable doubt that on 9 April 1994, Karera issued an order in the Gatoro *cellule* to kill Tutsis and loot their property.

5.3 Meeting with Refugees at Ntarama Sector Office, 14 April 1994

231. Paragraphs 16 and 17 of the Indictment state:

16. Around 14 April 1994, François KARERA held a meeting at the Ntarama *secteur* office in Kankenze *commune*, Kigali-rural *préfecture*, where he stated that "the Tutsi people had killed the president but we would see what was going to happen next." The following day, François KARERA led an attack against Tutsi refugees in Ntarama *secteur*.

17. The attack against the Tutsi in Ntarama *secteur* was strategically planned: Tutsi refugees in Ntarama had initially resisted attacks by local civilian militias following the death of the president on 6 April 1994. François KARERA met with the refugees at Ntarama Primary School, and in response to their requests for protection François KARERA promised to return the next day with soldiers to ensure security. François KARERA also instructed some refugees to take shelter at Ntarama Church.

232. Paragraph 16 refers to a meeting at the Ntarama sector office on 14 April 1994, whereas paragraph 17 mentions a meeting with the refugees "at Ntarama Primary School". In its Pre-Trial Brief, the Prosecution submits that Karera addressed them at the Ntarama sector office, and this is also the submission in its Closing Brief. The Defence disputes these allegations.²⁹⁰

²⁸⁸ For example, he denied that he had met with Prosecution counsel after 18 January 2006 in spite of two written will-say statements by the Prosecution showing that he was interviewed on 23 and 26 January 2006. Furthermore, the 2001 statement indicated that his house was burnt on the day of the *cellule* meeting in Gatoro, whereas he testified that it was burnt on 14 April 1994. The witness did not explain the reason for this inconsistency. T. 31 January 2006 pp. 2, 9-14, 31; Defence Exhibit 19 (Statement of 4 May 2001), Defence Exhibit 20 (Will-say statement concerning 23 January 2006) and Defence Exhibit 21 (Will-say statement concerning 26 January 2006).

²⁸⁹ Witness BML first testified that Minani was with Karera at a meeting on 14 April 1994, but later testified that he was mistaken and Minani was at the 1992 meeting. T. 27 January 2006 pp. 21, 25; T. 30 January 2006 pp. 4-6, 13, 33. Witness BMJ mentioned that the meeting was held by Karera in May 1992, but did not mention Minani. T. 26 January 2006 pp. 36-38.

²⁹⁰ Pre-Trial Brief para. 71; Prosecution Closing Brief, para. 498, see also paras. 503-514; Defence Closing Brief, paras. 273-288.

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Evidence:

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Prosecution Witness BMJ

233. Witness BMJ, a Tutsi, testified that following attacks by Hutus against Tutsis from 9 April 1994, many fled to the school and church in Ntarama. The church was across the road from the sector office, on the Kigali-Ntarama road. When arriving from Kigali, the church was on the right and the sector office on the left.²⁹¹

234. One morning around 14 April 1994, the witness saw Karera on the Kigali-Ntarama road, about 10 or 12 paces from the sector office. The witness, who had met Karera once in 1992, was with about 30 other refugees, about five metres away from him. Karera arrived in a small white vehicle, descended from it and greeted the refugees. He was accompanied by two armed soldiers and three unarmed civilians. The witness did not know the civilians but was told that one of them was Bizimana, the director or chief warden of the Nyamata prison. Karera introduced himself as "François Karera, the prefect of Kigali-Rural".²⁹²

235. Karera asked the refugees about the situation. They explained that Hutus were attacking them. Karera stated that the President's death was the fault of their brothers, the RPF Tutsis. He told them to defend themselves that day, and that on the following day he would send soldiers to protect them. Karera spoke in Kinyarwanda. The witness understood him well. The refugees thanked him and applauded. Karera and his entourage left in the vehicle towards Kigali.²⁹³

Prosecution Witness BMK

236. Witness BMK, a Tutsi, testified that on 14 April 1994, he and others fled to the Ntarama school because of the attacks against the Tutsis. About 2,000 Tutsi refugees were there, whereas about 700 refugees were in the church.²⁹⁴

237. On that day, the witness attended a meeting chaired by Karera at the Ntarama sector office. The office was across the road, about 10 to 20 paces from the church. The meeting was convened by Saveri Ndekezim, the *conseiller* of Ntarama sector, who announced in advance that it would be chaired by the prefect. Karera arrived in a white saloon car. He was accompanied by someone who looked like a soldier, but the witness was told he was a *gendarme*. The witness did not know anyone called Bizimana.²⁹⁵

238. The meeting commenced at 11.00 a.m. and lasted for about 30 minutes. There were about 40 or 50 participants. Karera introduced himself as the prefect of Kigali-Rural prefecture. Witness BMK was in the back, about eight paces from Karera. It was the first time he had seen Karera and learned that he was the prefect. Karera opened the meeting by announcing that the President had died. He addressed the Tutsis and claimed that they "are the ones who killed him" and that they "are going to pay for that". He spoke in Kinyarwanda. After saying these words, Karera immediately left in his car. Witness

²⁹¹ T. 26 January 2006 pp. 39-41.

²⁹² T. 26 January 2006 pp. 42-44; T. 27 January 2006 pp. 7, 9-10.

²⁹³ T. 26 January 2006 pp. 43-44.

²⁹⁴ T. 25 January 2006 pp. 30-31, 33-35; T. 26 January 2006 p. 19.

²⁹⁵ T. 25 January 2006 pp. 31-32; T. 26 January 2006 pp. 13-14, 16, 20, 31, 33.

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BMK and the other participants also left.²⁹⁶

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Prosecution Witness BML

239. Witness BML, a Tutsi, fled to the sector's school after his house was burnt on 9 April. Many refugees were at Ntarama school and the church, which were about 800 to 1,000 metres apart.²⁹⁷ The church was across the road and about 10 or 11 metres from the sector office. On 14 April 1994, at around 10.00 a.m. or 11.00 a.m., the witness saw Karera on the road between the church and the sector office. The witness was with about 50 others, about seven metres away from him. He had an unobstructed view of Karera and recognized him because he had seen him at a meeting which took place in 1992.

240. Karera arrived in a white vehicle and was dressed in civilian trousers and a shirt. He was accompanied by two soldiers and the director of the Ntarama central prison, Bizimana. The witness added that Minani, the sub-prefect of Kanzenze, and Karerangabo, the inspector of Nyamata schools were also there, but subsequently said that these two had visited Ntarama with Karera in 1992 and not in 1994. Karera introduced himself by his name, asked about the security situation and promised to return with security enforcement. He left after about 15 to 30 minutes. The meeting was unplanned and had not been convened by the *conseiller*.²⁹⁸

Prosecution Witness BMI

241. Witness BMI (II.5.2) testified that Tutsis from all neighbouring sectors began fleeing to Ntarama on 7 April 1994. On 14 April 1994, he sought refuge at the sector's school. Between 5,000 and 6,000 Tutsi refugees were there. Later that day, he visited Ntarama church and found a similar number of refugees in and outside the building. The church was slightly elevated from the road. There were also refugees at the sector office, which was across the road from the church, about 50 to 60 paces or metres away. That day, after having been to the school and the church, the witness went home, discovered that his house was burned, and returned to the school. According to the witness, the school was about 500 metres from the sector office and the church.²⁹⁹

Defence Witness YCH

242. In April 1994, Witness YCH, a Hutu, resided in Muyenzi sector, Kanzenze commune. His business was based in Nyamata town and included travelling within the Bugesera region. According to the witness, no meetings were convened in Kanzenze by the sub-prefects or prefect that month. The public was usually informed about meetings in the commune by the administrative authorities, and he did not hear of any meetings in Ntarama in April 1994. Meetings concerning the region were normally held in Nyamata town, but the *conseiller* or *cellule* leaders could convene meetings only for Ntarama's population. Still, the meeting would be organized by the communal authorities in Nyamata. After the death of the President, the witness did not hear about Karera's presence in the region. After 6 April, the witness no longer travelled to Ntarama.³⁰⁰

²⁹⁶ T. 25 January 2006 p. 32; T. 26 January 2006 pp. 14-15, 19, 31.

²⁹⁷ T. 27 January 2006 pp. 22-23.

²⁹⁸ T. 27 January 2006 pp. 24-26; T. 30 January 2006 pp. 4-6, 13-14, 33.

²⁹⁹ T. 30 January 2006 pp. 39, 41-43; T. 31 January 2006 pp. 2, 9-10, 17.

³⁰⁰ T. 15 May 2006 pp. 61, 66-71, 77-78.

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Defence Witness ZAC

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243. Witness ZAC was an official of Kanzenze commune until sometime in 1992. He lived about 1.5 km from the Ntarama school, which was about 700 or 800 metres from the Ntarama church. He did not visit the church or school in 1994 and did not hear about a meeting in front of the church in April that year.³⁰¹

244. In 1997, he was arrested, pleaded guilty to genocide and was released from prison in 2003. About 20 civilian prisoners testified about the Ntarama attacks in the prison's *gacaca* proceedings from 1999 to 2003. The witness was the chairman of the "Urumuli committee" which heard confessions of detainees, soldiers and civilians, including about the Ntarama attacks. He did not hear Karera's name mentioned, or that there was a meeting near the church around 15 April 1994.³⁰²

245. In 2006, Witness ZAC participated in *gacaca* proceedings. He only heard four people who survived the 1994 Ntarama attacks say that Karera held a meeting by the Ntarama church. These four had just come back from Arusha, where they had testified about the attack before the ICTR. In that context, he recalled that vehicles once came to his area, carrying white people. He heard they were looking for witnesses to testify against Karera.³⁰³

Deliberations

246. Of the four Prosecution witnesses who testified about the events in Ntarama, Witness BMI did not mention the meeting on 14 April 1994, but he left his home and sought refuge at the school around 4.00 p.m. with scores of other Tutsi refugees on that day. There is no evidence that he was near the sector office when the other witnesses saw Karera there. Witnesses BMK, BML and BMJ described the meeting similarly. It was held in the morning close to the sector office. Karera arrived in a white vehicle, introduced himself, addressed approximately 30 to 50 refugees, and left in the same car.

247. There are some inconsistencies in the testimonies. The Chamber does not consider it significant whether the meeting was an unplanned encounter or announced in advance by the *conseiller*. The witnesses may have received different information at the time or their recollection may vary. Similarly, it does not affect their credibility whether they now remember if Karera introduced himself only by name or also by title. However, the testimony of Witnesses BMJ and BMK that Karera called himself "prefect" supports the Chamber's conclusion (II.3) that Karera did perform functions as prefect before he was officially appointed on 17 April 1994.

248. Witnesses BMJ and BML said that Karera was accompanied by two soldiers. Witness BMK mentioned one *gendarme* but added that this is what he was told and that he thought that the person looked like a soldier. The Chamber does not attach importance to the different accounts of military personnel that were present, as considerable time has passed and the witnesses' recollection may have faded.

249. Witness BMK did not mention any civilians arriving with Karera. Witness BMJ

³⁰¹ T. 17 August 2006 pp. 15-16.

³⁰² *Id.* pp. 11, 17, 22, 33-34, 38, 43-45, 48-54, 56-59, 61.

³⁰³ *Id.* pp. 35, 61.

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was told that Bizimana was one of the three civilians, and Witness BML recognized Bizimana but was unclear as to the identity of two other civilians. Witness BML first identified them as sub-prefect Minani and school inspector Karerangabo but then said that they accompanied Karera at the meeting in 1992. In the present context, Witness BML's confusion of the meeting in 1992 and 1994, respectively, is not important. Karera's presence at the meeting on 14 April 1994 was confirmed by three witnesses, and there is not really any contradiction regarding Bizimana's presence: One witness recognized him, another witness was told that he was there, and the third witness did not know him. The point is that all three witnesses have consistently explained that Karera was present at the meeting since they gave their statements in 2001.

250. Witnesses BMJ and BML testified that Bizimana was a prison director, while their written statements of 2001 indicated that he was a school director.³⁰⁴ In a written statement given in 2005, Witness BML corrected this and stated that Bizimana was the Nyamata prison director.³⁰⁵ Witness BMJ made the same correction in court in January 2006.³⁰⁶ The Defence submits that the witnesses had coordinated their accounts.³⁰⁷ The Chamber does not exclude that the witnesses may have discussed the events of 1994, in spite of general denials of having done so.³⁰⁸ Even though ICTR investigators conduct interviews with witnesses separately, it is noted that two of them gave their statement to investigators on the same day at the same place in 2001 and the other two on another day at the same location in 2001. All four lived in the same area, travelled together to Arusha in connection with the trial and had their meals together in the safe house.³⁰⁹ However, the differences between their testimonies regarding the meeting on 14 April do not support a submission of collusion. Furthermore, Bizimana's title is a detail which does not affect Karera's role during the meeting of 14 April 1994. The Defence's other submissions concerning collusion will be discussed below (II.5.4).

251. Having also considers the testimony of Defence witnesses, the Chamber finds that Karera was present during the meeting at the sector office on 14 April 1994. There could have been such a meeting of which Witness YCH was unaware, in particular as he did not travel to Ntarama after 6 April. Witness ZAC's evidence that there was no meeting by the Ntarama church around 15 April has also limited significance. He was not in the area in 1994. His hearsay evidence that no-one in the *gacaca* proceedings allegedly mentioned

³⁰⁴ T. 27 January 2006 pp. 9-10 (BMJ); T. 30 January 2006 pp. 6-9 (BML); Defence Exhibits 16 (Witness BMJ's statement of 29 April 2001) and 17 (Witness BML's statement of 29 April 2001).

³⁰⁵ Defence Exhibit 18 (Witness BML's statement of 6 October 2005).

³⁰⁶ Witness BMJ's prior statement of 2001 mentions that Bizimana was the "former director of the Kanzenze primary school". The witness testified that Bizimana was associated with the prison, not the school, and that when the Prosecutor re-read his statement to him, the witness told him that it was incorrect. T. 27 January 2006 pp. 9-10; Defence Exhibit 16 (statement of 29 April 2001).

³⁰⁷ Defence Closing Brief, paras. 311-312. The Prosecution submits that its four witnesses corroborate each other in all material respects, explains discrepancies in their evidence, and rebuts the Defence allegations of collusion. Prosecution Closing Brief, paras. 554, 559, 562-564.

³⁰⁸ Witness BMJ admitted that he knew Witness BML and that they lived in the same area in Rwanda, but denied that they discussed the subject matter of their testimonies or that he heard from Witness BML that Bizimana was associated with the prison. T. 27 January 2006 pp. 11-13, 19. Witness BML also denied that he discussed his testimony with Witness BMJ. T. 30 January 2006 pp. 8-9.

³⁰⁹ T. 26 January 2006 pp. 2-8 (Witness BMK); T. 27 January 2006 pp. 11-13, 19 (Witness BMJ); T. 30 January 2006 pp. 27, 29-31 (Witness BML); T. 31 January 2006 p. 28 (Witness BMI).

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Karera's presence at the brief meeting before the massacres the following day carries little weight compared to the direct testimony of Witnesses BMK, BML and BMJ.

252. According to paragraph 16 of the Indictment, Karera threatened the Tutsis that they were going to pay for the President's death, whereas paragraph 17 states that he promised to return with soldiers the following day to ensure security. Only Witness BMK testified that Karera made a threatening remark. He did not mention anything about protection. According to Witness BML, Karera said that the shooting down of the President's plane was the responsibility of the RPF and that he would send soldiers to protect the refugees the next day. Nothing in that testimony indicates that Karera threatened the refugees. Witness BML only heard the remark about protection, not the threat.

253. No evidence suggests that there was more than one meeting close to the Ntarama sector office in the morning of 14 April 1994. All three witnesses saw Karera arrive and leave in his car, which means that they were present during the entire meeting. According to their evidence, they were only a few meters from him when he spoke and had therefore no problem hearing him. A statement threatening the Tutsis would be of a dramatic character and not easy to forget. It is therefore significant that only one of three Tutsi witnesses testified that Karera threatened the refugees. The Chamber does not find it established beyond reasonable doubt that he did so.

254. However, based on the testimony of Witnesses BML and BMJ, the Chamber finds it established that during a meeting at Ntarama sector office on 14 April 1994, Karera promised to provide security by bringing soldiers to protect the refugees. This conclusion does not contradict the Chamber's finding (II.4.5) that he was in Nyamirambo between 7 and 15 April (see II.7 below). The significance of Karera's statement about protection will be considered in light of the Chamber's findings concerning his role during the attacks against Ntarama Church the following day (II.5.4).³¹⁰

5.4 Attack Against Ntarama Church, 15 April 1994

255. The Indictment states:

18. The following day, on or about 15 April 1994, François KARERA arrived in Ntarama *secteur* with a convoy of ONATRACOM buses carrying soldiers, including Presidential Guard, and *Interahamwe*. François KARERA armed with firearm addressed the soldiers and *Interahamwe*, stating "Now you people have been fighting the Tutsi for one week but now the job will be finished. I don't want to see one Tutsi person alive in Ntarama *secteur* by tonight." François KARERA thereafter led a group of soldiers and *Interahamwe* in an attack against Tutsi civilians at the Ntarama Church. Among those who collaborated in organizing and leading the attacks were: Jean de la Croix BIZIMANA, former director of Kan[z]enze Primary School, and Kan[z]enze *bourgmestre* [...] Bernard GATANAZI.

19. François KARERA misled Tutsi refugees in Ntarama *secteur* by falsely

³¹⁰ See also paragraph 19 of the Indictment (Karera misled the Tutsi refugees by falsely representing to them that soldiers would be dispatched to the church to protect them), and para. 80 of the Pre-Trial Brief (according to which Karera's statement was intended to provide the refugees with "a false sense of security").

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representing to them that soldiers would be dispatched to Ntarama Church to protect them. Instead, François KARERA organized and led soldiers in attacks on the refugees. During the said attack, numerous Tutsi civilians were killed. Further, between 15 and 28 April 1994, daily attacks continued at the said church.

28. Sometime between 15 and 28 April 1994, a series of attacks against Tutsi refugees who [sought refuge] at Ntarama primary school in Ntarama church in Ntarama *secteur* resulted [in] numerous deaths. Some of [these] attacks were organized and orchestrated by François KARERA, in particular that on Ntarama church around 15 April 1994. The attacks were strategically planned, and François Karera played a seminal role in encouraging refugees to gather at the church so that they could be exterminated with great efficiency.

35. Among those that were killed as a direct consequence of François KARERA's acts or omissions included: Mukadana, Murebwayire, Tuyishire, Kadabari, Mukeshimana and Murekatete, and their entire families. All these victims were killed at Ntarama church on 15 April 1994.

256. Based on testimonies and a forensic report, the Prosecution submits that Karera led the attack against Tutsi refugees at Ntarama Church and its environment on or about 15 April 1994. A large number of persons, including the six persons mentioned in paragraph 35 of the Indictment and their families, were killed as a direct consequence of his acts or omissions. The Defence does not dispute the forensic report but submits that Karera was not present during the attack. The Prosecution witnesses were coached and their testimonies unreliable.³¹¹

Evidence:

Prosecution Witness BML

257. On 15 April 1994, Witness BML was heading to Ntarama Church when he saw four buses, from which soldiers and *Interahamwe* emerged. The witness recognized Karera, whom he had seen the previous day, descend from the second bus. He was carrying a long rifle and wearing trousers, a shirt and a long coat. The witness recognized the *Interahamwe* by the banana leaves around their heads, and their machetes, spears and clubs. The soldiers were wearing military uniform and had rifles. Between 200 and 300 soldiers and *Interahamwe* were there.³¹²

258. The witness was hiding in a 60-centimetre deep ditch, about 50 metres or paces from Karera and the buses. Between him and Karera there were only young coffee trees, through which he could clearly see the road and hear the noises. The ditch was parallel to the lower side of the road between the church and sector office.³¹³

259. The buses passed near Witness BML's hiding place. They parked slightly after the church, towards the school. The school was 800 metres from the church, beyond a hill.

³¹¹ Prosecution Closing Brief, paras. 515-536 and 554-588 (genocide), 739-741 (extermination), 804-809 (murder); Defence Closing Brief, paras. 289-317; Prosecution Exhibit 30 (forensic scientists' report by Dr. José Maria Abenza Rojo and Dr. Emilio Perez Pujol, entitled "UN Commission Report on Human Rights in Rwanda").

³¹² T. 27 January 2006 pp. 27-29; T. 30 January 2006 p. 9.

³¹³ T. 27 January 2006 pp. 28-30; T. 30 January 2006 pp. 10-11, 15, 18.

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The buses were green and blue full-size ONATRACOM buses and arrived from the direction of Kigali. The witness assumed they came from there since Kigali was the only place such buses existed. The doors faced the upper side of the road, away from the witness. Since the buses parked beyond the church, the attackers had to walk behind them to reach the church and the witness was able to see them. The attackers did not get closer than 50 metres to him.³¹⁴

260. The attackers stood by Karera and looked towards the church. Karera said that a week has passed since they started confronting the Ntarama Tutsis and asked them "to speed up things and finish them off because I do not want to see Ntarama Tutsis". He specified that by nightfall he did not want any Tutsis in Ntarama. Karera spoke loudly and the witness heard him clearly. The soldiers, *Interahamwe* and Karera began shooting as they proceeded towards the church. Once they entered the church, Witness BML left the ditch and went to the school to hide. After the perpetrators left the area that day, the witness and other refugees returned to the church. They saw many corpses near the sector office and on the road in front of the church, as well as outside and inside the church. The bodies inside were burnt. Relatives of the witness died in the attack.³¹⁵

261. After the attack, Witness BML hid in a swamp. Later that day he returned to the church to search for bodies. He spent the night at the school and returned to the swamp the following day. The witness also testified that he hid at the swamp near the Akagera river until he was rescued by the *Inkotanyi* in May.³¹⁶

Prosecution Witness BMK

262. Around 15 April 1994, at about 10.00 a.m., Witness BMK saw six buses arriving in a convoy in Ntarama sector. The first five buses stopped a short distance from the church and sector office, on the small road leading to Ntarama school. He first testified that the distance between the school and the church was 500 metres and subsequently said that it was 150 to 200 steps. The last bus parked in front of the church. Some of the buses were white. The witness recognized Karera, who he saw the previous day, descend from the second bus. Karera stood on the road near the bus. He had a long military coat and carried a long rifle. Around 200 *Interahamwe* and soldiers were in the buses. Witness BMK recognised the *Interahamwe* by their machetes, clubs and spears. The soldiers had guns. The witness believed that the buses came from Kigali because in his area there were no buses and because Karera lived in Kigali. Refugees from Kayumba, who were with the witness, identified the soldiers as Presidential Guards. They said: "[n]ow that Presidential Guards and *Interahamwes* are here, no one is going to survive".³¹⁷

263. The witness was about 100 paces from the parked buses and about 150 paces from the school, towards the sector office, in the valley below the school and beside the road leading to the sector office. He and others were trying to repel the attacks against refugees at the school. There was a eucalyptus forest nearby, but at the witness's location the land was free of vegetation. The attackers could therefore see him clearly. They emerged from the buses and started shooting at the refugees. Karera was also shooting.

³¹⁴ T. 27 January 2006 pp. 27-29; T. 30 January 2006 pp. 15-19.

³¹⁵ T. 27 January 2006 pp. 29-31; Prosecution Exhibit 20 (names of Witness BML's relatives who died).

³¹⁶ T. 27 January 2006 pp. 31-32; T. 30 January 2006 pp. 19, 23-25.

³¹⁷ T. 25 January 2006 pp. 35-39; T. 26 January 2006 pp. 22-23, 32.

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The witness was hit by a bullet and hurt in his right arm. He was losing blood and went into the bushes to hide.³¹⁸

264. Some attackers used traditional weapons. Refugees who ran to the school were chased and killed once they arrived there. Many were killed that day. Some refugees managed to escape to the valley. The witness's granddaughter was killed at the school. He heard from others who subsequently went to the church that all the refugees at the church were killed that day.³¹⁹

265. Witness BMK knew Gatanazi, the *bourgmestre* of Kanzenze commune, but did not see him on 14 or 15 April 1994.³²⁰

Prosecution Witness BMJ

266. In the morning of 15 April 1994, Witness BMJ saw four buses pass in front of the Ntarama sector office and park slightly beyond the church. He had arrived from the church and was facing the buses, which were green and yellow full-size ONATRACOM buses. Many *Interahamwe* and soldiers descended from them and opened fire in his direction. The witness sought refuge in a ditch, about 32 steps from the buses. There were young coffee trees in front of him and bushes behind him. He stated that anyone looking attentively in his direction could have seen him.³²¹

267. Karera was the first to emerge from the second bus. Witness BMJ watched him for a while and immediately recognized him as the man he had seen at the Ntarama sector office on the previous day and in 1992. Karera was wearing black civilian clothes and a black coat. He carried a long rifle. The soldiers and *Interahamwe* descended from the buses at different times and approached Karera. The witness recognized the *Interahamwe* by their distinct attire and traditional weapons such as spears, machetes and clubs. The soldiers were wearing military uniform and carried rifles. Karera looked towards the refugees and ordered the soldiers and *Interahamwe* to hurry up. They began shooting at the Tutsi refugees. There were many refugees at the church and the school. People were being killed at the church and opposite to it. The witness did not see Karera shoot and did not know whether the soldiers came from the Gako military camp in Gashora commune. They arrived from that direction, but the road from that camp also arrived from Kigali.³²²

268. When the gunshots ceased and the attackers had left, the witness left the ditch and hid at the Kanyaru papyrus-tree swamp. He was unaware of the exact duration of the attack, but when he returned to the church later that evening, the attack was over. All the refugees at the church had been killed. Between 6,000 and 7,000 corpses were lying in and around the church and the nearby buildings. Six persons whom the witness knew were among the refugees at the church: Mukadana, Murebwayire, Tuyishire, Kadabari, Mukeshimana and Murekatete. He never saw them again. Based on the number of victims, the witness estimated that the attack lasted a long time. Most of the refugees who had survived escaped to the papyrus swamp by a nearby stream. Only a few spent the

³¹⁸ T. 25 January 2006 pp. 38-39; T. 26 January 2006 pp. 22, 24, 28-30, 32-33.

³¹⁹ T. 25 January 2006 pp. 38-39; T. 26 January 2006 pp. 24, 32.

³²⁰ T. 26 January 2006 p. 33.

³²¹ T. 26 January 2006 pp. 44-47; T. 27 January 2006 pp. 4, 6-8, 18.

³²² T. 26 January 2006 pp. 44-47; T. 27 January 2006 pp. 3-4, 6-7, 14.

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night at the school.³²³

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Prosecution Witness BMI

269. On 15 April 1994, at around 10.00 a.m., Witness BMI was at Ntarama Church when he heard buses arriving from the direction of Kigali. He realized that *Interahamwe* were in them and started running towards the school, where the buses were headed.³²⁴ They parked about 100 or 150 metres beyond the church. The witness stopped running and hid beside the road, about 200 to 240 metres beyond the church. Two minibuses led the convoy and two full-size buses followed. The minibuses were blue with a green stripe. The big buses were green and white ONATRACOM buses and may have had a third colour.³²⁵

270. The witness explained that about 150 metres beyond the church, there was a junction where the Kigali-Ntarama road split into two roads, leading to the Ntarama school and Kibungo sector, respectively. The first bus parked on or just before the junction, facing away from the church. The other buses parked behind it, the last about 20 metres past the church.³²⁶

271. Witness BMI passed the junction and hid on the road leading to Kibungo sector, about 60 to 80 metres beyond the parked buses. He was on the right side of the road (when facing Kibungo), in a banana or sorghum field or in a ditch. The bus doors opened towards the same side of the road where the witness was hiding. He could therefore see Karera and the others leave the buses.³²⁷

272. Karera descended from the second minibus and walked to its front. *Interahamwe*, soldiers and *gendarmes* emerged from the buses, some of them through the doors whereas others jumped out of the windows. The *gendarmes* were distinguishable from the soldiers as they wore red, not black, berets. Karera acted like their commander and showed the attackers in which direction to proceed. They carried firearms, machetes, traditional weapons and grenades. All of them, including Karera, at once ran and began shooting at the refugees. Witness BMI observed him for about five minutes from 70 paces away. Karera waited for everyone to leave the buses. He was dressed in civilian clothes, had a long coat and carried a long rifle, similar to the soldiers' weapons. The witness did not know whether Karera actually hit anyone, but was certain that his gun had live bullets. It was unclear from the witness's testimony whether *Interahamwe* had already been in the area since before the attack.³²⁸

273. Witness BMI was already hiding when the attackers started shooting. Those from the last bus shot the refugees at the church while those from the other buses attacked the refugees at the school. The Tutsis tried to defend themselves by throwing stones. Some attackers threw grenades into the church after breaking its windows. The refugees were

³²³ T. 26 January 2006 pp. 47-48; T. 27 January 2006 pp. 1-2, 6, 8-9, 18; Prosecution Exhibit 18 (names of persons who were killed in the attack).

³²⁴ T. 31 January 2006 p. 21: "I knew that Tutsis could not be making such noise, only *Interahamwes* could make such noise. So I escaped after hearing that noise".

³²⁵ T. 30 January 2006 pp. 43-44; T. 31 January 2006 pp. 16-18, 20-26, 35-36.

³²⁶ T. 30 January 2006 pp. 44-45; T. 31 January 2006 pp. 17-18, 20-24.

³²⁷ T. 30 January 2006 pp. 43, 45; T. 31 January 2006 pp. 20-25, 35-36.

³²⁸ T. 30 January 2006 pp. 44, 46-47; T. 31 January 2006 pp. 18, 20, 35-36.

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compelled to escape to the Akanyaru river swamps. The attackers immediately proceeded towards the school and did not survey the witness's hiding place. He saw them arrive at the school but they were no longer visible once they went into the eucalyptus forest nearby. He remained in his hiding place until 3.00 p.m., when a soldier shot into the air and the attackers withdrew, as if they had a pre-established plan. The witness fled to the swamps near the Akanyaru river, and remained there until 14 May 1994, when he was rescued by the *Inkotanyi*. Gatanazi, the *bourgmestre* of Kanzenze commune, was also present during the attack.³²⁹

274. The witness's relatives who had sought refuge at the church were all killed, including seven of his sisters, his three children, his sister's child, a nephew and an elder brother. A catechist at the parish named Aphrodis was hit by a bullet during the attack.³³⁰

The Accused

275. As mentioned in connection with the alibi (II.7), Karera testified that he left Nyamirambo on 7 April 1994 and stayed at his son's residence in Nyakinama campus, Ruhengeri until 19 April 1994, when he was appointed prefect of Kigali prefecture. Between 7 April and 19 April, he had no factual authority.

276. Karera said that he did not commit or order any crimes, directly or indirectly, in the Bugesera region, which includes Ntarama. He never visited Ntarama. After his appointment as prefect, Karera wanted to go there but was unable because the roads were inaccessible. On 4 May 1994, he attempted to travel to Gitarama through Ngenda commune (near Ntarama), but refugees and soldiers at the Kanyaru bridge advised him to turn back as the RPF had captured Camp Gako and the Bugesera region. Karera was unable to contact the relevant sub-prefect on the phone due to faulty equipment.³³¹

277. On the radio, Karera heard that attacks against the Tutsis commenced within the various communes of Kigali-Rural prefecture on 8 April 1994. It was the responsibility of the prefect to supervise law and order through receiving reports from the various *bourgmestres*. He and the other three sub-prefects at the Kigali-Rural prefecture did not receive reports concerning the Ntarama attacks.³³²

278. The sub-prefect for Rushashi, Juvénal Sezikeye, told Karera that he had received a report about attacks in Rushashi. Karera explained that some of the perpetrators of the Rushashi attacks had been arrested (II.6.3). The sub-prefect for Murambi, Alexis Kanyamibwa, described the attacks in his area to Karera and told him that he did not receive reports as he had to flee his region because of an attack. Karera did not speak with the sub-prefect for Bugesera, Djuma Gasana. He tried to get in touch with him but was unsuccessful as the phone lines were down. When he tried to see Gasana, he was unable to reach his area. Karera therefore did not know what the situation was in the

³²⁹ T. 30 January 2006 pp. 46-48; T. 31 January 2006 pp. 18-19, 21-23, 25, 27.

³³⁰ T. 30 January 2006 pp. 47-48; Prosecution Exhibit 22 (names of Witness BMI's relatives who were killed).

³³¹ T. 22 August 2006 p. 29; T. 23 August 2006 pp. 53-54.

³³² T. 23 August 2006 pp. 4-8. As indicated in II.3, the three sub-prefects at the prefecture were Népomuscène Nayinzira, Athanase Minani and Dancilla Mukarushema, see also Defence Exhibit 69 (chart prepared by Karera on the administrative organization of the Kigali-Rural prefecture: Prefects, sub-prefects and *bourgmestres* 1900-1994).

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Bugesera area. Gasana is currently detained in Kigali.³³³

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Defence Witness NKZ

279. Witness NKZ participated in attacks at the Ntarama church and school, was arrested by Rwandan authorities in December 1996, pleaded guilty and was released in January 2003.³³⁴ He testified that the attack on Ntarama church took place on 15 April 1994, between 10.00 a.m. and 11.00 a.m. The witness did not personally remember the date of the attack on the church, but learned about it from participants in the *gacaca* proceedings. The purpose of the attack was to avenge the President's assassination by Tutsis.³³⁵

280. The attack was led by Thaddée Sebuindo, a retired soldier who had become the *conseiller* of Kanzenze sector. About 300 or 400 perpetrators participated, including about fifteen soldiers (persons in military uniform) who instructed Hutu civilians. Without the soldiers, the civilians could not have carried out the attack against the Tutsis. The witness did not see soldiers arrive at the church in vehicles or buses, nor did he see vehicles parked there. Between 800 and 1,000 victims were killed at the church that day. The victims of the church attack, together with additional corpses that were brought there, amounted to 5,000.³³⁶

281. The attack against Ntarama school on 17 April was also led by Sebuindo. Many civilians participated, including those who perpetrated the church attack on 15 April. Witness NKZ walked to Ntarama with six soldiers. When he reached the school, he saw soldiers shooting at Tutsis. Many died on the spot. Others tried to flee. The soldiers had arrived at the school in two buses, and possibly a pickup. Between the church and the school there were about 500 metres or slightly more, but less than one kilometre. According to the witness, it was impossible to see the church from the school because of the sorghum and eucalyptus fields between the institutions. The witness further testified that the civilian perpetrators could not have killed the Tutsis without the military equipment provided by the soldiers.³³⁷

282. Witness NKZ did not see Karera during the attack against Ntarama church, and he could not have been there before the witness arrived. Apart from Sebuindo, the only civilian authority involved in the attack was Kambali, the *conseiller* of Kibungo sector. The witness did not see Karera at Ntarama school on 17 April 1994, and never heard anyone talk about having seen him there, or in the area, that day. During *gacaca* proceedings, when he was in prison and afterwards, he never heard Karera's name mentioned in connection with the Ntarama attacks.³³⁸ In cross-examination, he admitted having lied in statements he gave to the Rwandan authorities in 1997 prior to his confessions in 1998 and 1999. It was also put to him that in his confession of 1998 he had diminished his role in the attack.³³⁹

³³³ T. 23 August 2006 pp. 4-8.

³³⁴ T. 14 August 2006 pp. 3-4, 22.

³³⁵ *Id.* 4, 6, 15-16.

³³⁶ *Id.* 5-6, 9, 11-15, 18, 26-27, 32-35, 71. Witness NKZ was not able to distinguish soldiers from *gendarmes*. When he said "soldiers" he meant people in military uniform (*Id.* p. 19).

³³⁷ *Id.* pp. 17-18, 32, 69.

³³⁸ *Id.* pp. 15, 19, 23, 33-34, 48.

³³⁹ *Id.* pp. 44-48; Prosecution Exhibits 44 (Pro-Justitia of 19 February 1997), 45 (Investigation report of 20 February 1997), 46 (Witness NKZ's statement of 27 March 1997) and 47 (Pro-Justitia of 18 June 1998).

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Defence Witness ZIH

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283. Witness ZIH participated in the attacks against the Ntarama church and school, was arrested by Rwandan authorities in December 1996, confessed and was released in May 2003.³⁴⁰ He testified that the attack against the church on 15 April started between 10.00 a.m. and 11.00 a.m. It was led by Thaddée Sebuindo, a retired warrant officer who had become the *conseiller* of Kanzenze sector. When the witness arrived at the church there were no other attackers there. No vehicles arrived at the church that day.³⁴¹ About 30 soldiers and 700-800 civilians participated in the attack. The perpetrators included Sebuindo, *conseiller* Kambali of Kibungo sector, Chief Warrant Officers Nsabimana and Ilymukuru, soldiers from Mugero in Kanombe commune, soldiers from Karumuna in Kanzenze commune, and a former policeman from Butamwa commune. The civilian perpetrators were from Kanzenze, Kibungo and Ntarama sectors. Among the civilian perpetrators were *Interahamwe*. Some of them carried grenades, one had a gun and another had a hatchet. Between 800 and 1,200 victims were killed.³⁴²

284. The attack against the school on 17 April was led by Sebuindo. A sergeant named Izabiliza also had a role in leading the attack. Around 1.00 p.m., Witness ZIH saw soldiers passing through his neighbourhood in an ONATRACOM bus and a Toyota pick-up truck. They asked him to board the bus. Also other civilians boarded the two vehicles. Izabiliza informed them that they were going to Ntarama and demanded that everyone be killed there. Sebuindo was in one of the vehicles. The witness later learned from Sebuindo that Izabiliza, despite his low rank, was the commander of Gako camp, the military unit in Nyamata.³⁴³

285. The vehicles arrived at the Ntarama school at 3.00 p.m. and parked on the secondary road leading to the school. Another bus was already there, parked slightly beyond the church. It had also brought soldiers. They emerged from the witness's bus and took positions on the slope. The civilians, including *Interahamwe*, joined the soldiers. They surrounded the hill. Izabiliza opened fire and the other soldiers immediately began shooting. Tutsis trying to escape were killed, as were the Tutsis inside the school. At one stage, Izabiliza drove a motorcycle around the school and shot twice in the air. He told the attackers to retreat, as the ammunition had finished. The soldiers boarded the vehicles and left, proceeding towards Gako camp, where they were based. The civilians left on foot. At least 300 people were killed during the school attack. More perpetrators participated than in the church attack. Some formed part of both attacks.³⁴⁴

286. Witness ZIH did not see any other civilian authorities than *conseillers* Sebuindo and Kambali during the attacks on 15 and 17 April. He was unaware whether the *bourgmestre* of Kanzenze commune was involved.³⁴⁵ The witness did not see Karera at the Ntarama church or at the school and never heard that he had been involved in the two attacks. When he participated in *gacaca* proceedings relating to Kibungo, Ntarama and

³⁴⁰ T. 15 August 2006 pp. 57-59.

³⁴¹ *Id.* pp. 3, 7-9, 11-12, 65-66.

³⁴² *Id.* pp. 8, 10-12, 13, 66-67, 69; T. 16 August 2006 pp. 35-36.

³⁴³ T. 15 August 2006 pp. 52-57, 66-69.

³⁴⁴ *Id.* pp. 56-59, 68; T. 16 August 2006 pp. 4-5, 30-32, 36-38.

³⁴⁵ T. 15 August 2006 p. 68. The witness testified that the *bourgmestre* was never arrested, and that the communal office was about six kilometres from the Ntarama church and school.

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Kanzenze sectors, he never heard anyone mention Karera's presence or participation in the two attacks. The attackers were grouped according to their sector. Seuhindo would have introduced a foreigner, an authority, or anyone with special duties.³⁴⁶ During cross-examination, Witness ZIH admitted that he had lied to Rwandan authorities in 1997, denying having participated in the attack with Seuhindo.³⁴⁷

Defence Witness ZAC

287. Witness ZAC, the prisoner who chaired the "Urumuli committee" (II.5.3), listened to confessions relating to the Ntarama attacks, made by Defence Witnesses NKZ and ZIH and three other prisoners. In addition, during the *gacaca* proceedings in prison, about 20 civilian prisoners described the Ntarama attacks. He never heard Karera's name mentioned in these statements.³⁴⁸

288. When the witness participated in *gacaca* proceedings after his release from prison (II.5.3), four survivors referred to Karera's presence during the attacks in Ntarama. This was in 2006, after their testimonies before the ICTR. He also recalled that vehicles with white people once came to his area, looking for witnesses to testify against Karera.³⁴⁹

Defence Witness MZN

289. Witness MZN was a soldier in Camp Gako in April 1994. He was charged with genocide in 1997, detained and acquitted by a Rwandan military court in September 2001. The charges against him included crimes in Ntarama sector. The witness never heard that Karera ordered attacks in Ntarama in 1994. Furthermore, Karera never entered a military camp, ordered soldiers to attack or order killings in Bugesera (where Ntarama is located). Witness MZN did not participate in the Ntarama church attack, but heard from other soldiers who shared his prison cell that Tutsis were massacred there between 18 and 20 April 1994. These soldiers, who had been present during the massacre, said that *Interahamwe* participated. They did not mention the presence of Karera or of any other civilian authorities. According to the witness, no civilians were implicated in trials relating to the Ntarama massacres. He said that Corporal Hategekimana, one of the soldiers charged with participating in the attacks would have seized an opportunity to implicate Karera in the killings to mitigate his own guilt. His failure to do so indicates that Karera had not ordered the crimes.³⁵⁰

Defence Witness DSM

290. In April 1994, Witness DSM served as a policeman in Ngenda and its neighbouring communes in Kigali-Rural prefecture. He did not participate in the Ntarama attacks. The witness did not see Karera in Ngenda or Kanzenze communes that month and never heard anyone mention his presence (Ngenda commune was south of Kanzenze commune). Ndagijama, a policeman from Kanzenze commune, informed him about the Ntarama church massacre. According to Ndagijama, soldiers from Camp Gako, accompanied by

³⁴⁶ *Id.* pp. 12, 57, 60, 63-64.

³⁴⁷ T. 16 January 2006 pp. 11-12; Prosecution Exhibit 48 (Pro-Justitia of 2 January 1997) and 45 (Procès-Verbal of 20 February 1997).

³⁴⁸ T. 17 August 2006 pp. 23-27, 29, 34-35, 43, 58-59, 61.

³⁴⁹ *Id.* pp. 35, 61.

³⁵⁰ T. 10 May 2006 pp. 52-55, 58-64, 66-68, 70-72; Defence Exhibit 43 (Witness MZN's judgement by a Rwandan military court, dated 24 September 2001).

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civilians, perpetrated the killings by using military and traditional weapons. The victims were very many and included Tutsis and Hutu accomplices. Ndagijimana did not mention the presence of any civilian authorities. Ndagijimana would have informed him if Karera had been in the area.³⁵¹

291. On 14 and 15 April 1994, refugees arriving from Kigali to Ngenda reported heavy fighting between the RPF and government forces from Kicukiro to Kanzenze bridge. On 15 April, it became impossible to pass through Kicukiro. Those travelling from Kigali to Nyamata had to take a detour through Butamwa. That day, the government still controlled the Bugesera side of the bridge, and people arriving from Kigali with identity cards proving they were residents of Kanzenze or Gashora were allowed to pass through Butamwa. Those arriving from Ngenda or Kanzenze were allowed to approach the bridge, but not to cross it. Another route from Kigali to Kanzenze passed through Gitarama, Butare and Ngenda. Those attacking the Ntarama church would have avoided the RPF forces if they had taken that circuitous way to Ntarama (see more generally II.7 about travel to Ntarama).³⁵²

Deliberations

292. A massacre took place at Ntarama Church on 15 April 1994, as alleged in the Indictment. This follows from the testimonies of Prosecution Witnesses BMK, BMJ, BML and BMI, who were amongst the refugees, and Defence Witnesses NKZ and ZIH, who formed part of the attack. It started around 10.00 a.m. and lasted for several hours. There were several hundred attackers, including soldiers, *Interahamwe* and other civilians.³⁵³ They used guns and traditional weapons, and some attackers had grenades. A large number of refugees were killed, including women, men and children.³⁵⁴ According to the two Defence witnesses, there was also an attack at the school on 17 April. This was not mentioned by the four Prosecution witnesses, as they fled in the evening of 15 April. There is no evidence that Karera was present during the attack against the school on 17 April.³⁵⁵

293. According to paragraph 18 of the Indictment, the attack at the church was led by Karera, Jean de la Croix Bizimana (former director of Kanzenze Primary School), and *bourgmestre* Bernhard Gatanazi of Kanzenze commune. Bizimana was not mentioned in any of the testimonies, and only Witness BMI testified that Gatanazi was present. For the Chamber, the crucial question is whether Karera was there.

³⁵¹ T. 15 May 2006 pp. 10-11; T. 16 May 2006 pp. 22, 24.

³⁵² T. 15 May 2006 pp. 12-13; T. 16 May 2006 pp. 26-27.

³⁵³ The estimates varied between Witness BML (200-300 attackers, including soldiers and *Interahamwe*), Witness BMK (200 *Interahamwe* and soldiers), Witness NKZ (300-400 attackers, including 15 soldiers), and Witness ZIH (30 soldiers and 700-800 civilians).

³⁵⁴ Two witnesses gave estimates. Witness BMJ indicated 6,000 to 7,000 victims. Witness NKZ said that between 800 and 1,000 persons were killed on 15 April but that the total number of dead bodies brought to the church to be given a decent burial amounted to 5,000. According to the forensic report, which was not challenged by the Defence, 385 victims were found at the Ntarama Church. See page 25 of the English version of Prosecution Exhibit 30 (forensic scientists' report by Dr. Jose Abenza Rojo and Dr. Emilio Perez Pujol entitled "UN Commission Report on Human Rights in Rwanda").

³⁵⁵ Only paragraph 28 of the Indictment refers explicitly to Ntarama school. Its English formulation is unclear, as it refers to a series of attacks between 15 and 28 April against Tutsi refugees who sought refuge "at Ntarama primary school in Ntarama church".

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294. The four Prosecution witnesses described the attack similarly in terms of location, time, attackers, mode of transport and Karera's presence. They all saw buses with soldiers and *Interahamwe* arrive on 15 April 1994 and park just beyond the Ntarama church. Karera emerged from the second bus, wearing a long coat and armed with a long gun. He participated in the attack together with the soldiers and *Interahamwe*. According to their testimonies, Witness BMJ was about 32 steps away from Karera when he arrived, Witness BML observed him from about 50 meters or paces, Witness BMI indicated 70 paces and Witness BMK gave an estimate of 100 paces. At least the two first distances, which are relatively short, would normally be sufficiently close to ensure reliable identification, provided that these estimates are credible. The Chamber will revert to this below.

295. Three of the four Prosecution witnesses allegedly heard Karera address the attackers. According to Witness BML, Karera stated that one week had elapsed and that it was time to finish the Tutsis. This account is very close to the formulation in the Indictment. Witness BMJ said that he asked them to hurry up, whereas Witness BMI testified that he acted like their commander, indicated the direction to proceed and said it was getting late.³⁵⁶ In the Chamber's view, these variations do not affect the witnesses' credibility, who may not have heard the same parts of Karera's alleged statement because their positions were different. Furthermore, their memories may vary, due to the lapse of time since the event. Witness BMK did not hear Karera say anything but he was further away than the three other witnesses, in the valley below the school and beside the road leading to the sector office.

296. The Chamber will now consider each of the four testimonies. Witness BMJ said that he hid in a ditch about 32 steps from the parked buses, with coffee trees in front and bushes behind him. This is at variance with his written statement of 2001 to investigators, according to which he was hiding in the bushes 150 metres away. Questioned about this discrepancy, he explained that he was used to paces but not to the metric system.³⁵⁷ The witness added that during a preparatory meeting shortly before his testimony, he had informed Counsel for the Prosecution that the distance was not 150 metres but 32

³⁵⁶ Paragraph 16 of the Indictment: "Now you people have been fighting the Tutsis for one week but now the job will be finished. I don't want to see one Tutsi alive in Ntarama secteur by tonight"; Witness BML, T. 27 January 2006 p. 29 ("He told them, 'It's been a week since you have started confronting Ntarama Tutsis. You have not been able to vanquish them. So I want you to speed up things and finish them off, because I do not want to see Ntarama Tutsis.' So they started attacking the church, and I was hiding near there."); Witness BMJ, T. 26 January 2006 p. 47 ("he told them to hurry up, and that is when they started shooting."); see also T. 27 January 2006 p. 7 ("He said something before they started shooting. You know, he said, 'Act fast' and that is when they started shooting."); Witness BMI, T. 30 January 2006 p. 46 ("at that time, after they arrived at that location, he came out of the vehicle like the commander of his forces, and he was asking his men why they were still there. He showed them the direction to take. ... So he gave his orders, because he was saying it was getting late, and the *Interahamwes* and the soldiers ran and started shooting.").

³⁵⁷ Asked by Defence counsel whether he was 150 metres from the buses, he answered: "Even though I am not very familiar with the metric system, I cannot say that the distance was 150 metres, it was shorter than that". T. 27 January 2006 p. 4. See also T. 27 January 2006 p. 5 ("I have told you that I cannot make estimates in metres, but I can tell you that between me and him, the distance was about 32 paces"); T. 27 January 2006 pp. 5-6 ("I do not know how to estimate distances in metres, but probably what I said was that the distance was 32 paces. I hear people talk about, metres, but I do not know how to measure one metre. The only measures I can give you, I will express them in paces.").

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paces.³⁵⁸ As for the vegetation, the witness explained that when he gave his statement to the investigators he meant to say that there were bushes behind him. He reiterated that in front there were only coffee plants.³⁵⁹

297. If these two new elements in the testimony are accepted, the witness would have had no problems in seeing Karera. With respect to the abbreviated distance, the Chamber considers it unlikely that the investigators would have recorded a distance which was different than what he said. Even assuming that the investigators may have written "metres" instead of "paces", the Chamber notes that there is a considerable difference between 150 metres and 32 paces.³⁶⁰ Whether the two changes concerning distance and vegetation are indicative of collusion or coaching, as alleged by the Defence, will be considered below after consideration of the other testimonies.

298. Witness BMJ first was recorded as having said that he was injured and fell in the ditch.³⁶¹ On cross-examination the following day, he denied this and explained that he sought refuge in the ditch because he was afraid. According to the Defence, this affects his credibility.³⁶² Having listened to what the witness said in the Kinyarwanda original recording, the Chamber accepts his version.³⁶³

299. Witness BML testified that the distance between him and Karera during the attack was 50 metres or paces.³⁶⁴ In his prior statement of 2001, the distance was 150 metres, just like in Witness BMJ's statement. Witness BML explained that he made an error in his prior statement and subsequently returned to the site to measure the distance by using paces.³⁶⁵ Another similarity compared to Witness BMJ, is Witness BML's testimony that there were only young coffee trees between him and Karera, whereas his prior statement states that he hid in the bushes. The witness explained that the bushes were behind his hiding place, while there were only coffee trees in front, through which he could see. The Chamber considers these differences immaterial.³⁶⁶

300. The prior statements of Witnesses BML and BMJ were given at the same time and place. During cross-examination of Witness BML, the Defence put to him that he had

³⁵⁸ T. 27 January 2006 p. 6 ("I told him that I did not agree with the 150 metres, that I could not measure in metres, only in paces ... and I explained to him that the distance was, rather, 32 paces."). The Prosecution did not provide a will-say statement reflecting this correction.

³⁵⁹ T. 27 January 2006 pp. 4-6; Defence Exhibit 16 (Witness BMJ's statement of 29 April 2001).

³⁶⁰ According to the Concise Oxford Dictionary, a pace is about 75 cm, which means that 32 paces are about 24 metres. A Rwandan will use the term "paces" in a less precise way. For example, Witness BML testified that he considered a pace as equivalent to a metre (T. 30 January 2007 p. 10).

³⁶¹ T. 26 January 2006 p. 47 ("when they shot at us, I was hurt and I fell into a ditch"); T. 26 January 2006 p. 45 (French version: "*Et quand ils ont tiré, j'ai été touché et je suis tombé dans cette tranchée antiérosive*").

³⁶² Defence Closing Brief, para. 298.

³⁶³ According to the Tribunal's language section, the correct interpretation of his testimony on 26 January 2007 would be: "When they shot, I immediately fell (or ducked) at the spot where I was standing into the trench of water". (In Kinyarwanda: "*Barashe, jye ubwo mpita ngwa ha handi nari mpagaze mu mu tracé w'amazi*").

³⁶⁴ Witness BML testified that he considered a pace as "the equivalent of" a metre. T. 30 January 2007 p. 10.

³⁶⁵ T. 27 January 2006 p. 5; T. 30 January 2006 pp. 10 (the witness was not "comfortable using a metric form of calculation"), 11, 18.

³⁶⁶ T. 30 January 2006 p. 11; Defence Exhibit 17 (statement of Witness BML dated 29 April 2001).

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coordinated his account with Witness BMJ. Witness BML rejected this proposition and explained that he went back later to take measurements. He was alone when he did so and denied having discussed the matter with anyone. He and Witness BMJ were not hiding at the same place, which according to the witness explains why they testified about different distances from Karera.³⁶⁷ Also Witness BMJ said that he did not discuss his testimony with anyone besides the Prosecutor.³⁶⁸

301. As mentioned above, Witness BMJ corrected the distance to Karera in connection with his testimony. Witness BML did so in an additional statement in 2005, where he said that the distance was 50 meters.³⁶⁹ This means that Witness BML must have measured the distance before that time. The Chamber observes that it is unusual that witnesses take the effort to double-check a distance given to investigators but cannot exclude this possibility. Witness BMJ did not say that had measured the distance a second time.

302. Witness BML first testified that he hid in the swamp of the Nyaborongo river in conformity with his two prior statements, but subsequently said that he hid in the swamp near the Akagera river. The Defence suggested that the Akagera river was about 40 kilometres from Ntarama and questioned the witness's ability to cover 80 kilometres in the same day, noting that there was a river much closer to Ntarama, called Akanyaru. The witness answered that he did not know how much distance he covered that day, but he arrived at a swamp near a river, and the river's name was not important.³⁷⁰ The Defence considers it incomprehensible that a long term resident of the area would not know the name of the river in his neighbourhood and submits that the witness was coached by

³⁶⁷ T. 30 January 2006 pp. 11-12 ("Q. ... You see, not only did the last witness have the same peculiar story about Bizimana, he also gave a statement same time, same place as you did, and guess what, he told the investigators he was 150 metres from Karera and he was hiding in the bushes, just like you. And you know what he said when he came to testify here, he was 32 paces from Karera, lying in a ditch. The only difference between you and his story is the changes are a couple of paces. Any explanation for that, sir? A. As you are aware, everybody gives their own testimony. Perhaps the same questions that were put to me were put to him. Maybe he was not prepared and he made the same errors, and then, perhaps, later on he also measured the distance. But people were not hiding in the same place. He was somewhere else, and I was at another place, and that is why there is a difference between the distances. When you are going to hide you don't tell people, "Come, let us go and hide together." Everybody hid where they could. That is why the distance that he gets you is different from what I'm telling you. Q. How about this, sir, somebody told both of you that you couldn't hear a thing about what Karera was saying from 150 metres away so you had to straighten your stories. How about that? A. No, we did not change our story. What happened is that when the statements were given we were not ready. We had not paid any attention. We did not even know that we would be called to testify, but after having given the statement we went back to this location to be sure about the distance. Regarding the fact that someone may have talked to us about 150 metres, that is not correct. Q. When you say "we went back to check the distance," who is "we"? A. Personally, I went there after I returned from Remera, where I had given my statement. I went back to look at that place, so as to see whether the distance was, indeed, 150 metres. And when I measured the distance, I saw that it was 50 paces. And when the investigators returned, I explained it to them. Q. Right, and were you alone or with some friends when you checked the distances and had a look at the ditch and worked this out? A. I was alone. Q. Did you talk to anybody else who was a possible witness in this proceeding about your insight into the distance that you were from Mr. Karera? A. I did not speak about that with anyone.")

³⁶⁸ T. 27 January 2006 pp. 11-12.

³⁶⁹ Defence Exhibit 18 (Witness BML's statement of 6 October 2005).

³⁷⁰ T. 27 January 2006 p. 32; T. 30 January 2006 pp. 19-20, 23-25.

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someone unfamiliar with the immediate geography of the area.³⁷¹ The Chamber entertains no doubts that the witness came from Ntarama, accepts that he was present during the attack at the church on 15 April 1994, and considers any confusion about his subsequent hiding place as insignificant. Some other inconsistencies in Witness BML's evidence are also of marginal importance.³⁷²

303. Turning to Witness BMI, he testified that he was about 200 metres from the church when he first saw Karera and the buses, but also said that he was at the church when he heard the buses. When asked about this inconsistency, the witness explained that he heard them when he was at the church, he then ran, stopped and hid by the road, and only from there he observed the buses and Karera.³⁷³ The Chamber accepts this evidence, which also explains how the witness could observe the situation although he was running for his life.³⁷⁴

304. The witness initially testified that he hid in a banana farm, and even indicated the owner's name, but later mentioned several times that he was in a sorghum field. At one stage, he testified that he hid in a ditch. In a prior statement of 2001, the witness mentioned that he hid in the bushes. When confronted with this inconsistency, he explained that he was afraid and did not pay attention to the vegetation while he was hiding.³⁷⁵ The Chamber accepts this explanation and does not consider other possible inconsistencies in Witness BMI's evidence as significant.³⁷⁶

305. Witness BMK testified that the perpetrators attacked him while he was in the valley below the school, about 150 paces from the school towards the sector office. According to Defence Witnesses ZAC and NKZ, it was impossible to see the school from the church because eucalyptus trees and banana plantations were blocking the view.³⁷⁷ The Chamber

³⁷¹ Defence Closing Brief, para. 311.

³⁷² Witness BML testified that the attackers did not reach closer than 50 metres to him, whereas his prior statement describes attackers jumping over him. The witness explained that one group of attackers went into the church while another group passed through his hiding place and jumped over him, believing he was dead. When he said that the attackers did not reach closer than 50 metres to him, he thought he was asked whether the buses, not the attackers, came closer than 50 metres to him. T. 30 January 2006 pp. 18-19. The Chamber accepts these explanations.

³⁷³ T. 31 January 2006 pp. 20-26.

³⁷⁴ Cf. Defence Closing Brief, para. 310 ("BMI's testimony reveals irreconcilable contradictions, such as where the witness was hiding, the fact that he is able to describe the scene in a such a detailed manner while admitting that he was then running for his life").

³⁷⁵ Defence Exhibit 19 (Witness BMI's statement of 4 May 2001); T. 31 January 2006 p. 25 ("There are many bushes, and, as you know, when you are hiding you don't pay attention to the type of plants under which you are hiding, and you may not realise whether these are coffee trees or eucalyptus. I was hiding. I was frightened. I could not pay attention to the type of plants under which I was hiding.").

³⁷⁶ For instance, it is of little importance whether or not *Interahamwe* were at Ntarama Church before the attack, more generally in the area, or simply on alert. T. 31 January 2006 pp. 18, 20. Second, the witness testified that a catechist at the parish named Aphrodis was hit by a bullet during the attack, the context suggesting that he watched this event from his hiding place, as he said that he slipped into there as soon as the shooting started. Later he confirmed the information in his prior statement of 2001 that he was between the sector office and the church when he saw Aphrodis fall, and only after that incident he ran and hid. The witness was confronted in cross-examination with this inconsistency, but did not provide an explanation. T. 30 January 2006 p. 47; T. 31 January 2006 p. 26. The Defence did not pursue this matter in its Closing Brief, and the Chamber does not consider it significant.

³⁷⁷ T. 17 August 2006 p. 15.

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recalls that Witness ZAC testified that he did not approach the vicinity of the church or school in 1994 and considers that he was therefore not in a position to assess the visibility conditions. Further, Witness BMK testified that he was at a considerable distance from the school, towards the church. He added that there was a eucalyptus forest nearby, but at his location the land was free of vegetation and the attackers could therefore see him. During its site visit to Rwanda in November 2006, the Chamber noted that when walking from the school down to the valley in front, the sector office and church became, at one stage, visible. Consequently, the Chamber accepts this part of Witness BMK's evidence.

306. Witness BMK first said that the distance between the school and the church was 500 metres, but subsequently testified that it was 150 to 200 steps. Confronted with this inconsistency, he explained that he never measured the distance and just gave an estimate.³⁷⁸ The Chamber does not consider that his revised estimate of the distance between those two locations affects his credibility. It notes that also this witness appeared to have problems with the metric system.³⁷⁹

307. The Defence suggests that all four Prosecution witnesses had discussed the events prior to testifying and were coached. It submits that the witnesses could not have seen Karera come out of a door which opens on the right hand side of the bus, suggesting that they had been coached by someone from a country where the doors of buses open on the left.³⁸⁰ The Chamber observes that Witness BMI testified that he was on the right side of the road. Witness BML was on the left, but said that the doors were on the right. He said that because the buses parked beyond Ntarama church, the attackers went behind the buses to reach the church and that is when he saw them. Witness BMK, who was in the valley besides the road leading to the sector office, testified that Karera came off from the second bus, but not that he actually saw him stepping out of it.³⁸¹ Witness BMJ, who went into the ditch after the shooting started, did not mention on which side of the road he was hiding. The Chamber does not find any basis for concluding that the witnesses lied or were coached.

308. The Defence also points out that all four Prosecution witnesses described Karera as carrying "a long gun" and wearing "a long coat". It is true that the words used to describe the weapon and clothing are very similar. The witnesses also all said that Karera came out of the second bus. On the other hand, these formulations, which may simply reflect what they observed, have been used consistently by all four witnesses since they gave

³⁷⁸ T. 26 January 2006 pp. 20-22; T. 26 January 2006 p. 21 ("Actually, I never measured the distance there either in metres or in paces. And another thing is that I cannot compare metres to steps, and, as I said, I never measured at the distance there either in metres or in paces ... I did not measure the distance there, therefore, I cannot say that my assertion is 100 per cent correct. And to tell you the truth, I never measured the distance, as I have just said. I just gave an estimate.").

³⁷⁹ Witness BMK also testified that the attackers started shooting once they were out of the buses, whereas his statement to investigators of 2001 indicated that they were shooting as they emerged from the buses. On cross-examination, he explained that when his statement was re-read to him he did not notice that detail and therefore did not correct it. T. 26 January 2006 p. 24; Defence Exhibit 15 (Witness BMK's statement of 4 May 2001). This point was not pursued by any of the parties and the Chamber does not consider it important.

³⁸⁰ Defence Closing Brief, paras. 311-312, 317; T. 23 November 2006 pp. 46-47 (closing arguments).

³⁸¹ T. 25 January 2006 p. 36 ("He alighted from the second bus, and I saw him standing.").

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their statements in April and May 2001. As pointed out by the Prosecution, they may have paid specific attention to a civilian authority.³⁸² The expression "long gun" distinguishes the weapon from, for instance, a pistol. There were also differences between the testimonies, for instance in relation to the number of buses, the way in which they were described, Karera's speech and whether he shot. As observed previously, it cannot be excluded that the witnesses may have discussed the events of 1994, either previously or in connection with travelling to Arusha or taking their meals together (II.5.3). But the Chamber does not have any basis to conclude that they colluded in order to untruthfully implicate Karera in the attack at Ntarama church.

309. Apart from Karera, the Defence presented five witnesses who testified that he was neither present nor involved in the attack at Ntarama Church. Two of them, Witnesses NKZ and ZIH, were present as attackers. As a general matter, the Chamber observes that the attack involved a high number of attackers and refugees moving about. It is therefore quite possible that someone may have been present even if he or she was not observed by these two witnesses.³⁸³ Witness NKZ was not certain about the date of the attack at the church but learned about it from others. He had only seen Karera once, while he was *bourgmestre* of Nyarugenge commune, and it is not clear when in this period (from 1975 to 1990) he had seen him.³⁸⁴ The witness was not present when the attack commenced on 15 April and would therefore not have observed Karera's arrival. He did not observe any buses, which contradicts the consistent evidence of four Prosecution witnesses. For these reasons, Witness NKZ's evidence has limited weight. The Chamber has also noted that the witness denied having participated in the attack or diminished his role in statements to the Rwandan judicial authorities.

310. Witness ZIH testified that a friend had pointed Karera out to him while he was still *bourgmestre*, and that he had seen him on three occasions "as from 1978" until 1994.³⁸⁵ The Chamber considers that under these circumstances, his ability to recognize Karera in the midst of a high number of persons running helter-skelter would be limited. His assumption that Sebuindo would have pointed out someone who was not known or holding a position of authority is speculative. The Chamber considers that the witness's evidence has limited reliability and also notes that he admitted to having previously lied to Rwandan judicial authorities because he was afraid of the consequences of having participated in the attack.

311. Defence Witnesses DSM, MZN and ZAC were not present during the attacks but heard about them. Witness DSM's evidence that he did not see Karera in Ngenda or Kanzenze communes in April 1994, is of little importance. The witness was not in Ntarama on 15 April. His view that Ndagijimana, another police officer, would have

³⁸² T. 23 November 2006 pp. 46-47 (closing arguments) ("there was nothing unusual with the soldiers carrying rifles, but with the Accused, a civilian authority -- ...who had only the previous day promised them security -- now seeing him wielding a weapon was not a common sight. That is why the witnesses paid attention to the Accused and they were in a position to describe even what he was wearing and what he was wielding.").

³⁸³ By way of example, the witnesses also gave different evidence about whether *bourgmestre* Gatanazi was present.

³⁸⁴ T. 14 August 2006 p.15.

³⁸⁵ The witness did not know whether Karera ever ceased occupying that position and was unaware of his function in 1994. T.15 August 2006 pp. 12, 62-63; T. 16 August 2006 pp. 2-3.

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informed him of Karera's presence, is speculative and also depends on what that officer may have known. Also his evidence about limited access to the area because of RPF fighting carries limited weight (*see generally* II.7), and he did testify that perpetrators of the Ntarama church attack could have taken a circuitous way to Ntarama.

312. Also the testimony of Witness MZN, the soldier, is hearsay evidence. Furthermore, he said that no civilian authorities were present. This contradicts the testimonies of Defence Witnesses NKZ and ZIH, who said that two *conseillers* were present (Thaddée Sebuhindo and Kambali, respectively), as well as evidence from Prosecution witnesses. Witness ZAC listened in prison to confessions of the perpetrators of the Ntarama attacks and said that he did not hear Karera's name being mentioned. Again, such hearsay evidence has limited significance. The Chamber has taken into account the witness's statement that four witnesses in *gacaca* proceedings in 2006 referred to Karera's presence during the Ntarama attacks after having testified before the ICTR.

313. Having rejected the Defence submissions about collusion, and having found that the testimonies that Karera was not seen during the attack carry limited weight, the Chamber will revert to the observations made by the four Prosecution witnesses who said that they observed him on 15 April. The Appeals Chamber has stressed that the Trial Chamber must always, in the interests of justice, proceed with extreme caution when assessing the identification of an accused made under difficult circumstances.³⁸⁶ The Prosecution witnesses said they had seen Karera on the previous day or beforehand. Witness BMI knew him from 1970 and saw him again in Ntarama in 1992.³⁸⁷ Witnesses BML and BMJ saw him on one occasion in 1992 for about one hour from a short distance, and on 14 April 1994. Witness BMK saw him for the first time. Based on their evidence, the Chamber found that Karera held a meeting on that date at the Ntarama sector office (II.5.3). Based on this, it is clear that the witnesses knew Karera and were able to recognize him. The question is whether they correctly identified him on 15 April.

314. The witnesses made their observation in the morning, in broad daylight. The attack had not yet commenced when they observed Karera. All four witnesses testified that they could see him well, and three of them also heard his voice. Witnesses BMJ and BML were, according to their testimonies, about 32 steps and 50 meters or paces away from him, respectively. The Chamber accepts their revised estimate of the distance. It is not unusual that witnesses appearing before the Tribunal have problems in assessing distances and the Chamber considers the distances given in this instance as estimates. This is also illustrated by Witness BMK's testimony, who revised his assessment of the distance between the school and the church from 500 metres to 150 to 200 steps. Based

³⁸⁶ See *Bagilishema*, Judgement (AC), para. 75: ("In cases before this Tribunal, a Trial Chamber must always, in the interests of justice, proceed with extreme caution when assessing a witness' identification of the accused made under difficult circumstances. While a Trial Chamber is not obliged to refer to every piece of evidence on the trial record in its judgement, where a finding of guilt is made on the basis of identification evidence given by a witness under difficult circumstances, the Trial Chamber must rigorously implement its duty to provide a "reasoned opinion". In particular, a reasoned opinion must carefully articulate the factors relied upon in support of the identification of the accused and adequately address any significant factors impacting negatively on the reliability of the identification evidence."); *Kupreskic et al.*, Judgement (AC), para. 39.

³⁸⁷ The Chamber did not find it established beyond reasonable doubt that Witness BMI saw Karera on 9 April 1994 (II.5.2).

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on the revised estimate of Witnesses BMJ and BML, the Chamber finds that they were sufficiently close to recognize Karera. The evidence of Witnesses BMI and BMK, who were 70 and 100 paces away, corroborates their testimony. The four witnesses observed him from different positions, and three of them also heard his voice. Three of them were only a few meters away from him when he addressed him at the sector office the previous day. Under these circumstances, the Chamber is persuaded that these witnesses actually recognized Karera and finds that the Prosecution has established beyond reasonable doubt that he was present.

315. The Chamber finds that on the morning of 15 April 1994, Karera arrived at Ntarama Church. Instead of providing security, as he had promised the refugees at the Ntarama sector office the previous day (II.5.3), he encouraged a group of *Interahamwe* and soldiers to hurry up and attack the refugees who had assembled at the church. Several hundred Tutsis were killed during that attack, including men, women and children. Amongst the Tutsi victims were Mukadana, Murebwayire, Tuyishire, Kadabari, Mukeshimana and Murekatete, and their families. His promise about protection, made on the previous day, provided the refugees with a false sense of security.

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6. Rushashi

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6.1 Introduction

316. It is the Prosecution case that Tutsi civilians were massacred in Rushashi commune between April and July 1994, primarily at roadblocks, with the full knowledge of Karera. He held meetings where he encouraged the elimination of Tutsis and distributed weapons to be used at massacre sites. At a roadblock near the Kinyari Centre, in April or May 1994, he ordered the arrest of the *conseiller* of Kimisange, Théoneste Gakuru, who was detained and killed later that day by *Interahamwe*.³⁸⁸

317. On the basis of the evidence, the Prosecution charges Karera with genocide, or in the alternative, complicity in genocide (paragraphs 11 to 14 of the Indictment), extermination (paragraph 22) and murder (paragraph 34). The Prosecution invokes Articles 6 (1) and 6 (3) of the Statute. It relies primarily on the testimony of Prosecution Witnesses BMR, BMN, BMA, BMM, BMB, BMQ and BMO.³⁸⁹

318. The Defence submits that Karera held meetings aimed at pacifying the population from 20 April 1994, the day after his arrival in Rushashi. As a consequence, the killings and looting stopped in the region. He did not distribute weapons or commit any offences in Rushashi. Karera knew Gakuru, who was a Hutu, but was not aware of his presence or death in Rushashi. The Defence also submits that there was insufficient notice.³⁹⁰

319. The Chamber will first address the issue of notice (6.2), followed by the activities at the roadblocks (6.3), meetings (6.4), distribution of weapons (6.5), and the killing of Gakuru (6.6).

6.2 Notice

320. The Defence submits that the allegations in the Indictment are vague and should either be disregarded by the Chamber or, alternatively, only be considered in connection with the murder charge (Count 4) since they only appear in the Indictment under the title "Concise Statement of Facts in support of Count 4".³⁹¹

321. The Prosecution argues that all counts in the Indictment refer to Kigali-Rural prefecture and that its written submissions in December 2005 clarified that Rushashi was one of the communes in Kigali-Rural where Karera committed crimes. Reference to Rushashi was also made in the Pre-Trial Brief and the Prosecution Opening Statement.

³⁸⁸ Prosecution Closing Brief, paras. 589-690, in particular 594-628 (meetings), paras. 629-645 (roadblocks), paras. 647, 649, 652-653, 658-659, 663-664, 673, 677 (distribution of weapons), paras. 655-656, 660-661, 810-824 (Gakuru), and 654, 662 (Gatete).

³⁸⁹ Prosecution Closing Brief, paras. 686-690 (genocide), paras. 739-741 (extermination), paras. 820-824 (murder).

³⁹⁰ Defence Closing Brief, paras. 318-377, in particular 322-342 (distribution of weapons), paras. 343-350 (roadblocks), paras. 351-355 (Gakuru) and 356-359 (Gatete). The Defence also submits (para. 377) that since the Prosecution did not cross-examine Karera on his activities and alleged criminal conduct in Rushashi, that it cannot request conviction on them. The Chamber considers that the Prosecution is under no obligation to cross-examine the Accused on all aspects of its case.

³⁹¹ Defence Closing Brief, paras. 318-319, 339-340. Whether there was sufficient notice in relation to distribution of weapons, will be considered below (II.6.5).

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The Defence was also given additional time for investigations.³⁹²

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322. The Defence complained about lack of notice for the first time in its Closing Brief. There is no explanation why no objections were made at an earlier stage. The Chamber finds, in the exercise of its discretion, that the burden of proof has shifted to the Defence to demonstrate that any lack of notice prejudiced Karera in the preparation of his defence (I.2.3).

323. The original Indictment was amended on 12 December 2005 to include references to "Kigali-Rural" prefecture in connection with all four counts.³⁹³ A few days earlier, the Prosecution stated in writing that Rushashi was a commune in Kigali-Rural in which Karera was accused of participating in crimes.³⁹⁴ The Pre-Trial Brief, filed on 12 December 2005, and the Prosecution Opening Statement on 9 January 2006 also referred to events in Rushashi.³⁹⁵ The Chamber therefore considers that the Defence was given sufficient notice that he was accused of crimes in Rushashi under all four counts. Furthermore, following fresh disclosures by the Prosecution in November 2005, which included reference to events in Rushashi, the Defence was granted additional time for investigations and leave to vary its witness list.³⁹⁶ Consequently, the Chamber does not consider that Karera's ability to prepare his defence was impaired by vague pleading or lack of notice in respect of events in Rushashi.

324. The Defence also submits that evidence relating to a massacre in Rwankuba parish should be excluded as it was not pleaded.³⁹⁷ The Chamber notes that neither the Indictment, the Pre-Trial Brief nor the Opening Statement mentioned this event. Consequently, it will not consider this evidence due to lack of proper notice. A similar situation arises with respect to the killing of Gatete in connection with Count 4 (murder).

6.3 Roadblocks, April-July 1994

325. Paragraph 13 of the Indictment states:

13. During the events referred to in this indictment, roadblocks manned by *Interahamwe* were killing stations for Tutsi civilians in flight. Many Tutsi civilians were killed at roadblocks in Kigali-rural.

326. According to the Prosecution, Karera was aware of the existence of roadblocks in

³⁹² T. 23 November 2006 pp. 54-55; T. 24 November 2006 pp. 24-27 (closing arguments).

³⁹³ Decision on the Prosecutor's Request for Leave to Amend the Indictment, 12 December 2005 (events in Rushashi included).

³⁹⁴ Prosecution Response to the Trial Chamber's Scheduling order of 7 December 2005 pursuant to Rule 54 of the Rules, 8 December 2005.

³⁹⁵ Pre-Trial Brief, paras. 56-67 and Annex, in particular summaries of anticipated testimonies of Witnesses BMR, BMB, BMO, BMA, BLY (who did not eventually testify), BMM and BMN; T. 9 January 2006 p. 4 ("... We would further represent to the Court that the actions of the Accused in the said préfectures throughout the months of April, May, June 1994, namely the distribution of weapons to militiamen at roadblocks in Nyarugenge and Rushashi communes ...").

³⁹⁶ Decision on Variation of Defence Witness List, 13 July 2006. The Prosecution disclosures of 10 November 2005 included, for example, statements by Witnesses BMR and BMB, which referred to events in Rushashi. These statements were eventually tendered as Defence Exhibits 22 and 25.

³⁹⁷ The Rwankuba massacre is referred to in Prosecution Closing Brief, paras. 179, 648, 676; T. 24 November 2006 pp. 12-13 (Defence closing arguments).

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Rushashi between April and July 1994 and the activities there. The Defence submits that the Prosecution evidence regarding roadblocks is contradictory and unreliable.³⁹⁸

Evidence

Prosecution Witness BMR

327. Witness BMR was an *Interahamwe* in Rushashi. He testified that on 7 April 1994, the *conseiller* of Kiruku sector, Ananie Ahimana, and the *Interahamwe* representative in Rushashi commune, Alexi Banzirabose, decided to erect roadblocks to check the identity of persons unknown in the region. That morning, roadblocks were established in Rushashi, including a main one at the Kinyari centre, where everyone arriving from Kigali was checked. Two other roadblocks were placed about 50 and 100 metres away, respectively, near the road to Musasa and by the Kigali North Project office, and a fourth one near the agricultural-veterinary school, a 15-minute walk from the Kinyari centre. There were also other roadblocks in the area, manned by *Interahamwe* and civilians, as well as in Karyango and Mubuga cellules in Kiruku sector.³⁹⁹

328. Ananie Ahimana assigned Witness BMR to the roadblock at the Kinyari centre. The witness and his colleagues were instructed by *Interahamwe* officials of the Kigali-Rural prefecture to stop and kill Tutsis who passed there and anyone without identifying documents. According to the witness, the *Interahamwe* decided to avenge the death of President Habyarimana by "hunting down" the perceived enemy, the Tutsis. The witness worked in shifts and did not go to the roadblock every day.⁴⁰⁰

329. The roadblocks were manned mainly by *Interahamwe*, who initially only had traditional weapons. In May 1994, firearms (which Karera brought to the commune office, see II.6.5) were distributed at the roadblocks. Since then, two Kalashnikovs were used at the Kinyari centre roadblock, one Kalashnikov at the Musasa road roadblock, one Kalashnikov at the roadblock by the Kigali North Project and one gun at the roadblock near the agricultural-veterinary school.⁴⁰¹

330. Anyone travelling from Kigali to Rushashi had to pass through the Kinyari centre roadblock. In April 1994, the witness saw Karera pass through that roadblock on seven occasions. Karera owned three houses in Rushashi, less than 500 metres from the Kinyari centre, and frequently visited Rushashi during the events. He often visited a bar owned by Jean-Marie Vianney Mutabazi, fifty metres from the Kinyari centre roadblock. In May, Karera moved to live in Rushashi. He may have spent nights in Rushashi in April, without the witness's knowledge. Those heading to the Rushashi commune office had to pass through the roadblock at the Kigali North Project.⁴⁰²

331. From 6 April and "until the end of the war", Witness BMR saw five people being killed at roadblocks in Rushashi. The witness was present when three of them were

³⁹⁸ Prosecution Closing Brief, paras. 629-645, in particular para. 629; Defence Closing Brief, paras. 343-377, in particular para. 376, where the Defence also submits that the Prosecution "failed to adduce evidence of any massacre that took place in the region where the Accused could have exercised command and control over his subordinates").

³⁹⁹ T. 1 February 2006 pp. 1-2, 4, 20, 22. Prosecution Exhibit 24 (the witness's position).

⁴⁰⁰ T. 1 February 2006 pp. 2, 20, 27-28.

⁴⁰¹ *Id.* p. 3.

⁴⁰² T. 31 January 2006 pp. 39-41; T. 1 February 2006 pp. 5-6, 32-33, 38.

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stopped at the Kinyari centre roadblock, where the witness was based, and arrested on the order of Karera who called them *Inyenzi*. They were taken elsewhere to be killed (II.6.6). One man was brought to the roadblock by the local *Interahamwe* leader and subsequently taken elsewhere. Another man was killed at the roadblock on the road leading to Musasa because he did not have identity papers.⁴⁰³ The witness did not know his name or ethnicity, and it was unclear whether he was present when the man was killed.

Prosecution Witness BMM

332. Witness BMM, a Hutu, was one of five communal policemen based at the Rushashi commune office in April 1994. He was subordinate to Brigadier Cyprien Ndiyunze, whose superiors were *Bourgmestre* Cassien Ngirumpatse and Prefect Karera (who used to visit the communal office before 6 April 1994). After the President's death, the witness first saw Karera there on around 10 April 1994.⁴⁰⁴

333. In April 1994, roadblocks were set up in the area, on the Kigali-Ruhengeri main road, following a decision on the previous day. The witness was not present at the meeting when the decision was taken, but heard about it. This was before Karera moved to Rushashi but the witness said that Karera "must have been present, because people could not decide to set up roadblocks without his knowledge, because he was the authority".⁴⁰⁵

334. Following the President's death, the witness and other communal policemen were posted at the Kinyari centre roadblock. It was the brigadier who assigned them and said that "this was instructions from [the] *bourgmestre* and Karera". They were requested to check identifying documents and to allow only Hutu and Twa to pass. Two days later, "the *bourgmestre* and the préfet, Karera, asked that we should be replaced". The brigadier told them that they had to stop working on the roadblocks because they were not doing their work properly. He also said that this "was the opinion of the *bourgmestre*, as well as Préfet Karera". The witness understood that they were replaced because they were allowing everyone to pass. Two days later, the *Interahamwe* who replaced them killed some of those who arrived at the roadblock. According to the witness, Karera was in Rushashi on the day the witness and his colleagues were replaced, although he did not live there yet.⁴⁰⁶

335. The *Interahamwe* at the roadblocks carried firearms they received at the commune office or from *conseillers*. Weapons were brought to the commune office from the Ministry of Defence, on one occasion by Karera (II.6.5). Many Tutsis were killed in Rushashi after the President's death, some in their homes. According to the witness, Karera must, as prefect, have been aware of the killings. Given his authority and influence, he could have deployed soldiers and policemen to end the massacres.⁴⁰⁷

⁴⁰³ T. 1 February 2006 pp. 8, 23-24.

⁴⁰⁴ T. 1 February 2006 pp. 62-64, 70; T. 2 February 2006 p. 3.

⁴⁰⁵ T. 1 February 2006 pp. 65-66; T. 2 February 2006 pp. 2-3.

⁴⁰⁶ T. 1 February 2006 pp. 65-68; T. 2 February 2006 pp. 1-3.

⁴⁰⁷ T. 1 February 2006 pp. 62-64, 68, 70, 72-73, 75; T. 2 February 2006 pp. 3-4.

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Prosecution Witness BMB

336. Witness BMB, a Hutu school inspector and MDR official in Rushashi, testified that roadblocks were set up in Rushashi every five or six kilometres, on small roads as well as on the main Kigali-Ruhengeri road. Those manning them, mostly *Interahamwe*, were instructed to stop Tutsis and to fight RPF infiltrators. Individuals without identity documents, and occasionally residents of far regions, were considered *Inkotanyi* infiltrators. Some roadblocks were also manned by members of the MDR youth wing, under *Interahamwe* supervision. *Interahamwe* throughout the sector were at the disposal of the authorities. Karera was protected by an *Interahamwe* named Setiba, who always accompanied him.⁴⁰⁸

Prosecution Witness BMO

337. Witness BMO, a Hutu, had his business at the Kinyari centre in Rushashi. He testified that roadblocks were erected in Rushashi on 7 April 1994, including at the town centre, the Kigali North Project, and the Kinyari trading centre, fifty metres from his business.⁴⁰⁹

338. On the morning of 7 April 1994, on his way to work, the witness saw *Interahamwe* searching for Tutsis. His Tutsi neighbour, Zuzi, was killed that day with ten relatives. The same morning, he passed by a roadblock near the Agricultural-veterinary school in Rushashi. Those manning it, including a teacher named Karangwa, carried traditional weapons. Following their request, the witness presented his identity documents and was allowed to pass, but Tutsis arriving at the roadblock were killed.⁴¹⁰

339. At one stage, Karera moved to Rushashi, where he owned two multi-story buildings and one small house. Two roads led to his houses, one of them passed by the commune office and Witness BMO's business. He occasionally saw Karera heading home. Sometimes Karera had a drink at the Kinyari centre, and the witness also saw him on other occasions (II.6.4, 6.5 and 6.6).⁴¹¹

340. The security situation in Rushashi deteriorated after Karera arrived in the commune. He used to pass through the roadblock at the Kinyari centre, but did nothing to improve the commune's security. The witness never saw Karera carrying a weapon, but recalled that he was often accompanied by his bodyguard, an *Interahamwe* from Kigali-Rural prefecture named Setiba and nick-named "colonel".⁴¹²

Prosecution Witness BMN

341. Witness BMN, a Tutsi, was fifteen years old in 1994. The witness testified that on the day she learned about President Habyarimana's death, she heard *Interahamwe* in Rushashi saying "it's over for the Tutsis". This was on Wednesday, on her way back from the Muhondo market. Starting the next day, houses were looted and burnt, and her own house was set on fire the following Sunday. The witness, who was related to Karera's wife, then hid in various places, until she eventually sought refuge at Karera's

⁴⁰⁸ T. 2 February 2006 pp. 9-10, 13, 24.

⁴⁰⁹ *Id.* p. 54.

⁴¹⁰ *Id.* pp. 52-53, 57-58, 61-62.

⁴¹¹ *Id.* pp. 55, 60.

⁴¹² *Id.* pp. 60-61.

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house. She arrived there on Friday or Saturday, and saw him the next morning. Karera was usually in Rushashi on Saturdays. He insulted the witness and asked her to leave, instructing his domestic staff to ensure that she left the compound. She hid in a banana grove.⁴¹³

The Accused

342. Karera testified that he arrived in Rushashi after he was officially appointed as prefect of Kigali-Rural prefecture, on 19 April 1994.⁴¹⁴ He was not acting prefect before that day (II.3) and was not in Rushashi between 6 and 18 April 1994 (II.7).⁴¹⁵ Karera performed his responsibilities as prefect from the sub-prefecture office in Rushashi, due to the serious security situation in Kigali and because he had houses in Rushashi.⁴¹⁶ He did not commit or incite others to commit crimes in the region directly, indirectly, or through orders, nor did he carry arms.⁴¹⁷

343. Upon his arrival in Rushashi, Karera was informed about the refugee problem and the killings of Tutsis in the region. He also learned that members of his *Abambogo* family had been killed.⁴¹⁸ He consequently reinforced the security provisions in the region. Karera testified that the Tutsi population in Rushashi, Tare and Musasa communes was less than one percent. As no Tutsi were left in the area, victims of crimes were mostly Hutus who were accused of fraternizing with Tutsis. The attackers were *Abaseso* Hutus from Ndusu commune in Ruhengeri prefecture. The looters were refugees and deserter, mostly Hutu. Karera met with the prefect of Ruhengeri and the *bourgmestre* of Ndusu and asked that the *Abaseso* be instructed to stop the attacks.⁴¹⁹

344. Karera was not informed of any massacres which occurred in Musasa after his arrival in Rushashi. Those who committed killings there prior to his arrival had been arrested and imprisoned. From 20 April 1994, he held meetings in the area, where he requested the public to stop killing and looting. His requests were followed (II.6.4).⁴²⁰

345. According to Karera, there were two roadblocks and one check point in Rushashi. One roadblock was about 150 metres from the Kinyari centre, but not within sight from the centre. The second was the Joma roadblock. The third "roadblock" was more of a control post or checkpoint, manned by soldiers and located near offices of local authorities and the prosecutor's office. These were the only roadblocks Karera saw in the commune. He denied that there were eight roadblocks in Rushashi, as indicated on a sketch he was shown.⁴²¹

⁴¹³ T. 1 February 2006 pp. 41-43, 48, 51-52.

⁴¹⁴ T. 21 August 2006 pp. 67-68; T. 23 August 2006 pp. 31-33.

⁴¹⁵ T. 22 August 2006 pp. 3-9.

⁴¹⁶ *Id.* pp. 5, 7, 9, 24.

⁴¹⁷ *Id.* p. 30.

⁴¹⁸ Several Defence witnesses testified that the *Abambogo* clan was linked to the Rwandan Tutsi monarchy and that members of that group were persecuted, for instance Witness YAH (T. 11 May 2006 pp. 62-63); Witness YCZ (T. 18 May 2006 pp. 8, 10); Witness YNZ (testifying that Karera's family was called "*Habirus*" or "*Abaganuzas*", T. 16 August 2006 pp. 47-48) and Witness MWG (referring to the *Abaganuza* family, T. 10 May 2006 p. 31). See also II.8.2 (Karera denying anti-Tutsi statements in Zaire).

⁴¹⁹ T. 22 August 2006 pp. 10-11, 16-18.

⁴²⁰ *Id.* pp. 15, 17, 19-20, 25.

⁴²¹ *Id.* pp. 22-23; Prosecution Exhibit 13 (Sets of maps, sketches, photos and documents).

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Defence Witness YNZ

346. Witness YNZ, a Hutu driver from Rushashi, testified about a roadblock on the road to Kigali, just below the Rushashi sector office and about 100 metres below the Kinyari centre. He passed through the Kinyari centre daily. The roadblock could not be seen from the heart of the centre, but only from its bottom entrance. Once when the witness transported goods to the Muhondo centre, he passed through the roadblock at Kinyari centre and noticed that it was manned only by soldiers. This was before the *Inkotanyi* drove people out of the Muhondo centre.⁴²²

347. According to the witness, there were other roadblocks in the area. They were erected immediately after the President's death and existed when Karera arrived. They continued to exist, manned by soldiers, throughout Karera's stay in Rushashi. Sometimes civilians manned the roadblocks during the day, but at night they were always manned by armed soldiers who searched vehicles to prevent infiltration of *Inkotanyi* and checked whether Tutsis were passing. Few Tutsis lived in the area and not many passed through the roadblocks, but those identified as Tutsi were taken by the soldiers. The witness did not know their fate. He did not see any killings at roadblocks, neither in Rushashi nor elsewhere, but agreed that Tutsis were killed throughout the country between April and June 1994 when they were identified at roadblocks.⁴²³

348. Witness YNZ testified about a roadblock below the Rushashi communal office, on the road leading to a military post. Another one was at Kineza, where there was a military post, and was manned by soldiers. One was on the main road between Rushashi and Joma in Bulimba. Another roadblock was on the road to Ruhengeri, at the junction leading to the Rushashi agro-veterinary school, where soldiers stayed. The Musasa roadblock was in Kiruku, very far from the centre, where the witness passed on his way to deliver goods.⁴²⁴

349. There were no roadblocks at the building of the Kigali North Project. There were two paths below the project building and a path above the project, which led to Karera's residence. The witness used a path below the project building and did not see roadblocks there. He did not go to Karera's residence in April-May 1994.⁴²⁵

350. Instability in Rushashi began between 7 and 10 April 1994, at around 3.00 p.m., when a Tutsi-owned house in the sector was looted. The house was near the sub-prefecture and prosecutor's offices. Houses were also destroyed in other areas in Rushashi commune. People were generally attacking each other. Soldiers of the Rwanda Armed Forces caused disorder after hearing about the President's death. Turmoil was also caused by the *Abaseso* (or *Basbasi*) from beyond the Base River in Ruhengeri. These "people from outside Rushashi" attacked Shyombwe hill sector, killing many people and looting property.⁴²⁶

⁴²² T. 16 August 2006 pp. 49-50, 54, 60. The reference to the *Inkotanyi* driving people out seem to refer to the month of July.

⁴²³ T. 16 August 2006 pp. 49, 55-56, 66.

⁴²⁴ *Id.*

⁴²⁵ *Id.* pp. 54-55. The witness testified that the "Kigali North Project" was funded by the French. Witness MZN referred to this project as one of the "security and development services" in the area. T. 15 May 2006 p. 33.

⁴²⁶ T. 16 August 2006 pp. 46-47, 50 (including quote). See similarly the testimony of Karera (above) and Witness YCZ (below).

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351. The witness saw Karera arrive in Rushashi, in late April or May (II.6.4), and believed that this was after the killings. Soldiers, however, were still causing unrest. They regarded Karera as a Tutsi accomplice and did not accept his authority. Still, he ended the lootings and persecution. After Karera's arrival, the witness did not see or hear about killings in Rushashi. In May-June 1994, there were generally no disturbances in the area. The witness lived in Rushashi until late June 1994. He travelled for work in the morning, but returned home every evening and received information from others.⁴²⁷

Defence Witness YCZ

352. In April 1994, Witness YCZ, a Hutu, was a teacher at a school, where he lived at the teachers' residence. He testified that there was a roadblock in Rushashi, on the road to Kigali, which was manned only by soldiers. He passed it at least five times in the period from April to June 1994. There were no roadblocks near Karera's houses in Rushashi.⁴²⁸

353. On his way to Nyange sector in Musasa commune, the witness noticed two roadblocks. One was at Nkoto, in that commune, between the Gikingo centre and the Kinyari centre in Rushashi. The witness showed his identity card there, according to the standard procedure. The other roadblock was beyond the Musasa commune office, at Gikingo. He was not asked to show his identity card there, since he was known to those manning the roadblock. The two roadblocks were manned by communal policemen who carried batons and by others who were unfamiliar to the witness and seemed unarmed. They examined people's identity cards.⁴²⁹

354. On about 10 April 1994, the security situation in Rushashi commune became compromised by members of political parties' youth wings and Hutus of the *Abaseso* clan. They lived across the Base river, in Ndusu commune, were notorious for stealing cows, and collaborated with the members of the political parties' youth wings in killing and perpetrating other crimes without targeting any particular ethnic group.⁴³⁰ It became difficult to move around. People were killed, including members of the *Bumbogo* clan, to which Karera belonged. Killings were also committed in Musasa commune from 15 to 18 April. After Karera's arrival in Rushashi, there were no killings in the area.⁴³¹

355. The witness testified that the new dean of students at the agriculture-veterinary school was killed between 10 and 15 April. He was from Mgumbazi, and had been in Rushashi for only about two days. The witness did not know his ethnicity, or who killed him. In addition, he heard that Rwabukwandi, a Tutsi teacher at the same school, was killed in Rushashi between 10 and 15 April. Rwabukwandi used to act provocatively even before the President died. He often irritated youth wingers at bars. In the same time frame, Jeanne, a Hutu, and her two children were also killed in Rushashi. The witness did not know by whom. He heard that the *Abaseso* killed Nkazamurego, a cattle trader, and his children, as well as Gatete, a trader in Musasa. Both victims belonged to the *Bumbogo* clan. The witness did not mention where they were killed. He testified that the killings

⁴²⁷ *Id.* pp. 50-53, 64.

⁴²⁸ T. 18 May 2006 pp. 27-28.

⁴²⁹ *Id.* pp. 24-27.

⁴³⁰ *Id.* pp. 6-8, 29-30.

⁴³¹ *Id.* pp. 4, 8, 10, 29.

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occurred a week or two after 15 April. Subsequently, however, the witness said that they were killed before Karera arrived in Rushashi.⁴³²

356. About four or five days after the radio announced that Karera had been appointed as prefect, Witness YCZ saw him for the first time in Rushashi. This was later than 21 April 1994. Karera was in his official vehicle, heading to the sub-prefecture office. The witness subsequently saw him holding meetings in Rushashi. He sometimes saw him or his car at the sub-prefecture office. After 20 or 21 April 1994, Witness YCZ passed by Karera's two houses in Rushashi, but never saw him near them.⁴³³

357. In August 1994, the witness heard from Vincent Munyandamutsa that Karera had solved the security problems. Munyandamutsa, a Hutu, had been the *bourgmestre* of Rushashi before the advent of multiparty politics. Between 10 and 15 April 1994, he was threatened by the *Abaseso* and youth wing members because of his affiliation with the MDR party. In 1996, the witness was told by Caritas Uwamiariya, a Tutsi, that Karera calmed the situation in Rushashi enough to enable her to emerge from her hiding place and return home to Kibuye. Uwamiariya was married to Jean Nduhura, a Hutu veterinary doctor.⁴³⁴

358. The witness estimated that the population of Rushashi commune was about 20,000 to 25,000, and that two percent were Tutsi. He knew under ten Tutsis out of about 500 people living in Rushashi centre. There were also very few Tutsis in Musasa. Out of 2,000 to 4,000 families in Nyange sector, there were only two Tutsi families. The witness never saw Tutsis being arrested on his trips from Musasa to Rushashi.⁴³⁵

Defence Witness YAH

359. Witness YAH, a Hutu, fled Rutongo commune and arrived in Musasa commune on 27 April 1994. He found it calmer than other places, with fewer roadblocks manned by less aggressive people. The witness stayed in Musasa until 12 July 1994.⁴³⁶ After his arrival, a person named Kayijuka was killed in the commune. The witness heard that suspects were jailed for participating in the killing, but the *bourgmestre* released them for lack of evidence and said that those who killed Kayijuka came from Ruhengeri.⁴³⁷

360. Before the witness arrived in Musasa, people from the opposition were hiding. Once Karera's pacification message was conveyed (II.6.4), they started moving about freely. For example, one of the Tutsis, who came out of hiding, and subsequently became *bourgmestre* of Musasa commune after the RPF government was instituted. Furthermore, Vincent Munyandamutsa, who was known throughout Rushashi as an RPF supporter, was protected by Karera. The witness also testified that Karera accorded protection to the nuns from Rwankuba, who had sought refuge in the Ruli convent.⁴³⁸ A man called

⁴³² *Id.* pp. 5-6, 8-10.

⁴³³ *Id.* p. 9-10, 16-17, 20; Defence Exhibit 56 (sketch of Rushashi drawn by Witness YCZ).

⁴³⁴ T. 18 May 2006 pp. 17-19. The witness testified that after the war, Munyandamutsa was appointed *bourgmestre* of Rushashi. The witness had spent about two years with him, until he died.

⁴³⁵ *Id.* pp. 9, 27, 30-31.

⁴³⁶ T. 11 May 2006 pp. 61-62.

⁴³⁷ *Id.* p. 66.

⁴³⁸ *Id.* pp. 70-72. The witness testified that the public was not persuaded by Karera's pacification message in relation to Munyandamutsa. Therefore, Karera travelled to his cellule to calm the population and

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Vianney Hakizimana from Musasa was also able to emerge from his hiding place due to Karera's pacification message. Hakizimana even held a reception in honour of Karera, which the witness attended.⁴³⁹

Defence Witness MZR

361. Witness MZR was an official of Kigali-Rural prefecture. He heard that refugees fled on 9 or 10 April 1994 from Murambi after the RPF's arrival and were killed in Rushashi, presumably between 10 and 20 April. In particular, the witness recalled that the woman in charge of the CCDFP compound in Mugambazi commune was killed after fleeing to Rushashi, together with her fiancé who was visiting from Canada.⁴⁴⁰

362. In late April or early May 1994, the witness met Karera at the Rushashi commune office. It was the first time he saw him after the President's death. He was brought by a driver who was sent by Karera in a prefecture vehicle. The driver found the witness at the "Kabgayi minors seminary" in Gitarama prefecture, where he hid after fleeing from the RPF in Murambi. Subsequently, Witness MZR received an official vehicle from Karera to search for Murambi's displaced population. He returned to Rushashi about a week or two later. The situation there appeared to be calm.⁴⁴¹

Deliberations

363. The Chamber finds it established that on or about 7 April 1994, shortly after the President's death, roadblocks were set up in Rushashi. The persons manning them checked the identity documents of those who passed by, and Tutsis were targeted. This follows from the evidence of Prosecution Witnesses BMR, BMM, BMO and BMB as well as more generally from Defence Witness YNZ (who also confirmed that instability in Rushashi began between 7 and 10 April 1994).

364. Based on the evidence, it is clear that there were several roadblocks in Rushashi. Almost all Prosecution and Defence witnesses mentioned the main roadblock at Kinyari trading centre, where everyone coming from Kigali was checked. The exact distance to the Kinyari centre (50 or 150 metres) is of limited importance. Several witnesses also referred to the roadblock on the road to Musasa, another at the building of the Kigali North Project, and a third one at the agricultural-veterinary school. Witness YNZ did not observe the roadblock near the building of the Kigali North Project, but he used a path below the building. The Chamber finds it established that all these four roadblocks existed. There were also other roadblocks in Rushashi.⁴⁴²

365. Witnesses YCZ and Witness YNZ testified that the Kinayari roadblock was manned by soldiers. Witness YNZ said the same about the other roadblocks he knew of but also stated that sometimes they were manned by civilians during the day whereas soldiers manned them at night. The Chamber does not exclude that soldiers were occasionally

subsequently Munyandamutsa was left in peace. He was subsequently appointed by the RPF as *bourgmestre* of Rushashi.

⁴³⁹ T. 11 May 2006 pp. 69, 71.

⁴⁴⁰ T. 15 May 2006 pp. 34-35. CCDFP appears to stand for *Centre communal de développement et de formation*.

⁴⁴¹ T. 15 May 2006 pp. 29-33, 35.

⁴⁴² See testimonies of Witnesses BMR, BMB, YNZ and YCZ above. The evidence largely confirms the sketch of roadblocks included in Prosecution Exhibit 13 (Sets of maps, sketches, photos and documents).

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present but finds it established beyond reasonable doubt that the roadblocks were primarily manned by civilians, in particular *Interahamwe*, at least during daytime. This follows from the testimonies of Witnesses BMR and BMM, who worked at the Kinyari roadblock. Witness BMO, who had his business close by that roadblock, also observed *Interahamwe* there. In the Chamber's view, these witnesses gave credible evidence also about the other roadblocks they observed. Furthermore, Witness BMB, the school inspector and MDR official, testified that the roadblocks in Rushashi were mostly manned by *Interahamwe*.

366. The Chamber is also convinced that instructions were given that Tutsis and persons who could not identify themselves at the roadblocks should be killed. This follows from the testimony of Witnesses BMM and BMR, who were involved, and is corroborated by the evidence of Witnesses BMO and BMB. It is recalled that all four witnesses were Hutus. Witness BMR personally saw four persons being stopped when he was at the Kinyari roadblocks. They were taken elsewhere to be killed. The witness also knew of one person who was killed at the Musasa roadblock because he did not have identity papers. Also Defence Witness YNZ confirmed that Tutsis were taken at the roadblocks.

367. The main question is whether Karera was involved in the establishment of the roadblocks and the activities there. Witness BMR said that it was *conseiller* Ananie Ahimana and Alexi Banzirabose, the *Interahamwe* representative, who decided to set up the roadblocks. According to Witness BMM, Karera "must have been present" because such a decision could not have been taken without his knowledge. The Chamber does not accept this assumption and finds no evidence that Karera was present at the time that the roadblocks were initially set up. However, the Chamber considers that such an important decision would not have been taken without at least some kind of previous consultation with superiors at the prefecture office.

368. Witness BMM was of the opinion that Karera must have known of the decision to establish roadblocks in Rushashi and the following activities there. His view is supported by his evidence that two days after he was posted at the Kinyari roadblock, he was replaced by *Interahamwe*, who killed Tutsi. The witness first testified that he was discharged from the roadblock because he allowed everyone to pass, but later said that Karera dismissed him because he had abandoned his duties because the RPF was coming. The Chamber does not consider this as an inconsistency but simply a different way of expression. According to the brigadier, the *bourgmestre* and the prefect had asked that this be done. The Chamber notes that this is hearsay evidence but accords it some weight. In particular, Witness BMM saw Karera in Rushashi on the day he was removed.

369. The four Prosecution witnesses who observed Karera in the vicinity of roadblocks indicates that Karera was involved in and aware of the activities there. Witness BMR saw him pass by the Kinyari roadblock seven times in April 1994. The Chamber observes that his statement to ICTR investigators of 2005 did not mention that he manned a roadblock. When confronted with this inconsistency, the witness expressed his surprise that the person recording the statement had failed to write that he manned a roadblock.⁴⁴³ The Chamber accepts this explanation, further noting the potential criminal liability a witness might expose himself to in admitting to manning a roadblock.

⁴⁴³ T. 1 February 2006 pp. 27-28. Defence Exhibit 22 (statement by Witness BMR of 20-21 June 2005).

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370. Witness BMR's evidence is corroborated by Witness BMO, who testified that Karera used to pass by the roadblock at the Kinyari centre but did nothing to improve the situation. Both he and Witness BMR said that Karera often visited a bar at the Kinyari centre. This would have placed him in the vicinity of a major roadblock in Rushashi. It is not important whether the roadblock could be seen from the Kinyari centre. Witnesses BMO and BMB both testified that Karera was protected by an *Interahamwe* named Setiba. The Chamber accepts this evidence, which shows that Karera had close ties with the *Interahamwe* in Rushashi, and recalls that they manned the roadblocks there.

371. Witness BMM said that Karera, who was his superior, must have been aware of the crimes and had the power to stop them. The Chamber is of the view that as a communal policeman, Witness BMM must have known the chain of command in the commune's administration and that he was able to appreciate Karera's authority and responsibilities.

372. Four Defence witnesses testified about Rushashi, in addition to Karera. Two of them lived outside Rushashi commune. After 6 April 1994, Witness MZR only met Karera on one occasion. This was at the Rushashi commune office in late April or early May. His evidence that killings were committed in Rushashi between 6 and 20 April but that the situation was calm in May therefore carries limited weight. The witness' testimony may have also been influenced by the fact that Karera rescued him from the RPF. Witness YAH fled from Rutongo to Musasa commune on 27 April and stayed there to 12 July. He described Karera as a protector of Tutsis and moderate Hutus in that commune but did not provide evidence of direct relevance to Rushashi. Leaving aside the veracity of the witness's description, the Chamber observes that none of these two witnesses provided evidence about the roadblocks in Rushashi.

373. Karera testified that he arrived in Rushashi on 19 April. Witness YCZ said that the security situation in the commune became compromised on about 10 April 1994 but that there were no more killings after Karera arrived there. The Chamber observes that Witness YCZ's evidence about the killings of Gatete and Nkazamurego was inconsistent. During his direct examination, he first said that they were killed one or two weeks after 15 April, which means after Karera's arrival on 19 April. However, later in his direct examination, the witness testified that they were killed before Karera arrived in Rushashi. In this light, the Chamber does not accept his evidence that no killings occurred in Rushashi after Karera arrived there. Also Witness YNZ testified that no one was killed in Rushashi after Karera's arrival. The Chamber is not convinced that the witness was fully informed about the events. As a driver, he would leave Rushashi in the morning, come back in the evening and hence be absent all day. His source of information would therefore be what he was told by other persons. Accordingly, his evidence carries limited weight. The evidence of Witnesses YCZ and YNZ is contradicted by Witness BMO, who testified that the security situation in Rushashi deteriorated after Karera moved there. The Chamber has generally found his evidence credible.

374. According to the Defence, Karera protected Tutsis and moderate Hutus. Witnesses YCS and YAH testified that Vincent Munyandamutsa, a Tutsi, was protected by Karera. For the reasons mentioned below (*see* II.6.4), the Chamber does not accept this. Furthermore, the Rwankuba nuns and Vianney Hakizimana, who according to Witness YAH were protected by Karera, were generally described as RPF supporters, not Tutsis. Having examined the specific examples mentioned by the witnesses, the Chamber

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observes that only two of the individuals saved by Karera allegedly were Tutsi. Witness YCZ mentioned a woman who was married to a Hutu veterinary doctor, whereas Witness YAH referred to a man who later became the *bourgmestre* of Musasa. In light of the evidence of Witness BMN, which the Chamber accepts, the Chamber finds it peculiar that Karera protected two unknown Tutsis while refusing to protect a young Tutsi relative of his wife who sought refuge at his house after her house was burnt.⁴⁴⁴ But even assuming that Karera, for reasons unknown, saved these two Tutsis, this does not establish that he protected Tutsis in general.

375. The Chamber accepts that Karera held meetings where he asked the public to stop killing and looting. However, the evidence is not clear as to whether such pacification meetings were aimed at preventing crimes being committed between the Hutus (for instance by the *Abaseso* from Ruhengeri against the *Abambogo*), preventing infiltration by unknown persons, achieving reconciliation between extreme and moderate Hutus, or mitigating animosity between Hutu and Tutsi.

376. The Chamber finds that several roadblocks, at least four, were established in Rushashi commune following the President's death on or about 7 April 1994. Civilians, including *Interahamwe*, were amongst those who manned them. Tutsis were targeted at the roadblocks. The Chamber is satisfied that Karera visited Rushashi briefly between 7 and 10 April and that he was fully aware that roadblocks existed there and that Tutsis were being killed at them from April onwards.

6.4 Meetings Encouraging Crimes, April-June 1994

377. Paragraph 14 of the Indictment states:

14. In addition to directing attacks against the Tutsi in Kigali-Rural, François KARERA also convened meetings with *bourgmestres* in Kigali-rural *préfecture* and encouraged them to kill Tutsi civilians.

378. The Prosecution submits that Karera held meetings in Rushashi, aimed "to reorient, ferment, and incite members of the civilian Hutu population to target Tutsi civilians" and "to address the squabbles between members of the Hutu population over the properties of their slain Tutsi compatriots". The Defence submits that from the day after his arrival in Rushashi, Karera held meetings aimed at pacifying the population. Consequently, the killings and looting stopped in the region.⁴⁴⁵

Evidence

Prosecution Witness BMB

379. Witness BMB, the employee at the agricultural-veterinary school, testified to three meetings allegedly chaired by Karera. One morning in the second half of April 1994, he

⁴⁴⁴ The Defence put to Witness BMN that her prior statements, as opposed to her testimony, did not mention that she went to Gaharajuru before arriving in Karera's house. T. 1 February 2006 pp. 41, 43. The Chamber does not consider this discrepancy significant. It also observes that the witness probably was mistaken about the day she heard of the President's death, as he died in the evening on Wednesday 6 April 1994. It seems unlikely that she would have learnt this on her way from the market on that day.

⁴⁴⁵ Prosecution Closing Brief, paras. 594-628, in particular 618-619; Defence Closing Brief, paras. 362-371.

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attended a meeting chaired by Karera at the Rwankuba Secondary School. Karera explained that the objectives were to raise funds for weapons to reinforce the roadblocks, establish new roadblocks and encourage cooperation of youths with the army. *Bourgmestre* Cassien Ngirumpatse of Rushashi commune and the sub-prefect who accompanied him also spoke. Many people participated, including civil servants, traders, sector *conseillers* and *cellule* leaders. The witness sat in the back, about 16 metres from Karera.⁴⁴⁶

380. The second meeting took place behind the Rushashi commune office, in late May 1994. It was intended for civil servants, businessmen and intellectuals. About 200 persons participated, including the 120 teachers and the traders of the region. Karera arrived with André Rwamakuba, the Minister of Education. Witness BMB sat in the first row, about two metres from Karera. The speakers included Karera, *bourgmestre* Ngirumpatse, Major Bahembera and Rwamakuba, who requested contributions. Karera spoke longer than the others, stressing that there should be no survivors at the roadblocks. The witness understood this to mean that Tutsis should not survive, as they were the targeted group. Karera mentioned that his previous request for contributions did not yield a positive response. One teacher noted that it was difficult for the teachers to donate, as they had not received their salaries. Karera responded that youths would be sent to the houses of the teachers who did not contribute, to take their property and “deal” with them. He also said that those who failed to contribute would be sent to the war front, where they would realize the necessity of such contributions.⁴⁴⁷

381. Because of his position, Witness BMB was nominated to collect donations from the teachers. In June 1994, he collected 400,000 Rwandan francs. In early July 1994, he handed the amount to Karera, at the commune office. According to the witness, the contributions were given as a result of the intimidations made at the meeting in May. When the contributions were sought, most Tutsis in the area had already been killed. However, reinforcing the roadblocks was necessary in order to locate Tutsis who were still hiding and to fight the *Inkotanyi*. Witness BMB testified that he greeted Karera as he arrived at the May meeting, but Karera refused to shake his hand. The witness attributed this to his affiliation with the MDR’s moderate wing, as persons belonging to this group were considered by the *Interahamwe* and the authorities, including Karera, as “accomplices”.⁴⁴⁸

382. The third meeting allegedly chaired by Karera took place in June 1994 at the Rushashi sub-prefecture office. The participants were similar to those who attended the April and May meetings and included the Rushashi and Musasa intellectuals. The aim was to follow-up on the search for Tutsis and the fund-raising. Karera, *Bourgmestre* Cassien and Major Bahembera spoke.⁴⁴⁹ Karera asked whether the “work” in Rushashi had been completed. When the *bourgmestre* replied affirmatively, he requested to know why Vincent Munyandamutsa was still alive. The *bourgmestre* stressed the risk involved in apprehending Munyandamutsa, in light of the support he received. Munyandamutsa

⁴⁴⁶ T. 2 February 2006 pp. 6-9, 19. The witness only mentioned the first name (Cassien) of the *bourgmestre*.

⁴⁴⁷ *Id.* pp. 10, 12-14.

⁴⁴⁸ *Id.* pp. 13, 18, 24-25.

⁴⁴⁹ *Id.* pp. 13-14, 17.

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was the MDR chairman in Rushashi. He was hiding because he was affiliated with the party's moderate wing. Many Hutu MDR members were killed. Munyandamutsa was eventually killed while the witness was in exile in Zaire.⁴⁵⁰

383. At the meeting, Dr. Eugene Nsanzabiga, a lecturer at the University of Ruhengeri, complained that he was being attacked by *Interahamwe*. Karera advised him to join the MRND, rather than the MDR, claiming that he would thereby avoid being attacked. Other matters raised at the June meeting included machetes and a mass grave at the Rwankuba parish. The Rwankuba secondary school principal, who lived near the parish, explained that the machetes were intended for use in the fields and the pit was dug as septic tank. Karera suggested that Hutus who could not find Tutsis would be dumped in that grave.⁴⁵¹

Prosecution Witness BMM

384. Witness BMM testified that in the second half of April 1994, he attended a two-hour meeting at the commune office where he worked as a communal policeman. The meeting was organised by Karera. The aim was to raise money for the army. Following the meeting, donations were made to purchase weapons "to be used in the fight against the *Inyenzi*". The witness also mentioned another fund-raising meeting in April, which took place in the courtyard of the commune office. It was held by Karera, and the *bourgmestre* was present. Following that meeting, roadblocks were set up and *Interahamwe* received weapons.⁴⁵²

Prosecution Witness BMO

385. Witness BMO, a Hutu businessman, attended a meeting held by Karera at the commune office's garden, about three weeks after the President's death. Teachers, civil servants and businessmen were invited. About 300 people attended, including *bourgmestre* Ngirumpatse. Karera asked for contributions to purchase weapons to assist the government. He said the *Inkotanyi* had taken over Byumba. Karera instructed the participants to fight the *Inkotanyi*, their accomplices and MRND opponents. It was generally understood that they were expected to fight the Tutsi. According to the witness, the weapons eventually distributed were used to kill Tutsis.⁴⁵³

386. Businessmen were requested to contribute 50,000 or 100,000 francs, small traders were requested to donate 20,000 francs and restaurant owners were asked for between 5,000 and 15,000 francs. Traders handed their contributions to a certain Habineza. Teachers also donated money, but the witness did not know who collected it. Later, the money raised was deposited in an account opened at the *Banque Populaire*. At the meeting, a teacher named Mugaragu indicated that he could not donate since he had not

⁴⁵⁰ *Id.* pp. 15, 24, 26.

⁴⁵¹ *Id.* pp. 15-17.

⁴⁵² T. 1 February 2006 pp. 64-65; T. 2 February 2006 p. 1. The witness first did not recall the date of the meeting but then said that it "must have been in the second half of April".

⁴⁵³ T. 2 February 2006 pp. 55-56, 58-59, 62. The witness testified that the meeting took place about a week after weapons were distributed two weeks following the President's death.

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received his salary. Karera stated that those who were not able to contribute should sell their property and suggested that otherwise they might be killed.⁴⁵⁴

Prosecution Witness BMR

387. Witness BMR, an *Interahamwe* from Rushashi, testified that he attended a meeting chaired by Karera at the hall of the Rushashi commune office, in May 1994. *Bourgmestre* Ngirumpatse announced in advance that the meeting would be chaired by the prefect of Kigali-Rural, François Karera. He invited political party leaders, sector *conseillers*, the *bourgmestres* of Musasa and Mutare, teachers, businessmen and traders. Karera asked the officials at the meeting to raise money and recruit youths to the *Interahamwe* to defend the town against the *Inkotanyi*. He promised to provide over 40 weapons to fight the enemy at the roadblocks. According to the witness, Karera did not need to specify that "enemy" meant "Tutsis", as this was widely understood in Rwanda. Contributions were not made at the meeting.⁴⁵⁵

Prosecution Witness BMN

388. Witness BMN, a fifteen year old Tutsi who was related to Karera's wife, testified that in April 1994 she attended a meeting at the sector office in Rushashi. *Bourgmestre* Cassien Ngirumpatse opened the meeting at around 9.00 or 10.00 a.m. Karera and several other "members of the population" participated. Karera spoke after a certain Gatoyi. The witness was about 8.5 metres from Karera, who instructed the public to loot Tutsi property. Someone asked him what they should do when the Tutsis demanded their property back. Karera replied that Tutsi women and children should be killed, as well as Hutus married to Tutsis. According to the witness, the instructions were followed after the meeting. In spite of being a Tutsi, Witness BMN felt compelled to attend the meeting because she was related to Karera's wife. The witness was aware of the lootings, but believed she would be protected by Karera. Once killings were ordered, she lost her confidence and left the meeting before it ended.⁴⁵⁶

Prosecution Witness BMQ

389. In early June 1994, Witness BMQ fled from Bugesera to the refugee camp on Gihinga Hill in Rushashi commune. He was Hutu and his wife was Tutsi. A week after his arrival, a representative of *bourgmestre* Gatanazi of Kanzenze commune informed the refugees from that commune that a meeting would be held that day at 4.00 p.m. in Kigarama. The representative presided over the meeting, which was attended by between 50 to 100 people. He said that the prefect of Kigali-Rural, François Karera, sent a message that they had to kill men married to Tutsis and their children. The witness immediately left the meeting. He heard the speaker clearly, from four metres or more, as he spoke loud. Attacks against the targeted persons commenced that evening. The witness paid his neighbours to avoid that he and his family be killed. The men, women and

⁴⁵⁴ *Id.* pp. 58-59, 62. According to Defence Exhibit 29 (Witness BMO's statement of 19 April 2001), André Habineza was a wealthy businessman.

⁴⁵⁵ T. 31 January 2006 pp. 41-42, 44; T. 1 February 2006 p. 38.

⁴⁵⁶ T. 1 February 2006 pp. 45-46, 48, 52-53, in particular p. 52 ("There was Cassien Ngirumpatse, François Karera, Jean-Marie Vianney Mutabazi, Gatoyi, as well as other members of the population that I have not mentioned.")

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children who had been killed were dumped in a pit on the lower side of the camp. The witness continued to live on the camp and saw what was happening there.⁴⁵⁷

The Accused

390. Karera testified that when he arrived in Rushashi on 19 April 1994, he saw a large crowd of refugees gathered in the Kinyari centre. The residents complained about refugees trespassing and pillaging their crops. The amount of refugees impeded movement. They were requested to relocate to Rutabu Hill, near Ruhengeri prefecture.⁴⁵⁸

391. On 20 April 1994, following Karera's request, the sub-prefect of Rushashi convened a meeting with *bourgmestres* and a major of the *gendarmerie*. The meeting was held at the Rushashi sub-prefecture office, from 11.00 a.m. to 12.00 p.m. The issues addressed were the restoration of peace and understanding between the refugees and the residents, ensuring that the *Abaseso* did not return and the need to convene a meeting involving *bourgmestres*, their assistants, and *conseillers* to decide on a course of action.⁴⁵⁹

392. On 22 or 23 April 1994, a meeting was held at the large conference hall at the Rwankuba Secondary School. The meeting was jointly chaired by the Rushashi and Byumba sub-prefects, a major from the *gendarmerie* and Karera. It was attended by about 100 to 200 persons, including heads of services, communal advisers, *conseillers* and *bourgmestres*, such as the *bourgmestre* of Murambi. The focus was to restore peace and promote understanding between refugees and residents. It was decided that roadblocks should be removed from certain places and remain under the sole authority of the sector *conseillers*. Karera testified that to ensure the implementation of the decisions, *bourgmestres* were asked to hold communal meetings. Karera, the *gendarmerie* major and the Rushashi sub-prefect attended the communal meetings, aware that their presence could assist.⁴⁶⁰

393. From 25 April, there were daily meetings where the population was asked to stop looting and killing. The requests were successful. Even on Sundays, when Karera went to church, he held meetings immediately afterwards. These pacification meetings were held until the end of April, after which assessment meetings took place every two weeks until June. At the assessment meetings, *bourgmestres* who faced problems in their communes requested assistance.⁴⁶¹

394. In the same period, Karera also chaired a meeting in the neighbouring Musasa commune, in a sector bordering Nyabikenke in Gitarama. The purpose was to mediate between the residents of Gitarama and the residents at a place called Ikitavizuma and re-establish security and mutual understanding.⁴⁶²

⁴⁵⁷ T. 2 February 2006 pp. 30-32, 44-45. The French version (T. 2 February 2006 p. 31) correctly states that Karera was the prefect of Kigali-Rural, not Kigali town (English version, T. 2 February 2006 p. 31).

⁴⁵⁸ T. 22 August 2006 pp. 9-10, 16-18.

⁴⁵⁹ *Id.* pp. 11-12.

⁴⁶⁰ *Id.* pp. 12-14, 17.

⁴⁶¹ *Id.* pp. 15, 17, 19-20.

⁴⁶² *Id.* p. 16.

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Defence Witness YNZ

395. Witness YNZ, a driver, testified that he saw Karera arrive in Rushashi towards late April or early May 1994. Karera parked his vehicle at the Kinyari centre, and stood near the car, in a green area. The witness and others were on verandas on the opposite side of the road. Those who knew Karera's position approached him and complained about the refugees from Nyacyonga and Mugambazi, who were looting cattle and chickens from Hutu locals. Many refugees and locals stood on the road. Karera addressed the public. He requested the refugees to stop looting and ask for food instead. Karera began his speech at around 10.00 a.m. It did not last long. No one else spoke. The witness watched Karera from the veranda, and did not personally speak to him. He did not see Karera hold other meetings there or elsewhere in Rushashi.⁴⁶³

Defence Witness YCZ

396. Witness YCZ, a teacher, testified that in early May 1994, he attended a meeting held by Karera near the Kinyari roundabout, on a hill between the roads to Kigali and Musasa. The witness arrived at around 10.00 a.m., and the meeting was already in progress. Over a hundred people participated, including soldiers and civilians. Karera urged them to understand each another and live harmoniously. He directed them to report the *Abaseso* to the authorities, instead of helping them. The witness left the meeting during Karera's speech. He did not know whether others spoke afterwards.⁴⁶⁴

397. In early June 1994, the witness attended a meeting held by Karera on the Gahira bridge in Musasa, which stretched over the Nyabarongo river. The Nyabarongo river separated Musasa commune (in Kigali-Rural prefecture) from Nyabikenke commune (in Gitarama prefecture). The meeting lasted from about 9.00 a.m. to 2.00 p.m. and was attended by over 400 persons from the general population. Karera asked the public to live harmoniously and alert the authorities when seeing persons who were unknown in the area. A senior military officer also spoke. The audience asked questions. Only Karera and the officer spoke for a significant amount of time.⁴⁶⁵

Defence Witness MZR

398. Witness MZR, an official of Kigali-Rural prefecture, testified that one morning in second half of May 1994 he attended a meeting at the Rushashi commune office. About 15 people attended, including the Rushashi sub-prefect, Juvénal Sezikeye, *bourgmestres*, the deputy prosecutor of Rushashi and representatives of security and development services, such as the head of the Kigali-North Project. During the meeting, Karera urged the participants to strengthen the security measures, be more vigilant in areas which were still populated, and continue to assist civilian refugees. The witness initially testified that he did not remember whether there were speakers other than Karera but then corrected himself. The *bourgmestres* gave briefings about the security situation in their communes. The prosecution department addressed security matters and the witness spoke about the displaced people in Taba commune, Gitarama prefecture.⁴⁶⁶

⁴⁶³ T. 16 August 2006 pp. 48-49, 52, 54, 62-64.

⁴⁶⁴ T. 18 May 2006 pp. 10, 13-14; Defence Exhibit 56 (sketch of Rushashi drawn by Witness YCZ).

⁴⁶⁵ T. 18 May 2006 pp. 10, 13-15, 19.

⁴⁶⁶ T. 15 May 2006 pp. 33-36.

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Defence Witness YAH

399. Witness YAH, a Hutu who fled Rutongo, testified that in the first week of May 1994 he saw Karera at the Musasa commune meeting room. The *bourgmestre* of Musasa, Aloys Havugimana, a friend and relative of the witness, had announced the meeting two days earlier. Havugimana and Karera sat on the podium with Madam Astérie Rwarahoze, a parliament member. About 300 people attended, including sector *conseillers*, *cellule* committee members and intellectuals. The general public was not invited. Karera was introduced as the new prefect of Kigali. He declared that his mission was to pacify the commune. Karera spoke about the history of the war since 1990, described the Arusha peace accords, condemned the massacres, urged the public to show restraint and encouraged the dismantling of roadblocks. In the second week of May 1994, the witness attended a similar meeting held by Karera in Rushashi.⁴⁶⁷

400. In the third week of May 1994, Witness YAH attended another meeting held by Karera in Musasa. Karera asked the commune's *bourgmestre* to report on the manner in which his pacification message was implemented in the sectors and *cellules*. The *cellule* leaders gave reports on the security situation in their respective areas. Karera asked them to continue pacifying the population, ensuring public order and being vigilant. He left before the meeting ended. At the meeting, Karera was accompanied by an officer in charge of civil defence, who had just been appointed by the new government to recruit youths to reinforce the military front. The officer chaired the rest of the meeting after Karera left. The witness testified that following the pacification message "calm had returned throughout the commune". He admitted, however, that his wife was still threatened by bandits looking for money.⁴⁶⁸

Deliberations

401. Five Prosecution witnesses testified that Karera held meetings in Rushashi commune between April and June 1994, where he incited the population to target Tutsis. They described several such meetings: at Rwankuba Secondary School in April, outside the commune office in May, and at the Rushashi sub-prefecture office in June (Witness BMB); at the Rushashi commune office and in its courtyard, both gatherings in April (Witness BMM); outside the commune office towards the end of April (Witness BMO); at Rushashi sector office in April (Witness BMN); and in the hall of the commune office in May (Witness BMR). The sixth Prosecution witness mentioned a meeting on Gihinga Hill in June 1994, where Karera was not present (Witness BMQ).

402. Karera denied having made inciting statements. He and the other four Defence witnesses gave evidence about meetings in Rushashi, during which he tried to restore peace and promote understanding. In particular, they identified the following pacification meetings: at the sub-prefecture office on 20 April and at Rwankuba Secondary School on 22 or 23 April (Karera); at the Kinyari centre in late April or early May (Witness YNZ); at the Kinyari roundabout in early May (Witness YCZ); and at the commune office in the second half of May (Witness MZR).

⁴⁶⁷ T. 11 May 2006 pp. 63-68, 73; T. 12 May 2006 pp. 2-3.

⁴⁶⁸ T. 11 May 2006 pp. 67-70; T. 12 May 2006 pp. 2-3.

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403. The Defence witnesses also referred to pacification meetings in Musasa commune: in a sector bordering Nyabikenke in Gitarama after 23 April (Karera); at the Musasa commune conference room in the first week of May and two other meetings in that commune in the second and third week of May (Witness YAH); and at Gahira bridge in Musasa commune in early June (Witness YCZ).

404. Karera's statements at meetings in Musasa commune do not form part of the Prosecution case. However, the Chamber accepts that they may arguably throw light on what he is likely to have stated elsewhere in the same period. The situation is similar in relation to testimonies from Defence witnesses about what Karera may have said at other meetings in Rushashi than those testified to by Prosecution witnesses. This said, the Chamber will focus on the meetings at which Karera, according to the Prosecution Witnesses, allegedly was present.

405. Witness BMB's testimony about three fund-raising meetings was generally coherent and credible. The Chamber is convinced by his explanation that he was invited to the meetings because of his position in the education field.⁴⁶⁹ Even though he was affiliated with the MDR's moderate wing, he was a Hutu, and his presence could be useful to the fund-raising. In the Chamber's view, his testimony does not reveal any bias against Karera. His evidence about the meetings and Karera's utterances there was in conformity with his statements to the investigators in 2001 and 2005.⁴⁷⁰

406. In relation to the first meeting, at Rwankuba Secondary School in April 1994, Witness BMB heard Karera say that the contributions should be used to reinforce existing roadblocks, establish new roadblocks and encourage the youth to co-operate with the army. As he was about 16 metres from Karera, the Chamber considers that he must have heard what he said. Karera testified that he held a pacification meeting at the school on 22 or 23 April. To the extent this is alleged to have been the same meeting as the one referred to by Witness BMB, the Chamber does not find Karera's testimony convincing. His evidence that it was decided to remove roadblocks from certain places is unclear, and not corroborated by other evidence (see II.6.3).

407. At the second meeting mentioned by Witness BMB, outside Rushashi commune office in late May, Karera allegedly said that there should be no "survivors" at the roadblocks. The witness understood this to mean Tutsis. Based on his explanations, the context and the situation at the meeting the Chamber accepts that his interpretation was correct.⁴⁷¹ It also finds that Karera threatened those who failed to donate money for weapons, as explained by the witness.

⁴⁶⁹ T. 2 February 2006 p. 19.

⁴⁷⁰ Defence Exhibits 25 (Witness BMB's statement of 9 November 2001) and 26 (Witness BMB's statement of 11 October 2005).

⁴⁷¹ T. 2 February 2006 p. 12 ("During that meeting, once again, Karera asked people to man roadblocks in order to ensure that there were no survivors, and here I mean, Tutsis, because they were the ones being targeted at that time."); pp. 58-59 (Karera ... chaired the said meeting, and he told us that we should give donations to purchase weapons, in order to assist the government. He said that the *Inkotanyi* had taken control of Byumba, and he told us we had to fight them, as well as their accomplices and the opponents of the MRND. ... Q. When you said accomplices of the *Inkotanyi*, did you understand to whom he was referring, Mr. Witness? A. For a long time it could be said that *Inkotanyis* had long ears, and that meant Tutsis. And everyone understood that we had to fight against the Tutsis."

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408. During the third meeting, at the Rushashi sub-prefecture office in June, Witness BMB allegedly heard Karera ask whether the "work" in Rushashi had been completed and, having received an affirmative answer, requested to know why the MDR chairman in Rushashi, Vincent Munyandamutsa, was still alive. Karera also threatened Hutus that they would be dumped in a grave if they did not find Tutsis. The Chambers considers also these elements of the testimony credible and notes that they are generally in conformity with the witness's prior statement to investigators.

409. Witness BMO testified about a meeting at the commune office in late April. Like Witness BMB, he said that the meeting took place outdoors, mentioned similar categories and number of participants, and stated that Karera threatened those who did not make donations. The Chamber has considered whether Witnesses BMB and BMO referred to the same meeting. However, their indications about the time, in April and May, respectively, were quite different. There is no indication that one of them was mistaken about the month.⁴⁷² Furthermore, Witness BMO did not mention the presence of Minister Rwamakuba during the May meeting. There is reason to believe that the presence of such a prominent person would have been noted and remembered by Witness BMO. The Chamber therefore cannot conclude that the witnesses described the same meeting.

410. The Chamber has generally found Witness BMO credible. It considers it quite plausible that he was invited to attend such a fund-raising meeting, as he was a Hutu businessman. There is no evidence that he had anything against Karera. His testimony was in conformity with his prior statement to investigators in 2001.⁴⁷³ Accordingly, the Chamber accepts his evidence concerning the meeting in late April 1994.

411. Witness BMR testified that Karera held a meeting in the hall of the commune office in May 1994. The Chamber notes that this is a different occasion than the outdoor meetings at the commune office, mentioned by Witnesses BMO and BMB. According to Witness BMR, Karera asked for donations to purchase weapons and encouraged recruitment of youths to the *Interahamwe* to defend the town against the *Inkontanyi*. It follows from the testimony in context that the witness understood this to be directed against the Tutsis. Karera also promised over 40 weapons to fight the enemy at the roadblocks.⁴⁷⁴ The Chamber believes the evidence of Witness BMR, which it finds coherent and consistent. There are no significant inconsistencies compared to his statements to investigators in 2005.

412. Witness BMM, the communal policeman, testified that in April, Karera attended two fund-raising meetings at the commune office, which were attended by the *bourgmestre* and *conseillers*. One of them took place in the courtyard. The purpose of the

⁴⁷² Witness BMO testified that the meeting took place one week after Karera distributed weapons, which was two weeks after the President's death. T. 2 February 2006 pp. 56, 58. Witness BMB, however, said that he "no longer remember the exact date when that meeting was held, but it was towards the end of May". T. 2 February 2006 p. 10.

⁴⁷³ Defence Exhibit 29 (Witness BMO's statement of 19 April 2001).

⁴⁷⁴ T. 1 February 2006 p. 2 ("The instructions had been given by the préfecture *Interahamwe* officials, especially in Kigali-rural préfecture, and that was started by the demise of the head of state. The *Interahamwe*s had decided to avenge the death, they took it out on the enemy, namely the Tutsis. That's why they were hunting down Tutsis."); see also p. 38. The witness first testified that Karera promised to provide 44 weapons, but later said 47 weapons. T. 31 January 2006 pp. 42, 44. The Chamber considers this insignificant.

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fund-raising was to purchase weapons for the army or the *Inkontanyi*.⁴⁷⁵ The Chamber accepts his evidence. The witness worked at the commune office, where the meetings took place, and it was therefore natural that he would attend them. His testimony was brief, and it is difficult for the Chamber to identify these meetings compared to the other testimonies. However, the Chamber considers that his testimony corroborates the evidence of Witnesses BMB and BMO that fund-raising meetings were indeed held in the commune office during the month of April.

413. Witness BMN said that at a meeting in the sector office in April 1994, Karera publicly ordered the looting and killing of Tutsis. If the Tutsis wanted their property back, Tutsi women should be killed, as well as Hutus married to Tutsis. As this took place after the witness had been chased out of Karera's house (II.6.3), it may be asked why she attended such a meeting. She explained that even though she was afraid, she felt compelled to attend. Until then there had mainly been looting, and she assumed that she would not be killed at the meeting, given her relationship to Karera's wife. As soon as she heard the order to kill, she left. The Chamber accepts this explanation. It has taken into account that the witness was only 15 years old in 1994. The distance between Karera and the witness was only about 8.5 metres. The testimony was in conformity with her previous statements to investigators from 2001 and 2005.⁴⁷⁶

414. Prosecution Witness BMQ testified to a meeting during which Karera was not present. It took place in June in a refugee camp on Gihinga Hill in Rushashi commune. According to the witness, a representative of the *bourgmestre* of Kanzenze commune conveyed a message from Karera, that men married to Tutsis must be killed as well as their children. The Chamber does not find this established beyond reasonable doubt. Even though Witness BMQ is generally credible, no-one heard Karera issue the order, there is no evidence as to when it was given, the identity of the representative of the *bourgmestre* is unknown, and it is not clear how the representative knew about the instructions.

415. Apart from Karera, three Defence witnesses testified about meetings in Rushashi. Witness YNZ said that in late April or early May 1994, he saw Karera at around 10.00 a.m. at the Kinyari centre, asking refugees to stop looting. The Chamber observes that he was absent from Rushashi all day because of his work as a driver (II.6.3) and could not have been aware of all the events in the commune. The meeting at the Kinyari roundabout in early May at 10.00 a.m., mentioned by Witness YCZ, may have been the same meeting as the one mentioned by Witness YNZ. The two witnesses gave different accounts of Karera's speech, but this can be explained by Witness YCZ leaving the meeting while Karera was still speaking. The Chamber sees no need to make a finding as to whether there was one or two meetings, as the evidence of these two witnesses did not relate to any gathering testified to by the Prosecution witnesses. It is noted that Karera's speech includes references to inter-Hutu conflicts, including the role of the *Abaseso*, and requests to the refugees to stop looting. Witness MZR's evidence about a meeting at the Rushashi commune office in the second half of May referred to the presence of about 15

⁴⁷⁵ He first testified that the weapons were intended "for the army", and later said that they were for "fighting the *Inkotanyi*".

⁴⁷⁶ Defence Exhibits 23 (Witness BMN's statement of 9 June 2001) and 24 (Witness BMN's statement of 10 October 2005). In her testimony, the witness first said that she went to the meeting with other children, but then testified said that she went by herself. In the Chamber's view, this does not affect her credibility.

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officials and service providers. His description of the participants and their number shows that this meeting is not one of those mentioned by the Prosecution witnesses. His testimony has therefore limited weight.

416. As mentioned above, meetings in Musasa are not part of the Prosecution case but the Chamber has still taken this part of the evidence into consideration. Witness YAH testified about a meeting held by Karera in May 1994, saying that the commune had become calm. However, he also stated that his wife continued to be threatened by bandits. This contradiction weakens his credibility. Furthermore, the witness said that the meeting in the third week of May in Musasa was co-chaired by Karera and a civil defence officer, who was responsible for recruiting youths to reinforce the military. Witness YCZ also said that Karera and a military officer were the key speakers at an outdoor meeting in Musasa in June 1994. It is surprising that meetings chaired by military and civil defence leaders were aimed at contributing to reconciliation and pacification, rather than encouraging youths to join the battle. The Chamber has some doubts about these two testimonies.

417. Without excluding that so-called pacification meetings were held, the Chamber finds it established that Karera spoke at fund-raising events. It is certainly not a crime to seek financial support for the army in a time of war, or to encourage co-operation with the army. Similarly, threats against Hutus who did not want to contribute do not in themselves constitute criminal conduct under the Tribunal's Statute. However, during these meetings, Karera also made statements which explicitly or by implication encouraged looting or killing of Tutsis. Threats against Hutus who hesitated to co-operate reinforced his message. Having assessed the totality of the evidence, the Chamber makes the following findings:

- At the Rwankuba secondary school in April 1994, Karera spoke in favour of establishing and reinforcing roadblocks and encouraged the youth to co-operate with the army (Witness BMB). This was done in a period when Tutsis were being targeted at roadblocks by *Interahamwe* (II.6.3).
- At the sector office in Rushashi in April 1994, he publicly ordered the looting and killing of Tutsis. If Tutsis wanted their property back, Tutsi women should be killed, as well as Hutus married to Tutsis (Witness BMN).
- In a meeting held outside the commune office in late April 1994, Karera sought contributions for weapons in order to fight the *Inkotanyi*, their accomplices and MRND opponents (Witness BMO). In the context, this clearly included Tutsi civilians.
- In another meeting held outside the commune office in May 1994, he sought contributions and encouraged hundreds of administrative, intellectual and business leaders to fight the *Inkotanyi* saying that there should be no survivors at the roadblocks (Witness BMB). This clearly included Tutsi civilians.
- In the hall of the Rushashi commune office in May 1994, Karera asked for donations to purchase weapons and encouraged the recruitment of youths to the *Interahamwe* in order to fight the *Inkotanyi* (Witness BMR). In the context, this included Tutsi civilians.
- At the Rushashi sub-prefecture office in June 1994, Karera asked whether the "work" had been done, which in that context meant the killing of Tutsis, and asked why

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Vincent Mundyandamutsa, a moderate Hutu belonging to the MDR party, had not been killed.

6.5 Distribution of Weapons, April-May 1994

418. The Prosecution submits that Karera distributed weapons for use at massacres sites, whereas the Defence refutes this allegation.⁴⁷⁷ The distribution of weapons in Rushashi was not pleaded in the Indictment.

419. The Chamber will first consider whether there was lack of notice. As mentioned above, the distribution of weapons in Rushashi does not form part of the Indictment. It is used as a material fact to underpin the Prosecution counts relating to genocide, extermination and murder. It is noteworthy that paragraphs 9 and 10 of the Indictment refer to the weapon distribution in Nyamirambo (II.4.14). In the Chamber's view, the lack of similar statements relating to Rushashi is an omission of a material fact which should have been pleaded in the Indictment.⁴⁷⁸ It notes that the Pre-Trial Brief, which contained such references, was filed on 12 December 2005, one week before the filing of the Amended Indictment.

420. As mentioned in I.2.3, the omission of a material fact may, in certain cases, be cured by the provision of timely, clear and consistent information. In determining whether an defective Indictment was cured by such information, the Appeals Chamber has looked to the Prosecution Pre-Trial Brief (together with its annexes and chart of witnesses) or the Prosecution Opening Statement.⁴⁷⁹ In the present case, distribution of weapons in Rushashi was mentioned in the Pre-Trial Brief⁴⁸⁰ and its Annex with summaries of anticipated testimonies.⁴⁸¹ It was also included in the Opening Statement.⁴⁸²

⁴⁷⁷ Prosecution Closing Brief, paras. 673, 677, *see also* 647, 649, 652-653, 658-659, 663-664; Defence Closing Brief, paras. 322-342.

⁴⁷⁸ The Prosecution request to amend the Indictment, filed on 23 November 2005, did not include distribution of weapons in Rushashi, *see* Decision on the Prosecutor's Request for Leave to Amend the Indictment, 12 December 2005 (TC). The trial commenced on 9 January 2006.

⁴⁷⁹ *Bagosora et al.*, Ntabakuze Appeals Chamber Decision, para. 35 (with references).

⁴⁸⁰ Pre-Trial Brief, para. 64 ("sometime in early June 1994, Francois Karera organised a meeting at the Rushashi commune office ... It was during this meeting that guns were distributed to the various communes"); para. 65 ("the guns distributed at the meeting mentioned above were used to kill Tutsi in Rushashi ... Francois Karera was aware of the purpose for which the guns were to be used when he distributed them"); para. 67 ("Francois Karera facilitated the killings of Tutsi in Rushashi commune by organizing meetings, distributing weapons used in the said killings and raising money that was used in the process");

⁴⁸¹ In particular, *see* summaries of Witness BMA ("FK left for Rushashi with a small lorry full of guns issued by Minadef which he distributed to local Interahamwe"); Witness BLY, who did not eventually testify ("In April 94, the day after Karera came to Rushashi, weapons were distributed"); Witness BMM ("Witness saw Karera bring weapons to the communal office..."); and Witness BMN ("Three months before the death of the President, Karera brought to the Bourgmestre of Rushashi, at the communal office, some weapons").

⁴⁸² T. 9 January 2007 p. 4 ("In some cases local government officials, such as the Accused, Francois Karera, sponsored these roadblocks and supplied those manning them with food, with drinks, with weapons and with other forms of support and encouragement. ... We would further represent to the Court that the actions of the Accused in the said *préfectures* throughout the months of April, May, June 1994, namely the

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421. Having reviewed these documents, the Chamber is satisfied that the Defence received sufficient information. At no time during the trial did the Defence object to the admission of evidence concerning distribution of weapons in Rushashi. Only its Closing Brief contained an objection. Under these circumstances, the Chamber considers that the burden of proof has shifted to the Defence to demonstrate that lack of notice prejudiced Karera. This burden has not been met.

Evidence:

Prosecution Witness BMM

422. Witness BMM, the communal policeman, testified that in the second half of April 1994, he was at the Rushashi commune office when Karera arrived, driving a vehicle loaded with weapons. This was at around 2.00 p.m. The car was a white pick-up truck with an open back, resembling a Peugeot. The weapons were in the back, in a carton box covered by white canvas. Karera asked the witness to remove them from the car, and he placed them on the ground. The witness counted 22 Kalashnikovs, brand new and in their original packages. Karera asked him to give the guns to the brigadier and left. The witness obeyed. He testified that there was adequate ammunition at the office.⁴⁸³

423. The brigadier was the head of the communal police in Rushashi. As soon as the weapons were given to him, the *conseillers* came to collect them, in order to distribute them to youths at the roadblocks.⁴⁸⁴ The witness knew that they were given the weapons, because young people were armed with the guns at the roadblocks when he carried out security patrols or moved about. He saw this at the roadblocks near the commune office and the Kinyari centre. Many Tutsis were killed in Rushashi, even in their homes, after the death of the President, and the witness said that Karera must have known of this.⁴⁸⁵

Prosecution Witness BMO

424. About two weeks after President Habyarimana's death, at around 11.00 a.m., Witness BMO observed a vehicle passing by his place of business at the Kinyari centre with Karera, his bodyguard and a driver onboard. The bodyguard, who often accompanied Karera, was an *Interahamwe* from Kigali-Rural prefecture named Setiba and nick-named "colonel" (II.6.3). The witness was outside his business premises when he saw Karera in the vehicle, which looked like a military jeep. It arrived from the direction of Kigali town and proceeded on the road leading to the Rushashi commune office.⁴⁸⁶

425. The witness noticed a big box inside the vehicle, but did not see its contents. At around 3.00 p.m. that day, *Interahamwe* whom he knew arrived at his restaurant. They had new rifles with wooden butts. The witness first testified that he inferred from the

distribution of weapons to militiamen at roadblocks in Nyarugenge and Rushashi communes, ... demonstrate his specific intent to destroy, in whole or in part, the Tutsi as a group.").

⁴⁸³ T. 1 February 2006 pp. 68-70.

⁴⁸⁴ T. 1 February 2006 pp. 68-69; T. 2 February 2006 p. 1.

⁴⁸⁵ T. 1 February 2006 p. 70 ("In his capacity as *préfet*, he could not not be aware of that. Later on, when he distributed the weapons to the civilians, what could those weapons have been used for? So, he therefore must have known, because he was an authority.").

⁴⁸⁶ T. 2 February 2006 pp. 55-57, 61, in particular p. 56 ("The vehicle "was a relatively long vehicle which looked like a jeep ... The colour ... was almost the same as the colour of a military jeep").

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circumstances that these weapons were brought to the commune office by Karera. On cross-examination, he stated that the *Interahamwe* told him that Karera and the *bourgmestre* had just given them the weapons at the commune office. The *Interahamwe* said they were notified in advance that weapons would be distributed that day.⁴⁸⁷

426. On his way home that day, Witness BMO noticed a man with a rifle.⁴⁸⁸ On 7 April 1994, he had noticed a man named Karangwa manning the roadblock near the Rushashi agricultural-veterinary school, equipped only with a traditional weapon. The witness testified that three rifles were distributed in his sector, including one to the *conseiller*, and the arms were used by those manning the roadblocks to kill Tutsis. He did not know of anybody else, besides Karera, who could have transported weapons to the commune office.⁴⁸⁹

Prosecution Witness BMR

427. About a week after the fund-raising meeting held by Karera in May in the hall of the Rushashi commune office (II.6.4), the Rushashi *bourgmestre* invited local officials and leaders to receive weapons at the commune office. When Witness BMR, who was an *Interahamwe*, arrived there, he saw a government-owned Toyota Stout park in front of the office. Karera was in it with two communal policemen, another person, and a big box covered by a tarpaulin. The witness testified that Witness BMM was near the car and was asked by Karera to uncover the box and remove the weapons. Witness BMM piled the weapons in a room in the commune office. Karera instructed the *bourgmestre* to distribute the weapons to the *conseillers* for use at the roadblocks. He also said that the *conseillers* should direct the population to cut down bushes to prevent the enemy from hiding in them. Karera left the commune office immediately after giving these orders, about five or less minutes after the weapons had been removed from the vehicle. The weapons were distributed by the *bourgmestre* to the *conseillers*, and to the people manning the roadblocks, including the witness.⁴⁹⁰

428. Witness BMR testified that after Karera brought the weapons, two Kalashnikovs were used at the Kinyari centre roadblock, one Kalashnikov at the roadblock at Musasa road, one Kalashnikov at the roadblock by the Kigali North Project and one gun at the roadblock near the agricultural-veterinary school.⁴⁹¹

Prosecution Witness BMA

429. Witness BMA, an official of Nyarugenge, saw Karera leave Kigali for Rushashi between 12 and 17 April 1994, with a Toyota Hilux carrying crates of the kind which contains guns (II.4.14). The witness later learned that Karera had distributed the weapons to *bourgmestres*, *conseillers* and *Interahamwe* at the roadblocks. He heard this from *Interahamwe* who received weapons from Karera, and from *conseillers* he met in exile or in Kigali central prison. Witness BMA did not mention where the weapons were distributed, but from the context of his testimony it was in Rushashi. He was not certain

⁴⁸⁷ T. 2 February 2006 pp. 57-58, 61-62, 68.

⁴⁸⁸ According to the English version of the transcripts the man's name was Karangwayire (T. 2 February 2006 p. 58) whereas in the French version his name was Karangwa (T. 2 February 2006 p. 60).

⁴⁸⁹ T. 2 February 2006 pp. 53, 58.

⁴⁹⁰ T. 31 January 2006 pp. 43-44.

⁴⁹¹ T. 1 February 2006 p. 3.

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of the type of guns but believed they were Kalashnikovs and Uzis, the types often used by *Interahamwe*.⁴⁹²

The Accused

430. Karera testified that he did not distribute any arms in Rushashi and did not even know how to operate a weapon. He did not commit any crimes in the region directly, indirectly, or through orders. Karera also denied that he incited others to commit massacres. He claimed that the fact that he did not carry arms was corroborated by Prosecution witnesses.⁴⁹³

Deliberations

431. Four Prosecution witnesses linked Karera to distribution of weapons. Witness BMA saw him leave Kigali with gun-crates in his car, whereas the other three observed him in Rushashi in a car with a big box in the back. Karera was the only witness for the Defence concerning this event.

432. The Chamber accepts the testimony of Witness BMM, that he received the 22 new Kalashnikovs from Karera at the commune office and gave them to the brigadier, pursuant to Karera's orders. The *conseillers* then collected these guns from the office and distributed them to *Interahamwe* at the roadblocks. He even saw the *Interahamwe* carrying the guns. The Chamber has in other contexts considered the witness reliable (II.6.3 and 6.4) and finds also this part of his testimony coherent and credible.

433. Witness BMM's testimony should be considered in the light of the evidence of Witness BMR, who saw Karera arrive at the commune office with weapons. The Chamber is convinced that they referred to the same event. Witness BMR saw Karera hand over the weapons to Witness BMM. The witnesses gave similar descriptions of the car (a Toyota-Stout is a pick-up truck), the box of weapons in its back, and how the box was covered by canvas or tarpaulin. They both said that the weapons were distributed through the *conseillers* to youths at the roadblocks.⁴⁹⁴

434. The question is when this event took place. Witness BMM did not remember the date but appeared certain that it was in the second half of April.⁴⁹⁵ Witness BMR

⁴⁹² T. 19 January 2006 pp. 28-30.

⁴⁹³ T. 22 August 2006 p. 30.

⁴⁹⁴ Witness BMR testified that Karera entered the office and instructed the *bourgmestre* to ensure that the guns were distributed at the roadblocks, whereas Witness BMM's said that Karera left the office immediately after the weapons were off-loaded from his car. In the Chamber's view, this difference does not affect their credibility. Considerable time has elapsed since the event. Both stated that Karera did not stay around for long, and Witness BMM was busy removing and counting the weapons, hence having less opportunity to observe Karera's movements.

⁴⁹⁵ T. 1 February 2006 p. 68 ("Can you remember the dates, Mr. Witness? A. I no longer remember the date, but this was in April, and he found me in the communal office. Unfortunately, I cannot remember the date, because I did not note it down anywhere."); pp. 69-70 ("Judge Egorov: Mr. Witness, could you recall when these weapons were brought to the office? A. It is very difficult for me to remember the date, but he brought those weapons, handed them over to me, and asked me to hand them over to the person indicated. But I did not take note of the date, because I was not aware that I would later on be required to testify regarding those weapons. Judge Egorov: Do you remember the month? A. It was in April. Judge Egorov: The first or second part of April? A. Second half.").

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estimated the time to May but also made some references to April.⁴⁹⁶ There is no evidence that Karera handed over weapons to Witness BMM more than once. Consequently, either Witness BMM or Witness BMR was mistaken about the month.

435. Witness BMO's testimony is relevant in this context. About two weeks after the President's death, which means around 21 April, he saw Karera heading to the commune office in a car with a big box in the back.⁴⁹⁷ The Chamber finds the witness's observation, as well as his time estimate, credible. The witness was told by the *Interahamwe* about the weapons from Karera on the day they received them.⁴⁹⁸ He further testified that they were used to kill Tutsis.

436. The Chamber has considered whether Witness BMO saw Karera on the same day as Witnesses BMM and BMR. Witness BMO's evidence that the car headed towards the commune office with a box, and that he saw *Interahamwe* with new weapons on that day, suggests such a finding. Furthermore, it was in April, as mentioned by Witness BMM. On the other hand, there are also differences between the testimonies. Witness BMO said that the vehicle had military colour, that he saw Karera's driver, and that it passed by in the direction of the commune office at around 11.00 a.m. The two other witnesses described it as a pick-up truck, and Witness BMM said that it was white, that Karera was driving, and that it arrived at the commune office at 2.00 p.m.

437. Of interest is also Witness BMA's evidence. Between 12 and 17 April, he saw Karera leaving Kigali in the direction of Rushashi, using a Toyota Hilux (which is a pick-up), carrying crates of guns (II.4.14). Although his testimony is considered with caution (II.2), it still corroborates the evidence of Witnesses BMM, BMO and BMR. His account also supports that Karera transported weapons in April. Also Witness BMA heard from *Interahamwe* and officials that Karera had given them weapons to use at roadblocks.

438. Under the circumstances, the Chamber finds it impossible to make a definite finding as to whether the event observed by Witness BMM and BMR took place in April or May, although the evidence suggests that it was in April. However, the Chamber is in no doubt that in the period covering April and May, Karera transported weapons to the Rushashi commune office, that they were given to the *conseillers* and subsequently reached the *Interahamwe* at the roadblocks where they were used in killing Tutsis.

⁴⁹⁶ T. 1 February 2006 p. 3 ("For instance, the Rushashi trading centre, we were issued with Kalashnikovs. A short while after April or rather towards late April we received those weapons, after the month of May, towards the 20th of May. ... We were issued with those weapons in the course of April ... [The prefect of Kigali-Rural] brought those weapons towards those dates in the month of May. ... We received weapons a week after the date of the meeting, which date I cannot remember very well, but it was in the month of May.").

⁴⁹⁷ T. 2 February 2006 p. 56 ("Q. Do you still recall when it was when you saw Mr. Francois Karera bringing firearms, as you have mentioned? A. It was two weeks later. ... I'm talking about the time when I saw him bringing the guns there. ... It was in April. ... Q. Are you saying two weeks after the death of the president? A. Yes, two week's after the president's death.") The witness gave the same estimate when he spoke to investigators in 2001. Defence Exhibit 29 (Witness BMO's statement of 19 April 2001.)

⁴⁹⁸ Witness BMO first said that he inferred from the circumstances that the weapons reached the youths at the roadblocks, and then said that he was told by them. In the Chamber's view, the witness did not contradict himself but simply supplemented his testimony in connection with further questioning.

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6.6 Killing of Théoneste Gakuru, April or May 1994

439. Paragraph 34 of the Indictment states:

34. During April 1994, François KARERA also led attacks against the civilian Tutsi population in Kigali-Rural *préfecture*. Among those that were killed as a direct consequence of François KARERA's acts or omissions are: Théoneste Gakuru, *conseiller* of Kimisange who was arrested between late April and May 1994 on the orders of François Karera at a roadblock in Rushashi. He was detained at the communal office and was later killed that same day by the *Interahamwe*.

440. The Prosecution submits that the Defence did not provide any evidence challenging the allegation. The Defence argues that the testimonies of the Prosecution witnesses were contradictory and indirect.⁴⁹⁹

Evidence:

Prosecution Witness BMR

441. Witness BMR testified that towards late May 1994, he and the four other *Interahamwe* who manned the roadblock at the Kinyari centre stopped a white Toyota Corolla. The man in the car introduced himself as the *conseiller* of Kimisange sector in Kigali-Ville prefecture. His wife and a male driver were also in the vehicle. They claimed they had arrived from Kigali. The wife had no identification documents. The witness and his colleagues decided to verify the information with Karera, who was at Mutabazi's bar with Vianney Ndiyunze, the brigadier of Rushashi commune. A man called Vianney Simparikubwabo was sent to call him. Karera arrived at the roadblock with brigadier Ndiyunze, and said that the car's passengers were *Inyenzi*. He ordered to detain them at the communal jail, his order was followed, and he left.⁵⁰⁰

442. According to the witness, it was clear that the passengers would be killed shortly after Karera's order, as referring to someone as "*Inyenzi*" would encourage *Interahamwe* to kill them. Further, as prefect, Karera had the power to spare the *conseiller*'s life. At about 3.00 p.m. that day, while still at the roadblock, the witness was told by Karangwayire, Obed and Mfura, who "seemed to have been eyewitnesses", that the detainees had been killed. The witness later saw their bodies in a dirty compost pit near the commune office in Kageyo cellule in Rushashi. He helped cover them with soil.⁵⁰¹

443. Witness BMR later learned that the *conseiller* in the car was Théoneste Gakuru and the driver was Jean-Marie Vianney Harerimana. The witness was unaware of their

⁴⁹⁹ Prosecution Closing Brief, paras. 810-824, in particular para. 818; Defence Closing Brief 351-355; T. 24 November 2006 p. 17 (closing arguments).

⁵⁰⁰ T. 1 February 2006 pp. 5-7, 24 (in page 24 the witness notes that Karera said that the passengers were "*Inyenzi* accomplices"). According to the English version of the transcripts, Vianny's last name was "Simparikubwabo" (T. 1 February 2006 p. 7), and according to the French version it was "Simparikubwo" (T. 1 February 2006 p. 7).

⁵⁰¹ T. 1 February 2006 pp. 5-8, 24, 29-32, in particular p. 7 ("Once a decision was made that someone had to be taken to the *commune* we, the *Interahamwes*, knew that you were actually in a position that you had a few minutes or hours to be alive. And we knew that the person was an *Inyenzi*, so that encouraged the *Interahamwe* to kill the person.").

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ethnicity, but heard that Gakuru was not Tutsi. In June 1994, the witness saw Karera use the *conseiller's* white Toyota. He did not know its licence plate number.⁵⁰²

Prosecution Witness BMO

444. Witness BMO, a businessman, testified that sometime in April 1994, he went to the Kinyari roadblock where some persons had been stopped. He saw Karera in the company of the *Interahamwe* Vianney Simparikubwabo. A man, his wife and two children were in a white Peugeot 505 sedan. The man said he was the *conseiller* of Kimisange sector. The *Interahamwe* were searching the vehicle. The *conseiller* begged for his life. To prove that he was not Tutsi, he asked to speak to Karera, whom he said he knew very well because he had worked with him when Karera was *bourgmestre* of Nyarugenge. Karera said that there was nothing he could do and asked that they be taken to the commune office. They were immediately brought there. The witness left and when he later returned to the area, he heard that the *conseiller* and his relatives had been killed. Later that week, the witness saw Karera using the vehicle of the *conseiller*. According to the witness, Karera had the power to save the *conseiller's* life.⁵⁰³

445. According to Witness BMO, also other persons observed this event, including Mutabazi, Gatoyi and traders at the Kinyari centre. He insisted that Karera was present and that anyone testifying otherwise was hiding the truth. The witness was unaware of Karera's whereabouts before he arrived at the roadblock with the *Interahamwe* Vianney.⁵⁰⁴

Prosecution Witness BMM

446. Witness BMM, a policeman, was at the commune office when he saw, at around 6.00 p.m., a vehicle arriving with two men and two girls, who had been arrested. The witness did not mention the month. He did not know them or their ethnicity but heard that they came from Kigali. Those who brought them said they did not have identification cards. He heard people say that they were *Inkotanyi* or Tutsis and some wanted to kill them with clubs. The four requested to be taken to Karera, claiming that they knew him. The *bourgmestre*, who was present, sent Vatiri, an employee of the commune office, to find Karera and ask him about these people. Witness BMM was told by the victims that Karera was found at the Kinyari centre. Vatiri returned and said that Karera did not know the people and asked that they be killed, adding that they were *Inkotanyi* and that the dirt should be cleaned. The four were killed at the commune office while the witness was there. He assumed it happened because they were considered *Inkotanyi* or Tutsis. According to the witness, Karera could have spared their lives.⁵⁰⁵

Prosecution Witness BMN

447. Witness BMN, a Tutsi relative of Karera's wife, who knew the *conseiller* of Kimisange sector, saw him being stopped at a roadblock on the road from Kigali. This

⁵⁰² T. 1 February 2006 pp. 6-8, 29-30, 33-34.

⁵⁰³ T. 2 February 2006 pp. 59-60. According to the English version of the transcripts, Vianny's last name was "Simpakubwabo" (T. 2 February 2006 p. 59), and according to the French version it was "Simparikubwabo" (T. 2 February 2006 p. 61).

⁵⁰⁴ T. 2 February 2006 p. 67.

⁵⁰⁵ T. 1 February 2006 pp. 73-74.

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was some time after the meeting she attended at the sector office in April (II.6.4). The *conseiller* was asked for his identification document. He did not have it with him and requested to be taken to Karera. At around 1.00 p.m., he was brought to the commune office to meet Karera. The witness was there, looking for firewood in the area. Karera demanded to know why the *conseiller* had not been killed. The *conseiller* was taken away. The witness left, but she was followed by a policeman who arrested her and took her to jail at the communal office. There, she saw the *conseiller* again. One of the policemen at the jail knew the witness and she was released. Later, when the witness was hiding, she heard *Interahamwe* boasting that they had killed the *conseiller*.⁵⁰⁶

The Accused

448. Karera testified that he did not hear about Théoneste Gakuru's presence or murder in Ruhashi. According to Karera, Gakuru was a Hutu. They met in 1985 and at the request of the person who was then the *conseiller* of Kimisange, Karera found him employment as a tax collector. During Karera's final term as *bourgmestre*, Gakuru became *conseiller* of Kimisange sector.⁵⁰⁷

Deliberations

449. Paragraph 34 of the Indictment supports Count 4 (murder). The Prosecution does not claim that Gakuru was a Tutsi but submits that Karera referred to him as *Inyenzi* or *Inkotanyi*.⁵⁰⁸ There is no clear evidence that Gakuru was a Tutsi. Three of the four Prosecution witnesses testified that he and his family members lacked identity documents.

450. Prosecution Witnesses BMR and BMO provided first-hand and similar accounts of the location and sequence of events. Both testified that the *conseiller* arrived at the Kinyari centre roadblock in a white sedan car with others, that Karera and a man called Vianney Simparikubwabo were there, that Karera was asked to confirm the *conseiller*'s identity, that he ordered his arrest and detention, and that the *conseiller* was later killed. These two witnesses, as well as Witness BMM, also said that Karera had the power to save the *conseiller*. It is noted that they both saw Karera use Gakuru's car after he was killed.

451. While Witness BMR testified that Karera referred to the *conseiller* and his companions as *Inyenzi*, Witness BMO stated that he refused to acknowledge their claim that they were not Tutsis. The Chamber does not consider this difference significant. Both witnesses conveyed that Karera created an impression that the *conseiller* or his companions were Tutsi or accomplices.⁵⁰⁹

⁵⁰⁶ T. 1 February 2006 pp. 46-47.

⁵⁰⁷ T. 22 August 2006 pp. 25-27.

⁵⁰⁸ The Chamber notes that the terms "*Inyenzi*" or "*Inkotanyi*" are commonly associated with Tutsis and the RPF, but could also encompass moderate Hutus. For example, Prosecution Witness BLX testified that the *Inkotanyi* was the armed wing of the RPF. He testified that the term "accomplices" referred to Tutsis who supported the *Inkotanyi* as well as to Tutsis and Hutus who opposed the MRND. T. 18 January 2006 pp. 65-68. In addition, Prosecution Witness BMB testified: "... during the genocide, the term '*Inkotanyi*' and the term 'Tutsi' were used together ... the moderate wing of the MDR was considered as an accomplice of the *Inkotanyi*." T. 2 February 2006 p. 26.

⁵⁰⁹ According to Witness BMR, Karera ordered their transfer to the commune jail, whereas Witness BMO referred to commune office. This is no inconsistency, as Witness BMN explained that the jail was within

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452. Witness BMR placed the event in late May 1994 and said that Gakuru was with his wife and a driver in a Peugeot 505 sedan. According to Witness BMO, however, it was in April and Gakuru was accompanied by his wife and two children in a Toyota Corolla. In light of the important similarities outlined above, the Chamber does not consider these discrepancies significant. Considerable time has passed since the event, and the witnesses may have recalled the date and perceived the vehicle differently.

453. The Defence challenges the credibility of Witness BMR, as he is under a life sentence for participating in murder and has a profound motive to advance his liberty. The Chamber observes that his testimony was generally in conformity with his prior statement to investigators in 2005 and was corroborated the evidence of Witness BMO and BMM.⁵¹⁰ Witness BMR testified that he heard about Gakuru's death from Mfura, Obed and Karangwayire. When confronted with his prior statement of 2005, which states that these three persons had killed Gakuru, he explained that they informed him but did not explicitly say that they had killed Gakuru. The Chamber accepts his explanation.⁵¹¹

454. Witness BMM was at the commune office when two men and two girls were brought and killed there. He did not remember the month nor did he identify them by their names. However, his evidence is very similar to the account of Witnesses BMR and BMO, and the Chamber is satisfied that he testified about the arrest and killing of Gakuru. It has considered that Witness BMM said that they arrived at the commune office at 6.00 p.m., whereas Witness BMR said that he heard about Gakuru's death at 3.00 p.m. The fact that one of the witnesses may have given an incorrect time estimate, thirteen years after the event, does not affect his overall credibility. According to Witnesses BMO and Witness BMR, the *conseiller* asked to see Karera when he was at the roadblock, but this does not rule out that the *conseiller* later also requested, in vain, to see him at the commune office.

455. Witness BMN was unclear about when this event took place. In her prior statement of 2005, she said that two months had elapsed between the meeting she attended at the sector office in April 1994 (II.6.4) and the killing of the Kimisange *conseiller*. In court, she testified that she did not know how much time had passed between the events, and the Chamber accepts this part of her evidence.⁵¹² Her testimony corroborates the evidence of Witnesses BMR and BMO that Gakuru was arrested at the roadblock and later killed, as well as Witness BMM's account that Gakuru was brought to the commune office,

the commune office. T. 1 February 2006 p. 5 (BMR); T. 2 February 2006 p. 60 (BMO); T. 1 February 2006 p. 47 (BMN).

⁵¹⁰ T. 24 November 2006 p. 17 (Defence closing arguments).

⁵¹¹ T. 1 February 2006 pp. 7, 34 ("I reached that conclusion because they were the people who came to inform me of Gakuru's death, but they did not specifically tell me that they were the ones who had killed him."); Defence Exhibit 22 (Witness BMR's statement of 20-21 June 2005).

⁵¹² The witness first said it was "long after the meeting" in April (II.6.4) and then "there was some period of time between the two events" (meaning the April meeting and the killing of the *conseiller*). When she was confronted with her prior statement, which indicates that two months had elapsed between the two events, she said "I told the investigators that when the *conseiller* of Kimisange was stopped at the roadblock, a number of days had passed since the meeting had been held." T. 1 February 2006 pp. 48-49; Defence Exhibit 24 (Witness BMN's statement of 10 October 2005).

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where he asked to see Karera. Witness BMN did not say that Karera ordered Gakuru's arrest at the roadblock, but she may have arrived after Karera had left the scene.⁵¹³

456. Having assessed the evidence of the four Prosecution witnesses as well as Karera's testimony, the Chamber finds it established beyond reasonable doubt that in April or May 1994, Karera said to the *Interahamwe* at the Kinyari centre roadblock that Gakuru, the *conseiller* of Kimisange sector, was an *Inkotanyi* or *Inyenzi* and ordered that he be arrested. By doing so, Karera left him in the hands of *Interahamwe*. Under the prevailing circumstances, he must have understood that Gakuru would be killed.

⁵¹³ T. 1 February 2006 pp. 49-50. In addition, the Chamber observes that the witness did not indicate why she was arrested. When she was confronted with her prior statements of 2001 and 2005, which do not state that she was arrested, the witness explained that Cassien Ngirumpatse ordered her arrest, and her statements concerned Karera, who was not involved. T. 1 February 2006 p. 50. Defence Exhibits 23 (Witness BMN's statement of 9 June 2001) and 24 (Witness BMN's statement of 10 October 2005). The Chamber accepts her explanation.

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7. Alibi

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7.1 Introduction

457. The Defence has presented an alibi asserting that Karera was in Nyakinama in Ruhengeri prefecture from 7 until 19 April 1994. The Chamber has set forth this evidence separately in this section in order to preserve it as a coherent narrative. Notwithstanding this structure, in making its factual findings, the Chamber has assessed the Prosecution and Defence evidence in its totality.

458. The evidence of Prosecution witnesses places Karera in Nyamirambo, Kigali-Ville prefecture, on various dates ranging from 8 to 25 April 1994 (II.4.3, 4.5, 4.11, 4.14) in Ntarama, Kigali-Rural prefecture, on 9, 14 and 15 April 1994 (II.5.2, 5.3, 5.4), and in Rushashi commune between 7 and 10 April 1994 (II.6.3).⁵¹⁴

459. The Defence presented evidence in support of an alibi and submits that on 7 April 1994, Karera left his home in Nyamirambo. He travelled to Kiyovu, Kigali-Ville, and proceeded to the house of his son, Ignace, at the Nyakinama campus of the Rwanda National University in Ruhengeri prefecture. Karera arrived at the campus that day and did not leave until 19 April 1994, when he moved to Rushashi to assume the post of the Kigali-Rural prefect.⁵¹⁵

460. To establish Karera's alibi, the Defence relies on the evidence of Witnesses ATA, KD, BBK, YMK, BBA, François Xavier Bangamwabo and Karera. The three first witnesses are Karera's relatives, whereas the other witnesses were colleagues and neighbours of his son, Ignace, at the university. In addition, Defence Witnesses YNZ, BMP, MWG, KBG, ZBM, KNK, DSM and MZP testified about Karera's absence from Nyamirambo and the difficulties of travelling in Rwanda after 6 April 1994.

461. The Prosecution challenges that Karera left Nyamirambo between 7 and 9 April 1994. It was almost impossible for him, as a civilian, to travel from Kigali-Ville to Ruhengeri via Kiyovu on the morning of 7 April. In relation to 8 to 19 April, the Prosecution challenges that Karera remained in Ruhengeri. It alternatively submits that it was possible for him to make the journey between Ruhengeri and Kigali or Ntarama several times in one day. In support of its submissions, it refers to testimonies and documentary evidence.⁵¹⁶

462. The Chamber will first discuss Karera's journey from Kigali to Ruhengeri (7.2) and subsequently his presence in Ruhengeri from 7 to 19 April 1994 (7.3). It is recalled that according to established jurisprudence, an accused need only produce evidence likely to raise a reasonable doubt in the Prosecution case. The alibi does not carry a separate

⁵¹⁴ Karera's participation in meetings in Rushashi (II.6.4) appears to be in the second half of April 1994.

⁵¹⁵ Defence Closing Brief, paras. 71-111. Notice of alibi pursuant to Rule 67 (A)(ii) of the Rules of Procedure and Evidence was served on the Prosecution on 9 January 2006 (unredacted version). *See also* Decision on Motion for Further Alibi Particulars, 7 March 2006 (TC).

⁵¹⁶ Prosecution Closing Brief, paras. 254-333. *See* para. 318 ("it was most unlikely, considering the events in other prefectures such as Butare, that the Accused would have remained impassive and deliberately absented himself from his duties both as the acting préfet of Kigali-Rural préfecture and the Chairman of the ruling MRND party in Nyarugenge commune only to re-emerge a few weeks later as préfet of the Kigali-Rural préfecture in the same Government he allegedly abandoned.") The Prosecution does not make any specific submissions on the impact of Karera's alibi on his presence in Rushashi before 19 April.

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burden. The burden of proving beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true remains squarely on the shoulders of the Prosecution.⁵¹⁷

7.2 Journey from Kigali to Ruhengeri, 7 April 1994

Evidence

The Accused

463. On 6 April 1994, around 9.00 p.m., Karera was in his home in Nyamirambo when he heard a plane crash at Kanombe airport. He shortly afterwards learned that it was the presidential plane. The next morning, at around 3.00 a.m. or 4.00 a.m., gunfire was heard from the CND building, where the RPF battalion was garrisoned, as well as from the direction of the President's official residence at Kanombe. Between about 6.00 a.m. and 8.00 a.m., Karera was informed that the RPF forces had left the barracks and were ready for combat. A high ranking military officer told him to leave Nyamirambo immediately and advised on which route to take. Karera felt threatened, as he was on the RPF list of "death squad" members, who were considered enemies of the RPF. He feared the RPF's arrival into Nyamirambo particularly after the political assassinations of Fidèle Rwambuka (in 1993), Martin Bucyana, Félicien Gatabazi and Katumba (all in 1994). Karera decided to travel to Ruhengeri, where his son, Ignace, resided.⁵¹⁸

464. On 7 April 1994, between 11.00 a.m. and 12.00 p.m., Karera and his immediate family members left Nyamirambo in two vehicles. They first went to collect another relative, who lived in the Kiyovu area, near the President's house. The cars drove through *Avenue de la Justice*, the "Bernadine sisters", the *Lycée de Notre-Dame de Citeaux*, the Swiss and Congolese Embassies and the St. Michel Church, and did not encounter roadblocks on the way. They reached Kiyovu in about 20 minutes, at around 12.00 p.m.⁵¹⁹ Karera's relative joined the convoy in a third car with her own family. The three cars were civilian and unarmed, and travelled without a military escort or bodyguards.⁵²⁰

465. Upon leaving Kiyovu, Karera drove on Mt. Juru Road and *Boulevard de l'OUA* and encountered a roadblock near the *Sainte Famille* church. It was manned by UNAMIR soldiers and *gendarmes*, who recognized Karera and let him pass after checking his vehicle. One of the *gendarmes* at the roadblock gave him "a polite military salute as befitting the salute given to an authority", and Karera testified that "obviously the *gendarmes* within Kigali city recognised me".⁵²¹ He encountered a second roadblock at

⁵¹⁷ *Kajelijeli*, Judgement (AC), paras. 42-43; *Niyitegeka*, Judgement (AC), para. 60; *Musema*, Judgement (AC), para. 202; *Kayishema and Ruzindana*, Judgement (AC), para. 113; *Delalic et al.*, Judgement (AC), para. 581.

⁵¹⁸ T. 21 August 2006 pp. 52-57; T. 23 August 2006 pp. 11-14, 21-22, 30, 51; Defence Exhibit 73 (RPF list of "death squad" members). Karera obtained the information that he was on the list from his brother-in-law Landouald Ndasingwa, his friends, and from Radio Muhabura, which first broadcasted his name in May 1993. He never saw the actual list, but heard about it. Karera believed that he was accused of being a member of the death squad because he refused to join the Liberal Party (PL).

⁵¹⁹ T. 21 August 2006 pp. 57-60, 63; T. 23 August 2006 pp. 14, 48, 50; Defence Exhibit 74 (sketch of Kigali town).

⁵²⁰ T. 23 August 2006 pp. 17, 20.

⁵²¹ *Id.* p. 18.

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Giticyinyoni, where the roads to Ruhengeri and Butare intersected, and passed a military checkpoint at Mukungwa Bridge. On the road to Camp Kigali, he saw a roadblock which he did not pass.⁵²² Between 5.00 p.m. and 6.00 p.m., Karera arrived at his son's residence in Nyakinama campus, Ruhengeri.⁵²³

466. During cross-examination, Karera was shown certain UN documents and a Government communiqué which are considered below in connection with the Chamber's deliberations. He did not contest their contents, but explained that he was able to move around despite the dire situation. He followed a route proposed by an army commander, which bypassed the reinforced roadblocks.⁵²⁴ Karera said that it was reasonable in the circumstances that parts of the city were secured and movement of non-essential persons restricted. He was aware of the Ministry of Defence communiqué asking the public to "stay indoors", but explained that this expression in Kinyarwanda is synonymous to refraining from work as a sign of respect when a leader dies. Karera received a green light from the security authorities to leave Nyamirambo.⁵²⁵

Defence Witness ATA

467. Witness ATA is related to Karera. She testified that on 7 April 1994, between 10.00 a.m. and 11.00 a.m., Karera and his family left their home in Nyamirambo in two cars: his official vehicle, a white Peugeot 505 with government license plates, and his private car, a Peugeot 305. At around noon, the two cars stopped at the house of another relative, who lived with her husband and two children behind the St. Michel Church in the Kiyovu area of Kigali. The relative and her family joined the convoy in their own car, which the witness said may have been a Renault. They left Kiyovu between 2.00 p.m. and 3.00 p.m. The passengers in the Peugeot 505, including Karera and the witness, drove to Ruhengeri. The destination of the others, in the Peugeot 305, was Butare.⁵²⁶

468. On the way to Ruhengeri, the witness saw roadblocks at Giticyinyoni and at the entrance to Ruhengeri town, but none in Kigali town. At the roadblocks, soldiers stopped the vehicles and asked for identification documents. That evening, after a journey of about two to three hours, they arrived at the house of Karera's son, Ignace, in Ruhengeri. The witness testified that no guards travelled with them.⁵²⁷

Defence Witness KD

469. Witness KD is related to Karera. In April 1994, she lived in the Kiyovu area of Nyarugenge commune with her children and husband. In the morning of 7 April 1994, the radio announced the President's death. She did not hear an announcement asking people to stay in their homes. Karera told her on the phone that the family was about to leave Nyamirambo for security reasons. At around 11.00 a.m., on their way out of town,

⁵²² T. 21 August 2006 pp. 59-60, 62; T. 23 August 2006 pp. 14-15, 17-18, 48-49; Defence Exhibit 74 (sketch of Kigali town).

⁵²³ T. 21 August 2006 pp. 63-64; T. 23 August 2006 p. 43.

⁵²⁴ T. 23 August 2006 pp. 28-29.

⁵²⁵ *Id.*, pp. 19-23; Prosecution Exhibit 34 (official communiqué issued by the Rwandan Ministry of Defence, following the death of President Habyarimana). Karera heard that Prime Minister Agathe Uwilingiyimana had been assassinated on 7 April 1994, and that Kavaruganda, the president of the National Assembly, was missing.

⁵²⁶ T. 4 May 2006 pp. 47-49; T. 5 May 2006 pp. 1-4, 34-35, 37-38.

⁵²⁷ T. 5 May 2006 pp. 3-4, 34-36, 39-40, 46.

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he and other family members passed by her house. They were in two vehicles. Karera, his wife and two daughters drove to Ruhengeri in his official vehicle, a Peugeot 305. The other car, heading for Butare, was Karera's private vehicle, a Peugeot 505. It carried his four sons. The witness and her own family joined the convoy in their private vehicle and followed Karera to Ruhengeri. She feared that the presidential residence, about 200 metres from her house, would be attacked and did not want to be far from her family.⁵²⁸

470. Karera drove at the head of the convoy, the car going to Butare followed, and the witness's car was in the rear. They did not have a security escort. The radio in her car played only classical or religious music. The convoy took a single road out of Kigali and did not drive within the city. At Giticinyoni, the car driving to Butare separated from the other cars. On the way, the witness saw only one roadblock in Kigali, at the roundabout in the city centre, which had been there for a while. It was manned by government and UNAMIR soldiers. All three cars were stopped there and the passengers' identity documents were checked. The soldiers also opened the vehicle's hood to inspect under it. That evening, the witness's and Karera's cars arrived in Ruhengeri, at the house of Ignace.⁵²⁹

Defence Witness BBK

471. Witness BBK is related to Karera. In the morning of 6 April 1994, he arrived at his family's house in Nyamirambo. At about 8.00 p.m., he heard on the radio that a plane had just been shot down. Karera received a phone call, after which he told the family that it was probably the President's plane which was shot. A radio announcement later confirmed this news. The population was asked over the radio to remain at home until further notice. That night, the witness heard gunshots in the area. His family members felt insecure as they did not know what would follow and believed that people opposed to the regime lived in their neighbourhood.⁵³⁰

472. Witness BBK's aunt who lived in Remera neighbourhood in Kigali, phoned and said that the situation in her area was bad because RPF soldiers were moving out of the CND building nearby. The family members felt that to ensure their safety, they must leave the area until the situation returned to normal. The witness heard on the radio that the security problems in Kigali town did not exist in the rest of the country. He thought it was announced that, despite the security problems in Kigali, it was safe to move within the city from 6 to 8 April.⁵³¹

473. On 7 April, at around noon, Karera and his family left Nyamirambo. The witness travelled to Butare in one car with his brothers. The others drove to Ruhengeri. Both cars first passed by Kiyovu to visit another relative, who decided to leave Kigali with them in her own vehicle. The convoy of three cars left Kiyovu at around 1.00 p.m., with no escort. The witness saw a roadblock at the roundabout on the road leading out of Kigali. It was still being erected. He saw a second roadblock at the Giticinyoni junction, where

⁵²⁸ *Id.* pp. 43-44, 46; T. 8 May 2006 pp. 7, 9-17, 19-20, 22.

⁵²⁹ T. 5 May 2006 pp. 43-44, 46; T. 8 May 2006 pp. 15-16, 19-20.

⁵³⁰ T. 8 May 2006 pp. 35, 37-38, 41-43.

⁵³¹ T. 8 May 2006 pp. 38-39, 42-46.

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the road to Butare intersected with the road to Gisenyi. They passed it without being asked to present documents. There, the witness separated from Karera.⁵³²

Deliberations

474. Witnesses ATA, KD and BBK testified that they accompanied Karera when he left Nyamirambo on 7 April 1994, and passed through Kiyuvo. Witnesses ATA and KD continued with him to the Nyakinama campus in Ruhengeri. Their testimonies are generally coherent and consistent with Karera's evidence. The Chamber has taken into account that the witnesses are related to Karera.⁵³³ This does not in itself discredit their evidence.⁵³⁴ The Prosecution points to inconsistencies in their testimonies, such as in the number and location of roadblocks they encountered on their journey out of Kigali, and whether or not their documents were checked.⁵³⁵ Having considered the evidence, the Chamber does not consider these differences important in the present case. Minor discrepancies in the hour of departure or the car models are also insignificant. The Chamber also accepts that Witness KD only heard classical or religious music on the radio but not the announcement that people should stay in their homes, even though most persons in her situation would have wished to follow the news continuously.⁵³⁶

475. In its cross-examination of Karera, the Prosecution used a document dated 20 September 1995, prepared by the Belgian UNAMIR battalion (KIBAT).⁵³⁷ It describes the events in Rwanda from 6 to 19 April 1994, including mobility difficulties and activities at the roadblocks in Kivuyo in the morning of 7 April 1994.⁵³⁸ The Prosecution also referred to a cable of 8 April 1994 from the UN Representative in Rwanda to the UN headquarters in New York. The correspondence contains an update on the situation in Rwanda and details the difficulties in conducting UN activities there from 6 April 1994.⁵³⁹ Furthermore, Karera was also confronted with the communiqué issued by the

⁵³² *Id.*, pp. 39, 42-44, 47.

⁵³³ Prosecution Closing Brief, para. 285.

⁵³⁴ *Simba*, Judgement (TC), 13 December 2005, para. 381.

⁵³⁵ Prosecution Closing Brief, paras. 286-288.

⁵³⁶ *Id.*, para. 289.

⁵³⁷ Prosecution Exhibit 51 (KIBAT Calendar of Events 6 April - 19 April 1994). Its preface (p. 4) explains: "This narrative, which is directed mainly to KIBAT members, seeks to situate in time and space the numerous activities carried out by the Kigali Battalion on 6 April 1994, at the beginning of the evening, when the attack occurred, until 19 April, the day on which the last KIBAT man left. The events that occurred in Rwanda at that time, particularly, the outset of the genocide and operations of the Para-Commando Brigade [SILVER BACK], will be raised only as the KIBAT staff had perceived them. The narrative reviews only clearly identified facts, without any comments, opinion, nor even an analysis."

⁵³⁸ For example, the document states that the roadblocks in Kigali were reinforced with tanks before 4.00 a.m. on 7 April 1994. Certain *gendarmes* were fired upon at the roadblocks near the Prime Minister's house and at *Saint Siège*. The escorts assigned to accompany Prime Minister Agathe to Radio Rwanda to make a broadcast, were blocked at roadblocks, including one which was 400 metres north of her residence. Further, a meeting scheduled that day at the US Embassy between a UN high official, Booh-Booh, and certain ambassadors did not take place as it was impossible to move about. Prosecution Exhibit 51, pp. 23-25, 33.

⁵³⁹ Prosecution Exhibit 50 (cable of 8 April 1994 from the UN Representative in Rwanda to his superiors at the UN headquarters in New York). E.g., the document states (pp. 4-5: "Surveillance and Verification. Given the present situation and the events of the last 48 hours it is unacceptably risky to conduct these operations with unarmed UNMOs [UN Military Observers] or even lightly armed troops." Regarding to issue of evacuating the UN and expatriate community it stipulates: "Given the present situation in the streets this may not be possible or may be retarded and very dangerous."

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Rwandan Ministry of Defence after the death of the President, requesting the public to "stay at home and to await new orders".⁵⁴⁰ The Chamber is not satisfied that the UN documents and Government communiqué exclude the possibility that Karera travelled out of Kigali on 7 April 1994. It considers that even though the situation was tense and it was difficult to move about, Karera, a well-known authority, would move through roadblocks manned by soldiers, UN troops, *gendarmes* or *Interahamwe*, without major problems. It is recalled that he used his official vehicle all the way to Ruhengeri.⁵⁴¹

476. The Chamber notes that the relative of Karera in Kiyuvo lived 200 metres from the President's house, which would have been heavily guarded and movements around it restricted. However, this does not mean that there was no access to the relative's home.

477. The Prosecution challenges Karera's reasons for leaving Nyamirambo. He testified that he was informed early in the morning of 7 April 1994 that the RPF forces had left their barracks in Kigali (CND) and were ready for combat, whereas the two UN documents put the RPF's departure from the CND at around 4.00 p.m. that day.⁵⁴² The Chamber does not consider that this discredits Karera's evidence. He was told that the RPF were preparing for combat, whereas the UN documents confirm that they started fighting later that day. Karera's second reason was that he was afraid because the RPF had alleged in 1993 that he formed part of the "death squad". Even though some time had elapsed since then and 7 April 1994 the Chamber does not dismiss this submission.⁵⁴³

478. The Chamber cannot reject that, given the volatile situation, Karera wanted to protect his relatives by relocating them to a safer place. It is recalled that also several Prosecution witnesses testified that he left Nyamirambo following the President's death, without specifying when he left (II.4.2). Consequently, the Chamber finds that on 7 April 1994, Karera and his relatives travelled from Nyamirambo to Ignace's residence in Nyakinama, Ruhengeri.

7.3 Presence in Ruhengeri, 7-19 April 1994

Evidence

The Accused

479. Karera testified that on 7 April 1994, between 5.00 p.m. and 6.00 p.m., he arrived at the university campus in Nyakinama, Ruhengeri. He did not leave the campus until 19 April, when he moved to Rushashi, following his appointment as prefect of Kigali-Rural prefecture. During his stay on the campus, he met some of Ignace's university colleagues. One of them he met upon his arrival on 7 April and subsequently saw frequently at the

⁵⁴⁰ Prosecution Exhibit 34 (official communiqué issued by the Rwandan Ministry of Defence, following the death of President Habyarimana).

⁵⁴¹ A telling illustration is Karera's own testimony, quoted above, where he referred to the *gendarme* who gave him "a polite military salute as befitting the salute given to an authority" at the roadblock near *Sainte Famille*, and added that "obviously the *gendarmes* within Kigali city recognised me". T. 23 August 2006 p. 18.

⁵⁴² Prosecution Closing Brief, para. 262.

⁵⁴³ *Id.*, para. 263; Prosecution Exhibit 50 (cable of 8 April 1994 from the UN Representative in Rwanda to his superiors at the UN headquarters in New York); Prosecution Exhibit 51 (KIBAT Calendar of Events 6 April - 19 April 1994).

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multipurpose hall of the campus. Karera denied that he returned to Nyamirambo or attended meetings in Kigali town after 7 April 1994.⁵⁴⁴

480. According to Karera, he sought refuge in Ruhengeri and not in Rushashi, his home commune, as it was further away from the capital and because in Rushashi he would have been at greater risk as people knew where he lived there. He retained his position in the civil service and the official vehicle, but had no factual authority.⁵⁴⁵

481. Karera resided in Rushashi from 19 April to July 1994. He held many public meetings there (II.6.4), including on weekends. When there were no meetings in the weekends, he visited his family in Ruhengeri. He also went to Ruhengeri to obtain fuel.⁵⁴⁶

Defence Witness ATA

482. A week after Witness ATA's arrival with other family members at Ignace's house on 7 April 1994, she enrolled in school in Ruhengeri town and attended it for about two months. Karera did not work while in Ruhengeri. He was home when the witness left for school every day at 7.00 a.m., and when she returned between 3.00 p.m. and 4.00 p.m. In mid-April, he was appointed as prefect of Kigali-Rural prefecture and began travelling for work to Rushashi. He was based there during the week but spent his weekends in Ruhengeri with his family. In early July 1994, Karera moved with his family to Gisenyi, and in late July they left Gisenyi and travelled to Zaire.⁵⁴⁷

Defence Witness KD

483. Witness KD remained at Ignace's house with other family members until July. After mid-April 1994, she started a business with Ignace's neighbour, across the road from the house. The shop operated from 10.00 a.m. until about 5.30 p.m. In mid-April, Karera was, according to the witness, appointed to a position in Rushashi and he left Ruhengeri. Between 7 April and mid-April, Karera occasionally left his son's house to watch TV at the university campus or to visit professors, but he never left the campus and did not visit the sub-prefecture office. Karera was home when the witness left for work in the morning, and when she returned for lunch and from work.⁵⁴⁸

484. The witness continued seeing Karera after he moved to Rushashi, as he visited his family in Nyakinama every weekend from mid-April until early July 1994, except for the family's last weekend in Ruhengeri. On Sundays, the family attended church together. In July, Karera moved to Gisenyi and later to a refugee camp in Zaire.⁵⁴⁹

Defence Witness YMK

485. In April 1994, Witness YMK, a Hutu, worked at the university campus in Nyakinama. He lived in a staff residence on campus and knew Ignace. On 7 April 1994,

⁵⁴⁴ T. 21 August 2006 pp. 57-60, 63-68; T. 22 August 2006 pp. 9, 29; T. 23 August 2006 pp. 10, 31-33, 43; Defence Exhibits 75 (name of a protected witness who Karera met upon his arrival in Nyakinama), 76 (names of two additional protected witnesses who Karera met in Nyakinama).

⁵⁴⁵ T. 23 August 2006 pp. 31, 43.

⁵⁴⁶ T. 22 August 2006 pp. 20, 24.

⁵⁴⁷ T. 4 May 2006 pp. 47-48; T. 5 May 2006 pp. 2-9, 34-36, 39.

⁵⁴⁸ T. 5 May 2006 pp. 43-46; T. 8 May 2006 pp. 24, 27.

⁵⁴⁹ T. 5 May 2006 p. 6; T. 8 May 2006 pp. 2-5, 17, 24-27.

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around 8.00 p.m., Ignace arrived in the witness's house and asked for help in obtaining drinks to offer his father, who had just arrived. The witness obtained the drinks and went to Ignace's house, where he stayed for about 15 minutes. Karera was there, with his wife, daughter, and a man the witness believed was Ignace's brother.⁵⁵⁰

486. Between 8 and about 17 April 1994, Witness YMK met Karera almost on a daily basis at around 4.00 p.m. at the multipurpose hall on the campus, where they watched the "EuroNews" program on television. They usually spent about an hour watching television, but sometimes less. Witness YMK left the hall immediately after the news. He occasionally missed the program. After 7 April, the witness also saw Karera on a few other occasions at Ignace's home.⁵⁵¹

487. Around 17 April 1994, the witness heard on Radio Rwanda that Karera was appointed as prefect. The witness heard from Ignace that Karera sometimes travelled to Rushashi. Karera continued visiting his family at the campus. Between about 17 and 30 April 1994, Witness YMK saw Karera on the campus once or twice a week. In May, he saw him less frequently. Both the witness and Karera's family left the campus on or around 7 July 1994.⁵⁵²

Defence Witness Bangamwabo

488. In 1994, Witness Bangamwabo, a Hutu, was a university professor at the Nyakinama campus. He was the immediate neighbour of Karera's son, Ignace. Some days after 7 April 1994, Ignace told him that Karera was staying with him on the campus. Several days later, the witness met Karera at Ignace's house. Subsequently, especially before 17 April, he saw Karera often on the campus. At one stage in April 1994, the witness heard the radio announcing Karera's appointment as prefect. The witness continued to see Karera on campus, but less often than previously.⁵⁵³

489. The witness testified that the distance from Ruhengeri to Kigali was 100 kilometres or a little more, and under normal circumstances could be covered in two hours. He also said there are several alternative routes between Ruhengeri and Kigali, but he was not sure whether it was possible to use them in April 1994.⁵⁵⁴

Defence Witness BBA

490. In April 1994, Witness BBA lectured at the university, where he also had administrative duties. He lived on the campus and knew Ignace, a fellow lecturer and his neighbour. The witness first saw Karera at the campus on 9 or 10 April 1994. Subsequently, he observed him and occasionally talked with him in canteens, residences and on the streets of the campus. Karera once visited his house, and the witness met him twice at Ignace's house. The witness had previously met Karera when the latter presided over his marriage ceremony in Kigali in December 1985.⁵⁵⁵

⁵⁵⁰ T. 15 August 2006 pp. 16-19, 26.

⁵⁵¹ *Id.* pp. 19, 26-27, 32-34.

⁵⁵² *Id.* pp. 19-20, 29, 31, 33-34.

⁵⁵³ T. 16 August 2006 pp. 68-70; T. 17 August 2006 pp. 2-4, 8.

⁵⁵⁴ T. 17 August 2006, pp. 5-6.

⁵⁵⁵ T. 15 August 2006 pp. 39-41, 45-49.

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491. Shortly after mid-April 1994, Karera was appointed prefect of Kigali-Rural prefecture. He continued living at Ignace's house and was almost permanently on the campus. The witness saw him on the campus at least once in three days. He did not know where Karera carried out his duties as prefect of Kigali-Rural prefecture, but noted that he travelled occasionally due to his position.⁵⁵⁶ In April 1994, the witness was very busy with his administrative duties which did not include "monitoring [Karera's] actions and movements".⁵⁵⁷

492. Witness BBA testified that besides the main Ruhengeri-Kigali road, there was an unpaved road leading out of Ruhengeri, towards Gitarama. He did not know whether that road was used in April 1994. It started from the Ruhengeri-Nyakinama main road. Hence, one could travel from Nyakinama to Gitarama without passing through Ruhengeri.⁵⁵⁸

Defence Witness YNZ

493. Witness YNZ was a Hutu driver based in Rushashi, who transported goods from Kigali to Rushashi and Ruhengeri. From around 10 April 1994, the main road from Ruhengeri and Rushashi to Kigali was blocked at a place called Shyorongi, but some people travelled in that period between Rushashi and Kigali, using another road.⁵⁵⁹ He said "It was not possible to move about. After the death of the President, for three days we were not allowed to move about. And after that the *Inkotanyis* themselves blocked the road to Kigali at the level of Shyorongi ... From Shyorongi to -- towards Kigali, the road was cut off and you could not leave from Ruhengeri, pass by Shyorongi to Kigali. The soldiers were close to where the *Inkotanyis* were and they were preventing people from going to their destination."⁵⁶⁰

Defence Witness BMP

494. Witness BMP, a Hutu *gendarmier* corporal stationed at Kacyiru in Kigali, used to pass through the Giticyinyoni junction on his way home. In April 1994, he noticed that *Interahamwe* were there, and that machine guns positioned at Mount Jari pointed towards Giticyinyoni. It became impossible to travel on that road. The witness testified that on 9 or 10 April, his friend's car was ambushed. On 10 April 1994, it became generally impossible to travel in Rwanda, and vehicles could no longer enter Kigali using the road from Ruhengeri.⁵⁶¹

Defence Witness MWG

495. On 7 April 1994, Witness MWG, a Hutu, left his neighbourhood in Nyarugenge because it became too dangerous to stay there. Both RPF and government soldiers were

⁵⁵⁶ *Id.* pp. 41-42.

⁵⁵⁷ *Id.* p. 45.

⁵⁵⁸ *Id.* pp. 48-49.

⁵⁵⁹ T. 16 August 2006 pp. 42, 45-46, 57, 60-61, 64.

⁵⁶⁰ *Id.* pp. 46, 57. When asked about the first three days after the death of the President, he testified "These were days of mourning and no one could leave one commune to the other, but people could still move from one secteur to another and it was possible to talk to other people, but you could not travel from one commune to another. Nevertheless, there were rare cases of people who were outlaws and who could move from one commune to another ... That was the situation throughout the country." T. 16 August 2006 p. 57.

⁵⁶¹ T. 16 May 2006 pp. 6-7.

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shooting. In some neighbourhoods it was almost impossible to move around due to the situation, but in others it was possible.⁵⁶²

Defence Witness KBG

496. Witness KBG, a Hutu student, did not see Karera in Nyamirambo after the President's death, nor had he heard from his neighbours that they saw Karera after that day (II.4.2).⁵⁶³ The security situation in Nyarugenge was precarious between April and July 1994, but people could leave town. He explained that "... people went on the Nyamirambo road, passed to Mt. Kigali to get to Nyabarongo, and then they moved on to Gitarama because it was the only motorable road at the time".⁵⁶⁴

Defence Witness ZBM

497. Witness ZBM, who returned to Nyamirambo sector in August 1994, never heard about Karera's involvement in killings there in 1994 (II.4.2). He lacked first-hand knowledge, but heard about the events from people who knew Karera well and would have mentioned his presence in Nyamirambo at the relevant time. In Kigali-Ville prefecture "it was not possible to travel over long distances, but it was still possible to go from one house to another. So you could not take your vehicle and travel a long distance, but you could still move about in the neighbourhood".⁵⁶⁵

Defence Witnesses KNK, DSM and MZP

498. Witness KNK testified that on 16 April 1994 she travelled from Kigali to Ruhengeri through Gitarama which was the only safe route at the time.⁵⁶⁶ According to Witness DSM, there was a route available around mid-April from Kigali to Kanzenze (Ntarama sector is in Kanzenze commune) through Gitarama.⁵⁶⁷ Witness MZP said that around mid-April, it was possible to go from Kigali to Nyamata (in Kanzenze) through Gitarama.⁵⁶⁸

Deliberations

499. The Chamber observes that Witnesses ATA and KD testified that Karera did not leave the campus before mid-April 1994. Witnesses YMK, BBA and Bangamwabo, who were colleagues and neighbours of Ignace, said that they saw Karera at the campus on 7 April 1994 and subsequently. The Chamber notes that these Defence witnesses who provide evidence in support of the alibi are either family members of Karera (Witnesses ATA and KD) or have a close relationship with his son, Ignace. While these relationships do not, in themselves, discredit the witnesses, they may account for the witnesses' inclination to resolve any lapse in their recollections in a manner favourable to Karera.

500. The Chamber accepts the Defence witnesses' evidence that Karera stayed at his son's residence in Nyakinama, Ruhengeri, in the period from 7 to 19 April 1994. This is

⁵⁶² T. 10 May 2006 pp. 36-38; Defence Exhibit 41 (identification sheet of Witness MWG, indicating his commune).

⁵⁶³ T. 8 May 2006 pp. 52-53, 58; T. 9 May 2006 pp. 1-2, 5-9.

⁵⁶⁴ T. 9 May 2006 pp. 3-5, 11 (with quote).

⁵⁶⁵ T. 10 May 2006 pp. 9-11, 17-18, 20 (with quote), 22.

⁵⁶⁶ T. 9 May 2006 pp. 37-44.

⁵⁶⁷ T. 15 May 2006 pp. 12-13; T. 16 May 2006 pp. 26-27.

⁵⁶⁸ T. 11 May 2006 pp. 1-2.

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consistent with the evidence of Prosecution witnesses, who were found credible, that Karera moved from Nyamirambo in the days following the President's death (II.4.2). However, Prosecution Witnesses BME, BMG, BMH and BMF testified that they saw Karera in Nyamirambo on certain days between 8 and 15 April (II.4.5). Several witnesses also claimed to have seen him in Ntarama (II.5.2, 5.3, 5.4). In addition, he was also placed in Rushashi commune between 7 and 10 April (II.6.3). The question is whether the evidence of these Prosecution witnesses eliminates the reasonable possibility that Karera remained consistently in Nyakinama in Ruhengeri prefecture. In the Chamber's view, this depends on how frequently he was observed in Nyakinama, whether he could use the roads to the other areas, and the reliability and credibility of the Prosecution's evidence placing him in Nyamirambo and Ntarama sectors and Rushashi commune discussed in sections II.4-6.

501. Witness ATA testified that Karera was at Ignace's home every day when she left for school and when she returned. However, she enrolled in school a week after her arrival in Ruhengeri, which means from about 14 April.⁵⁶⁹ As she also said that Karera started travelling to Rushashi in mid-April in connection with his appointment, her testimony that he was home when she left and returned every day can only relate to very few days. It is recalled that Karera was officially appointed prefect on 17 April 1994. The witness was less specific about the period before 14 April but stated that Karera had no specific work and stayed with the family at home all the time.⁵⁷⁰

502. Witness KD testified during examination-in-chief that Karera stayed at home from 7 April until he moved to Rushashi in mid-April.⁵⁷¹ She saw him when she left for work and when she returned for lunch or after work. It was later clarified that he did, at least occasionally, leave the house.⁵⁷² Subsequently, she also stated that during the period from 7 to 15 April she had not yet started her business.⁵⁷³ These developments in her testimony affect her credibility.

⁵⁶⁹ T. 5 May 2006 p. 5 ("I believe I first spent a week at home before I started attending the school. So I started attending the school before the end of April.")

⁵⁷⁰ T. 5 May 2006 p. 6 ("Q. As from the 7th of April 1994, what were your father's activities in Ruhengeri? A. He had no specific work because he stayed at home. Before I left the home – our home to go to school, he was with us because he had no other work to do, so he didn't go anywhere. ... Q. As for your father, in April 1994, to the best of your recollection, did he leave Ruhengeri? A. I said he was permanently at home and I recall that we were by and large with him together with our mother.")

⁵⁷¹ T. 8 May 2006 p. 2 ("Q. From the 7th of April up until the departure of your father for Rushashi, can you explain to us what your father's activities were on the university campus, to the best of your recollection? A. He had no work. He stayed at home with his son – his son-in-law, they were all at home. He had no other work to do. They would listen to the news, wait for their meals, and they spent their time in the home.")

⁵⁷² T. 8 May 2006 p. 25 ("What I can say is this: It is perhaps true that he moved about the house. He was not locked up in the house during that period. He used to go out to go and see professors at the university but I know that he never left Nyakinama to go into Ruhengeri town or further, but it is true that he left the building in which we were living.")

⁵⁷³ T. 8 May 2006 p. 27 ("Q. ... is your testimony that from the 7th of April to the 15th of April, which is the middle of April, during those approximately eight days, he did not go to the sub-préfecture office? A. He did not go there. During that period, I, myself, had not yet started my commercial activities. From the 7th up until he left for Rushashi, he did not leave the compound.")

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503. The Chamber's impression of the testimony of these two relatives is that they sought to exaggerate Karera's presence in Ruhengeri. Furthermore, their insistence that he stayed inactive with the family at Ignace's house for about 11 days instead of contributing to the administration of Rwanda is difficult to believe in view of his important official position and the chaotic situation prevailing in the country.

504. The evidence of the other witnesses who said that they observed Karera in Ruhengeri does not reliably indicate that he remained consistently in the area. Bangamwabo merely stated that he saw Karera often, from several days after 7 April until 17 April 1994. Witness BBA, who was very busy with his administrative duties, mentioned that he saw Karera from 9 or 10 April, but apart from three specific events when they met, he did not specify how often he saw Karera on the campus. He also said that Karera did not resettle elsewhere after 17 April 1994, which contradicts Karera's evidence that he moved to Rushashi on 19 April 1994.

505. Witness YMK testified that he saw Karera at the campus "[a]most on a daily basis" between 7 and 17 April 1994, when they watched a TV program together.⁵⁷⁴ The evidence of Witness ATA indicates that Karera's journey from Kiyuvo, which was in the centre of Kigali town, to Nyakinama on 7 April 1994 took 2 to 3 hours.⁵⁷⁵ Accordingly, the Chamber is satisfied that Karera could have lived in Ruhengeri, but travelled during the daytime to Nyamirambo or Ntarama sectors, returning on some days to the Nyakinama campus by 4.00 p.m., in time for the daily news program. It is important that the witness did not see Karera every day, as he testified that he occasionally missed the program.⁵⁷⁶

506. Turning now to whether the roads from Nyakinama to Kigali and Ntarama were open, Witnesses YNZ and BMP testified that the main road from Ruhengeri to Kigali was blocked from 10 April 1994. However, Witness YNZ said that some people travelled in that period between Rushashi and Kigali using another road. Witness BBA testified that travel was possible from Nyakinama to Gitarama without using the main Ruhengeri-Kigali road, and Witness KBG said that the road from Gitarama to Nyamirambo was open for travel between April and July 1994. Their evidence is corroborated by Witness KNK, who testified that she travelled from Ruhengeri via Gitarama to Kigali on 16 April 1994. Accordingly, the Chamber considers that it was possible to travel from Nyakinama to Nyamirambo, through Gitarama, without using the main Ruhengeri-Kigali road.

507. The evidence of Witnesses DSM and MZP established that travel from Nyakinama via Gitarama to Kanzenze (Ntarama's commune) was possible, without having to pass through Kigali. The Chamber accordingly accepts that Karera could have travelled from Nyakinama to Ntarama between April and July 1994.⁵⁷⁷

⁵⁷⁴ T. 15 August 2006 p. 19.

⁵⁷⁵ Bangamwabo said the distance was 100 kilometres or a little more. According to Prosecution Exhibit 13 it was 116. See also Prosecution Closing Brief, paras. 322, 325.

⁵⁷⁶ T. 15 August 2006 pp. 20, 33 ("There are even some programmes that I did not watch because I was absent; for example, I could be in the parish.").

⁵⁷⁷ In addition, the Chamber has found that it was possible to travel from Kigali to Ntarama around mid-April (II.5.4).

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508. Two UN documents, tendered by the Prosecution and discussed above (7.2), suggest that travel was difficult within the Kigali area during the days following the President's death.⁵⁷⁸ The testimonies of Defence Witnesses MWG and ZBM confirm this information. Further, the Government had issued the communiqué asking the population to remain in their homes throughout Rwanda.⁵⁷⁹ According to Witness YNZ, only "rare cases of people who were outlaws" disobeyed the instruction not to leave their communes in the first three days after the death of the President.⁵⁸⁰ However, as Karera had an influential governmental position and was well known, the Chamber considers that he would have passed roadblocks controlled by *Interahamwe*, *gendarmes*, soldiers or civilians, without major problems. The use of an official vehicle, which Karera said that he had while in Ruhengeri, would facilitate his travel. In addition, this reasoning also suggests that Karera would have had no difficulty going to Rushashi commune.

509. The Chamber accords limited weight to the evidence of Witnesses KBG and ZBM that Karera was absent from or not involved in crimes in Nyamirambo after 7 April 1994. Witness KBG only passed by Karera's house in Nyamirambo about three times in April, and Witness ZBM lacked first-hand knowledge about the events (II.4.2 and 4.5).⁵⁸¹

510. After viewing the evidence of the alibi in its totality, it is understandable that Karera stayed in Nyakinama in Ruhengeri prefecture between 7 and 19 April 1994. The Chamber considers, however, that the credibility issues raised in connection with Defence evidence outlined above as well as the reliable and credible evidence placing Karera in Nyamirambo, Ntarama and Rushashi during this period eliminate the reasonable possibility that Karera remained consistently and exclusively in Ruhengeri prefecture. When considering the evidence of the alibi, together with the Prosecution's evidence in sections II.4-6, the Chamber has no doubt that Karera was present in Nyamirambo and Ntarama sector and Rushashi commune.⁵⁸²

⁵⁷⁸ Prosecution Exhibit 50 (cable of 8 April 1994 from the UN Representative in Rwanda to his superiors at the UN headquarters in New York); Prosecution Exhibit 51 (KIBAT Calendar of Events 6 April - 19 April 1994).

⁵⁷⁹ Prosecution Exhibit 34 (official communiqué issued by the Rwandan Ministry of Defence, following the death of President Habyarimana).

⁵⁸⁰ T. 16 August 2006 p. 57.

⁵⁸¹ One of ZBM's sources was a Tutsi who was in hiding during the events of 1994. T. 10 May 2006 pp. 8, 18-19.

⁵⁸² In its Closing Brief (para. 316), the Prosecution also submits that Karera's alibi is contradicted by his statements to the *New York Times* in Zaire in August 1994 (Prosecution Exhibit 52). The Chamber notes that during cross-examination, Karera denied having made the following statements the article attributed to him: that he was hiding in his house in Kigali when the massacres started on 6 April 1994, that he was working in his office for more than a month following 6 April, and that he left Kigali on 20 May 1994 (T. 23 August 2006 pp. 34, 39, 41-42, 44-45, 54). The statements in the article are not clear. The journalist who conducted the interview did not testify, and the Chamber has not given this account any weight (see also 8.2).

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8. Zaire

8.1 Introduction

511. Paragraph 20 of the Indictment alleges that Karera continued an anti-Tutsi campaign between July and December 1994 in a refugee camp in Zaire (now the Democratic Republic of Congo):

20. Francois KARERA continued the anti-Tutsi campaign, which included amongst other things, openly justifying the killing of Tutsi civilians, even after he fled Rwanda. Between July and December 1994, Francois KARERA and several other former Interim Government officials convened a meeting in a refugee camp in Zaire to develop a strategy to regain power. Discussions at the said meeting included references to the mission of killing all the Tutsi. François KARERA suggested fund-raising activities to purchase weapons. Sometime thereafter François KARERA suggested to schoolteachers at one of the refugee camp schools that instead of teaching children mathematics and academic subjects, they should concentrate on teaching them that there was only one enemy, the Tutsi.

512. The Prosecution claims that Karera's conduct in Zaire proves that he had intent to commit genocide, or in the alternative, complicity in genocide. It relies on the evidence of Witness BMQ and also refers to a newspaper article with statements allegedly made by Karera.⁵⁸³ The Defence argues that the evidence concerning Zaire is unreliable and outside the time-frame of the Indictment. The newspaper article should not have been admitted as an exhibit.⁵⁸⁴

8.2 Statements in Katale Refugee Camp

Evidence

Prosecution Witness BMQ

513. In late June 1994, Witness BMQ, a Hutu, fled from Rwanda to Zaire. He arrived in Katale refugee camp shortly thereafter. About 120,000 refugees lived there. One afternoon at 3.00 p.m. in December 1994, around Christmas, Karera held an hour long outdoor meeting in the camp. The witness saw him clearly from about 15 metres away. He was accompanied by representatives of a political party and members of the previous Rwandan government. About 300 refugees from Kigali-Rural prefecture attended the meeting.⁵⁸⁵

514. Karera introduced himself as the prefect of Kigali-Rural prefecture and announced that they were assembled to discuss means to facilitate their return to Rwanda. The participants said that they had no weapons and had not yet completed their mission of killing the Tutsi. In response, Karera promised to raise funds to purchase weapons. He added that the weapons would enable them to return to Rwanda and complete their

⁵⁸³ Prosecution Closing Brief, paras. 691-721, *see also* 119-122; Prosecution Exhibit 52 (article published in the *New York Times* on 15 August 1994).

⁵⁸⁴ Defence Closing Brief, paras. 378-387; T. 23 November 2006 p. 59 (closing arguments); T. 24 November 2006, pp. 2-4, 24, 28 (closing arguments).

⁵⁸⁵ T. 2 February 2006 pp. 32-33, 35-36.

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mission, which the witness understood as killing the Tutsi.⁵⁸⁶ At the meeting, Karera also addressed the teachers and suggested that instead of mathematics and other subjects, children's education should focus on portraying the Tutsis as the enemy.⁵⁸⁷

The Accused

515. Karera testified that he went into exile in Zaire on 14 July 1994. Until October or November that year, he stayed in Rutchuru with some of his relatives at King Ndeze's house.⁵⁸⁸ Between late October and early December 1994, he moved to Katale camp and stayed there until 16 December 1995. During this period, he never held any meetings.⁵⁸⁹

516. During cross-examination, the Prosecution confronted Karera with an article published in the New York Times in August 1994, according to which he defended the massacres in Rwanda and made negative remarks about the Tutsis.⁵⁹⁰ Karera explained that in Rutchuru, he met two foreign journalists who spoke little or no French. An acquaintance of his translated from English. Karera denied that he had made the statements attributed to him, stressed that in Rwanda he was regarded as a Tutsi, and said that certain things he told the journalists were not reported in the article. He agreed that a photograph of him accompanied the text of the article and also said that the journalists used a tape recorder during the interview.⁵⁹¹

Defence Witnesses ATA, BBK and KNK

517. Witness ATA, the relative of Karera, arrived in Katale camp in early August 1994 and lived there with him and other relatives. She worked at the camp as a social worker with certain NGOs. The witness was unaware that Karera organized meetings or occupied any positions within the Katale camp.⁵⁹² Witness BBK, the other relative, saw Karera in the camp in early 1995 and did not observe him carrying out particular activities.⁵⁹³ Defence Witness KNK lived in Katale camp from January 1995 to 23 September 1996. She met Karera there and was unaware whether he organised meetings.⁵⁹⁴

Defence Witness MWG

518. Witness MWG, a Hutu, left Rwanda and fled to Zaire in July 1994. He testified that Karera was closer to the Tutsis than the Hutus and originated from the *Abaganuza* family, which historically brought the first harvest to the Tutsi king. From August to September

⁵⁸⁶ T. 2 February 2006 pp. 36-38, 46-47, 49.

⁵⁸⁷ *Id.* pp. 36-37.

⁵⁸⁸ T. 22 August 2006 pp. 27-28; T. 23 August 2006 pp. 33-34, 39, 44.

⁵⁸⁹ T. 22 August 2006 p. 28; T. 23 August 2006 p. 33.

⁵⁹⁰ Prosecution Exhibit 52 (article published in the *New York Times* on 15 August 1994). It was entitled "Under the Bourgainvillea, A Litany of Past Wrong; A Hutu politician says the Tutsi deserve to die" and written by an American journalist, Ms. Jane Perlez. The article was partly reprinted in the *International Herald Tribune* on 16 August 1994 under the title "A Hutu Justifies Genocides; Tutsi Deserved to Die, Politician Says, because They Are All 'Originally Bad'".

⁵⁹¹ T. 22 August 2006 pp. 31-33; T. 23 August 2006 pp. 34, 39, 41-42, 44-45, 54.

⁵⁹² T. 5 May 2006 pp. 9-12.

⁵⁹³ T. 8 May 2006 pp. 39-40.

⁵⁹⁴ T. 9 May 2006 p. 35.

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1994, the witness stayed in Rutchuru, where he often met Karera who lived with the "mwami", the Tutsi king. Rutchuru was about 6 to 7 kilometres from Katale camp.⁵⁹⁵

519. From September 1994 to November 1995, the witness lived in Katale camp. When he arrived, there were about 350,000 refugees of all ethnic groups, but mostly Hutus. He saw Karera in the camp after September 1994 and believed he was there until late 1995. There were 14 zones in Katale camp. The population in each of them varied. Between 30,000 and 60,000 refugees lived in the witness's zone. He and Karera resided in different parts of the camp, about one and a half kilometres apart. The only means of moving within the camp was by foot. It took the witness 25 minutes to walk from his to Karera's zone.⁵⁹⁶

520. The refugees organised themselves according to their structure in Rwanda. Each neighbourhood had a leader. Witness MWG held important positions in Katale camp and therefore travelled to all parts of it. If there were UNHCR meetings, he would attend them. The witness was unaware that Karera held any official functions in the camp and did not know of any meetings, speeches, or fundraising event organised by him. Given the witness's position in the camp, he would have been informed about such activities.⁵⁹⁷

Defence Witness BMP

521. Witness BMP, the Hutu *gendarmier* corporal, arrived in Zaire in July 1994 and lived in Katale camp from September 1994 until May 1996. Over 200,000 refugees lived at the camp when he left it. No meetings were held there. People only assembled when food and supplies were distributed. Kigali residents were called to a different location than Ruhengeri residents in connection with distribution of food.⁵⁹⁸

522. The camp covered a much smaller area than Kigali town. In May 1996, it had seven *quartiers*, demarcated by small streets. Its residences were separated by small allies. The witness lived in the second *quartier* and later moved to the third. Karera lived in the second *quartier*.⁵⁹⁹

523. Witness BMP occasionally saw Karera at the Katale camp but they never spoke. The witness could not indicate the dates, locations or number of times he saw him. Karera did not fulfil any role in the camp and the witness was unaware of any influence he may have had there. Furthermore, Karera never addressed the public or incited people. The witness admitted that he had no way of finding out whether Karera organized meetings in certain parts of the camp.⁶⁰⁰

Deliberations

524. The Defence argues that the evidence is inadmissible as being outside the time-frame of the Indictment. This submission is not new. During the trial, the Defence objected to Witness BMQ's evidence as falling outside the Indictment. The Chamber

⁵⁹⁵ T. 10 May 2006 pp. 29-30, 30-32, 35, 37-38, 40-41.

⁵⁹⁶ *Id.* pp. 32, 39-40, 44, 47.

⁵⁹⁷ *Id.* pp. 33, 34, 35, 41.

⁵⁹⁸ T. 16 May 2006 pp. 8-11.

⁵⁹⁹ *Id.* pp. 8-11.

⁶⁰⁰ *Id.* pp. 8-10, 12, 19-20.

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overruled the objection.⁶⁰¹ The Defence closing submissions do not change the Chamber's view. It is true that Karera is charged with crimes committed between 6 April and 14 July 1994, whereas paragraph 20 of the Indictment relates to subsequent events. However, these incidents fall within the temporal and geographical jurisdiction of the Tribunal. Rule 89 (C) of the Rules of Procedure and Evidence allows the Chamber to "admit any relevant evidence which it deems to have probative value." The Prosecution has adduced the evidence primarily to prove Karera's genocidal intent. This is relevant. Even though evidence may not relate to a count in the proper sense, it may still have probative value. Its weight will be considered below.

525. The meeting in Katale refugee camp in December 1994 is disputed by the Defence. Karera lived in the camp in that period. The Chamber is not convinced by the Defence witnesses who testified that such a meeting could not have taken place without their knowledge. The camp had at least 120,000 refugees, with thousands residing in each zone.⁶⁰² The walking distances between the zones could be considerable. In such a situation, a meeting of about 300 persons would not necessarily be known by persons living elsewhere in the camp. Of the Defence witnesses, Witness ATA lived in the same zone as Karera in December 1994. Her testimony carries limited weight as she is a close relative. It is also noted that as she was working, she may not have followed his activities on a continuing basis. Witness BBK, the other relative who stayed with Karera, only arrived in early 1995, after the meeting. Witness KNK only lived in the camp from January 1995. Witness MWG, who was convinced that he would have known of any such meeting, lived in another zone, 25 minutes walking distance away. Witness BMP lived in another *quartier* and admitted that he could not know whether Karera organized meetings in another part of the camp.⁶⁰³

526. Witness BMQ is the only witness who testified about this event but the Chamber finds him generally credible (*see also* II.6.4). Witness MWG's evidence that the refugees were organised as in Rwanda provides some corroboration to Witness BMQ's testimony that Karera held a meeting with refugees from Kigali-Rural prefecture, and that he presented himself as the prefect. Witness BMP also stated that the refugees, at least when receiving food, were organized by their place of origin. Having assessed the evidence in its totality, the Chamber finds that there was a meeting in Katale camp in December 1994.

527. Turning to what was said during the meeting, Witness BMQ understood Karera's statement that the weapons would enable them to return to Rwanda and "complete their mission" as meaning killing the Tutsis. The witness testified that Karera did not make any explicit remark to this effect but responded to the refugees' comment that they had not completed their mission of killing the Tutsis. This is in conformity with the witness's

⁶⁰¹ T. 2 February 2006 pp. 33-35 ("I am afraid we have to overrule that objection. We know that this element is in the indictment. It is covered by the time-frame of the Tribunal's statute. The statute also mentions neighbouring country. It is true that it is not a count in the proper sense, but we have no basis for now to dismiss this evidence saying that it is not of probative value.... At the end of the day we will, of course, weigh the evidence. But at this stage we cannot say that this has no probative value.")

⁶⁰² The witnesses provided different estimates, varying from 120,000 (Witness BMQ) to 350,000 (Witness MWG) in 1994. About 200,000 still lived in the camp when witness BMP left it in 1996. According to Witness MWG, there were between 30,000 and 60,000 refugees in his zone only.

⁶⁰³ T. 16 May 2006 pp. 8-10, 12, 19-20.

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statement to investigators in 2001.⁶⁰⁴ The Chamber accepts, as alleged in paragraph 20 of the Indictment, that Karera made statements in favour of the return of refugees to Rwanda and buying weapons to achieve that aim but observes that this is not in itself a crime under the ICTR Statute. There is not sufficient evidence to conclude that Karera thereby accepted or encouraged the killing of Tutsi civilians.

528. Witness BMQ also testified that during the same meeting, Karera said that school children should be taught that the Tutsi is the enemy.⁶⁰⁵ The Indictment attributes similar words to him.⁶⁰⁶ His testimony is consistent with his prior statement and appears reliable. The witness, a Hutu, added that when he heard these words he “got a full picture of Karera’s visceral hatred for the Tutsi”.⁶⁰⁷ The Chamber believes that Karera made this anti-Tutsi statement concerning the school children during the December 1994 meeting. Its significance will be considered in connection with the Chamber’s discussion of Karera’s alleged genocidal intent (III.2.1).

529. In connection with Karera’s stay in Zaire, the Prosecution has also referred to the newspaper article which was put to him during cross-examination.⁶⁰⁸ As regards its admissibility, it is recalled that on 23 January 2006, the Chamber denied a Prosecution request to admit the article into evidence under Rule 92 *bis*.⁶⁰⁹ The Prosecution’s alternative request for a subpoena to the journalist was also denied.⁶¹⁰ After Karera’s cross-examination, the article was tendered as an exhibit, despite a Defence objection.⁶¹¹ The Chamber reiterates that its previous decision of 23 January 2006 to deny the

⁶⁰⁴ The Defence is therefore not correct when it argues that Witness BMQ’s evidence is inconsistent because “the references to killing of Tutsi were not in either of this witness’ previous statements” (Closing Brief, para. 381). In his statement of 22 April 2001 (Defence Exhibit 27), the witness confirmed that some participants at the meeting “said that they hadn’t finished the first mission of killing all the Tutsi and they should return and complete this mission first. Karera then stated that they were going to do fund raising amongst the refugees to find the money to purchase weapons”. This was not changed in his subsequent statement of 20 May 2001 (Defence Exhibit 28), in which the witness made a correction to his first statement.

⁶⁰⁵ T. 2 February 2006 p. 37 (“they should be taught that the enemy is a Tutsi”); T. 2 February 2006 (French version) p. 38 (“*de leur enseigner plutôt que l’ennemi, c’était le Tutsi*”).

⁶⁰⁶ Paragraph 20 of the Indictment alleges that the statement (“there was only one enemy, the Tutsi”) was made *after* the meeting where Karera suggested raising funds. However, the Pre-Trial Brief para. 83 states it was made *during* that meeting, as testified to by Witness BMQ. The Chamber considers that the Defence received sufficient notice of the alleged time of Karera’s statement through the Pre-Trial Brief.

⁶⁰⁷ T. 2 February 2006 p. 37.

⁶⁰⁸ Prosecution Exhibit 52 (article published in the *New York Times* on 15 August 1994).

⁶⁰⁹ Decision on Admissibility of Newspaper Article and Subpoena to Journalist, 23 January 2006 (TC), para. 5 (“The Prosecution has not shown that the newspaper article complies with Rule 92 *bis* or, alternatively, that some other provision justifying admission is applicable in the present circumstances”).

⁶¹⁰ *Id.* paras. 9-11 (finding that the journalist’s testimony about Karera’s purported negative remarks about Tutsis were not contemporaneous with his alleged criminal conduct and hence not of direct and important value in determining a core issue in the case, even though it related to his state of mind).

⁶¹¹ T. 23 August 2006 pp. 35-39 (... we have to overrule that objection. The impact of the ruling was limited to the application under 92 *bis* to lead evidence instead of calling a witness ... What we are faced with here is normal cross-examination, namely, that a document is put to the witness to solicit that witness’s comments. And that is something we have done on many occasions in this Tribunal, and we will do it also here. As for the weight of such newspaper articles, that remains to be seen when the Chamber is considering the merits of the case.”). The article was then admitted into evidence as Prosecution Exhibit 52. T. 23 August 2006 p. 43.

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Prosecution request to tender the article under Rule 92 *bis* in no way contradicts its ruling to admit it in order to reflect that the document was put to Karera, not instead of oral testimony, but in order to solicit his comments.

530. The newspaper article is not mentioned in the Indictment. The Prosecution refers to it as an indication of Karera's genocidal intent. He admitted having been interviewed by journalists but denied that he made the statements attributed to him. Although it is not likely that a journalist from the New York Times using a tape recorder would have totally misunderstood Karera's statements, there may have been linguistic problems. There is no testimony about the interview, only documentary evidence put to Karera during cross-examination. The Chamber will not attach any weight to the alleged anti-Tutsi statements during the interview in August 1994.

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CHAPTER III: LEGAL FINDINGS

1. Introduction

531. The Indictment charges Karera with genocide or, alternatively, complicity in genocide, and extermination and murder as crimes against humanity. The crimes were allegedly committed in Nyamirambo and Ntarama sectors and Rushashi commune. Karera is charged with responsibility for these crimes under Article 6 (1) of the Statute, as well as with superior responsibility under Article 6 (3).⁶¹² The Chamber will first consider Karera's responsibility under Article 6 (1).⁶¹³

2. Responsibility Under Article 6 (1)

532. The Indictment alleges that Karera is responsible pursuant to Article 6 (1) of the Statute for having planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation and execution of the crimes charged. The Chamber does not consider it necessary to recapitulate the extensive jurisprudence concerning the interpretation of these terms.⁶¹⁴

2.1 Genocide

533. Count 1 of the Indictment charges Karera with Genocide under Article 2 of the Statute committed through killing or causing serious bodily or mental harm to members of the Tutsi ethnical group. Article 2 (2) reads:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

...

534. The [specific] victims must be targeted because of their membership in the protected group, and the perpetrator must intend to destroy at least a substantial part of that group.⁶¹⁵ In the absence of direct evidence, the perpetrator's specific intent may be inferred from his overt statements or other circumstantial evidence.⁶¹⁶ The perpetrator

⁶¹² Responsibility under Article 6 (3) was not pleaded with respect to Count II (complicity in genocide). It is also recalled that the Chamber has found that joint criminal enterprise, which is one mode of commission under Article 6 (1), was not pleaded with sufficient specificity (I.2.3).

⁶¹³ The Prosecution also argues that Karera should be held responsible under Article 6 (1) for his omissions in failing to prevent the crimes. The Chamber need not consider these submissions in view of its findings that Karera actively participated in the crimes.

⁶¹⁴ See most recently from this Chamber, *Mpambara*, Judgement (TC), paras. 6-8, 12, with references to established case law.

⁶¹⁵ *Gacumbitsi*, Judgement (AC), para. 39; *Rutaganda*, Judgement (AC), paras. 524-525; *Jelusic*, Judgement (AC), para. 46; *Mpambara*, Judgement (TC), para. 8; *Simba*, Judgement (TC), para. 412.

⁶¹⁶ *Gacumbitsi*, Judgement (AC), paras. 40-41; *Semanza*, Judgement (AC), paras. 261-262; *Rutaganda*, Judgement (AC), paras. 525, 528; *Mpambara*, Judgement (TC), para. 8; *Simba*, Judgement (TC), paras. 413, 415; *Ndindabahizi*, Judgement (TC), paras. 454. However, the inference must be the only available reasonable inference which can be made from the evidence. *Kayishema and Ruzindana*, Judgement (AC), para. 159; *Krstic*, Judgement (AC), para. 34.

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need not be *solely* motivated by a genocidal intent and having a personal motive will not preclude such a specific intent.⁶¹⁷

Nyamirambo

535. In Chapter II, the Chamber found that in April 1994, three communal policemen (Charles Kalimba, Habimana and Kabarate) were stationed in Karera's house in Nyamirambo. They committed crimes together with the *Interahamwe* operating in that area. The Chamber made the following findings:

- Between 8 and 10 April, the *Interahamwe* followed after Kabahaye, a Tutsi, and killed him in Butamwa, not far away from Nyamirambo. They then reported to the policemen that he had been killed (II.4);
- Between 8 and 10 April 1994, policeman Kalimba forced a man to kill Murekezi, a Tutsi, at the roadblock near Karera's house (II.4.8).
- On 10 April 1994, Ndingutse, a Tutsi, was arrested and killed by the policemen and *Interahamwe* not far away from Karera's house (II.4.9);
- On 24 April 1994, Palatin Nyagatare, a Tutsi, was killed at a roadblock about three plots from his house by policeman Kalimba (II.4.11).

536. All the victims were Tutsis, who constitute a protected group under Article 2 (2) of the Statute.⁶¹⁸ The Appeals Chamber has held that "during 1994, there was a campaign of mass killing intended to destroy, in whole or at least in very large part, Rwanda's Tutsi population".⁶¹⁹ Defence and Prosecution witnesses testified that organized massacres of Tutsi, based on their ethnic identity, started soon after 6 April 1994. The Chamber is satisfied that the killers targeted the victims on the basis of their Tutsi ethnicity, with the intent to destroy a substantial number of Tutsis. The perpetrators were aware that the victims were Tutsis and killed them pursuant to Karera's order kill Tutsi members of the population. Accordingly, the policemen and *Interahamwe* committed genocide in Nyamirambo sector, Kigali-Ville prefecture, in April 1994, through the killings of Kabahaye, Murekezi, Ndingutse and Palatin Nyagatare.

537. In April 1994, Karera exercised authority over the three communal policemen (II.4.2). He also exercised authority in that period over the *Interahamwe* in Nyamirambo, based on his previous presidency and continuing membership of MRND, combined with his importance as a previous *bourgmestre* of Nyarugenge commune and his subsequent positions as a sub-prefect and later prefect in Kigali-Rural, which did not include Nyarugenge (II.2). Therefore, the Chamber finds that, in view of this authority, Karera had the capacity to issue orders to these assailants which would substantially contribute to a crime.

⁶¹⁷ *Simba*, Judgement (AC), para 269; *Ntakirutimana*, Judgement (AC), para 304; *Niyitegeka*, Judgement (AC), para. 53; *Krnjelać*, Judgement (AC), para. 102; *Jelisic*, Judgement (AC), para. 49.

⁶¹⁸ *Karera et al.*, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006, para. 35.

⁶¹⁹ *Id.*

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538. The Chamber is satisfied that Kabahaye, Murekezi, Ndingutse and Palatin Nyagatare were killed pursuant to Karera's orders to the policemen and *Interahamwe* to kill Tutsi and destroy their homes, which were given between 7 and 15 April (II.4.5).

539. Karera's orders to kill Tutsis demonstrate his genocidal intent. He was aware of the dangerously unstable environment, having evacuated his family from Nyamirambo for safety reasons (II.7), and knew that his order would lead to killings. His order to destroy houses of Tutsis as well as the destruction of the houses of Kahabaye and Felix Dix (II.4.5) also illustrate his intent. The Chamber sees no need to take into account Karera's anti-Tutsi statement concerning school-children in Zaire in December 1994 (II.8.2).

540. Accordingly, the Chamber finds Karera responsible under Article 6 (1) for ordering genocide, which was committed through the killings of Kabahaye, Murekezi, Ndingutse and Palatin Nyagatare in Nyamirambo sector, Kigali-Ville prefecture, between 7 and 24 April 1994.

Ntarama Church

541. On 15 April 1994, Karera and a large group of *Interahamwe* and soldiers participated in an attack at Ntarama Church (II.5.4). They arrived on board several buses, disembarked near the church, and shot at the refugees who were gathered there. Several hundred Tutsi men, women and children were killed. The attackers' intent to destroy a substantial number of Tutsis is clear from their acts. They committed genocide.

542. Karera's genocidal intent is also evident. Just before the attackers began shooting, he encouraged *Interahamwe* and soldiers to hurry up and attack the refugees. Furthermore, the previous day, at the Ntarama sector office, he had falsely promised the Tutsi refugees in the area that he would provide them with security reinforcement (II.5.3). He was thus aware of their vulnerable situation. The utterances on 14 and 15 April underscore his genocidal intent.

543. Given Karera's position of authority and influence, the Chamber finds that by travelling with *Interahamwe* and soldiers to Ntarama and verbally urging them to attack Tutsis, he encouraged them to attack the Tutsi refugees at Ntarama Church. By his words and acts, Karera substantially contributed to the attack, thus instigating genocide. By being present during the attack and participating through shooting, he is also guilty of committing genocide.⁶²⁰

544. The Chamber concludes that Karera is responsible under Article 6 (1) for instigating and committing genocide during the attack against Tutsi refugees at Ntarama Church on 15 April 1994.

⁶²⁰ See *Gacumbitsi*, Judgement (AC), paras. 59-61, where the Appeals Chamber held that presence, supervision and separation of the ethnic groups during an attack constituted committing genocide.

Rushashi

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545. Many Tutsis were killed in Rushashi from 7 April 1994 (II.6). The Chamber is satisfied that such attacks formed part of the broader genocidal campaign aimed at destroying the Tutsi ethnic group, in whole or in part, which took place in Rwanda.

546. The Chamber has found that Karera was aware that from 7 April 1994, roadblocks were set up in Rushashi commune and that Tutsis were killed at them (II.6.3). It has also found that between April and June, Karera held meetings in Rushashi, where he raised money for weapons, encouraged youths to join the *Interahamwe*, and urged crimes against the Tutsi (II.6.4). These statements instigated the commission of crimes against Tutsis. As an authority figure, Karera's encouragement would have a substantial effect in the killings which followed. His threats against those who did not participate in anti-Tutsi acts would be taken seriously.

547. The Chamber has also found that in April or May, Karera brought over twenty guns to the Rushashi commune office, which were aimed for use at the roadblocks (II.6.5). By bringing guns, the Chamber considers that Karera assisted in the killings of Tutsis. He therefore aided and abetted in the killings of Tutsis.

548. The Chamber concludes that, through his utterances and distribution of weapons, Karera is criminally responsible under Article 6 (1) for, respectively, instigating as well as aiding and abetting genocide in Rushashi between 7 April and June 1994.⁶²¹ He is therefore guilty under Count 1 of the Indictment.

2.2 Complicity in Genocide

549. Count 2 of the Indictment charges Karera in the alternative with complicity in genocide under Article 2 (3)(e) of the Statute. Since the Chamber has found Karera guilty of genocide, he is not guilty in relation to Count 2 of the Indictment.

2.3 Crimes Against Humanity: Extermination and Murder

550. In Counts 3 and 4 of the Indictment, the Prosecution charges Karera with Crimes Against Humanity (Extermination and Murder) under Article 3 of the Statute, which provides:

[Crimes against humanity are] the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;

...

⁶²¹ The killing of Théoneste Gakuru in April or May 1994 (II.6.6), in which Karera was directly involved, was not pleaded in the Indictment as genocide but as murder. Even though Karera referred to him as an *Inyenzi*, there is no clear evidence that Gakuru or the persons accompanying him were Tutsis, or that Karera wrongly perceived him as Tutsi (e.g. *Ndindabahizi*, Judgement (TC), paras. 468-469). According to Karera's testimony, Gakuru was a Hutu. The Chamber will discuss this event below under 2.3 (murder).

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551. The general requirements for a crime against humanity are intended to be read as disjunctive elements. While “widespread” refers to the large scale of an attack, involving many victims, “systematic” describes its organized nature, as distinguished from random or unrelated acts.⁶²² A perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the discriminatory attack, but need not share the purpose or goals behind the broader attack, or possess a discriminatory intent.⁶²³

Extermination

552. The crime of extermination is the act of killing on a large scale.⁶²⁴ The expression “on a large scale” does not, however, suggest a numerical minimum.⁶²⁵ It requires proof that the accused participated in a widespread or systematic killing or in subjecting a widespread number of people or systematically subjecting a number of people to conditions of living that would inevitably lead to death, and that the accused intended by his acts or omissions this result.⁶²⁶ The Prosecution need not name the victims.⁶²⁷

553. Based on the evidence, it is clear that a widespread or systematic attack against Tutsi civilians took place in the prefectures of Kigali-Ville and Kigali-Rural, between 6 April and June 1994. Considering Karera’s participation in attacks in Kigali-Ville and Kigali-Rural prefectures (II.4, 5.3, 5.4 and 6), as well as his high official position in the Rwandan administration, the Chamber finds that Karera was aware that such an attack took place.

554. Given the large number of victims and perpetrators, the Chamber finds that the attack against Tutsi refugees at Ntarama Church on 15 April 1994 satisfies the requirement of scale. The attackers’ arrival on board several buses and their waiting for Karera’s green light before commencing the attack also suggests organization. Karera was an instigator and direct participant in this attack.

555. In Nyamirambo sector, Kigali-Ville prefecture, the Chamber has found that communal policemen and *Interahamwe* killed numerous Tutsi civilians between 8 and 24 April 1994 (II.4.7, 4.8, 4.9 and 4.11) and that Karera ordered these killings (*see above under genocide*). In relation to Rushashi commune, Kigali-Rural prefecture, where many Tutsis were killed from 7 April 1994 (II.6), the Chamber has concluded that Karera instigated and aided and abetted in killings (*see above under genocide*). The Chamber considers that these crimes as well as the massacre in Ntarama formed part of the broader attack against Tutsi civilians in the prefectures of Kigali-Ville and Kigali-Rural.

556. In Ntarama, his words and deeds evidence his intent to bring about the death of Tutsi civilians on a large scale. In Nyamirambo, Karera’s intent to cause deaths on a large scale was manifested by his explicit orders to kill Tutsis. In Rushashi, this intent was demonstrated by his utterances at meetings and transport of weapons to the commune. In

⁶²² *Ntakirutimana*, Judgement (AC), para. 516 and footnotes; *Kunarac et al.*, Judgement (AC), 12 June 2002, paras. 93-97.

⁶²³ *Gacumbitsi*, Judgement (AC), para. 86; *Kunarac et al.*, Judgement (AC), paras. 99-100; *Semanza*, Judgement (AC), paras. 268-269, quoting *Akayesu*, Judgement (AC), para. 467.

⁶²⁴ *Ntakirutimana*, Judgement (AC), para. 522.

⁶²⁵ *Id.*

⁶²⁶ *Id.*, para. 522. *See also Gacumbitsi*, Judgement (AC), para. 86.

⁶²⁷ *Ntakirutimana*, Judgement (AC), para. 521.

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view of Karera's conduct, its impact on the Tutsi ethnic group, and his awareness of that impact, the Chamber considers that his contribution to the mass killing events in Nyamirambo and Rushashi evidences his participation in the crime of extermination in these localities.

557. Accordingly, the Chamber finds Karera to be criminally responsible under Article 6 (1) for instigating and committing extermination as a crime against humanity through the killing of hundreds of Tutsi refugees at Ntarama Church. The Chamber further finds him criminally responsible under Article 6 (1) for ordering extermination as a crime against humanity, committed through the mass killing of Tutsis in Nyamirambo sector, between 8 and 24 April 1994. Karera is also responsible for instigating and aiding and abetting extermination as a crime against humanity, committed through the mass killing of Tutsis in Rushashi commune between 7 April and June 1994.

Murder

558. Murder is the intentional killing of a person without any lawful justification or excuse or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim's death.⁶²⁸

559. The Chamber has found that

- In Nyamirambo sector, Karera ordered the killings of Kahabaye, Murekezi, Ndingutse and Palatin Nyagatare (II.4.7, 4.8, 4.9 and 4.11).

- In Ntarama sector, Karera committed and instigated an attack at the church. During this attack, hundreds of Tutsi refugees were killed, including Mukadana, Murebwayire, Tuyishire, Kadabari, Mukeshimana and Murekatete, and their entire families (II.5.4). It has not been established that Karera personally killed these victim, but in encouraging the attack he substantially contributed to and thus instigated their killings.

- In Rushashi commune, Karera instigated the killing of Théoneste Gakuru at a roadblock in April or May 1994 (II.6.6).

560. It follows from the orders, instigation, assistance and direct participation of Karera in these killings that the principal perpetrators as well as Karera had the intention to kill prior to the act of killing. The Chamber finds that by the above acts, Karera intended to bring about the death of these persons or at the very least was aware of the substantial likelihood that murder would be committed as a result of his conduct. As observed above, the Chamber is satisfied that the general requirements of crimes against humanity in Kigali-Ville and Kigali-Rural prefecture are met. Therefore, the Chamber finds Karera to be criminally responsible under Article 6 (1) of the Statute for:

- Ordering murder as a crime against humanity, committed through the killing of Kahabaye, Murekezi, Ndingutse and Palatin Nyagatare in Nyamirambo sector, Kigali-Ville prefecture, between 8 and 24 April 1994.

⁶²⁸ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), para. 25. The Chamber notes that some Trial Chambers have held that murder requires an element of pre-meditation, not only intent. See *Bagilishema*, Judgement (TC), para. 86, *Ntagerura et al.*, Judgement (TC), para. 700; *Semanza*, Judgement (TC), para. 339. In the present case, the Chamber is satisfied that the killings at issue would constitute murder as a crime against humanity under both standards.

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- Instigating murder as a crime against humanity, committed through the killing of Mukadana, Murebwayire, Tuyishire, Kadabari, Mukeshimana and Murekatete, and their entire families, in the course of the attack at Ntarama Church, Kigali-Rural prefecture, on 15 April 1994.

- Instigating and aiding and abetting murder as a crime against humanity, committed through the killing of Théoneste Gakuru in Rushashi commune, Kigali-Rural prefecture, in April or May 1994.

561. In view of these findings, Karera is guilty in relation to Counts 3 and 4 (extermination and murder as crimes against humanity).

3. Responsibility Under Article 6 (3)

562. In relation to superior responsibility under Article 6 (3), Karera's subordinates were alleged to include soldiers, *gendarmes*, communal police, *Interahamwe*, civilian militia or civilians acting under his authority.

563. In its factual findings, the Chamber has found that in Nyamirambo sector, Kigali-Ville prefecture, in April and May 1994, Tutsi civilians were attacked by the three communal policemen, *Interahamwe* and (II.4.3) soldiers. The Chamber has also found that Karera had some degree of authority over the policemen and *Interahamwe*. The following three elements must be proven to hold a civilian or a military superior criminally responsible pursuant to Article 6 (3) for crimes committed by subordinates: (a) the existence of a superior-subordinate relationship; (b) the superior's knowledge or reason to know that the criminal acts were about to be or had been committed by his subordinates; and (c) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrator.⁶²⁹

564. With respect to the first element, a superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must have possessed the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates. The superior must have had effective control over the subordinates at the time the offence was committed. Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders.⁶³⁰ This requirement is not satisfied by a simple showing of an accused individual's general influence.⁶³¹

Communal Policemen

565. The Chamber has found that in April 1994, Karera exercised authority over the three communal policemen, Charles Kalimba, Habimana and Kabarate, who were stationed in his house in Nyamirambo and who manned the roadblock nearby (II.4.2). The policemen followed Karera's orders to kill Tutsi and destroy their houses. The Chamber has further found that during the phone conversation between 7 and 15 April,

⁶²⁹ *Nahimana et al.*, Judgement (AC), para. 484; *Halilović*, Judgement (AC), para. 59.

⁶³⁰ *Ntagerura et al.*, Judgement (AC), para. 341 (quoting with approval *Ntagerura et al.*, Judgement (TC), para. 628).

⁶³¹ *Čelebići*, Judgement (AC), paras. 266, 303.

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Karera ordered the policemen to spare the lives of Callixte and Augustin and their relatives, and that this order was followed (II.4.6). Further, between 7 and 15 April, Karera ordered policeman Kalimba not to destroy the houses of Witness BMH and Enode, and, while other houses in the area were destroyed, these were not (II.4.6). The Chamber considers that they followed his order. The Chamber is accordingly satisfied that Karera had effective control over the communal policemen based at his house in Nyamirambo, and thus that a superior-subordinate relationship existed between Karera and the communal policemen.

566. The Chamber has found that all the killings by the communal policemen were committed in furtherance of Karera's orders. Therefore, it follows that also the two other elements under Article 6 (3) are satisfied. He was aware that the criminal acts were about to be committed by his subordinates, and, by ordering the crimes, he clearly failed to prevent them. Karera therefore also bears responsibility for the crimes under that provision. However, the Chamber has already held him responsible for these crimes under Article 6 (1). It follows from the jurisprudence that where both Article 6 (1) and Article 6 (3) responsibility are alleged under the same count, a Trial Chamber should enter a conviction on the basis of Article 6 (1) only, and consider an accused's superior position as an aggravating factor in sentencing.⁶³² Accordingly, Karera's superior-subordinate relationship with the policemen will only be taken into account as an aggravating factor in sentencing, in relation to these crimes, and not as a basis for his conviction.

Interahamwe

567. The Chamber has found that in 1994, Karera exercised authority over the *Interahamwe* in Nyamirambo, based on his previous presidency of the MRND in Nyarugenge commune and his continuing membership in the party, as well as his importance as previous *bourgmestre* of that commune and functions as sub-prefect and prefect in Kigali-Ville (II.2). It has been established that the *Interahamwe* followed Karera's orders, as well as co-perpetrated crimes with the communal policemen based at his house, who were his subordinates. However, it has not been established that Karera's authority over the *Interahamwe* in Nyamirambo, Rushashi or Ntarama extended beyond his personal influence, and the Chamber considers that a superior-subordinate relationship between Karera and the *Interahamwe* has not been established beyond reasonable doubt. It is accordingly unnecessary to consider whether Karera knew or had reason to know of their crimes, or whether he failed to take the necessary and reasonable measures to prevent or punish them.

Soldiers and Other Groups

568. There is no evidence that Karera held any military rank. His power under Rwandan administrative law, as a prefect, to requisition the military in certain circumstances did not give him *de jure* authority over soldiers. Moreover, it has not been established that he exercised *de facto* authority over military personnel.⁶³³ Even if they acted following his encouragement in connection with the attack on Ntarama Church, this is attributed to his

⁶³² *Blaškić*, Judgement (AC), para. 91 (referring to Article 7 (1) of the ICTY Statute, which is identical to Article 6 (1) of the ICTR Statute); see also *Galić*, Judgement (AC), para. 186.

⁶³³ *Ntagerura et al.*, Judgement (TC), paras. 641-642.

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influential personality rather than his effective control over them. Accordingly, the Chamber does not find that Karera bears superior responsibility for any crimes committed by soldiers. Finally, the Chamber has not found any basis for any Article 6 (3) responsibility in relation to civilians who did not form part of the *Interahamwe*, or *gendarmes*.

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CHAPTER IV: VERDICT

569. For the reasons set out in this Judgement, having considered all the evidence and arguments, the Trial Chamber unanimously finds François Karera:

- Count 1: GUILTY of Genocide
- Count 2: NOT GUILTY of Complicity in Genocide
- Count 3: GUILTY of Extermination as a Crime Against Humanity
- Count 4: GUILTY of Murder as a Crime Against Humanity.

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CHAPTER V: SENTENCE

1. Introduction

570. Having found François Karera guilty of genocide and extermination and murder as crimes against humanity, the Chamber must determine the appropriate sentence.

571. Pursuant to Article 23 of the Statute and Rule 101 of the Rules of Procedure and Evidence, the Tribunal may impose a term of imprisonment up to and including the remainder of an accused's life. In deciding the appropriate sentence, the Chamber shall consider (i) the gravity of the offences or totality of the conduct; (ii) the individual circumstances of the accused, including aggravating and mitigating circumstances; and (iii) the general practice regarding prison sentences in Rwanda.⁶³⁴ This list of considerations is not exhaustive.⁶³⁵ The Chamber will also take into account the principles of retribution, deterrence, rehabilitation and protection of society. Specific emphasis is placed on general deterrence, to demonstrate "that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights".⁶³⁶

572. In determining the sentence, the Chamber has considerable, though not unlimited, discretion resulting from its obligation to individualize penalties to fit the circumstances of the accused and the crimes.⁶³⁷ It shall consider the principle of gradation in sentencing, which enables it to punish, deter, and consequently stigmatize the crimes considered, at a level that corresponds to their overall magnitude and reflects the extent of suffering inflicted upon the victims. If need be, the Chamber shall credit the accused for any time spent in detention pending transfer to the Tribunal and during trial.⁶³⁸

2. Submissions

573. The Prosecution submits that life sentence is the adequate penalty. It refers to ICTR jurisprudence and penalties imposed by Rwandan legislation for comparable crimes, the gravity of the crimes, Karera's position of influence and authority, and his active participation and failure to spare lives. Other aggravating factors are zeal in committing crimes and perpetration in a manner causing irreparable harm. There are no mitigating factors. Karera showed no remorse and did not cooperate with the Prosecution. His good character prior to the events, his alleged saving of Tutsis and the historical ties of his clan to the Tutsis are irrelevant.⁶³⁹ The Defence did not make submissions on sentencing.

⁶³⁴ *Kajelijeli*, Judgement (AC), para. 290.

⁶³⁵ *Id.*; *Musema*, Judgement (AC), para. 380, citing *Čelebići*, Judgement (AC), para. 718.

⁶³⁶ *Aleksovski*, Judgement (AC), para. 185.

⁶³⁷ *Kajelijeli*, Judgement (AC), para. 291; *Kvočka et al.*, Judgment (AC), para. 681 ("sentences of like individuals in like cases should be comparable", but "any given case contains a multitude of variables, ranging from the number and type of crimes committed to the personal circumstances of the individual").

⁶³⁸ *Kajelijeli*, Judgement (AC), para. 290.

⁶³⁹ Prosecution Closing Brief, paras. 825-873; T. 23 November 2006 pp. 57-61 (closing arguments).

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3. Deliberations

3.1. Gravity of the Offence

574. All crimes under the Tribunal's Statute are serious violations of international humanitarian law. In assessing the gravity of the offence, the Chamber must take into account the particular circumstances of the case, and the form and degree of Karera's participation in the crime.

575. The Chamber has found that Karera participated in crimes against Tutsi civilians in Nyamirambo, Ntarama and Rushashi. He encouraged and committed a mass scale attack at Ntarama Church, where hundreds of Tutsi refugees were killed. Such acts are particularly shocking to the conscience of mankind. Karera also ordered attacks against Tutsis in Nyamirambo, instigated killings of Tutsis in Rushashi, and distributed weapons to *Interahamwe* in Rushashi.

3.2. Individual, Aggravating and Mitigating Circumstances

576. It is recalled that mitigating circumstances need only be established by the balance of the probabilities, while aggravating circumstances need to be proven beyond reasonable doubt.⁶⁴⁰ Any particular circumstance that constitutes an element of the crimes for which Karera is convicted will not also be considered as an aggravating factor.⁶⁴¹

577. Karera has been charged under both Article 6 (1) and Article 6 (3) of the Statute. The Chamber convicted him only on the basis of Article 6 (1), but found that a superior-subordinate relationship existed between Karera and the communal policemen who followed his orders to commit crimes in Nyamirambo. The Chamber considers his superior position as an aggravating factor in sentencing.⁶⁴²

578. The wrongful manner in which Karera exercised his influence and authority during the genocide also amounts to an aggravating factor.⁶⁴³ Since 1974 and until his exile in July 1994, Karera held official positions in the civil administration as *bourgmestre*, sub-prefect and prefect. He also held an important post in the political hierarchy, having served as the president of the MRND party in Nyarugenge commune. The influence Karera derived from these positions made it likely that others would follow his example.⁶⁴⁴ Prior to 17 April 1994, Karera was not formally appointed as prefect. However, he did exercise at least some of the authority which would normally have fallen under the prefect, and not within the capacity of a sub-prefect for economic and technical affairs, in particular in relation to security matters.

579. With respect to the massacre at Ntarama Church on 15 April 1994, the Chamber considers Karera's role an aggravating circumstance. Instead of providing security, as he had falsely promised the refugees at the Ntarama sector office the previous day, he encouraged *Interahamwe* and soldiers to hurry up and attack the refugees, who had

⁶⁴⁰ *Kajelijeli*, Judgement (AC), para. 294; *Ndindabahizi*, Judgement (TC), para. 502.

⁶⁴¹ *Ndindabahizi*, Judgement (TC), para. 502; *Semanza*, Judgement (TC), para. 571.

⁶⁴² *Blaškić*, Judgement (AC), paras. 91-92; *Miodrag Jokić*, Judgement (AC), para. 23.

⁶⁴³ *Kambanda*, Judgement (AC), para. 119; *Akayesu*, Judgement (AC), paras. 414-415; *Ndindabahizi*, Judgement (AC), para. 136.

⁶⁴⁴ *Semanza*, Judgement (AC), para. 336; *Simba*, Judgement (TC), para. 439.

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sought refuge in a traditional safe haven. The large number of victims and the irreparable harm caused to them and their families also aggravate Karera's sentencing in relation to his conviction for genocide, a crime with no numeric minimum of victims.⁶⁴⁵

580. As pointed out by the Prosecution, zeal in committing the crime can be an aggravating factor. There is no evidence that Karera killed anyone with his own hands, but according to the jurisprudence, attacking a place of safe haven such as a church, constitutes a form of zeal.⁶⁴⁶

581. The Chamber recalls that Karera was an educated person with an academic record and a role in the Rwandan education sector. In spite of this, he participated in the crimes. This is also an aggravating factor.⁶⁴⁷

582. The Chamber does not consider that there are any significant mitigating circumstances. Since 1958, Karera was a teacher and later became a director of primary education. He helped build schools and establish a soccer team for Kigali city (I.3). Prior contributions to community development have been considered by both Tribunals as a mitigating factor and the Chamber accords this some weight.⁶⁴⁸ There is no evidence that Karera discriminated against Tutsis before April 1994, and this is also accorded some weight by the Chamber. The Defence claims that Karera saved Tutsi civilians during the genocide, but the Chamber did not find the evidence regarding these rescues credible. Karera showed no remorse and did not cooperate with the Prosecution. The Chamber is of the view that the aggravating circumstances outweigh the mitigating circumstances.⁶⁴⁹

3.3. Sentencing Practices

583. The Chamber has taken into consideration the sentencing practice of the ICTR and the ICTY, and notes particularly that the penalty must first and foremost be commensurate to the gravity of the offence. In this Tribunal, principal perpetrators convicted of genocide and extermination as a crime against humanity have received sentences ranging from twenty-five years to imprisonment for the remainder of their life, except for in cases where the accused pled guilty or there existed other significant mitigating circumstances. Senior authorities, in particular Ministers, have received the most severe sentences.⁶⁵⁰ Life imprisonment have also been imposed on those at a lower level who planned or ordered atrocities or if they participated in the crimes with

⁶⁴⁵ *Semanza*, Judgement (AC), paras. 337-338; *Simba*, Judgement (TC), para. 440.

⁶⁴⁶ *Kayishema and Ruzindana*, Judgement (AC), para. 360.

⁶⁴⁷ *Nzabirinda*, Judgement (TC), paras. 59, 63; *Bisengimana*, Judgement (TC), para. 120.

⁶⁴⁸ *Simba*, Judgement (TC), para. 441; *Semanza*, Judgement (AC), para. 334.

⁶⁴⁹ The Chamber has also considered that it took time to deliver the judgement because of unforeseen developments explained in paragraph 7 of the Procedural History (Annex I).

⁶⁵⁰ Life sentences have been imposed against senior government authorities in *Kambanda*, Judgement (TC), paras. 44, 61-62 (Prime Minister); *Niyitegeka*, Judgement (TC), paras. 499, 502 (Minister of Information); *Ndindabahazi*, Judgement (TC), paras. 505, 508, 511 (Minister of Finance); *Kamuhanda*, Judgement (TC), paras. 6, 764, 770 (Minister of Higher Education and Scientific Research); *Kayishema and Ruzindana*, Judgement, (TC) para. 27 (prefect).

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particular zeal or sadism.⁶⁵¹ Secondary or indirect forms of participation have usually entailed a lower sentence.⁶⁵²

584. The Chamber has considered the general sentencing practice regarding prison sentences in Rwanda. Persons convicted in Rwanda for genocide or crimes against humanity, depending on the nature of their participation, and their position of authority, may incur penalties of life imprisonment.⁶⁵³ The Chamber regards this as one factor supporting the imposition of a heavy penalty upon Karera.

4. Conclusion

585. The Chamber has the discretion to impose a single sentence and notes that this practice is usually appropriate where the offences may be characterized as belonging to a single criminal transaction.⁶⁵⁴ The convictions for genocide, extermination as a crime against humanity, and murder as a crime against humanity, are based on the same underlying criminal acts. Considering all the aggravating circumstances, and noting that there are virtually no significant mitigating circumstances, the Chamber SENTENCES François Karera to

IMPRISONMENT FOR THE REMAINDER OF HIS LIFE

586. The above sentence shall be served in a State designated by the President of the Tribunal, in consultation with the Chamber. The Government of Rwanda and the designated State shall be notified of such designation by the Registrar.

587. Until his transfer to his designated place of imprisonment, François Karera shall be kept in detention under the present conditions.

588. Pursuant to Rule 102 (A) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.

⁶⁵¹ *Akayesu*, Judgement (TC), p. 12 (*bourgmestre*); *Rutaganda*, Judgement (TC), paras. 466-473 (second vice-president of *Interahamwe* at national level); *Musema*, Judgement (TC), paras. 999-1008 (influential director of a tea factory who exercised control over killers); *Musema*, Judgement (AC), para. 383; *Muhimana*, Judgement (TC), paras. 604-616 (*conseiller*); *Gacumbitsi*, Judgement, (AC), para. 207 (*bourgmestre*; increased by the Appeals Chamber from 30 years).

⁶⁵² It is recalled that 45 years of imprisonment was the sentence in *Kajelijeli* (*bourgmestre*); 35 years in *Semanza* (*bourgmestre*); 25 years in *Ruzindana* (businessman) and *Gérard Ntakirutimana* (medical doctor).

⁶⁵³ Rwandan Organic Law No. 8/96, on the Organization of Prosecutions for Offences constituting Genocide or Crimes Against Humanity committed since 1 October 1990, published in the Gazette of the Republic of Rwanda, 35th year. No. 17, 1 September 1996. See *Semanza*, Judgement (AC), para. 377 ("The command for Trial Chambers to 'have recourse to the general practice regarding prison sentences in the courts of Rwanda' does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice."), quoting *Serushago*, Judgement (AC), para. 30; *Nikolić*, Judgment (AC), para. 69.

⁶⁵⁴ *Ndindabahizi*, Judgement (TC), para. 497.

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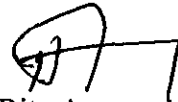
Arusha, 7 December 2007



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]



ANNEX I: PROCEDURAL HISTORY

1. The original Indictment, dated 8 June 2001 and confirmed on 2 August 2001, charged François Karera with four counts: genocide, or alternatively, complicity in genocide, and extermination, or alternatively, murder as crimes against humanity.¹ He was arrested in Kenya on 20 October 2001, pursuant to a warrant issued by the Tribunal on 2 August 2001.² Karera was transferred to the UN Detention Facility on 21 October 2001. At his initial appearance on 26 October 2001, he pleaded not guilty.
2. On 2 October 2003, the Chamber denied a Defence request to file preliminary motions outside the time-limit in Rule 72.³ On 5 July 2004, the Chamber dismissed a motion to set aside a decision by the Registry declining a Defence work programme.⁴ The Defence resubmitted the request to the President, and it was denied on 13 October 2004.⁵ On 1 December 2005, the Chamber granted protective measures to Prosecution witnesses.⁶
3. On 12 December 2005, the Chamber granted the Prosecution leave to amend the Indictment, by separating the murder and extermination charges, and by replacing the name of a specific region where the alleged crimes occurred with the prefecture's name.⁷ On the same day, the Prosecution filed its Pre-Trial Brief. On 16 December 2005, the Chamber granted a Prosecution motion for the temporary transfer of five detained witnesses from Rwanda to Arusha.⁸ The Amended Indictment was filed on 19 December 2005. On 8 and 9 January 2006, the Defence notified the Prosecution of its intent to enter a defence of alibi and provided particulars of its alibi witnesses.
4. The trial commenced before Trial Chamber I on 9 January 2006. The Prosecution closed its case on 4 May 2006, after calling 18 witnesses and tendering 52 exhibits. On 23 January 2006, the Chamber denied the Prosecution request to admit into evidence under Rule 92 *bis* a newspaper article, or to subpoena its author.⁹ On 28 February 2006, the Prosecution moved to admit into evidence a forensic report related to the 1994 Ntarama church massacre.¹⁰ The report was admitted into evidence on 4 May 2006, based on an agreement between the parties, and the Chamber declared the Prosecution motion

¹ Decision Confirming the Indictment, 2 August 2001.

² Warrant of Arrest and Transfer Addressed to All States Members of the United Nations, 2 August 2001.

³ *Décision relative à la requête de la Défense aux fins d'obtenir la permission de soulever, hors délais, des exceptions préjudicielles*, 2 October 2003, rendered by Trial Chamber III, which was conducting the pre-trial proceedings in this case (PTC).

⁴ Decision on Defence Motion to Set Aside a Decision by the Registrar and to Ensure Respect for the Basic Rights of the Accused, including the Right to Make Full and Defence (PTC), 6 July 2004. The Chamber found that the Defence request was not filed before the appropriate forum.

⁵ The President's Decision on a Defence Request for the Review of the Registrar's Decision Declining a Work Programme, 13 October 2004.

⁶ Decision on Motion for Protective Measures for Prosecution Witnesses (PTC), 1 December 2005.

⁷ Decision on the Prosecutor's Request for Leave to Amend the Indictment (PTC), 12 December 2005. The Prosecution filed additional information pursuant to the Chamber's Order for Filing Additional Information (PTC), 7 December 2005.

⁸ Order for the Transfer of Detained Witnesses from Rwanda (PTC), 16 December 2005.

⁹ Decision on Admissibility of Newspaper Article and Subpoena to Journalist (TC), 23 January 2006.

¹⁰ The Prosecutor's Motion for Admission into Evidence of the Forensic Scientists' Report in lieu of Oral Testimony, 28 February 2006.

moot.¹¹ On the same day, absent objections by the Defence, the Chamber admitted into evidence a Prosecution Expert report.¹² A Defence disclosure motion was also considered moot.¹³

5. On 7 March 2006, the Chamber denied the Prosecution request for further particulars of alibi witnesses.¹⁴ The Prosecution requested particulars of other Defence witnesses on 18 April 2006, and a continuance of the trial.¹⁵ The Defence immediately provided further particulars. The Prosecution moved again for a continuance, on 24 April, claiming that the details were still insufficient.¹⁶ On 25 April, the Chamber ordered the Defence to disclose further particulars, but denied a continuance.¹⁷ The Prosecution then requested the Chamber to reconsider its denial of a continuance, or alternatively, leave to appeal the decision.¹⁸ The Defence joined the Prosecution's call for a stay of the trial.¹⁹ However, the parties subsequently agreed that direct examination of several Defence witnesses would take place in succession, to allow the Prosecution sufficient time to prepare its cross-examination. The Chamber therefore declared the motion for reconsideration moot.²⁰

6. The Pre-Defence Brief was filed on 13 April 2006. The Defence presented its case from 4 until 18 May and from 14 until 23 August 2006. It called 25 witnesses, including Karera, and tendered 78 exhibits. Protective measures for the Defence witnesses had been granted on 9 February 2006.²¹ On 5 May 2006, the Defence filed a motion for the temporary transfer of one detained witness, but subsequently withdrew it.²² On 29 June 2006, the Chamber decided to allow two Defence witnesses to testify via video-link.²³ Four additional witnesses were added to the Defence's list by a decision of 13 July

¹¹ T. 4 May 2006 p. 34.

¹² *Id.*

¹³ *Id.* The Defence requested the disclosure of an unredacted statement of a potential Prosecution witness who was eventually not called. It also asked to meet with the witness in person. Extremely Urgent Defence Motion for Disclosure of the Unredacted Version of the Statement and Full Particulars of Witness KFK6 and for Leave to Contact Said Witness, 16 March 2006. The Prosecution denied that it had such a disclosure obligation, but provided the Defence with a courtesy copy of the unredacted statement. Prosecutor's Response to the Defence's Extremely Urgent Motion for the Disclosure of the Non Redacted Version of the Statement of Witness KFK6 and of its Full Coordinates in order to Obtain the Authorisation to Contact the Witness, 27 March 2006.

¹⁴ Decision on Motion for Further Alibi Particulars (TC), 7 March 2006.

¹⁵ Prosecutor's Motion for Disclosure of Further and Better Particulars of Defence Witnesses Pursuant to Rules 69 (C) and 73 *ter*, 18 April 2006.

¹⁶ Prosecution Motion for Continuance of Trial Session, Pursuant to Rule 73 (A), 24 April 2006.

¹⁷ Decision on Motion for Further Particulars of Defence Witnesses and for Continuance of Trial (TC), 25 April 2006.

¹⁸ Prosecutor's Urgent Motion for Reconsideration or, in the Alternative, Certification to Appeal, Pursuant to Rule 73 (B), the Trial Chamber's Decision on Motion for Further Particulars of Defence Witnesses and for Continuance of Trial dated 25 April 2006, 27 April 2006.

¹⁹ Extremely Urgent Response to the Prosecutor's Urgent Motion for Reconsideration of an Application to Adjourn, 9 May 2006.

²⁰ T. 12 May 2006 pp. 5-6.

²¹ Decision on Defence Motion for Protection of Witnesses (TC), 9 February 2006.

²² Defence Extremely Urgent Motion for an order for Temporary Transfer of a Detained Witness from Rwanda, 5 May 2006; T. 15 August 2006 p. 37.

²³ Decision on Testimony by Video-Link (TC), 29 June 2006. The witnesses allowed to be heard via video-link were Witnesses BBA and YMK.

2006.²⁴ On 1 September 2006, the Chamber denied a Defence motion for disclosure of documents used by the Prosecution during its cross-examination.²⁵ That day, the Chamber also granted a request for a site visit.²⁶

7. The Chamber visited the alleged crime sites in Rwanda from 1 to 3 November 2006. On 10 November 2006, the parties filed their closing briefs. Closing arguments were heard on 23 and 24 November 2006. The trial lasted 33 days, 15 of which were half days. The Chamber had initially reserved March, April and May 2007 for judgement writing. However, in that period, Trial Chamber I had to deliver 26 decisions in the Military I trial, in order to resolve all outstanding matters before the oral closing arguments in that case from 28 May to 1 June 2007. The Chamber then commenced the Nsengimana trial on 22 June 2006. The delivery of the present judgement, which has been drafted in parallel with the judgement in the Military I case, has therefore been delayed.

²⁴ Decision on Variation of Defence Witness List (TC), 13 July 2006. The additional witnesses were Witnesses NKZ, ZIH, YNZ, François-Xavier Bangamwabo and NSN. Witness NSN was eventually withdrawn by the Defence. T. 16 August 2006 p. 70; T. 17 August 2006 p. 62.

²⁵ Decision on Defence Motion for Additional Disclosure (Rule 98) (TC), 1 September 2006.

²⁶ Decision on Site Visit to Rwanda (TC), 1 September 2006. The Prosecution requested a site visit to Rwanda to allow the Chamber to familiarise itself with the alleged crime sites. The Defence consented and requested to visit an additional location, related to its alibi claim (Ruhengeri).

ANNEX II: JURISPRUDENCE AND DEFINED TERMS

1. JURISPRUDENCE

1.1 ICTR

AKAYESU

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001

BAGILISHEMA

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Judgement (Reasons) (AC), 3 July 2002

BAGOSORA ET AL.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Kabiligi Motion for Exclusion of Evidence (TC), 4 September 2006

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Nsengiyumva Motion for Exclusion of Evidence Outside the Scope of the Indictment (TC), 15 September 2006

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-AR73, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006

BISENGIMANA

The Prosecutor v. Paul Bisengimana, Case No. ICTR-00-60-T, Judgement and Sentence (TC), 13 April 2006

GACUMBITSI

The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006

KAJELIJELI

The Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-99-44-T, Judgement and Sentence (TC), 1 December 2003

Juvenal Kajelijeli v. The Prosecutor, Case No. ICTR-99-44-A, Judgement (AC), 23 May 2005

KAMBANDA

The Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgement and Sentence (TC), 4 September 1998

Jean Kambanda v. The Prosecutor, Case No. ICTR-97-23-A, Judgement (AC), 19 October 2000

KAMUHANDA

The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement (TC), 22 January 2004

KAYISHEMA AND RUZINDANA

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement (TC), 21 May 1999

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (AC), 1 June 2001

MEDIA

See Nahimana et al.

MPAMBARA

The Prosecutor v. Jean Mpambara, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006

The Prosecutor v. Jean Mpambara, Case No. ICTR-01-65-T, Separate Opinion of Judge Lattanzi, 20 September 2006

MUHIMANA

The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, Judgement and Sentence (TC), 28 April 2005

MUSEMA

The Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000

Alfred Musema v. The Prosecutor, Case No. ICTR-96-39-A, Judgement (AC), 16 November 2001

MUVUNYI

The Prosecutor v. Tharcisse Muvunyi, Case No. ICTR-00-55A-A, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005

NAHIMANA ET AL.

The Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007

NDINDABAHIZI

The Prosecutor v. Emmanuel Ndindabahizi, Case No. ICTR-2001-71-I, Judgement and Sentence (TC), 15 July 2004

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007

NIYITEGEKA

The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement, 9 July 2004

NTAGERURA ET AL.

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006

NTAKIRUTIMANA

The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003

The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-A, Judgement (AC), 13 December 2004

NZABIRINDA

The Prosecutor v. Joseph Nzabirinda, Case No. ICTR-2001-77-T, Sentencing Judgement (TC), 23 February 2007

RUGGIU

The Prosecutor v. Georges Ruggiu, Case No. ICTR-97-32-I, Judgement and Sentence (TC), 1 June 2000

RUTAGANDA

The Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003

SEMANZA

The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005

SERUSHAGO

The Prosecutor v. Omar Serushago, Case No. ICTR-98-39-S, Sentence (TC), 5 February 1999

Omar Serushago v. The Prosecutor, Case No. ICTR-98-39-A, Judgement (AC), 6 April 2000

SIMBA

The Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007

1.2 ICTY

ALEKSOVSKI

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement (AC), 24 March 2000

BLAŠKIĆ

Prosecutor v. Tihomir Blaškić, Case No. IT-94-14-T, Judgement (TC), 3 March 2000

Prosecutor v. Tihomir Blaškić, Case No. IT-94-14-A, Judgement (AC), 29 July 2004

BRĐJANIN

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgment (AC), 3 April 2007

“ČELEBIĆI”

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-T, Judgement (TC), 16 November 1998

Prosecutor v. Zejnil Delalić et al., Case No. IT-96-21-A, Judgement (AC), 20 February 2001

Prosecutor v. Zdravko Mucić et al., Case No. IT-96-21-A, Judgement on Sentence Appeal (AC), 8 April 2003

GALIĆ

Prosecutor v. Stanislav Galić, Case No. IT-98-29-T, Judgement and Opinion (TC), 5 December 2003

JOKIĆ, MIODRAG

Prosecutor v. Miodrag Jokić, Case No. IT-01-42/1-A, Judgement on Sentencing Appeal (AC), 30 August 2005

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KORDIĆ AND ČERKEZ

Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-T, Judgement (TC), 26 February 2001

KRNOJELAC

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement (AC), 17 September 2003

KUPREŠKIĆ ET AL.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Appeal Judgement (AC), 23 October 2001

KVOČKA

Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005

LIMAJ ET AL.

Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-I, Judgement (TC), 30 November 2005

NALETILIĆ AND MARTINOVIĆ

Prosecutor v. Mladen Naletilić and Vinko Martinović, Case No. IT-98-34-A, Judgement (AC), 3 May 2006

NIKOLIC

Prosecutor v. Dragan Nikolic, Case No. IT-94-2-A, Judgment and Sentencing Appeal (AC), 4 February 2005

TADIĆ

Prosecutor v. Duško Tadić, Case No. IT-94-1-A, Judgement (AC), 15 July 1999

2. DEFINED TERMS

Defence Closing Brief

Prosecutor v. Francis Karera, Case No. ICTR-2001-74-T, Defence Closing Arguments, 10 November 2006

Indictment

Prosecutor v. Francis Karera, Case No. ICTR-2001-74-I, Amended Indictment, 19 December 2005

MDR

Mouvement démocratique républicain

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MRND

Mouvement révolutionnaire national pour la démocratie et le développement

Pre-Trial Brief

Prosecutor v. Francis Karera, Case No. ICTR-2001-74-I, The Prosecutor Pre-Trial Brief, 12 December 2005

Prosecution Closing Brief

Prosecutor v. Francis Karera, Case No. ICTR-2001-74-T, The Prosecutor's Closing Brief, 10 November 2006

RPF

Rwandan Patriotic Front

Rules

Rules of Procedure and Evidence of the Tribunal

T.

Transcript. All references to the transcript are to the official, English transcript, unless otherwise indicated.

ICTR-01-74-I
19-12-2005

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

(1653 - 1646)

Case No. ICTR-2001-74-I

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THE PROSECUTOR

VS

FRANÇOIS KARERA

2005 DEC 19 2 16:20

AMENDED INDICTMENT

- I. 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:

François KARERA

With GENOCIDE; or in the alternative, COMPLICITY IN GENOCIDE; and EXTERMINATION and MURDER as CRIMES AGAINST HUMANITY; offences stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below:

II. THE ACCUSED:

François KARERA was born in Huro secteur, Musasa commune, Kigali-rural prefecture around 1939. **François KARERA** was appointed *préfet* of Kigali-rural *préfecture* in April 1994 and served in that capacity until mid-July 1994. Prior to this, he previously served as *sous-préfet* of Kigali-rural *préfecture* for the region of Bugesera from 1992. **François KARERA** also served as *bourgmestre* of Nyarugenge commune in the *préfecture* of Kigali-ville.

III. CHARGES and CONCISE STATEMENT OF FACTS:

Count 1: GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **François KARERA** with *GENOCIDE*, a crime stipulated in Article 2(3)(a) of the Statute, in that between 6 April and 14 July 1994 in the *préfectures* of Kigali-ville and Kigali-rural, Rwanda, **François KARERA** was responsible for killing or causing serious

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: <u>MOUHOU DIALLA</u>
<u>22/12/2005</u>

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bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnical or racial or ethnic group;

Pursuant to Article 6(1) of the Statute: by virtue of his acts in planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation and execution of the crime charged; and

Pursuant to Article 6(3) of the Statute: by virtue of his knowledge of the acts and omissions of soldiers, gendarmes, communal police, *Interahamwe*, civilian militia and civilians acting under his authority, and his failure to take necessary and reasonable measures to prevent or punish them, for their acts in the preparation and execution of the crime charged.

ALTERNATIVELY,

Count 2: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **François KARERA** with *COMPLICITY IN GENOCIDE*, a crime stipulated in Article 2(3)(e) of the Statute, in that between 6 April and 14 July 1994 in the *préfectures* of Kigali-ville and Kigali-rural, Rwanda, **François KARERA** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, an ethnical or racial group, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his acts in planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation or execution of the crime charged, in that:

1. Between 1 January and 31 December 1994, citizens native to Rwanda were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.
2. Between 1 January and 17 July 1994 there was a state of non-international armed conflict in Rwanda
3. Following the death of Rwandan President Juvénal Habyarimana on 6 April 1994 and resumption of civil hostilities in the non-international armed conflict on the following day, a newly installed Interim Government of 8 April 1994 launched a nationwide campaign to mobilize government armed forces, civilian militias, the local public administration and common citizens to fight the Rwandese Patriotic Front (RPF), a predominantly Tutsi politico-military opposition group. Government armed forces and *Interahamwe* militias specifically targeted Rwanda's civilian Tutsi population as domestic accomplices of an invading army, *ibitso*, or as a domestic enemy in their own right. Under the guise of national defense, ordinary citizens of Rwanda, primarily its Hutu peasantry, were enlisted in a nationwide campaign of murder and extermination of the Tutsi.

Concise Statement of Facts in support of Counts 1 and 2:

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4. **François KARERA** spearheaded the campaign of the destruction of Tutsi homes and murder of Tutsi civilians in his home *commune* of Nyarugenge in Kigali and in Kigali-rural *préfecture*, notably in Kankenze *commune*. The campaign consisted of encouraging Hutu civilians to separate themselves from their Tutsi neighbours and to kill them and in organizing, communal police and civilian militias to attack Tutsi refugees in public shelters, such as churches, resulting in thousands of deaths. **François KARERA** ordered killings of Tutsi by subordinates, and led attacks under circumstances where he knew, or should have known, that civilians were, or would be, killed by persons acting under his authority.
5. During 1994, **François KARERA** was either *sous-préfet* or *préfet* of Kigali-rural. In his capacity as *sous-prefet*, or *préfet*, **François KARERA** exercised authority over his subordinates, including but not limited to, *bourgmestres*, administrative personnel, *chefs de service de l'Etat* and law enforcement agents within the *préfecture*.
6. As consequences of his office of *sous-préfet* or *préfet* of the *préfecture* of Kigali-rural, his former status as *bourgmestre* of Nyarugenge *commune* in Kigali-ville *préfecture*, and his high ranking position within the MRND political party, **François KARERA** also exercised authority over communal police, gendarmes and civilian militias in his home *commune* of Nyarugenge in the *préfecture* of Kigali-Ville.
7. Certain homes of Tutsi civilians in Nyamirambo *secteur* were selectively spared during the campaign, specifically on orders from **François KARERA**. On or about 7 April 1994 **François KARERA** directed the communal policemen guarding his own home in Nyamirambo *not* to destroy or kill the occupants of a specific neighbouring Tutsi civilian household.
8. During the events referred to in this indictment, notably on or about 15 April 1994 in Nyamirambo, **François KARERA** publicly ordered, communal police, civilian militias and local residents, to destroy the houses of, and to kill every Tutsi.
9. During the period referred to in this indictment, **François KARERA** distributed weapons to communal police or civilian militias in Nyamirambo, knowing and intending that they would be used in attacks upon civilian Tutsi.
10. As a direct consequence of the weapons distribution and the public campaign of extermination ordered and, at times, led by **François KARERA**, many Tutsi civilians were killed by communal police, or by civilian militias and local residents, in Nyamirambo during April and May of 1994.
11. During the events referred to in this indictment, particularly during April 1994, **François KARERA** also led attacks against the civilian Tutsi population in *préfecture* of Kigali-rural.

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12. **François KARERA's** activities in *préfecture* of Kigali-rural during April, May and June of 1994 are especially significant given his authority as *préfet* or *sous-préfet* in the prefecture.
13. During the events referred to in this indictment, roadblocks manned by *Interahamwe* were killing stations for Tutsi civilians in flight. Many Tutsi civilians were killed at roadblocks in Kigali-rural.
14. In addition to directing attacks against the Tutsi in Kigali-Rural, **François KARERA** also convened meetings with *bourgmestres* in Kigali-rural *préfecture* and encouraged them to kill Tutsi civilians.
15. On or about 8 April 1994 **François KARERA**, accompanied by *sous-préfet* MINANI and several gendarmes, approached a group of *Interahamwe* that had destroyed Tutsi homes in Ntarama *secteur* and stated, "*instead of ransacking the properties you should kill them first so that you can enjoy all of their properties*" or words to that effect.
16. Around 14 April 1994, **François KARERA** held a meeting at the Ntarama *secteur* office in Kankenze *commune*, Kigali-rural *préfecture*, where he stated that "*the Tutsi people had killed the president but we would see what was going to happen next.*" The following day, **François KARERA** led an attack against Tutsi refugees in Ntarama *secteur*.
17. The attack against the Tutsi in Ntarama *secteur* was strategically planned: Tutsi refugees in Ntarama had initially resisted attacks by local civilian militias following the death of the president on 6 April 1994. **François KARERA** met with the refugees at Ntarama Primary School, and in response to their requests for protection **François KARERA** promised to return the next day with soldiers to ensure security. **François KARERA** also instructed some refugees to take shelter at Ntarama Church.
18. The following day, on or about 15 April 1994, **François KARERA** arrived in Ntarama *secteur* with a convoy of ONATRACOM buses carrying soldiers, including Presidential Guard, and *Interahamwe*. **François KARERA** armed with firearm addressed the soldiers and *Interahamwe*, stating "*Now you people have been fighting the Tutsi for one week but now the job will be finished. I don't want to see one Tutsi person alive in Ntarama secteur by tonight.*" **François KARERA** thereafter led a group of soldiers and *Interahamwe* in an attack against Tutsi civilians at the Ntarama Church. Among those who collaborated in organizing and leading the attacks were: Jean de la Croix BIZIMANA, former director of Kankenze Primary School, and Kankenze, *bourgmestre* Bernard GATANAZI.
19. **François KARERA** misled Tutsi refugees in Ntarama *secteur* by falsely representing to them that soldiers would be dispatched to Ntarama Church to protect them. Instead, **François KARERA** organized and led soldiers in attacks on the refugees. During the said attack, numerous Tutsi civilians were killed. Further, between 15 and 28 April 1994, daily attacks continued at the said church.

20. **François KARERA** continued the anti-Tutsi campaign, which included amongst other things, openly justifying the killing of Tutsi civilians, even after he fled Rwanda. Between July and December 1994, **François KARERA** and several other former Interim Government officials convened a meeting in a refugee camp in Zaire to develop a strategy to regain power. Discussions at the said meeting included references to the mission of killing all the Tutsi. **François KARERA** suggested fund-raising activities to purchase weapons. Sometime thereafter **François KARERA** suggested to schoolteachers at one of the refugee camp schools that instead of teaching children mathematics and academic subjects, they should concentrate on teaching them that there was only one enemy, the Tutsi.
21. By virtue of his authority as *préfet* or *sous-préfet* in Kigali-rural and as former *bourgmestre* of Nyarugenge, **François KARERA** ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute and kill or facilitate the killing of civilian Tutsi in the said prefecture. By virtue of that same authority **François KARERA** had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

Count 3: EXTERMINATION as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **François KARERA** with *EXTERMINATION as a CRIME AGAINST HUMANITY*, as stipulated in Article 3(b) of the Statute, in that between 6 April and 14 July 1994 in the *préfectures* of Kigali-ville and Kigali-rural, Rwanda, **François KARERA** was responsible for killing persons, or causing persons to be killed, as part of a widespread or systematic attack against a civilian population on racial or ethnic grounds as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his acts in planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation or execution of the crime charged; and

Pursuant to Article 6(3) of the Statute: by virtue of his knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to prevent or punish them for their acts in the planning, preparation or execution of the crime charged, in that:

Concise Statement of facts in support of Count 3

22. In support of count 3 above, the Prosecutor reiterates and incorporates herein, Francois Karera's acts in commanding, facilitating or participating in the killings of civilian Tutsi refugees in Kigali-Ville and Kigali-Rural prefectures as specified in paragraphs 4 through 21 above and in addition to which, the Prosecutor makes the following additional factual allegations:

23. Between 6 April and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.
24. **François KARERA**, acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to exterminate the Tutsi, by his own acts or through persons he assisted or by his subordinates with his knowledge and consent.
25. From 7 April 1994, **François KARERA** organized and ordered a campaign of extermination against Tutsi civilians in his home *commune* of Nyarugenge.
26. The campaign of extermination included distributing firearms to communal police and directing soldiers, including members of the Presidential Guard, communal police, civilian militias, and local residents that joined them, to destroy the homes of Tutsi civilians and to kill the occupants.
27. As direct consequences of the weapons distributions and the campaign of extermination ordered and, at times, led by **François KARERA**, many Tutsi civilians were killed by communal police, civilian militias, and local residents that joined in the attacks in Nyamirambo during April and May of 1994.
28. Sometime between 15 and 28 April 1994, a series of attacks against Tutsi refugees who sort refugee at Ntarama primary school in Ntarama church in Ntarama secteur resulted numerous deaths. Some of this attacks were organized and orchestrated by **Francois KARERA**, in particular that on Ntarama church around 15 April 1994. The attacks were strategically planned, and Francois Karera played a seminal role in encouraging refugees to gather at the church so that they could be exterminated with great efficiency.
29. By virtue of authority as *prefet* or *sous prefet* in Kigali Rural and as former bourgmestre of Nyarugenge, **Francois KARERA** ordered or directed or otherwise authorized government armed forces, civilians militias and civilians to kill or to facilitate the killing of civilian Tutsi. By virtue of his authority, **Francois KARERA** had the ability to prevent, discourage or sanction persons that committed, or were about to commit such as and did not do so, or only did so selectively.

Count 4: MURDER as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **François KARERA** with *MURDER as a CRIME AGAINST HUMANITY*, as stipulated in Article 3(a) of the Statute, in that between 6 April and 14 July 1994 in the *préfectures* of Kigali-ville and Kigali-rural, Rwanda, **François KARERA** was responsible for killing persons, or causing persons to be killed, as part of a widespread or systematic attack against a civilian population on ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his acts in planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation or execution of the crime charged; and

Pursuant to Article 6(3) of the Statute: by virtue of his knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe*, civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to prevent or punish them for their acts in the planning, preparation or execution of the crime charged, in that:

Concise Statement of facts in support of Count 4

30. In support of count 4 above, the Prosecutor reiterates and incorporates herein, Francois Karera's acts in commanding, facilitating or participating in the killings of civilian Tutsi refugees in Kigali-Ville and Kigali-Rural prefectures as specified in paragraphs 4 through 29 above and in addition to which, the Prosecutor makes the following additional factual allegations:
31. **François KARERA**, acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to kill the Tutsi, by his own acts or through persons he assisted or by his subordinates with his knowledge and consent.
32. From 7 April 1994, **François KARERA** organized and ordered the killing of Tutsi civilians in his home *commune* of Nyarugenge.
33. Among those that were killed as a direct consequence of **François KARERA's** acts or omissions are: Rukemampunzi, Murekezi, Mazimpaka, Joseph Kahabaye, Leonard, Murekezi and his three children, Kabuguza, Enode Ndoli, John, Nana, Bosco and Kazadi who were all killed on 7 April 1994 at a roadblock in front of Francois Karera's house by Interahamwe and the 3 communal policemen stationed at Francois Karera's house. Marianne, Rukemampunzi's wife was killed sometime in April 1994 by the Interahamwe in Rwarutabura's house where she had taken refuge. Palantin Nyagatare, Felix Dix and Adolphe were killed at their respective houses sometime in April 1994. Felicien and his two children, Gangi Innocent, Renata, Kazungu, Jean Baptiste Sano and Jean Marie Joseph Gasama were also killed by the interahamwe sometime in April 1994 in Nyamirambo.
34. During April 1994, **François KARERA** also led attacks against the civilian Tutsi population in Kigali-Rural *préfecture*. Among those that were killed as a direct consequence of François KARERA's acts or omissions are: Theoneste Gakuru, conseiller of Kimisange who was arrested between late April and May 1994 on the orders of Francois Karera at a roadblock in Rushashi. He was detained at the communal office and was later killed that same day by the Interahamwe.
35. Among those that were killed as a direct consequence of **François KARERA's** acts or omissions included: Mukadana, Murebwayire, Tuyishire, Kadabari, Mukeshimana and Murekatete, and their entire families. All these victims were killed at Ntarama church on 15 April 1994.

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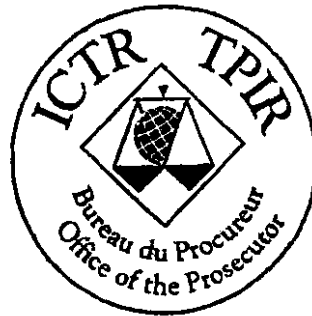
7791

The acts and omissions of François KARERA detailed herein are punishable in reference to Articles 22 and 23 of the Statute.

Dated: Arusha, this 19th day of December 2005:



Hassan B. Jallow
Prosecutor





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber I Judges Møse, Egorov, Arrey (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Francois Karera			Case Number: ICTR-01-74-T
Dates:	Transmitted: 14 December 2007		Document's date: 7 December 2007	
No. of Pages:	169	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Judgement and Sentence			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties		
<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision <input checked="" type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties		
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars		
		<input checked="" type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):

☒ English ☒ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input checked="" type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party will be submitting the translated version(s) in due course in the following language(s):

☐ English ☐ French ☐ Kinyarwanda

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<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: