



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

Or.: Eng.

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Khalida Rachid Khan
Judge Solomy Balungi Bossa

Registrar: Adama Dieng

Date: 15 July 2004

THE PROSECUTOR

v.

EMMANUEL NDINDABAHIZI

Case No. : ICTR-2001-71-I

JUDGEMENT AND SENTENCE

The Prosecution

Charles Adeogun-Phillips
Wallace Kapaya
Peter Tafah

The Defence

Pascal Besnier
Guillaume Marçais

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Chapter I

INTRODUCTION

1. The Tribunal and Its Jurisdiction

1. This Judgement in the case of *Prosecutor v. Emmanuel Ndindabahizi* is rendered by Trial Chamber I (“the Chamber”) of the International Criminal Tribunal for Rwanda (“the Tribunal”), composed of Judges Erik Møse, presiding, Khalida Rachid Khan, and Solomy Balungi Bossa.

2. The Tribunal was established by United Nations Security Council Resolution 955 of 8 November 1994 in response to reports indicating that genocide and other widespread, systematic, and flagrant violations of international humanitarian law had been committed in Rwanda.¹ The Security Council determined that this situation constituted a threat to international peace and security and was convinced that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the process of national reconciliation and peace in Rwanda. Consequently, the Security Council, acting under Chapter VII of the United Nations Charter, adopted Resolution 955 establishing the Tribunal.

3. The Tribunal is governed by the Statute annexed to Resolution 955 (“the Statute”) and by the Rules of Procedure and Evidence of the Tribunal (“the Rules”).²

4. Pursuant to the Statute, the Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States. Under Article 1 of the Statute, the Tribunal’s jurisdiction is limited *ratione temporis* to acts committed between 1 January 1994 and 31 December 1994. The Tribunal has *ratione materiae* jurisdiction over genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II thereto, as provided in Articles 2, 3, and 4 of the Statute.

2. The Accused

5. Emmanuel Ndindabahizi was born in 1950 in Gasharu, Gitesi Commune, Kibuye Prefecture, Rwanda.³ After completing primary school at Kirambo and Nyagato in Gitesi Commune in 1964, he attended the Shyogwe Secondary School in Gitarama Prefecture (1964 to 1967) and the Official College in Kigali (1967-1970).⁴ At the University of Butare, he obtained a Bachelor degree in Economics and Social Sciences in 1974 and a Degree in

¹ U.N. Doc. S/RES/955 (1994); *Preliminary Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)*, U.N. Doc. S/1994/1125; *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)*, U.N. Doc. S/1994/1405; and Reports of the Special Rapporteur for Rwanda of the United Nations Commission for Human Rights (U.N. Doc. S/1994/1157, Annexes I and II).

² Originally adopted by the Judges of the Tribunal on 5 July 1995, the Rules were last amended on 23-24 April 2004 during the Fourteenth Plenary Session. The Statute and the Rules are available at the Tribunal’s website: <<http://www.icttr.org>>.

³ During his testimony, the Accused provided an overview of his education and career. T. 24 November 2003 pp. 5-15.

⁴ Defence Exhibit 55.

Management (*licencié en Sciences de la Gestion*) in 1976.⁵ From November 1976, the Accused worked at Trafipro, a consumer cooperative with headquarters in Kigali and with thirty or more stores throughout Rwanda, where he was the head of the Finance Division until the end of 1981.⁶ He was then transferred to the Electrogaz Company in Kigali, where he headed the Administrative and Financial Department. In 1985, the Accused was transferred to the Ministry of Planning in Kigali to head the Internal Financing Section.⁷ In 1991, he left the civil service to work for Audico, a private consulting and auditing firm, until 1992.⁸

6. The Accused joined the Social Democratic Party, *Parti Social Démocrate* (“PSD”), in 1992. In September 1992 he was appointed *Directeur de Cabinet* in the Ministry of Finance, second in authority only to the Minister, and remained in that position until 6 April 1994.⁹ He was elected Executive Secretary of the PSD in Kibuye in 1993.¹⁰ The Accused was sworn in as Minister of Finance of the Interim Government on 9 April 1994. He left Rwanda for Goma in the Democratic Republic of Congo (Zaire) on or around 13 or 14 July 1994.¹¹

3. The Indictment

7. Under the amended Indictment of 1 September 2003, the Accused is charged with three counts, pursuant to Articles 2 and 3 of the Statute: genocide; extermination as a crime against humanity; and murder as a crime against humanity. The Indictment, which is set out in full in Annex A to this Judgement, charges the Accused with individual criminal responsibility under Article 6 (1) for these crimes.

4. Procedural History

8. The initial Indictment, confirmed by Judge Pavel Dolenc on 5 July 2001, charged the Accused with four counts: genocide; direct and public incitement to commit genocide; murder as a crime against humanity; and extermination as a crime against humanity.¹² Pursuant to a warrant issued on the same day, the Accused was arrested at Verviers, Belgium, on 12 July 2001.¹³ By order of 10 July 2001, Judge Dolenc granted the Prosecution’s *ex parte* application, dated 26 June 2001, for confidentiality of the Indictment until the Accused’s arrest and non-disclosure of the identity of witnesses, whose statements had been submitted in support of the Indictment.¹⁴ The Accused was transferred to the United Nations Detention Facility in Arusha, Tanzania on 25 September 2001.

9. On 3 October 2001, Judge Dolenc granted the Prosecution leave to amend the Indictment by adding a charge of rape as a crime against humanity, and the Accused’s alleged superior responsibility under Article 6 (3) of the Statute. Judge Dolenc also issued a non-

⁵ Defence Exhibits 56 and 57.

⁶ Defence Exhibit 58.

⁷ Defence Exhibit 60.

⁸ T. 24 November 2003 pp. 11-13; T. 27 November 2003 p. 2.

⁹ Defence Exhibit 61.

¹⁰ T. 24 November 2003 p. 17.

¹¹ T. 25 November 2003 p. 12.

¹² Confirmation of Indictment, 5 July 2001.

¹³ Warrant of Arrest and Orders for Transfer and Detention and for Search and Seizure, 5 July 2001.

¹⁴ Order for Non-Disclosure (TC), 10 July 2001.

disclosure order for the protection of witnesses.¹⁵ The amended Indictment of 4 October 2001 was filed on the following day.

10. At the Initial Appearance on 9 October 2001, Judge Navanethem Pillay adjourned the proceedings to afford the Accused additional time to examine the amended Indictment.¹⁶ On 19 October 2001, the Accused pleaded not guilty to all five counts of the amended Indictment. The same date, the Prosecution disclosed to the Defence twenty-seven witness statements in redacted form and fourteen other supporting documents. On 30 May 2002, the Chamber dismissed a motion, filed by the Defence on 19 November 2001, challenging the legality of this Indictment.¹⁷

11. In October 2002, the Prosecution allowed the Defence to inspect seventy-six documents enumerated in a “List of documents seized from Emmanuel Ndindabahizi upon his arrest in Belgium”. On 4 April 2003, the Prosecution disclosed eleven additional witness statements, thereby providing the Defence with a total of thirty-eight redacted statements of prospective witnesses.

12. The Prosecution served the Defence with a notice to admit facts under Rule 73 *bis* of the Rules on 13 June 2003. The Defence responded on 16 June 2003.¹⁸

13. On 30 June 2003, the Chamber granted a Prosecution request to withdraw from the Indictment charges of incitement to commit genocide and of rape as a crime against humanity, as well as all allegations of superior responsibility under Article 6(3) of the Statutes. The Defence did not oppose the motion.¹⁹

14. On the same date, the Chamber denied a Defence motion to establish a date for the commencement of trial or, alternatively, to grant the provisional release of the Accused. The Chamber noted that the trial would commence in the second half of the year, most probably in September 2003.²⁰

15. A further Prosecution motion to amend the Indictment was granted on 20 August 2003. The Chamber observed that most of the amendments were of a linguistic nature or aimed at obtaining consistency, thereby improving the quality of the Indictment. The proposed amendments did not cause any prejudice to the Accused.²¹

16. Following an informal Status Conference on 30 August 2003, the Chamber held a brief Pre-trial Conference with the parties in closed session on 1 September 2003. During the

¹⁵ Decision on the *Ex Parte* Application of The Prosecutor for Leave to Amend the Indictment Pursuant to Rule 50 and Review and Confirmation of Amended Indictment and Related Documents (TC), 3 October 2001, which also granted other changes; Order for Non-Disclosure, 3 October 2001.

¹⁶ T. 9 October 2001 pp. 14-15, 22. Judge Pillay also ordered minor translation changes in order that the French version of the Indictment conform to the English original.

¹⁷ See decision of 30 May 2003: *Décision (Exceptions préjudicielles de la Défense relatives à forme de l'acte d'accusation)* (TC).

¹⁸ Appendix B to the Prosecution Pre-Trial Brief of 1 August 2003.

¹⁹ Decision on Prosecution Request to Amend Indictment (TC), 30 June 2003.

²⁰ Decision on Motion to Set a Date for Trial of the Accused or for Provisional Release (TC), 30 June 2003. See also previous Order (Prosecutor's Request For Extension of Time), 11 February 2003, and decision of 2 April 2003: *Décision (Requête du Procureur aux fins de la Prorogation des Délais de Réponse)*.

²¹ Decision on Prosecution Motion For Leave to Amend Indictment (TC), 20 August 2003.

conference, both parties agreed on very minimal changes to the Indictment, which, as amended, was filed the same day.²²

17. The trial commenced on 1 September 2003. Fifteen Prosecution witnesses, including one investigator and one expert, testified over twelve trial days. The Prosecution concluded its case on 30 September 2003. A Pre-Defence Conference was held on the same day. The Defence case was heard from 27 October to 28 November 2003. Nineteen witnesses, including one expert, were called over fifteen trial days. In total, thirty-four witnesses testified over twenty-seven trial days. The Chamber heard this case in afternoon shifts concurrently with another trial, *Prosecutor v. Bagosora et al.*

18. On 15 September 2003, the Chamber granted a Prosecution request for transfer of a detained witness from Rwanda and a Defence motion for protection of Defence witnesses.²³ The Chamber rendered an oral decision on 29 September 2003, disallowing the testimony of Prosecution Witness CGP, whose correct identity was made known to the Defence only three days before his scheduled testimony, on the basis that the Defence had not had adequate time to prepare.²⁴

19. An order for the transfer of Defence witnesses was issued by the Chamber on 2 October 2003.²⁵ On 22 October 2003, the Defence filed a statement of contested matters of fact and law pursuant to Rule 73 *ter* (B) (ii) of the Rules. The Chamber issued an oral decision on 28 November 2003, denying a Defence motion for the admission, under Rule 92 *bis*, of the statement of Defence Witness DX, who was unable to testify before the Tribunal in Arusha for health, safety and professional reasons.²⁶

20. By an oral decision on 28 November 2003, followed by a written decision on 10 December 2003, the Chamber dismissed a Prosecution motion for contempt of court regarding the conduct of Defence co-Counsel during his cross-examination of Witness CGL.²⁷

21. On 28 November 2003, the Chamber held a Status Conference with the parties to discuss the schedule for closing arguments. Accordingly, Prosecution and Defence closing briefs were submitted on 20 January and 6 February 2004, respectively, and oral arguments were heard on the afternoons of 1 and 2 March 2004.

5. Evidentiary Matters

General Principles

22. Pursuant to Rule 89(A) of the Rules, the Chamber is not bound by national rules of evidence, but by its own Rules. Where the Rules are silent, the Chamber is to apply rules of evidence which best favour a fair determination of the matter before it and which are

²² T. 1 September 2003 pp. 1-2.

²³ Order for Transfer of Witness CGC (Rule 90 *bis*), 15 September 2003; Decision on Defence Motion for Protection of Witnesses, 15 September 2003.

²⁴ T. 29 September 2003 pp. 16-17.

²⁵ Order for Transfer of Defence Witnesses DC, DM, DN, DO, and DR, Pursuant to Rule 90 *bis* (TC), 2 October 2003.

²⁶ T. 28 November 2003 pp. 24-26.

²⁷ *Id.* p. 15; Decision on Prosecution's Motion for Sanctions against Defence Counsel (TC), 10 December 2003.

consonant with the spirit of the Statute and the general principles of law, as provided in Rule 89(B). Any relevant evidence deemed to have probative value is admissible in accordance with Rule 89(C).

Assessment of Credibility of Witnesses

23. The Tribunal's jurisprudence has established general principles concerning the assessment of evidence. The Chamber may consider a variety of elements in assessing the credibility of witnesses, including contradictions between the witness's testimony and any prior written statements; inconsistencies or implausibilities within the testimony; and other features of the witness's testimony.²⁸ These elements must be considered in light of other factors, including the passage of time, the horrific nature of the events described, and cultural factors which may explain apparent discrepancies. As stated by the ICTY Appeals Chamber in *Kupreskic*:

It is certainly within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence. The presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence.²⁹

On the basis of these considerations, the Chamber is entitled to determine that some elements of a witness's testimony are reliable, while others are not.³⁰

Corroboration

24. Testimony by more than one witness on matters relevant to the same event enhances the reliability of evidence, but is not a necessary condition for a finding of reliability. It is well-established that a Chamber may consider a material fact proven by uncorroborated testimony which it considers to be reliable. On the other hand, a Chamber may determine that, in the absence of corroboration, the testimony is unreliable.³¹

Discrepancies With Former Statements

22. The parties made submissions on alleged discrepancies between the prior written statements of witnesses and testimony before the Chamber. The Chamber has considered these submissions fully in assessing the credibility of witnesses.

²⁸ *Akayesu*, Judgement (TC) paras. 130-156; *Bagilishema*, Judgement (TC), para. 22-25; *Semanza*, Judgement (TC), para. 36.

²⁹ *Kupreskic*, Judgement (AC), para. 31; *Musema*, Judgement (AC), para. 20; *Delalic et al.*, Judgement (AC), paras. 485, 496-498; *Akayesu*, Judgement (TC), paras. 142-143; *Kajelijeli*, Judgement (TC), paras. 39-40; *Bagilishema*, Judgement (TC), paras. 22-25.

³⁰ See *Bagilishema*, Judgement (TC), para. 960.

³¹ *Kayishema and Ruzindana*, Judgement (AC), para. 320; *Musema*, Judgement (AC), para. 36; *Rutaganda*, Judgement (AC), paras. 28-29; *Akayesu*, Judgement (TC), para. 134; *Kayishema and Ruzindana*, Judgement (TC), para. 70; *Musema*, Judgement (TC), paras. 45-46; *Kajelijeli*, Judgement (TC), paras. 41-42.

Hearsay Evidence

23. The Chamber notes that hearsay evidence is not inadmissible *per se*, even when it is not corroborated by direct evidence. The Chamber has considered hearsay evidence with caution, in accordance with Rule 89 and the Tribunal's jurisprudence.³²

Identification of the Accused

24. The Chamber is aware of the inherent difficulties and risks of identification evidence. As stated by the ICTY Appeals Chamber in *Kupreskic*:

A reasonable Trial Chamber must take into account the difficulties associated with identification evidence in a particular case and must carefully evaluate any such evidence, before accepting it as the sole basis for sustaining a conviction. Domestic criminal law systems from around the world recognise the need to exercise extreme caution before proceeding to convict an accused person based upon the identification evidence of a witness made under difficult circumstances.³³

The Trial Chamber has carefully assessed and weighed the identification evidence adduced by the Prosecution, including the following factors: prior knowledge of the Accused, existence of adequate opportunity in which to observe the Accused, reliability of witness testimonies, conditions of observation of the Accused, discrepancies in the evidence or the identification, the possible influence of third parties, the existence of stressful conditions at the time the events took place, the passage of time between the events and the witness's testimony, and the general credibility of the witness.³⁴

Alibi

25. The Chamber is guided by the definition of alibi provided in *Musema*, where the Trial Chamber stated that

[I]n raising the defence of alibi, the Accused not only denies that he committed the crimes for which he is charged but also asserts that he was elsewhere than at the scene of these crimes when they were committed. The onus is on the Prosecution to prove beyond a reasonable doubt the guilt of the Accused. In establishing its case, when an alibi defence is introduced, the Prosecution must prove, beyond any reasonable doubt, that the Accused was present and committed the crimes for which he is charged and thereby discredit the alibi defence. The alibi defence does not carry a separate burden of proof. If the defence is reasonably possibly true, it must be successful.³⁵

Evidence that the Accused was elsewhere at the time the crime was committed must be considered in conjunction with the Prosecution's evidence that he was there at the time and that he committed the crime.³⁶

³² *Musema*, Judgement (TC), para. 51; *Akayesu*, Judgement (AC), paras. 286-287, 290, 292; *Rutaganda*, Judgement (AC), paras. 34-35.

³³ *Kupreskic*, Judgement (AC), paras. 34-41.

³⁴ *Kayishema and Ruzindana*, Judgement (AC), para. 328; *Kayishema and Ruzindana*, Judgement (TC), paras. 71-75; *Niyitigeka*, Judgement (TC), para. 49; *Kunarac*, Judgement (TC), paras. 558-563.

³⁵ *Musema*, Judgement (TC), para. 108; affirmed on appeal, Judgement (AC), paras. 205-206.

³⁶ *Ntakirutimana*, Judgement (TC), para. 466.

CHAPTER II

FACTUAL FINDINGS

1. Introduction

26. This Chapter summarizes the Chamber's determinations of fact, based on the evidence presented by the Prosecution and the Defence in relation to the material facts alleged in the Indictment. As a preliminary matter, in Section 2, the Chamber will consider Defence objections that the events described in the Indictment misrepresent the Prosecution case as presented at trial, or are unduly vague. Section 3 addresses some factual issues of general concern, followed by sections 4 through 8 which assess individual events described in the Indictment.

27. During closing arguments, the Prosecution acknowledged that it had presented no evidence in support of paragraphs 6, 7, 14, 17, 18, 22, 23, 24, and 26, containing allegations against the Accused in respect of six distinct events.³⁷ Accordingly, the Chamber deems these allegations to be unproven.

2. Notice: Vagueness and Errors in the Indictment

28. Article 20(4)(a) of the Statute enshrines the well-established principle of international human rights law that an accused has the right to "be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her".³⁸ The Prosecution has a corresponding obligation, under Article 17(4) of the Statute and 47(C) of the Rules, to prepare an indictment presenting a concise statement of the facts of the case, and the crime with which an accused is charged. The *ad hoc* Tribunals have elaborated that this right, and this obligation, requires that an indictment state the material facts supporting the charges against an accused, but not the evidence by which such material facts are to be proven. This means that an indictment must define the Prosecution case with sufficient particularity, and accuracy, to enable an accused to prepare his defence.³⁹ On the other hand, the indictment need not achieve the impossible standard of reciting all aspects of

³⁷ T. 1 March 2004 pp. 47-53; T. 2 March 2004, p. 54. Paragraphs 17 and 22 cover a single event, as do paragraphs 18 and 23, in support of separate charges of genocide and extermination.

³⁸ International Covenant on Civil and Political Rights, Art. 14(3)(a) (identical language as in Statute); American Convention on Human Rights, Art. 8(2)(b): to have "prior notification in detail ... of the charges against him"; European Convention on Human Rights, Art. 6(3)(a): "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him".

³⁹ *Kupreskic*, Judgement (AC), para. 95 ("By framing the charges against Zoran and Mijan Kupreskic in such a general way, the Amended Indictment fails to fulfil the fundamental purpose of providing the accused with a description of the charges against him with sufficient particularity to enable him to mount his defence"); *Rutaganda*, Judgement (AC) para. 301 ("Accordingly, the indictment must be sufficiently specific, meaning that it must reasonably inform the accused of the material charges, and their criminal characterization"); *Semanza*, Judgement (TC), para. 44 ("The fundamental question in determining whether an indictment is pleaded with sufficient particularity is whether an accused had enough detail to prepare his defence"); *Ntakirutimana*, Judgement (TC), para. 42. As to the requirement of accuracy: *Rutaganda*, Judgement (AC), para. 303 ("Before holding that an event charged is immaterial or that there are minor discrepancies between the indictment and the evidence presented at trial, a Chamber must normally satisfy itself that no prejudice shall, as a result, be caused to the accused. An example of such prejudice is the existence of inaccuracies likely to mislead the accused as to the nature of the charges against him").

the evidence against the accused as it will unfold at trial.⁴⁰ Whether an indictment is defective requires an initial showing by the Defence that it was, because of either vagueness or inaccuracy, not reasonably able to meet the Prosecution case as actually presented.

29. Where the evidence at trial turns out differently than expected, and a specific objection is interposed by the Defence, the Trial Chamber should consider measures such as amendment of the indictment, an adjournment, or exclusion of the evidence in question.⁴¹ Where, however, a defect in the indictment in relation to certain evidence adduced is only raised at the end of the trial, the Trial Chamber may consider whether the defect has been cured by notice to the Defence by other means, such as the Prosecution Pre-trial Brief, disclosure of evidence, or proceedings at trial. The timing of such communications, the importance of the information to the ability of the accused to prepare his defence, and the impact of the newly-disclosed material facts on the Prosecution's case are relevant to determining whether subsequent communications make up for the defect in the indictment.⁴² When raised at the end of trial, the Defence has the burden of showing that its preparation was materially impaired by the defect in the indictment, notwithstanding any additional curative disclosure of the Prosecution case.⁴³

30. The Defence complains that the Indictment is vague and misrepresents the nature of the Prosecution case as presented at trial. These errors became known to the Defence only at trial, after it had completed its investigations and lost the opportunity to collect information to contradict the Prosecution case. The Defence complains that the Accused's role in attacks on Gitwa Hill is insufficiently defined and that the dates of his involvement were inaccurate or unspecific; that the event at Gasharu cellule is incorrectly dated as occurring at the beginning of May, whereas Prosecution witnesses testified that it occurred at the end of May; and that the Indictment erroneously identifies one of the alleged victims at Gasharu as being two different people. None of these grounds of objection were raised during trial. Finally, the Defence argues that the Prosecution's attempt to withdraw a number of paragraphs of the Indictment during closing arguments was prejudicial to the Defence. The Defence requests the Chamber to quash the Indictment in whole or in part.⁴⁴

31. The Prosecution submits that the Indictment accurately reflects the evidence available at the time it was prepared; that any errors in the Indictment were remedied by subsequent disclosures; and that the period specified is not unduly vague. The error concerning Mukantabana was corrected in the Prosecution Pre-trial Brief, disclosed a month before the commencement of trial. Accordingly, the Defence was not prejudiced. The date of events at Gitaka Centre in the Indictment correctly reflects the content of the witness statements of the four Prosecution witnesses to the event. As to Gitwa Hill, the Prosecution contends that the testimony showed that three incidents occurred there between 17 and 25 April and, accordingly, falls within the date range given in the Indictment. The date range accurately

⁴⁰ *Semanza*, Judgement (TC), para. 44 ("The fundamental question in determining whether an indictment was pleaded with sufficient particularity is whether an accused had enough detail to prepare his defence"); *Ntagerura et al.*, Judgement (TC), para. 32 ("The Chamber, however, does not expect the Prosecutor to perform an impossible task and recognizes that the nature or scale of the crimes, the fallibility of the witnesses' recollections, or witness protection concerns may prevent the Prosecution from fulfilling its legal obligations to provide prompt and detailed notice to the accused. If a precise date cannot be specified, a reasonable range of dates should be provided").

⁴¹ *Niyitegeka*, Judgement (AC), para. 194; *Kupreskic*, Judgement (AC), para. 92.

⁴² *Id.*, para. 197.

⁴³ *Id.*, para. 200.

⁴⁴ T. 2 March 2004 pp. 10-14, 17-18; Defence Closing Brief paras. 62-83.

reflects the dates of events at Gitwa Hill given in Prosecution witness statements, and is not unduly vague.

Inaccuracy of Dates of Events at Gitwa Hill

32. Paragraph 15 of the Indictment, which is substantially reproduced at paragraph 20, alleges that the Accused “led or participated” in attacks on Tutsi civilians at Gitwa Hill “over the course of several days, between 13 and 26 April 1994”. Paragraph 16 appears to enumerate one such attack in greater detail, in which the Accused “facilitated or participated” in an attack “on or about 14 April 1994” by throwing a grenade and by transporting and directing soldiers and *Interahamwe*. The Defence argues that this description is not sufficiently particular, in that it does not accurately reflect the testimony of Prosecution Witnesses, who testified that the events allegedly occurred between 20 April and 25 April 1994.⁴⁵

33. The three Prosecution witnesses who testified on events at Gitwa Hill were Witnesses CGV, CGY and CGN. Witness CGV, the only one to refer to the Accused throwing a grenade, testified that the attack occurred on approximately 17 April. Witness CGN testified that the Accused encouraged attackers at the Hill between 20 and 24 April and that an attack occurred shortly after his departure. Witness CGY testified that he saw the Accused incite attackers at Gitwa Hill on 23 April, and that attacks took place on the following days.

34. The dates in the Indictment gave the Defence a good idea of when the alleged events in question occurred, and a reasonable opportunity to investigate them and discover exculpatory information. The Indictment does not give the impression that the Accused participated in an attack on a single date throughout the period, but rather than he participated over the course of several days.⁴⁶ The date range was not unreasonable in light of the nature of the events. The witnesses testified that a large number of Tutsi refugees assembled on Gitwa Hill as early as 13 April and that a massive and final attack involving many thousands of attackers occurred on 26 April. Large numbers of attackers appear to have encircled the refugees and launched sporadic attacks throughout that period. Given the continuity and notoriety of the attacks at Gitwa, it was not unreasonable for the Prosecution to have used the duration of the attacks to define the possible dates of the Accused’s involvement. The Defence was reasonably able to meet the Prosecution case as presented in the Indictment.

35. In any event, the Defence did not interpose an objection to the admission of evidence in relation to the attacks at Gitwa Hill on the basis of lack of notice in the Indictment. This being the case, the Defence bears the burden of showing that it was materially prejudiced in its preparation. The Defence has made no such showing.

36. The Chamber also rejects the Defence complaint that the Indictment does not specify whether the Accused’s role was as a leader, subordinate, or accomplice. The Indictment is clear, in paragraph 15, that the Accused committed the wrongful acts in person; that he led, participated in attacks; and, in paragraph 20, that he participated in attacks, and that he transported, or facilitated the transportation of, attackers and weapons. The Indictment further specifies that the Accused’s responsibility is under Article 6(1) of the Statute. While the

⁴⁵ Defence Closing Brief para. 63; T. 2 March 2004 p. 10.

⁴⁶ See *Rutaganda*, Judgement (AC), para. 304. The fact that the Indictment indicated that multiple criminal acts had taken place over several days was a basis for latitude in interpreting the range of dates allowed under an indictment.

details of the Accused's physical participation in the attacks are not particularized in the Indictment, it is clear that he was there and encouraged the attacks in various ways. This was an accurate description of the evidence as it unfolded at trial.

Error in Date of Events at Gitaka Centre, Gasharu Cellule

37. Paragraphs 8 and 9 of the Indictment, which are substantially replicated in paragraphs 27 and 28, state that the Accused visited Gasharu cellule in early May and encouraged the killing of specific individuals by name. Four Prosecution witnesses offered testimony at trial concerning this event: Witnesses CGB, CGE, CGF and CGX. The first three of these witnesses testified that the visit actually occurred at the end of May, whereas Witness CGX, whose recollection was tentative, recalled that the visit occurred at the beginning of May. The Defence complains that it has been misled to its prejudice, in particular, because it would have searched for an alibi for the end of May.

38. The prior declarations of the witnesses are not in agreement as to the date of the Accused's visit to Gasharu. The statements of Witness CGB and CGF indicate that the Accused visited in early May; Witness CGX offers no date; and the English version of Witness CGE's statement says simply that it was in May, although the French version does say end of May. The Prosecution Pre-Trial Brief reflects the dates given in the English statements.

39. Despite the discrepancy between the dates in the Indictment and the dates given by witnesses at trial, the Defence was not deprived of a reasonable opportunity to meet the Prosecution case. The failure to give the proper date did not deprive the Defence of the opportunity to search for alibi evidence. Indeed, other events in the Indictment would have spurred the Defence to search for alibi during that period, including those mentioned at paragraphs 11, 12, and 13. The discrepancies between the witnesses' testimony and their prior statements may, of course, be used by the Defence to question their credibility.

Error in Identification of Victims Mukantabana and Nyiramaritete

40. Paragraph 8 of the Indictment alleges that the Accused incited the killing of two men, Mukantabana and Karegeya, in early May. Paragraphs 6 and 26 allege that the Accused came to Gasharu on or about 9 April and incited the killing of a woman named Tatiane Nyiramaritete. Paragraph 28 alleges that the killings of all three individuals – Nyiramaritete, Mukantabana, and Karegeya – were the result of the orders of the Accused. The error in the Indictment based on the failure to recognize that Mukantabana is an alias for Nyiramaritete is acknowledged in Appendix A of the Prosecution's Pre-Trial Brief, filed more than a month before the start of trial. There, the summary of the testimony of Witnesses CGE and CGF clearly indicates that Nyiramaritete is another name for Mukantabana.

41. The Defence has not made a showing that the erroneous inclusion of an additional victim in the Indictment has deprived it of a reasonable opportunity meet the Prosecution case. At the worst, the Defence would have conducted investigations into three persons with three different names, which would yield the same information as an investigation into two persons with those same three different names. The added burden on the Defence caused by such an error is minimal.

Inclusion of Erroneous Charges in the Indictment

42. The Defence complained that the Prosecution's acknowledgement that it had presented no evidence in relation to nine paragraphs of the Indictment, referring to five distinct events, showed that the Indictment was defective and that it had undertaken investigations based on false information.

43. The Defence has failed to show how the Prosecution's recognition that it had failed to present evidence in support of some elements of its case impaired its preparation for the remaining elements. This is a common feature of many trials. The Defence was aware of the roster of Prosecution witnesses a month before commencement of trial and, therefore, the scope of evidence to be presented. Although it likely undertook investigations which were not needed for trial, the Defence has not established how this caused prejudice in its preparation for paragraphs of the Indictment in support of which evidence was adduced by the Prosecution.

Conclusion

44. Accordingly, the Chamber finds that the Indictment is not defective in the sense of having caused prejudice to the Defence in its preparations for trial.

3. General Issues

3.1 Introduction

45. The Prosecution has offered evidence of certain matters which it claims are of general or contextual significance to the charges in the Indictment, without obviously falling within the scope of any single event. In particular, the Prosecution has adduced evidence of the events leading up to the accession to power of the Interim Government; the Accused's nomination and acceptance of the position of Minister of Finance therein; the Government's alleged policy of encouragement of mass killing of Tutsi throughout Rwanda; the participation of the Accused in a public meeting of Government Ministers on 3 May in Kibuye in which he allegedly voiced support for that policy; and the Accused's exercise of influence within the *Parti Sociale Démocrate* to induce the resignation of a colleague from political office because of his Tutsi wife.

46. The Prosecution characterizes the relevance of this evidence to the charges in the Indictment in different ways. The general characterization is that its purpose is to illuminate the "general context in which the Accused perpetrated crimes alleged in the Indictment". More specifically, the Prosecution contends that the Accused's membership in the Interim Government establishes a motive for the actions with which he is specifically charged in the Indictment; that it shows the requisite *mens rea* for genocide; and that it assists in understanding the encouraging effect that his mere presence would have at such places as roadblocks.⁴⁷

47. The Defence submits that this evidence should be disregarded or treated with extreme caution. It emphasizes that the Prosecution amended the Indictment on 7 July 2003 so as to delete four paragraphs of the Indictment which charged the Accused with genocide for his

⁴⁷ Prosecution Closing Brief pp. 30-52; T. 1 March 2004 pp. 2-3, 5-6, 14, 38.

role in the 3 May meeting in Kibuye, and for his participation in the Interim Government. Having done so, it should not now be permitted to resuscitate those charges indirectly.⁴⁸

48. The Chamber is of the view that the Accused's membership and participation in the Interim Government is relevant to the Indictment for certain limited purposes. Whether the Accused had the ability to lead, incite or otherwise encourage killings of Tutsi is directly relevant to charges throughout the Indictment that he did so. His official position and, thus, his ability to incite and lead others, is a legitimate matter upon which the Prosecution may adduce evidence. This is valid background information to understand how the Accused could have "instructed", "supervised", "led", "directed", or "commanded" the commission of specific criminal acts as charged in the Indictment. Indeed, Section I and paragraph 1 of Section II of the Indictment both allege that the Accused was a Minister in the Interim Government. Evidence of his position in the Government and his authority are directly relevant to the Indictment as providing background or contextual information.

49. The Prosecution argues that the Accused's participation in government and his involvement in the 3 May meeting in Kibuye are relevant to establishing his motive for committing crimes with which he is charged in the Indictment. In particular, the Prosecution theory is that the Accused was chosen as a Minister precisely because he was from Kibuye Prefecture and could assist the Interim Government in disseminating anti-Tutsi policies in an area which might resist those policies. Accordingly, his involvement in the Interim Government would itself provide a motive for the acts of incitement in Kibuye alleged in the Indictment. The Accused was a voluntary member of the Government, as evidenced by the 3 May meeting in Kibuye and the removal of Witness GKH from his Parliamentary position. The Prosecution further argues that his continued membership required him to commit the acts alleged in the Indictment.⁴⁹ The Defence challenged the Prosecution's characterization of the Accused's political motivations, and submitted evidence that the Accused was an involuntary participant in the Government, and only did the minimum expected to avoid endangering himself.

50. The Chamber is of the view that the Accused's participation in Government could be relevant to his possible motive for having committed the crimes enumerated in the Indictment. Motive is relevant to the alleged commission of a crime particularly where, as here, the Defence has raised the possibility that the Accused's motives were the opposite of what might be inferred from participation in the Interim Government. On the other hand, the Chamber is aware of the need to exclude consideration of matters which have little probative value in relation to the charges, and which are outweighed by their prejudicial effect.⁵⁰

51. The Chamber is not persuaded, however, that these events are relevant to the *mens rea* of the Accused. The direct evidence of the Accused's conduct, if believed, provides ample indication of the state of mind of the Accused in respect of the specific acts with which he is charged. To permit the Prosecution to adduce evidence of the Accused's intent in relation to other matters is, in these circumstances, unnecessarily prejudicial to the Accused and irrelevant to the charges in the Indictment.

⁴⁸ Defence Closing Brief paras. 116-117, 125; T. 2 March 2004 pp. 14-15.

⁴⁹ Prosecution Closing Brief pp. 32-34; T. 1 March 2004 p. 38; T. 2 March 2004 p. 57.

⁵⁰ *Ngeze and Nahimana*, Décision sur les appels interlocutoires (AC), Separate Opinion of Judge Shahabuddeen, 5 September 2000, paras 20-24; *Bagosora et al.*, Decision on Proposed Testimony of Witness DBY (TC), paras. 10, 30-34; *Ntagerura*, Judgement (TC), Separate and Dissenting Opinion of Judge Dolenc, para. 21.

52. The Defence has also at various points asserted that the absence of incriminatory statement regarding the Accused in certain documents should be considered by the Chamber as exculpatory evidence. Reference has been made, for example, to a preliminary report of a commission which had purportedly conducted extensive investigations into killings in Rwanda in 1994. The Defence tendered this lengthy report as an exhibit in connection with testimony by its expert witness, Dr. Bernard Lugan, who testified that there was no mention of the Accused in the report.⁵¹ The Chamber notes that the report, dated February 1996, is entitled “Preliminary”. According to its preface, the document does not claim to be authoritative or exhaustive in its coverage. None of the authors of the report were called before the Chamber; there was no discussion of its methodology, particularly in reference to the specific events alleged in the Indictment; and there was no testimony on whether the preliminary report had been superceded by a final report. In these circumstances, the Chamber is unable to assess its reliability, and does not consider its contents to contradict Prosecution evidence.

3.2 Position of the Accused in Interim Government, April-July 1994

53. The Accused testified that he was the Minister of Finance in the Interim Government from 9 April 1994 until after it went into exile in the Congo in July 1994. The manner in which he came to be a Minister in the Interim Government, and the significance of that participation, is contested.

The Accused

54. The Accused heard of the death of President Habyarimana, by a telephone call from a friend, on 6 April at about 8 or 8.30 p.m. At about 9 a.m. the next morning, the Accused was told by his watchman that soldiers were entering houses in the neighbourhood and killing people. He went into hiding at the small, inconspicuous house of a neighbour about 500 metres from his home, while his wife and two of his children hid with another neighbour who was a soldier in the Rwandan army. The Accused himself saw Presidential Guard soldiers, who were stationed in a camp in the vicinity, breaking into houses, where he believed they were killing people. He was fearful that he too might be killed because of his senior position in a political party, the PSD, which was perceived as pro-RPF.⁵²

55. In the afternoon of 7 April, RPF soldiers emerged from their positions at the CND, which were close to his hiding place, and started to kill people and fight with other forces that were present. The Accused called Hyacinth Rafiki, a PSD colleague who was the director of the cabinet at the Ministry of Public Works, who agreed to shelter him. He fled to Rafiki’s house in the neighbourhood of Kicukiro, about 1.5 kilometres away, which appeared to be calmer.

56. The Accused testified that at approximately 2 p.m. on 8 April, Colonel Théoneste Bagosora came to the house and reportedly asked Rafiki to accompany him to a meeting of the political parties at the Ministry of Defence in Kigali, to represent the PSD. The Accused also understood that when Rafiki told Bagosora about the Accused’s presence at the house, Bagosora also invited him to attend. Escorted by Bagosora in a military jeep with soldiers,

⁵¹ T. 20 November 2003 pp. 12-13; Defence Exhibit 52.

⁵² T. 24 November 2003 pp. 28-31, 33.

Rafiki, his family, and the Accused, drove in Rafiki's car to the Ministry of Defence. On the way, they picked up another PSD leader, François Ndungutse. Rafiki and Ndungutse were both members of the national politburo of the PSD, whereas the Accused was the chairman of the Kibuye region of the party.⁵³ The Accused denied that he knew whether Bagosora and Rafiki were friends, and did not know how it was that Bagosora came to his house.⁵⁴

57. The meeting to which they had been invited was already over, but representatives of the various parties were standing or seated in the room. They were told that a new interim government had been formed; that all the parties were represented in the government except for the PSD; and that the former PSD ministers had been killed. They were then asked who from the PSD would fill the positions allocated to the PSD. The Accused testified that the decision was taken then and there by Rafiki and Ndungutse, as members of the party politburo, that the Directors of the Cabinet of the Ministry of Public Works and Finance, who were Rafiki and the Accused, respectively, should be promoted to the position of Minister. The Accused did not specify who was to assume the Ministry of Agriculture, whose director of cabinet had already been killed. Ndungutse and Rafiki signed a political agreement reflecting that understanding, with the reservation that the ministerial appointments were provisional.⁵⁵

58. The Accused testified that he did not then know who the Prime Minister would be or the agenda of the prospective government. He was presented with a *fait accompli* and had no choice but to accept his designation by Rafiki as Minister of Finance of the new Interim Government. The next day, 9 April, he was sworn in as a Minister in the new Interim Government.⁵⁶

59. The Accused testified that he had no opportunity to flee Kigali or Rwanda at this stage. Early in the morning of 9 April, after having spent the night at the Hotel Diplomate near the Ministry of Defence, the Accused borrowed a car from Ndungutse and went with a gendarme assigned by Rafiki to find his wife and two children whom he understood to have taken refuge at a convent in the Kicukiro area. Once he found them, he did not feel he could flee: he understood that the RPF had surrounded the city; there were roadblocks manned by killers and the Presidential Guard; the gendarmes would not necessarily agree; and he would be endangering Ndungutse, who would be left behind.⁵⁷ From 11 to 18 May, the Accused testified that he was in Nairobi on mission on behalf of the government. His family remained in Gitarama, near the temporary seat of the Interim Government, at the house of the prefect of Gitarama, Fidèle Uwizera.⁵⁸ The Accused testified that if he had fled, as a leader of an unpopular party whose leaders had been murdered because they were perceived as pro-RPF, then his children would have been killed.⁵⁹

60. The Accused testified that his main function as Minister of Finance in the Interim Government was to secure the funds of the state, re-open the banks so that civil servants could be paid, pay advances to suppliers, and ensure that the staff of the Ministry of Finance was provided for. The Accused denied knowledge of statements by other members of the

⁵³ T. 24 November 2003 pp. 36-37.

⁵⁴ T. 27 November 2003 p. 6.

⁵⁵ T. 24 November 2003 pp. 38-41; T. 27 November 2003 pp. 7-9.

⁵⁶ T. 24 November 2003 p. 41-42; T. 25 November 2003 pp. 1-5.

⁵⁷ T. 25 November 2003 pp. 4-6.

⁵⁸ *Id.* pp. 11, 23-24; T. 27 November 2003 pp. 18-19, 40-41.

⁵⁹ T. 27 November 2003 p. 41.

government espousing a Hutu power ideology.⁶⁰ He further testified that he was not responsible for security and that that situation was not discussed in Cabinet meetings, as it was handled by a special Cabinet committee. He did not know of any prefects or other government officials being removed because of their efforts to protect Tutsi civilians. He considered the general objectives of the Interim Government to be to restore peace in the country, manage the government, and deal with hunger and famine.⁶¹

Dr. Bernard Lugan

61. Defence expert Bernard Lugan testified that a meeting to form the Interim Government was held at the Ministry of Defence in Kigali starting at 8 or 9 a.m. on 8 April. Those who put the Interim Government together were Hutu extremists. The only political party which did not participate in that meeting was the PSD, whose Ministers and senior members were either killed or in flight. Low-ranking members of that party arrived after the meeting was over and were “taken hostage”.⁶² The expert testified that it was important for the Hutu extremists to have PSD representation in the Interim Government in order to show that even the most moderate Hutu political grouping was part of a united front.⁶³

62. The Accused could not have refused to join the Interim Government: to have done so would have meant death. His decision to accept the ministerial position was a survival strategy from which he could not escape, even as time passed.⁶⁴ His role in the Interim Government was as a “technical minister” who was tasked with continuing the essential work of administration.⁶⁵

Dr. Alison Des Forges

63. Prosecution expert Dr. Alison Des Forges testified that Colonel Théoneste Bagosora organized a meeting of representatives of various political parties, all of whom were associated with the Hutu Power factions, at the Ministry of Defence on the morning of 8 April. The purpose of the meeting was to form an Interim Government espousing the Hutu Power agenda, but which preserved a pretense of legitimacy by appearing to preserve the multiparty division of ministries. The only party not represented at the morning meeting was the PSD.⁶⁶

64. Those behind the formation of the new Interim Government were apparently in search of PSD representatives, many of whom had already been killed or were in flight, to attend the meeting at the Ministry of Defence. Some time on 8 April, Bagosora came to the residence of Rafiki Nsengiyumva and brought him, Ndindabahizi and Ndungutse back to the Ministry of Defence. Under normal circumstances, it would have been unusual for someone from the prefectural, rather than national, leadership of the party to join the Cabinet, but the Accused’s finance background tipped the scales in his favour.⁶⁷ Although the PSD had no Hutu Power wing as such, there were political divisions within the party. Dr. Des Forges testified that the

⁶⁰ *Id.* pp. 10-11.

⁶¹ *Id.* pp. 12, 14, 17-19.

⁶² T. 19 November 2003 p. 37.

⁶³ *Id.* p. 38.

⁶⁴ T. 19 November 2003 pp. 37-38; T. 20 November 2003 pp. 1, 9, 37.

⁶⁵ T. 20 November 2003 p. 11.

⁶⁶ T. 24 September 2003 pp. 13, 16; Prosecution Exhibit P21 (Des Forges Expert Report) pp. 14-16.

⁶⁷ T. 24 September 2003 pp. 14, 16-17.

members of the PSD leadership who were left were almost certainly to be identified with Hutu Power factions, but also implied that the Accused himself had a relatively low political profile and that he would not have been clearly identifiable as a strong proponent of Hutu Power ideology. The expert believed that it was by chance that the Accused was on the scene.⁶⁸ She also testified that many representatives from southern prefectures were chosen in order to shore up support for the Hutu Power agenda in areas not traditionally sympathetic to that persuasion.⁶⁹

65. According to the expert, the Interim Government propagated the idea, and pursued a policy, that Tutsi, by virtue of their ethnicity, were to be regarded as accomplices of the RPF and should be considered as the enemy. Government protestations against the killing were insincere and, particularly beginning in mid-April, the Government intended to spread, not stop, the killing. Political leaders, particularly the prefects of Butare, Kibungo, and possibly Gitarama as well, were removed because they genuinely attempted to stop the massacre of Tutsi. Speeches were given by the President and the Prime Minister, particularly those given at Butare on 19 April and broadcast on the radio, making clear that a choice had to be made between support for the Government's program of genocide, or against it. Neutrality was not possible. The Interim Government made a number of visits to southern prefectures, including Gikongoro, Butare and Kibuye, whose purpose was to spread the genocide to areas that appeared to be resistant.⁷⁰

66. The expert testified that the name of the Accused was either not mentioned at all in her book, *Leave None to Tell the Story*, or is mentioned only fleetingly.⁷¹ The Chamber has taken this testimony into consideration.

Factual Findings

67. The Chamber need not make detailed factual findings or credibility assessments in relation to evidence of the Accused's participation in the Interim Government, which is not the basis of any charge in the Indictment.

68. As a matter of background information, the Chamber notes that the Accused was the Minister of Finance in the Interim Government from 9 April 1994, and continued in that position in exile after July 1994. He undertook ministerial duties, such as attending cabinet meetings, traveling on mission, and representing the Government as part of an entourage at "pacification meetings" to address security issues. The Chamber infers that the Accused had knowledge of the general activities and policies of the Interim Government, and that he exercised government authority in accordance with his position.

3.3 Participation of the Accused in Meeting of 3 May 1994, Kibuye

69. The Prosecution tendered evidence of the participation of the Accused in a meeting of Government Ministers at the prefecture offices in Kibuye on 3 May, which was broadcast on Radio Rwanda. Although the meeting is not mentioned in the Indictment, the Prosecution maintains that it is relevant to show the requisite *mens rea* of genocide, and to show that the Accused willingly and publicly associated himself with a government policy of genocide.

⁶⁸ *Id.* 13-14, 16-17.

⁶⁹ *Id.* p. 19.

⁷⁰ *Id.* pp. 22-26; Prosecution Exhibit 21 pp. 18-21.

⁷¹ T. 24 September 2003 p. 39.

Although the Chamber will not consider this event as proof of *mens rea*, but recognizes that it could be probative of an alleged motivation to actively pursue a government policy of genocide against Tutsi.

Dr. Alison Des Forges

70. Prosecution expert witness Dr. Alison Des Forges commented on the content of the speeches at the 3 May meeting as narrated in a document purporting to be minutes of that meeting prepared by the Prefect of Kibuye. She noted that the comment by the Prime Minister that there were RPF soldiers throughout the country was a device used to convince the civilian population that they were acting in legitimate self-defence. The speeches were generally intended to send a “double-message” that the killings should continue, but less visibly.⁷²

71. The expert witness examined each of the approximately ten statements attributed the Accused in the purported minutes of the meeting. Concerning the first statement about accomplices and the need for the *Interahamwe*, she said that the accomplices referred to were those who negotiated the Arusha Accords giving concessions to the RPF. This was a recitation of an official position concerning the Arusha Accords. Another statement combines a form of apology – that the PSD had previously included accomplices – with a call for Hutu solidarity. The witness refrained from saying whether the term “working” should be understood to be a euphemism for killing Tutsi, as it was sometimes used. She observed, however, that the Accused called for PSD members to join the civil defence program, which was an effort by the national government to channel and control the killing of Tutsi, which was threatening to spin out of control.⁷³

72. According to the alleged minutes, the Accused said that RPF documents found with its partisans showed that the RPF had been planning a war to exterminate the Hutu. The expert commented that documents and arms caches were commonly planted in order to create the false impression that there was an immediate danger to the population, and to encourage measures of self-defence. As to the Accused’s statement that the RPF wanted to paralyze the government and seize exclusive control for itself, the witness identified this as a common allegation, and part of a pattern of seeing all problems as the result of an RPF plot. The Accused also declared that retrieved documents show that there are RPF soldiers in every commune whose goal was to exterminate the Hutu. Despite its improbability given the relative share of Tutsi and Hutu in the population, the expert described this as a common element in radio propaganda, and as a dangerous message. The expert stated that to the best of her knowledge, there was no RPF military presence in Kibuye until after the end of June.⁷⁴ The Accused is also alleged to have said that leaders who led them astray should be denounced early, which the expert placed in the context of the removal of political leaders who were not sufficiently active in the campaign against Tutsi.⁷⁵

⁷² T. 24 September 2003 p. 29; Prosecution Exhibit 30 (minutes of Kibuye meeting); Prosecution Exhibit P21 (Des Forges expert report) p. 26.

⁷³ T. 24 September 2003 pp. 30-32.

⁷⁴ *Id.* p. 21.

⁷⁵ *Id.* pp. 31-32; Prosecution Exhibit P30; Prosecution Exhibit P21 (Des Forges Expert Report).

Witness DN

73. Though called as a witness for the Defence, the Prosecution elicited testimony from Witness DN concerning a meeting held on 3 May in Kibuye, called by the Prefect of Kibuye, and attended by a Government delegation which included the Prime Minister, Jean Kambanda, and the Accused. Witness DN testified that he attended the meeting from start to finish, at which about one hundred people were present, and also later heard a broadcast of the meeting on Radio Rwanda. The subject of the meeting was security. Witness DN testified that the Prime Minister and the Bourgmestres of Gishyita and Gisovu spoke of the need to be vigilant against *inkotanyi*. The witness explained that this term could have been understood either to refer to armed partisans of the RPF, or to Tutsi in general, including civilians. These speakers referred to *inkotanyi* in Bisesero and Gishyita, even though there were no RPF forces in these areas. Witness DN inferred that these speakers were extremists who were calling for the killing of Tutsi civilians.⁷⁶

74. Witness DN testified that by 3 May, killings of Tutsi had taken place at various locations in Kibuye, and that the Prime Minister would certainly have been aware of these events. Nevertheless, he made no mention of these killings during the meeting or the need to find out who was responsible. The witness confirmed that this would have been understood as an implicit encouragement of the killings, which continued in Kibuye after the meeting, through the months of May and June.⁷⁷

75. According to Witness DN, the Accused spoke at the meeting in response to an accusation by one Rwabukwisi that the PSD was in league with, or supportive of, the RPF. The Accused rejected the accusation and declared that the PSD was part of the Government. Specific statements attributed to the Accused in a document purporting to be minutes of the meeting were then put to Witness DN, who confirmed that the Accused made the following three statements:

No Rwandan leader will ever again be negligent. If there had been no accomplices among Rwandan leaders and if they had been *Interahamwe* Rwanda would not have fallen so low!

...

What happened, happened, but no leader will ever work for the enemy again.

...

He called upon the PSD party members to join others in fighting for the country's security, even if many accomplices were from their party. This was also the case in many other parties, which did not mean that these parties would stop working. He called upon *Abakombozi*, PSD party members, to register for civil defence in big numbers.⁷⁸

76. Witness DN testified that the Accused could not have spoken against the killings openly as he was in a vulnerable position as a member of the PSD, even though he was a Government Minister. Members of the PSD were viewed with suspicion. The only two individuals who spoke out against the killings at the meeting, Tharcisse Kabasha and Leonard Hitimana, were members of the MRND and MDR parties, respectively.⁷⁹

⁷⁶ T. 4 November 2003 pp. 2-5.

⁷⁷ *Id.* pp. 5-6, 33. The witness affirmed that killings had taken place in Kibuye at the Catholic Church and Home St.-Jean; at Mugonero Hospital; and at Mubuga and Nyange.

⁷⁸ *Id.* pp. 13-14; Prosecution Exhibit 30.

⁷⁹ T. 4 November 2003 pp. 33-34.

Witness GKH

77. Witness GKH testified that he attended the meeting of political leaders at the Kibuye Prefecture Office on 3 May. The Interim Government was represented by the Prime Minister and the three Government Ministers from Kibuye: Agnes Ntamabyaliro, Eliézer Niyitegeka and the Accused. As of this date, there had been massacres throughout Kibuye Prefecture and the Prime Minister stated that the purpose of the meeting was to stop the killings, also described as “pacification”.⁸⁰ He declared that the RPF had attacked the country and that there was a need to fight and defeat them, but that the killings also had to stop. In response to a claim by the Bourgmestre of Gishyita commune, Sikuwabo, that there were RPF soldiers in Bisesero, the Prime Minister said “You must be watchful to see whether they were RPF soldiers, *inkotanyi*, or if they were Batutsi who had fled to that location. If they were Batutsi, you should leave them, but if they were RPF soldiers, tell us, and we will provide assistance so that you can fight them.” Witness GKH testified that the RPF had not yet arrived in Kibuye as of the date of the meeting, and that they were still fighting in the Gitarama area.⁸¹

78. One of the participants, Dr. Leonard Hitimana from the moderate wing of the MDR party, condemned the massacres and said that it was necessary to take care of the small children who had survived previous massacres, and been taken to the hospital. Niyitegeka told the doctor that it was none of his business. The witness understood that Hitimana later had to flee to Congo because he was being persecuted. Witness GKH commented that there were those with malicious intentions at the meeting.⁸²

79. Witness GKH was unable to recall hearing the Accused speak at the meeting.⁸³

The Accused

80. The Accused testified that he accompanied Prime Minister Kambanda to the 3 May meeting at the prefecture offices in Kibuye. He stated that the purpose of the meeting was pacification. The meeting began with remarks by the Prefect, who spoke of insecurity in the prefecture in 1992 and 1993, as well as in April 1994. He mentioned that there were particular problems with property being seized, but that security was being restored. The Prime Minister then spoke from a prepared text, and referred to a document dated 27 April. Bourgmestres who were in attendance asked about infiltrations by the RPF, while others said that there were people with blood on their hands, who had killed people. The Prime Minister responded to these concerns.⁸⁴ The Accused stated that prior to this meeting he had no knowledge of the massacres at Gatwaro Stadium and Home St.-Jean and that he had seen no corpses during his trip by road from Gitarama to Kibuye on the morning of 3 May. The Accused did testify, however, that he was aware that massacres had taken place.⁸⁵

81. The Accused had not prepared a speech for the meeting, but responded to allegations during the meeting by a certain Dr. Murego of the MDR party, and another person named

⁸⁰ T. 1 September 2003 pp. 53-54; T. 2 September 2003 pp. 10-11. The witness identified Home St. Jean, Gatwaro Stadium, Nyange, Mugonero, and Bisesero as places where killings had already taken place.

⁸¹ T. 1 September 2003 p. 54.

⁸² *Id.* p. 54.

⁸³ T. 2 September 2003 pp. 10-11.

⁸⁴ T. 25 November 2003 p. 13; T. 27 November 2003 pp. 22-23.

⁸⁵ T. 25 November 2003 pp. 12-15.

Rwabukwisi, that there were accomplices of the RPF in the PSD. The Accused testified that he responded by acknowledging that there had been accomplices in his party, as in other parties, but that there were no longer accomplices. He also said that “We’re not against you, we’re not going to kill you.”⁸⁶ The Accused considered the accusation to be very dangerous to him and his party, as the same accusations had led to killings of PSD party members immediately after 6 April.⁸⁷

82. The Accused denied that he urged members of the PSD youth wing to join the ranks of other youth groups in the service of civil defence, or that he referred to past accomplices amongst the Rwandan leadership, as suggested by minutes of the meeting purportedly prepared by Prefect Kayishema, entered as Prosecution Exhibit 30. He alleged that the document was a forgery.⁸⁸

83. Using passages from the purported minutes of the 3 May meeting, the Prosecution alleged that the purpose of the meeting was not to end the killing of innocent civilians, but rather to make the killings more discrete, and conceal them from the international community. It further suggested that linking the payment of salaries to cellule leaders who redoubled their efforts to ensure security was, in fact, an incitement to kill Tutsis for which the Accused as Minister of Finance was directly responsible. The Accused disputed both assertions. As Minister of Finance, he was not responsible for payment of salaries. A statement attributed to the Prime Minister in the minutes, in response to concerns raised by Sikubwabo, the Bourgmestre of Gishyita, was not an attempt to encourage discrete killings, but rather a real insistence that the killing be restricted to those who were actual infiltrators.⁸⁹

Dr. Bernard Lugan

84. Defence expert witness Bernard Lugan testified that many participants at the 3 May meeting in Kibuye were Hutu Power extremists, who would have viewed the PSD as an accomplice of the RPF, and of the Tutsi. Kibuye was an area in which some of the worst massacres had occurred. If the Accused made the remarks attributed to him in support of the government of Prime Minister Kambanda, the expert would interpret those words to be part of a survival strategy. The words attributed to him in a summary of the proceedings, shown to him by the Defence, was the minimum that he could have said to avoid being killed.⁹⁰

Credibility Assessment

85. In *Niyitegeka*, Witness DN was found to be a credible witness in relation to his description of the speeches made at the 3 May meeting Kibuye.⁹¹ In particular, his understanding that the words “*inkotanyi*”, “accomplice” and “enemy”, as used by Prime Minister Kambanda and Eliézer Niyitegeka, were not intended to refer to armed RPF militants, but rather to the Tutsi population in general, was found to be credible. He repeated his opinion – shared by Witness GKH and Alison Des Forges – that there were no armed RPF insurgents in Kibuye at this time, and that the use of those terms was a veiled reference to Tutsi civilians in the area. The witness also repeated his testimony in the present case that by

⁸⁶ *Id.* pp. 14-15; T. 27 November 2003 pp. 25-26.

⁸⁷ T. 27 November 2003 p. 33.

⁸⁸ *Id.* pp. 5, 32.

⁸⁹ *Id.* p. 32.

⁹⁰ T. 20 November 2003 p. 15.

⁹¹ *Niyitegeka*, Judgement (TC), paras. 245-249.

failing to order a stop to the killings, Prime Minister Kambanda had delivered an implied message that the killings of civilians should continue, by failing to direct people to stop the killings. More generally, the Chamber in *Niyitegeka* found Witness DN's account of the 3 May meeting to be credible, noting that he had offered balanced testimony, both harmful and beneficial to the Accused in that case.

86. When questioned as to why the Accused, who was present as a representative of the Interim Government along with Kambanda and Niyitegeka, should not have been understood as subscribing to their remarks, Witness DN implied that the Accused could not have dissented openly because he was in a vulnerable position:

[I]n the different speeches that took place during that meeting there were people who go straight ahead and speak directly of what was going on, who practically incite others to kill ... There are others who give political discourse, who try to beat around the bush, who don't speak openly, who try perhaps to gloss over the situation, who don't want to get in depth, who move around a bit ... And so, when we take action and we try to go around something, we can't go directly, because if you move directly you might fall flat on your face. There are people who try to go around things, and perhaps they are doing so because they were just as afraid as I was, or, perhaps, they support what was going on.⁹²

When confronted with the examples of Tharcisse Kabasha and Leonard Hitimana, who did speak out directly against the killings, the witness responded:

I want to say that the protection of an individual that he has within the community depends on the party he comes from ... The PSD party had a reputation as being pro-RPF; everyone in that party without distinction. So in some way they have a label attached to them. Even in the language used, they're labeled as being pro-RPF. They are not seen in a good aspect. So the attitude that they have during meetings will be very different from the attitude from the MRND [such as Kabasha], because the MRND is already a principal player. The others, the PSD, are more vulnerable, are very vulnerable. They're in a very difficult situation.⁹³

87. The Chamber considers Witness DN's testimony of what was said at the 3 May meeting, and the interpretation of the subtext of the remarks of Kambanda and Niyitegeka, to be credible. The witness recalled three specific statements of the Accused from a written account of the meeting. Although the Accused admitted that he had made remarks at the 3 May meeting, he was evasive and vague in explaining the content of those remarks. The Chamber accepts Witness DN's testimony concerning the three statements, and rejects that of the Accused denying that he urged PSD youth members to join the civil defence program. The Prosecution failed to establish the reliability of the remainder of the *Kayishema* minutes, either by authentication of the document, or by independent corroboration of its content.

88. The interpretation given by the witness of the meaning of the Accused's speech stands on a more speculative footing. Witness DN guesses that there was a sub-text below the sub-text of the Accused's speech, and that he was obliged to say what he did because of his vulnerability as a member of the PSD. In the final analysis, however, Witness DN acknowledges that he could not determine the motivation behind the Accused's speech. The

⁹² T. 4 November 2003 p. 33.

⁹³ *Id.* p. 34.

Accused did not advert to any such underlying meaning, as he denied making any remarks which could have been interpreted as encouraging the killing of Tutsi.

Factual Findings

89. The Chamber finds that on 3 May 1994, a meeting took place at the Kibuye Prefectoral Office attended by political leaders, including the Prime Minister Kambanda, Minister of Information Niyitegeka, and the Accused, as representatives of the Interim Government. The ostensible purpose of the meeting, and of the remarks given by Kambanda, was restoring security and stopping the killing of civilians. The true meaning of his remarks, however, based on information that would have been understood amongst the participants of the meeting, was to tacitly or implicitly encourage more killing.

90. The Chamber finds, and the Accused admits, that he was present at the meeting as a representative of the Interim Government. The Accused made statements praising the *Interahamwe* and encouraged PSD youth to join the civil defence program. He made no suggestion that he opposed or distanced himself from statements by the Prime Minister which tacitly or implicitly encouraged the killing of Tutsi civilians; on the contrary, his own speech implied that he agreed with those remarks.

3.4 Forced Resignation of Witness GKH, June 1994

91. This event is not specifically mentioned in the Indictment, but is invoked by the Prosecution as corroboration for the charge that the Accused incited Witness DN to commit genocide by offering him a seat in Parliament that had been assigned to Witness GKH, discussed in Section 2 above. The Prosecution further argues that the event is material to the specific intent required for the charge of genocide in the Indictment, and to the general context in which crimes were committed.⁹⁴

Witness GKH

92. Prosecution Witness GKH testified that he had been a member of the PSD in Kibuye Prefecture since its inception in 1992. In 1993, he was designated by the PSD to be one of its representatives in the National Assembly prescribed by the Arusha Accords.⁹⁵ On 9 April 1994, an old friend from his native commune of Bwakira, who was also a fellow member of the PSD, came to his house in Kibuye Town and warned him to go into hiding, saying that he was in danger because he was perceived as a moderate within the PSD party and had a Tutsi wife. Witness GKH went with his wife and children to the old friend's house in Bwakira commune, and stayed there until July 1994 when he fled Rwanda.⁹⁶

93. In the middle of June 1994, the Accused visited Witness GKH in Bwakira commune, at a small trading centre in Kilinda, on Shyembe Road. The Accused arrived in his official vehicle, which was a dark beige Daewoo car, along with a driver and two guards.⁹⁷ Witness GKH testified that the Accused told him:

⁹⁴ T. 1 September 2003 p. 58; Prosecution Closing Brief p. 39.

⁹⁵ Prosecution Exhibit 3 (personal information sheet); T. 1 September 2003 pp. 49, 51; T. 2 September 2003 p. 5.

⁹⁶ T. 1 September 2003 p. 51; T. 2 September 2003 pp. 12, 22-23.

⁹⁷ T. 1 September p. 49; T. 2 September 2003 pp. 23, 26.

You see, assume there is going to be the swearing in, and I know that you have been elected and the Arusha Accords recognizes you as a transitional member of parliament. But it is unfortunate, given your behaviour or your conduct, since your wife is a Tutsi woman and that the matters that are going to be dealt with are going to be serious, for fear of you going to tell things back to your wife which she in turn will tell her brothers, people do not feel comfortable with you, they are not happy with you. And I would prefer you to resign from that position, from that post, and I'm going to look for a job for you elsewhere, so that you can no longer be a member of parliament. But if you insist, it's your right to be a member of parliament, but I do not guarantee your safety, your security, and you may be placing yourself in danger.⁹⁸

94. Witness GKH agreed to resign his position. He wrote down words to that effect dictated by the Accused on a blank sheet of paper, and signed it.⁹⁹ Though he testified that he could not recall the exact words, he remembered that the note read: "I, [Witness GKH], for the interests of the safety of my family and in order to safeguard my family and myself, I am resigning from the post of member of parliament in the transitional government." The witness testified that he was replaced by Witness DN, a PSD member from Kibuye, who was sworn in at the end of June or beginning of July.¹⁰⁰

Credibility Assessment

95. The parties disagree on the credibility of Witness GKH.¹⁰¹ The Defence asserts that there is a discrepancy in the description of the words in the resignation letter given by the witness in a prior statement to investigators. In that prior statement, the witness did not indicate that the letter made reference to his family. The Chamber finds that the discrepancy is minor, particularly in light of the witness's acknowledgement that he could not recall the exact words used in his letter of resignation. Further, in his prior statement, the witness did mention his family's security as a reason for his resignation, even if he did not specifically recall that he had made reference to it in the resignation letter itself. Given the passage of time since the event transpired, such a minor discrepancy in the witness's recollection does not impair his credibility.

96. On cross-examination, Witness GKH also testified that the Accused told him during their meeting that party members were not satisfied with him because he had not been very visible. The Defence implied that this concern was justified if the witness was in hiding with his friend throughout this period, and had, therefore, not attended party meetings. The witness responded that if such meetings had taken place, he had not been invited, and insisted that he was accessible to the party as he had informed Witness DN where he was going when he went to Bwakira.¹⁰²

97. The Chamber finds Witness GKH to be credible. His testimony was clear, forthright and consistent, and the Defence did not adduce any basis for believing that the witness had an interest in testifying against the Accused.

⁹⁸ T. 1 September 2003 p. 50.

⁹⁹ *Id.* p. 50; T. 2 September 2003 pp. 18-19, 25.

¹⁰⁰ T. 1 September 2003 pp. 50-51.

¹⁰¹ Prosecution Closing Brief p. 39; T. 1 March 2004 p. 35; Defence Closing Brief para. 135; T. 2 September 2003 pp. 16-18.

¹⁰² T. 2 September 2003 pp. 13-14.

Witness CGH

98. Witness CGH testified that between mid-April and late May, the Accused met with Witness DN and promised to make him a member of parliament if he succeeded in killing all the Tutsi women in his commune, including those married to Hutu men.¹⁰³ The witness knew that Witness GKH had been elected to be the PSD representative in parliament for Kibuye Prefecture, but during the conversation between the Accused and Witness DN, it was said that Witness GKH's wife was Tutsi and, therefore, that he should be removed. Witness CGH heard Witness DN's swearing-in ceremony on the radio in July 1994.¹⁰⁴

Credibility Assessment

99. Witness CGH's testimony concerning an alleged visit by the Accused to Bourgmestre Karara's house is examined in detail in section 5 below. The Chamber concluded that the witness's account of his presence in the room during the alleged meeting was not plausible; that his testimony substantially contradicted his prior written statement; and that he was not convincing in accounting for those contradictions. For the reasons expressed in that section, the Chamber does not credit the witness's testimony.

Witness DN

100. Defence Witness DN testified that the PSD was allocated eleven parliamentary seats under the Arusha Accords. Each party was responsible for designating its representatives in parliament, and Witness GKH was originally elected to be the party's representative from Kibuye. For reasons unknown to Witness DN, Witness GKH was never sworn in as a member of parliament. Witness DN was told by the Accused at the end of June that he was being designated as a PSD member of parliament representing Kibuye, but insisted that he had not replaced Witness GKH, but was instead assuming a new seat as the number of PSD representatives had increased from eleven to thirteen.¹⁰⁵ Witness DN testified that Witness GKH subsequently told him that the Accused and Witness GKH had met in Bwakira and discussed his nomination to parliament. Witness GKH did not mention that any threats had been made by the Accused:

Q. Did [Witness GKH] tell you that he was threatened by [the Accused]?

A. Threat, no, I didn't have any information concerning any threats from him. No threats, sir. I don't know. I didn't ask precisely the nature of the discussions [that] took place. There were no threats during that discussion; at least, information I've had from [Witness GKH] says there's not been any threat whatsoever.¹⁰⁶

101. Witness GKH did not mention that any threats had been made by the Accused to secure Witness DN's nomination. Witness DN considered his appointment to have been jointly effected by the Accused and Witness GKH as officials of the PSD party in Kibuye.¹⁰⁷ He was sworn in on 4 July 1994. On 14 July 1994, the government fled to the Congo and he did not have the opportunity to sit in the Parliament.¹⁰⁸

¹⁰³ *Id.* pp. 39-40.

¹⁰⁴ *Id.* pp. 40-41.

¹⁰⁵ T. 3 November 2003 pp. 22-23; T. 4 November 2003 p. 24.

¹⁰⁶ T. 3 November 2003 p. 23.

¹⁰⁷ T. 4 November 2003 p. 25.

¹⁰⁸ T. 3 November 2003 pp. 22-24; T. 4 November 2003 pp. 23-25.

Credibility Assessment

102. Confidential information disclosed to the Chamber shows that Witness DN has an interest in protecting the Bourgmestre of Gitesi commune in 1994, Augustin Karara.¹⁰⁹ The Prosecution asserts that Witness DN is lying in order to protect the Bourgmestre, whom it alleges was an accomplice of the Accused in committing criminal acts in Kibuye. Karara is presently detained in Rwanda awaiting trial on charges of genocide. The Prosecution's expert witness testified that a Bourgmestre exercised more immediate control over ordinary people than national political leaders, and would have been an indispensable partner of the Accused in the commission of genocide and other crimes.¹¹⁰ The Prosecution also alleges that Witness DN is lying to minimize Karara's involvement with the Accused and his wrongdoing, and characterizes the response to the question regarding threats as evasive.¹¹¹

103. The Chamber notes that Witness DN consistently attempted to distance Bourgmestre Karara from any wrongdoing, either personally or by virtue of his official position at the time. The Prosecution case is that Bourgmestre Karara received the parliamentary position at the expense of Witness GKH as a reward for wrongdoing encouraged by the Accused. Witness DN's interest in minimizing such connections may have affected his testimony on this question. The Chamber finds that Witness DN's testimony on this question appeared evasive and uncertain. It is unlikely, as a fellow member of the party, that Witness DN would have had no information concerning the reasons for Witness GKH's resignation, particularly as he spoke to Witness GKH on at least one occasion before the swearing-in ceremony.

104. In any event, Witness DN's testimony has little value in assessing the truth of Witness CGK's allegation. Witness DN had no direct knowledge of the conversation between Witness GKH and the Accused; his testimony was only that Witness GKH had not mentioned that the Accused had threatened him in order to induce his resignation. Considering that Witness GKH would likely have perceived that he had been replaced by Bourgmestre Karara, and would therefore have understood that he and the Accused shared a close relationship, there is little likelihood that Witness GKH would have mentioned the matter to Witness DN. Witness DN's testimony does not undermine Witness GKH's credibility.

105. Witness DN has previously testified before the Tribunal as a Prosecution witness in the *Niyitegeka* case, where the Chamber found him to be credible.¹¹² The only testimony of the witness considered by the Tribunal in that case concerned speeches given by various political leaders, including Eliézer Niyitegeka, at a meeting on 3 May in Kibuye.¹¹³ The present testimony is very different: it concerns matters which potentially inculcate Bourgmestre Karara, and which Witness DN might have an interest in minimizing or concealing. The witness did not see the event about which he is testifying, but only heard Witness GKH's description. The Chamber sees no inconsistency in finding that Witness DN's testimony concerning the reasons for the resignation of Witness GKH is not credible and deserves little weight.

¹⁰⁹ Defence Exhibit 40 (personal information sheet).

¹¹⁰ T. 24 September 2003 pp. 35-36; Prosecution Closing Brief pp. 38, 40.

¹¹¹ Prosecution Closing Brief pp. 39-40; T. 1 March 2004 pp. 10, 36-38; Defence Closing Brief paras. 552-572; T. 2 March 2004 pp. 7, 44, 49, 100-02.

¹¹² *Niyitegeka*, Judgement (TC), para. 249.

¹¹³ The event is discussed in Section 3.2 below.

Witness DQ

106. Witness DQ testified that while he was working as the comptroller for public finances at the Ministry of Finance in 1988 or 1989, he understood that Witness GKH, who was an accountant working in Butare, had mismanaged funds. The witness thought that Witness GKH later found a job with a Swiss agricultural project in Kibuye. Witness DQ mentioned that Witness GKH was later a PSD candidate for parliament for Kibuye Prefecture.¹¹⁴ The witness's recollection of the misappropriation was vague, and carries little weight. The Chamber does not consider that this allegation undermines the credibility of Witness GKH.

The Accused

107. The Accused testified that he met Witness GKH in Kalinda on 2 June. Witness GKH stated that he did not wish to attend the swearing-in ceremony and leave his family in a state of insecurity, and to go to a place of insecurity. The Accused did not try to influence Witness GKH to change his mind, as he understood that he was feeling insecure; his concern was rather to ensure that the PSD retain its seat in the parliament. The Accused and Witness GKH discussed a possible replacement and agreed upon Bourgmestre Karara.¹¹⁵

Factual Findings

108. The Chamber considers the testimony of Witness GKH as to the nature of his conversation with the Accused to be more convincing than that of the Accused. The Defence adduced no reason to doubt the honesty or impartiality of the witness, and the Chamber found his testimony to be clear, forthright, consistent and detailed. The Accused provided no explanation as to why the witness would have such a different account of the meeting than his own.

109. The Chamber finds that in early or mid-June 1994 the Accused pressured Witness GKH to relinquish his post as an elected Member of Parliament for Kibuye Prefecture because he had a Tutsi wife.

3.5 Fabrication of Evidence and Collusion Amongst Witnesses

110. Both the Prosecution and the Defence have alleged that witnesses appearing for the other side have conspired in the presentation of false testimony.

111. The Prosecution argues that Defences Witnesses DR, DO, DM, and DN are all in Gisovu prison together, along with the Accused's brother, Ezekias Seyeze. They therefore had a motive to lie on behalf of the Accused, and an opportunity to co-ordinate false testimony.¹¹⁶ For its part, the Defence contends that Witnesses CGX, CGE, and CGB all admitted to having been recruited by Witness CGH. Witness DF charges that Witness CGH, while working as a prison guard, boasted that he was going to manufacture evidence against the Accused.¹¹⁷ Witness DC alleges that Witness CGH took him to see the inspector of judicial police, who was with two white people. They offered to pay him fifty dollars if he

¹¹⁴ T. 6 November 2003 p. 18.

¹¹⁵ T. 25 November 2003 pp. 20-21.

¹¹⁶ Prosecution Closing Brief p. 99.

¹¹⁷ T. 2 March 2004 p. 5; T. 5 November 2003 p. 29.

testified about crimes committed by the Accused. When he refused, Witness CGH implied that he would be deprived of prison privileges because of his failure to cooperate.¹¹⁸

112. The Chamber considers the independent evidence of these allegations to be inconclusive. Nevertheless, where appropriate, the Chamber will closely examine testimony for indications of collusion and fabrication of evidence.

4. Actions of the Accused at Gitwa Hill, April 1994

4.1 Introduction

113. The Accused is charged with genocide for his alleged participation in attacks on Gitwa Hill in April 1994. Paragraphs 15 and 16 of the Indictment state:

15. Over the course of several days, between 13 and 26 April 1994, at Gitwa Hill, Emmanuel NDINDABAHIZI led or participated in killings of civilians identified as Tutsi by transporting soldiers and *Interahamwe* militia to Gitwa Hill, discharging a firearm or by directing attackers to kill Tutsi refugees with guns, grenades, machetes and clubs. The attacks resulted in numerous deaths.

16. On or about 14 April 1994, at Gitwa Hill, Emmanuel NDINDABAHIZI commanded, facilitated or participated in killings of civilians identified as Tutsi by throwing an explosive grenade and by transporting or directing soldiers or *Interahamwe* militia to attack with guns, grenades, machetes and clubs, resulting in numerous deaths.

The Accused is also charged with extermination as a crime against humanity for his alleged activities at Gitwa Hill:

20. Over the course of several days, between 13 and 26 April 1994, Emmanuel NDINDABAHIZI participated in attacks upon civilian Tutsi refugees who had gathered at Gitwa Hill. Emmanuel NDINDABAHIZI transported, or facilitated the transportation of, soldiers or *Interahamwe* militia or weapons to Gitwa Hill and led attacks against civilian Tutsi by his own example in discharging a firearm into a group of refugees or by launching an explosive grenade in the direction of a group of refugees or by ordering and directing the attackers to kill the refugees.

21. As a direct consequence of Emmanuel NDINDABAHIZI's participation in the attacks at Gitwa Hill, numerous Tutsi civilians were injured or killed.

The Prosecution submits that the Accused was present at Gitwa Hill on three distinct occasions within the time period specified in the Indictment, as more fully described below.

114. The Accused denied that he went to Gitwa Hill at any time between 6 April and July 1994.¹¹⁹

¹¹⁸ T. 30 October p. 16; Defence Exhibit 36.

¹¹⁹ T. 25 November 2003 p. 22.

4.2 Distribution of Weapons, Incitement and Participation in Attack, mid-April 1994

Witness CGV

115. Witness CGV, a Tutsi, testified that in the week following the death of the President, his Hutu neighbours chased him from his home in Gasero, Gitesi commune. He fled, along with his entire family, to Gitwa Hill on or about 15 April, where many Tutsi refugees had assembled. Approximately two days later, at around 2 p.m., the witness saw the Accused arrive at the bottom of Gitwa Hill in a white Toyota car accompanied by a green Daihatsu pickup packed with soldiers in military uniform and *Interahamwe* dressed in white.¹²⁰ The occupants of the two cars disembarked and assembled around the Accused, who held a grenade in his hand and had two more attached to his belt. Grenades and ammunition were off-loaded from the Daihatsu and distributed.¹²¹ After approximately one minute, the Accused threw the first grenade at the refugees. Other grenades were then thrown and shots were fired at the refugees, including from a sub-machine gun located on a nearby hill.¹²² The witness heard a fellow refugee, a certain Jean, who was an agronomist with the commune, say: “You have to run. There are soldiers and even Ndindabahizi has come to kill Tutsi ... There are no Tutsi to be killed in Kigali, now he is coming to kill people of his native region”.¹²³ The Accused accompanied the *Interahamwe* up the hill during the attack, but the witness testified that he was running to escape the attack and did not observe the Accused. The witness’s family died in the attacks that day.¹²⁴

116. Witness CGV considered the Accused to be the leader of the attack that day, having been the first to throw a grenade. Further, as a Government Minister, he was the most influential person present.¹²⁵

117. Witness CGV testified that he knew the Accused between 1980 and 1985 as the manager of the Kibuye Trafipro Shop, where the witness used to shop. He described the Accused as being of average height, with a short nose and his hair extended to his forehead. The witness identified the Accused in court.¹²⁶

Credibility Assessment

118. The parties disagree on the credibility of Witness CGV.¹²⁷ The Defence confronted the witness with inconsistencies between his prior written statements and his oral testimony about the presence of the Accused at Gitwa Hill. In his written statement of 26 April 2001, the witness indicated that he had sought refuge on Gitwa Hill between 13 and 14 April and had seen the Accused that very day.¹²⁸ Witness CGV responded that his recollection of dates was only an approximation, and that the attack may have taken place as early as 13 and 14

¹²⁰ Prosecution Exhibit 17 (protected witness information); T. 16 September 2003 pp. 3 - 4, 18 - 20, 22. The witness pinpointed the date as around 17 April, and stated that the vehicles arrived on the road leading to Gisovu. During closing argument, the Prosecution maintained that the events occurred between 17 and 20 April.

¹²¹ T. 16 September 2003 pp. 3-5, 21.

¹²² *Id.* pp. 4, 6, 21 - 22, 24.

¹²³ *Id.* pp. 4, 17.

¹²⁴ *Id.* pp. 6 - 7, 15.

¹²⁵ *Id.* pp. 4-5.

¹²⁶ *Id.* pp. 2-3, 7 - 8, 18.

¹²⁷ Prosecution Closing Brief pp. 22-23, 29; Defence Closing Brief paras. 27-29, 77, 178-180, 831-875; T. 1 March 2004 pp. 29-30, 33, 41, 50-51; T. 2 March 2004 pp. 5, 38, 41-43, 57, 59.

¹²⁸ T. 16 September 2003 pp. 18-19.

April, as he had stated in his earlier declaration. The Chamber considers it reasonable and plausible, given the passage of time and the traumatic circumstances of the events, that the witness's recollection of the date is not precise. The discrepancy does not affect his credibility.

119. The Defence notes that the witness's prior statements describe the soldiers and *Interahamwe* as being transported in both vehicles, whereas his testimony was that the Accused travelled alone in his vehicle with his driver.¹²⁹ However, the Defence did not put this alleged discrepancy to the witness and the Chamber considers it unlikely that the witness would have told investigators that soldiers and *Interahamwe* were crowded into the Accused's relatively small sedan. The witness's credibility is not placed in doubt by this alleged discrepancy.

120. According to the Defence, Witness CGV's testimony on the actions of the Accused during the attack contradicts his first written statement to investigators, dated 26 April 2001. It follows from the statement that the Accused was present, watching the attack, but it is not mentioned that he threw a grenade or otherwise actively participated. The witness said that the investigators must have misunderstood his description of the actions of the Accused.¹³⁰ The Chamber observes that in the first statement, Witness CGV did indicate, consistent with his testimony, that the Accused was holding a grenade in his hand, and also said that "[t]hey then started attacking us, with grenades first". In a second statement, described as a "supplement" and dated 4 June 2001, the witness clarified that the Accused had, in fact, thrown the grenade. The Chamber does not find any discrepancy between the testimony and previous statements.¹³¹

121. The Defence also asserted that Witness CGV did not adequately explain how he could have observed the Accused while running in the opposite direction, and that his refusal to estimate his distance from the Accused was evasive.¹³² However, the witness explained that he observed the Accused for about a minute before the grenade was thrown. He gave a clear indication that the distance was about equal to the width of the courtroom.¹³³ These matters do not undermine the credibility of the witness.

122. Witness CGV's statement of 26 April 2001 contains the following sentences: "Both at Gitwa and Muyira, Tutsi women were raped and subsequently killed. Apart from the woman you interviewed yesterday, all the other women were killed on the battlefield." When asked by the Defence and the bench to identify the woman to whom he was referring in his statement, the witness denied knowing her.¹³⁴ This response appears to contradict the witness's prior statement.

123. The Defence questioned why Witness CGV waited seven years before offering information about the Accused, despite the fact that he had previously appeared as witness in Rwandan proceedings. The witness responded that the Accused had not been on trial in

¹²⁹ *Id.* p. 21. The Defence also argues that there was a discrepancy in the type of weapons unloaded from the vehicles, but no contradiction was clearly elicited on cross-examination, nor was the alleged discrepancy put to the witness.

¹³⁰ *Id.* pp. 14-15.

¹³¹ Defence Exhibit 12 (statement of 26 April 2001); Defence Exhibit 13 (statement of 4 June 2001).

¹³² T. 16 September 2003 pp. 22-23.

¹³³ *Id.* p. 22 ("I would say – I will start from the wall on the other side, and we were on the other side of the room").

¹³⁴ *Id.* p. 16.

Rwanda and, therefore, that he had not volunteered the information against an absent defendant.¹³⁵ The Chamber accepts this explanation.

124. The Defence challenged the witness's identification of the Accused. Witness CGV testified that he saw the Accused many times between 1980 and 1985 at the Kibuye Trafipro Shop.¹³⁶ The Prosecution submits that the Accused's denials that he ever worked, interned or visited the Kibuye Trafipro shop are unbelievable. It further argues that an attestation obtained by the Defence from the Trafipro Cooperative, purporting to show that the Accused worked only at the Trafipro office in Kigali, does not exclude the possibility that the Accused visited the branch during his employment.¹³⁷

125. Prosecution witnesses CGN and CGM also testified that they saw the Accused at the Kibuye Trafipro Shop during the same time period.¹³⁸ Though the Chamber accepts that the Trafipro attestation indicates that the Accused worked at the head office of Trafipro Cooperative in Kigali from 10 November 1976 to 31 December 1981, this is not inconsistent with his occasional visits to the branch store in Kibuye during that period. On the other hand, the Chamber questions how the witness could have concluded that the Accused was the manager of the store in Kibuye.

126. During his cross-examination, Witness CGV indicated that he did not recognize the Accused, and that Ndindabahizi was identified by a companion. Upon further Defence questioning, however, Witness CGV insisted that he knew the Accused well enough to identify him, even though he had not seen him since 1986.¹³⁹ A related issue is the witness's observation that the Accused threw a grenade. Witness CGV was the only witness to testify that the Accused participated directly in an attack.¹⁴⁰ There is no evidence that the Accused had any military background or training which would have qualified him to handle or throw a grenade. He is alleged to have thrown the grenade uphill which, though not impossible, seems a dangerous tactic given the proximity of his targets.

127. Neither Witness CGN nor Witness CGY, both of whom were on or near Gitwa Hill around this time, mentioned any attack as described by Witness CGV.¹⁴¹ Such an attack, involving grenades and machine gunfire from an adjacent hill, would likely have come to their attention, whether directly or by the accounts of others.

Factual Findings

128. Witness CGV's testimony is uncorroborated, and is implicitly contradicted by Witness CGN and CGY's lack of knowledge of any such attack. Further, the witness made conflicting remarks about his basis for identifying the Accused. Finally, there is doubt about the likelihood of the Accused throwing a grenade as described by the witness. For these reasons, the Chamber entertains a reasonable doubt as to whether the Accused participated in an attack on Gitwa Hill, on or about 17 April 1994, or that he facilitated the attack by transporting *Interahamwe* and distributing weapons.

¹³⁵ *Id.*

¹³⁶ *Id.* pp. 2 - 3, 18.

¹³⁷ Prosecution Closing Brief p. 50; Defence Exhibit 50 (Trafipro attestation).

¹³⁸ T. 8 September 2003 pp. 2 - 3, 24; T. 15 September 2003 pp. 4 - 5, 21, 45 - 47.

¹³⁹ T. 16 September 2003 pp. 17 - 18, 26.

¹⁴⁰ T. 1 March 2003 p. 30; T. 2 March 2003 p. 57.

¹⁴¹ T. 8 September pp. 17 (Witness CGN), 33 (Witness CGY).

4.3 Distribution of Weapons and Incitement, 23 April

Witness CGY

129. Prosecution Witness CGY, a Tutsi, was living near Kibuye Town when he heard of the death of the President on 7 April. Feeling that the security situation in Kibuye was worsening, he left on 11 April and went to a place outside of town where his family lived. After attacks by *Interahamwe* on surrounding areas, the witness and his family fled again on 15 April. He took his wife, who was pregnant, and one of his small children to stay at the house of a Hutu friend on Karongi Hill. His mother and his two other children found shelter with another person on Karongi Hill, while the witness and his brothers assembled with many other refugees on Gitwa Hill.¹⁴² Witness CGY testified that he moved regularly between Gitwa Hill and the two places on Karongi Hill where his family was hidden, at least until 20 April.¹⁴³ When the witness arrived, tens of thousands of refugees from Kibuye Prefecture and beyond were already encamped on Gitwa Hill, with their cattle, goats and other animals. Others trickled in after his arrival.¹⁴⁴ The witness took refuge there because he felt that there was security in numbers.

130. Witness CGY testified that on 23 April, at around 11 a.m., he saw the Accused arrive at a roadblock near Gitwa Hill in a white double-cabin vehicle, accompanied by two gendarmes and a driver. Two other vehicles followed: a blue Daihatsu carrying six to ten gendarmes and not more than twenty *Interahamwe*, wearing banana leaves on their heads; and a beige Toyota “stout” model pick-up with about six gendarmes and an unspecified number of *Interahamwe*, also wearing banana leaves on their heads.¹⁴⁵ The witness estimated that there were about six civilians manning the roadblock when the Accused arrived, but that about thirty or more assembled while the Accused was there.¹⁴⁶

131. According to Witness CGY, the Accused spoke to those at the roadblock, asking whether people were still taking refuge on Gitwa Hill. They answered that no more refugees were arriving. The Accused said that “they should implement the plan that was envisaged immediately”. About thirty machetes in one or more cartons were then unloaded from the Daihatsu and distributed, and the Accused explained “that the weapons that had just been distributed were to be used in implementing the plan that had been drawn up, and that they should not just keep them without using them”.¹⁴⁷ Camouflage uniforms were also distributed for those who would lead the attacks. Those assembled, some of whom were already armed with machetes and clubs, rejoiced at the distribution of weapons. The Accused remained at the roadblock for less than half an hour, and then left in the convoy in a northerly direction.¹⁴⁸ Witness CGY testified that he observed this scene at a distance of about twenty-six metres,

¹⁴² Prosecution Exhibit 7 (protected witness information); T. 8 September 2003 pp. 33, 50-53.

¹⁴³ T. 8 September 2003 p. 50. At first, the witness testified that he moved back and forth between the two hills every day between 15 and 26 April, but then he later corrected himself to say that these journeys ceased on 20 April when his wife and children joined him on Gitwa Hill, T. 9 September 2003 p. 1.

¹⁴⁴ T. 8 September 2003 pp. 33, 49.

¹⁴⁵ *Id.* pp. 37-38, 40-41, 53. The witness specified that the roadblock was located at a crossroads between Gitwa Hill and an FM antenna, which seems to be a reference to an antenna on Karongi Hill.

¹⁴⁶ *Id.* p. 56.

¹⁴⁷ *Id.* pp. 38-39, 57-58.

¹⁴⁸ *Id.* pp. 39-41, 58.

from his hiding place behind a wooden house which was slightly uphill from the roadblock.¹⁴⁹

132. The witness testified that there was no attack on Gitwa Hill on the day of the visit of the Accused, but small-scale attacks took place on 24 and 25 April, both of which were repulsed by the refugees who defended themselves with traditional weapons including machetes. The attackers did not have guns during these attacks.¹⁵⁰ The witness testified that people who had received weapons from the Accused on 23 April also participated in the attack on 24 April.¹⁵¹ On 26 April, Gitwa Hill was assaulted from all sides by many Hutu attackers, a few of whom were armed with, and used, guns and grenades. Witness CGY did not know the origin of the firearms, but believed that they had been distributed secretly.¹⁵² A large number of Tutsi were killed, and only the able-bodied escaped. The witness did not see the Accused or any other government ministers or prefects during the attacks on Gitwa Hill.¹⁵³

133. Witness CGY testified that he first came to know of the Accused as a young man around 1968 or 1969. The witness was then studying at Kirambo, and would see the Accused on holiday from his secondary school visiting his native area of Gasharu, which was near Kirambo.¹⁵⁴ During the multi-party era after 1990, Witness CGY saw the Accused at PSD party rallies in Kibuye, at a place known as the MRND Palace.¹⁵⁵ The witness gave a physical description of the Accused and identified him in court.¹⁵⁶

Credibility Assessment

134. The Chamber has assessed the credibility of Witness CGY in light of the parties' submissions.¹⁵⁷ The Defence submits that Witness CGY's testimony concerning the timing of his arrival at Gitwa Hill is contradicted by his written statement of 10 May 2001, and that his explanation of that contradiction is implausible. In the prior statement, the witness said that he stayed at Karongi Hill up until about 21 April and then went to Gitwa Hill. The witness clarified that between 15 and 20 April he shuttled between Gitwa Hill and the two locations on Karongi Hill where members of his family were hidden. He testified that he could not stay with his family on Karongi Hill because attackers would find and take people from houses in which they were hidden. He further suggested that he moved between these different locations at night, in order to provide food to other members of his family on Gitwa Hill, from supplies which had been hidden at Karongi Hill.¹⁵⁸ The Defence submits that it is implausible, under the circumstances, that the witness would have risked daily trips between

¹⁴⁹ *Id.* pp. 40, 47-48, 56-57. The witness at first indicated that he was between twenty-five and fifty metres away but then, using a reference point in the courtroom, specified that the distance was about twenty-six metres. The reference point itself in the courtroom is about 21 metres in length, to which the Accused would "add maybe another five metres".

¹⁵⁰ T. 8 September 2003 pp. 41; T. 9 September 2003 pp. 1-3.

¹⁵¹ T. 8 September 2003 pp. 39, 41. The witness named Jean Munyangeyo, Martin Kanyamibwa, Jean Rwamasasu, Nyagasaza, and one Mathias as recipients of weapons on 23 April.

¹⁵² T. 9 September 2003 p. 2.

¹⁵³ T. 8 September 2003 pp. 35, 42.

¹⁵⁴ *Id.* p. 35; T. 9 September 2003 p. 9.

¹⁵⁵ T. 8 September 2003 pp. 35-36; T. 9 September 2003 pp. 9-10.

¹⁵⁶ T. 8 September 2003 pp. 36, 47.

¹⁵⁷ Prosecution Closing Brief pp. 20-22; Defence Closing Brief paras. 28, 733-784, 898; T. 1 March 2004 pp. 29, 31-32, 50-51; T. 2 March 2004 pp. 5-6, 38-39, 41-43.

¹⁵⁸ T. 8 September 2003 pp. 50-53; T. 9 September 2003 p. 1.

Gitwa Hill and Karongi Hill, citing Witness CGN's testimony that the hill was surrounded by attackers.¹⁵⁹

135. Extensive reference was made during cross-examination to a prior statement of the witness, dated 10 May 2001. The document was not tendered by the Defence as an exhibit, possibly due to an oversight.¹⁶⁰ The Chamber has looked at the relevant portions of the witness statement in order to determine whether the excerpts selected by the Defence were correctly characterized, viewed in context. Those portions read as follows:

On 15 April 1994, we decided that it was too dangerous and some of us fled to Gitwa Hill. Myself, I went with some people to Karongi FM Hill. There I met my friend ... He accepted to hide me. I went to Gitwa Hill and brought my children also to Karongi FM Hill. My wife, who is Hutu, however, was pregnant and could not walk up either to Karongi FM Hill or to her parents' house. I hid her in another house with Hutu friends.

I stayed at Karongi FM Hill up to about 21 April... I left and hid in bushes near to Gitwa Hill... At one occasion, before I saw Ndindabahizi Emmanuel, also saw Minister of Information Eliezer Niyitegeka once. ... Often young men like me were checking around Gitwa Hill whether attacks were coming. ... Almost every day, Gitwa Hill was attacked but these attacks were small and Tutsi people taking shelter there, used to resist the attack. ... I saw Ndindabahizi Emmanuel about 23 April ...

Read in its entirety, the statement confirms Witness CGY's testimony that he went both to Gitwa Hill and to Karongi Hill on 15 April, and that he shuttled between these hills until 21 April. It also refers to the witness's concern for his family, who had sought refuge at different locations. Accordingly, the witness's testimony clarifies, rather than contradicts, his prior statement.

136. The Chamber does not find that these trips were implausible. Witness CGY acknowledged that the trips were extremely dangerous, but took the risk in order to bring essential food to his family. Witness CGN does not specify when Gitwa Hill was surrounded, and Witness CGY himself testified that these journeys became too dangerous after the soldiers arrived. The witness explained that he moved at night, which obviously reduced the risk of being discovered. Furthermore, there is no precise information available on the position of attackers between Karongi and Gitwa Hills.

137. During examination-in-chief, Witness CGY explained that he was certain of the date on which he saw the Accused because he was listening to the radio on that day. He was unable to explain in response to questions from the Bench and the Defence what, in particular, on the radio reminded him of the date.¹⁶¹ During re-examination, however, the witness explained that the date of the large-scale attack on Gitwa Hill was firmly etched in his memory as having occurred on 26 April, and that the presence of the Accused was three days before that unforgettable event.¹⁶²

138. Although Witness CGY's reference to the radio was unclear, the Chamber does not consider that it undermines his credibility. Given the dramatic events during the final attack on 26 April, the witness's explanation that he had a firm recollection of that date is not

¹⁵⁹ T. 8 September 2003 p. 42.

¹⁶⁰ *Id.* pp. 52, 54-55, 57-59; T. 9 September 2003 pp. 9-10.

¹⁶¹ T. 8 September 2003 pp. 53-54.

¹⁶² T. 9 September 2003 p. 11.

implausible. Nor is it unlikely that he would have been able to recall that a visit by the Accused occurred three days earlier. Under these circumstances, the Chamber does not consider that this part of his testimony was unreliable, much less that it undermines his general credibility.

139. The Defence argues that there is a substantial discrepancy between Witness CGY's testimony of what the Accused said at the roadblock on 23 April and his written statement. The witness mentioned twice in his testimony that the Accused referred to a "plan" that was to be implemented immediately, whereas in his prior statement there is no reference to a plan, although the civilians are told "You know what to do with these weapons".¹⁶³ The witness explained that the difference was purely a matter of translation and that he had, in substance, said the same thing in his testimony as in his prior statement. The Chamber does not consider this inconsistency significant.

140. According to the Defence, there are discrepancies between the witness's description of attacks on Gitwa Hill between 18 April and 26 April in the present case and his testimony in the *Musema* trial. It is submitted that in that case, Witness CGY testified that there was an attack on 18 April, followed by a large attack on 26 April, but that there were no attacks between those dates.¹⁶⁴ The witness believed that his testimony in the prior case had been improperly recorded, and that he had made reference to other small-scale attacks.¹⁶⁵ The Prosecution suggested, rather, that the witness had not mentioned the attacks on 24 and 25 April in his prior testimony because they were of minor significance compared the large attack which followed on 26 April. The Chamber accepts the Prosecution's explanation of the discrepancy. Whether there were any attacks between 18 and 26 April does not appear to have been a matter of significance in the prior testimony and, accordingly, the witness may have omitted mention of relatively small-scale attacks. The Chamber notes that according to his prior statement of 10 May 2001, quoted by the Defence, the witness said that there were attacks on Gitwa Hill almost every day, but that they were small. The statement also refers to a small attack on 25 April.

141. The Defence challenges the plausibility of the hiding place from which Witness CGY saw the Accused, in particular, whether he would have been able to observe the Accused from that place and at that distance. The witness explained that his view of the road was not obstructed by vegetation, and that he was able to conceal himself behind the wooden house. The Defence suggested that the need to hide would have prevented Witness CGY from seeing or hearing everything that happened at the roadblock, but the witness insisted that he observed the Accused until his departure.¹⁶⁶ The Defence further questioned the witness's observations as vague and uncorroborated by any other witness.

142. The Chamber accepts that the witness could have observed the Accused and heard his words at a distance of twenty-five metres. The fact that he was hiding behind a wooden structure at the time does not make such observation impossible or even unlikely. The very reason for his presence there was to observe the vehicles that had arrived. The Chamber is satisfied that the witness's description of his vantage point is credible.

¹⁶³ T. 8 September 2003 p. 58.

¹⁶⁴ *Id.* p. 55; T. 9 September 2003, pp. 3-6; Defence Closing Brief paras. 750-757.

¹⁶⁵ T. 9 September 2003 p. 6

¹⁶⁶ T. 8 September 2003 pp. 56-57, 59; Defence Closing Brief paras. 764-769.

143. Witness CGY's identification of the Accused is disputed by the Defence. It is suggested that the witness could not have seen the Accused in 1968 or 1969, as the Accused would have been expected to return to his native cellule, rather than to Kirambo, where the witness was studying. However, the witness testified that Kirambo was near the residence of the Accused.¹⁶⁷ The Defence also questioned why the witness would have seen the Accused at PSD political rallies in the 1990's even though he was not himself a member of the PSD. The witness answered that he was curious and that the rallies were near his workplace.¹⁶⁸ The Chamber finds these explanations plausible.

144. The Defence argues that according to Witness CGY's prior statement he first saw the Accused at the end of 1993 after he had left a meeting at the Prefecture offices and was driving around Kibuye greeting members of his party.¹⁶⁹ However, that statement also mentions that the witness was a native of the same sector as the Accused and knew him in connection with political rallies, as described above. The Chamber considers the reference to seeing the Accused for the first time to be ambiguous, and not indicative of a clear contradiction with the testimony.

145. Witness CGY was asked by the Defence why he would have waited more than seven years before mentioning the name of the Accused to any national or international authority concerning his conduct. The witness responded that he had never been asked about the role of the Accused before that time.¹⁷⁰ The Chamber accepts this explanation.

146. The Defence alleges that there are discrepancies in Witness CGY's recollection of the time and duration of the presence of the Accused. In his written statement dated 10 May 2001, the witness situated the arrival of the Accused on Gitwa Hill around noon and stated that he stayed for less than twenty minutes. In his oral testimony before the Tribunal, the witness asserted that the Accused arrived at around 11 a.m. and stayed for less than thirty minutes.¹⁷¹ In the Chamber's view, these discrepancies are minor and do not affect the reliability of the testimony.

147. The Defence asked Witness CGY to explain why a Government Minister would have arrived at Gitwa Hill for the sole purpose of distributing machetes, which were already possessed by a large number of the attackers. The Defence queried why he would not have brought firearms, which the witness said were used in the attack on 26 April.¹⁷² The witness did not consider the distribution of machetes and camouflage uniforms surprising, and also suggested that guns may have been distributed which he did not see. The Chamber does not consider it surprising that machetes were distributed during the events in 1994 and sees no reason to disregard the witness's testimony on this basis.

148. In summary, it follows from Witness CGY's testimony that on 23 April 1994, the Accused transported assailants and distributed machetes to Hutu at a roadblock between Gitwa Hill and Karongi FM Hill. The Accused came in a white vehicle and was accompanied by a Daihatsu from which machetes were offloaded, as well as a Toyota which carried

¹⁶⁷ T. 8 September 2003 p. 35; T. 9 September 2003 p. 9; Defence Closing Brief para. 778.

¹⁶⁸ T. 8 September 2003 pp. 35 - 36; T. 9 September 2003 p. 9.

¹⁶⁹ T. 9 September 2003 p. 10.

¹⁷⁰ *Id.* p. 8.

¹⁷¹ Defence Closing Brief paras. 745-746.

¹⁷² T. 9 September 2003 p. 8.

civilians and *Interahamwe*. The Chamber defers a final finding on the credibility of this witness until after consideration of Defence witnesses, including the testimony of alibi.

4.4 Distribution of Weapons and Incitement, 24 April

Witness CGN

149. Prosecution Witness CGN, a Tutsi, testified that he fled to Gitwa Hill from his nearby home after he and his Tutsi neighbours were attacked.¹⁷³ He saw Tutsi being killed and their homes burnt down. The witness estimated that there were already more than 10,000 Tutsi refugees on the hill when he arrived.¹⁷⁴ On 24 April, at about 10.30 or 11 a.m., Witness CGN saw vehicles approaching Gitwa Hill along the Kibuye-Karongi road.¹⁷⁵ He and two others descended to a hiding spot in the bush above the road about twenty-five to thirty metres from where the vehicles had stopped, to determine whether there were any soldiers amongst those arriving.¹⁷⁶ The witness saw the Accused standing by a white sedan, which he knew to be customarily used by the Accused. He also saw a green Daihatsu which had transported eighteen to twenty gendarmes inside, as well as about fifty *Interahamwe* who were hanging from bars on the back of the truck. A third vehicle, a blue Toyota or Hilux, arrived subsequently, carrying Nambajimana, the Conseiller in the witness's sector; Ruzindana, who came from Rwamatamu; and a former journalist called Niyitegeka.¹⁷⁷

150. Witness CGN testified that he saw the *Interahamwe* unload a wooden box from the Daihatsu, from which they took about fifty new machetes.¹⁷⁸ In addition to those who had come in the vehicles, there were many other civilians present around the vehicles. These civilians applauded, shouted and danced at the arrival of the vehicles and the distribution of weapons because, according to the witness, they assumed that the soldiers had come to exterminate the Tutsi refugees on the hill.¹⁷⁹ The witness believed that the Accused was in charge and supervised the distribution of weapons, because he was a very important personality working for the Government, whereas everyone else was a civilian or a gendarme. The Accused addressed those assembled, saying: "Go. There are Tutsis who have become difficult ... There are Tutsi on the hill and they've proved to be difficult. You, therefore, have to kill them, and when you kill them, you will be compensated."¹⁸⁰

151. The Accused then left in the white sedan in the direction of Gisovu, accompanied by a gendarme. The green Daihatsu with the gendarmes and the blue Toyota departed with the sedan. The civilians who had arrived in the Daihatsu were left behind.¹⁸¹ The civilians to whom the machetes had been distributed then launched an attack on the hill, which the refugees were able to repulse by throwing stones.¹⁸² Witness CGN testified that there had

¹⁷³ Prosecution Exhibit 6 (protected witness information); T. 8 September 2003 pp. 4-5, 16 - 17.

¹⁷⁴ T. 8 September 2003 pp. 8, 17.

¹⁷⁵ *Id.* p. 4. The witness testified that he recalled that he saw the Accused between 20 and 24 April. However, he also recalled that "two days later", the refugees were dispersed from Gitwa Hill. The uncontradicted testimony of Witness CGN and several other witnesses was that the attack dispersing the refugees occurred on 26 April. Accordingly, the Chamber infers that the witness's testimony was that the Accused visited on 24 April.

¹⁷⁶ *Id.* pp. 5-7, 9, 20-22. The Prosecution asserts that this attack occurred on 20 April. T. 1 March 2004 p. 31.

¹⁷⁷ T. 8 September 2003 pp. 8-9.

¹⁷⁸ *Id.* pp. 5, 7.

¹⁷⁹ *Id.* pp. 11, 20.

¹⁸⁰ *Id.* p. 8.

¹⁸¹ *Id.* pp. 5, 10.

¹⁸² *Id.* p. 10.

been attacks on the Tutsis assembled at Gitwa Hill by Hutu civilians armed with machetes, small hoes and clubs every day from 14 through 20 April. The attackers surrounded the hill and made escape impossible. He estimated that the attackers numbered as many as 50,000 civilians.¹⁸³

152. Witness CGN testified that on 26 April, gendarmes joined the attackers and fired their guns on the civilians on Gitwa Hill. Many refugees were killed, although some were able to disperse and hide. All of the witness's family members were killed.¹⁸⁴

153. The witness testified that the Accused was well-known in his region and that he used to see him during holidays, as well as on other occasions. He recalled that the Accused was at university around 1969 to 1971, and that before 1980, he used to see him at the Kibuye Trafipro shop. The witness also knew the Accused to be a member of the PSD party during the multi-party era, and remembered seeing him twice in 1992 and 1993 attending political rallies at the Kibuye Stadium.¹⁸⁵ He estimated that he had seen the Accused a total of ten or eleven times in his life. Witness CGN identified the Accused in court and asserted that he had known him for a long time.¹⁸⁶

Credibility Assessment

154. Both parties have addressed the credibility of Witness CGN.¹⁸⁷ The Defence submits that the witness was vague or inconsistent as to the date, or possibly dates, on which he saw the Accused. These alleged inconsistencies were not put to the witness during his cross-examination, and could, potentially, have been explained by the witness. Nor did the Defence put to the witness alleged inconsistencies concerning the description of the vehicles that arrived with him and their passengers; whether more than one box of machetes was unloaded; and the words spoken by the Accused to those assembled. The Chamber considers these matters to be of minor importance. It accepts that it was difficult for the witness to provide precise dates, almost nine years after the events.

155. The Defence suggests that Witness CGN's description, and identification, of the Accused at Gitwa Hill is implausible. The witness could neither have distinctly heard nor identified the Accused amongst the large and boisterous crowd by which he was surrounded. The witness explained that he was only twenty-five to thirty metres away from the Accused and that, as he was in danger, his hearing was particularly acute. Further, the Accused had asked the crowd to remain quiet and, as he was respected, they were. The Defence questioned why only fifty machetes would have been brought for a crowd of thousands and, on the other hand, considered it implausible that any machetes would have been distributed when the population already possessed machetes. The witness acknowledged that many people owned machetes, but that the machetes were brought for those too poor to buy their own.¹⁸⁸ The Defence showed a photograph to the witness, purporting to demonstrate that there was no vegetation in which he could have remained hidden while observing events. The Prosecution

¹⁸³ *Id.* p. 18.

¹⁸⁴ *Id.* pp. 12, 17.

¹⁸⁵ *Id.* p. 3.

¹⁸⁶ *Id.* pp. 4, 13, 15.

¹⁸⁷ Prosecution Closing Brief pp. 20-21; Defence Closing Brief paras. 28, 77, 763, 786-830, 876-880; T. 1 March 2004 pp. 29, 31, 50-51; T. 2 March 2004 pp. 5, 37-41, 43, 59.

¹⁸⁸ T. 8 September 2003 p. 23.

objected that the photograph was taken long after the events in question, and the witness stated that the bush had been burned down since April 1994.¹⁸⁹

156. The Chamber does not find the witness's account of events to be implausible. The Defence has not raised a reasonable doubt that the area was, in fact, vegetated at the relevant time or that it was otherwise implausible that the witness could have hidden twenty-five to thirty metres from the Accused. At that distance, the Chamber considers it possible that the words of the Accused would have been audible to the witness, given the conditions he describes. The witness did not testify that 50,000 people surrounded the Accused when he spoke; rather he estimated that there were a total of 50,000 civilians around Gitwa Hill from time to time.¹⁹⁰ The circumstances described by the witness are not inconsistent with his audible observation of the words of the Accused. The distribution of machetes is not implausible, taking into account the context of Rwanda in 1994. Finally, the Chamber accepts the witness's testimony that vegetation in which he had hidden had been burned down since the events.

157. The Defence submits that Witness CGN's identification of the Accused is unreliable. In his written statement of 27 April 2001, the witness stated that he knew the Accused as Minister of Finance in Kigali and used to see him when he came to Kibuye. The Defence infers from the witness's statement that this refers to a time-period prior to 1994, and that that the Accused was never a Minister before that period. According to the Defence, there is a contradiction between the witness's direct testimony, when he said that he was in school while the Accused was in university, and his cross-examination, during which he stated that he was a farmer during that same period. It is further submitted that the Accused never worked at the Trafipro in Kibuye and, therefore, that the witness's assertions to the contrary are erroneous. Further, the Defence argues that the in-court identification of the Accused was meaningless because the Accused was the only black male in the courtroom not wearing a lawyer's robe or a security officer's uniform, and that a guide given to all witnesses contains a sketch which indicates the location of the Accused in the courtroom.

158. The Chamber observes that during cross-examination, Witness CGN clarified that he only knew the Accused to be Minister of Finance in 1994.¹⁹¹ The Defence did not challenge the witness's statement on cross-examination that he was a farmer while the Accused was at university, and it is not impossible that the witness was both a student and a farmer during the same period. The Accused's occasional presence at the Kibuye Trafipro is corroborated by Witnesses CGV and CGX. An attestation obtained by the Defence from Trafipro purporting to show that the Accused worked at the head office in Kigali does not exclude the possibility that he was occasionally present at the Kibuye branch.¹⁹² The Chamber accepts the witness's testimony that going to university was a mark of notoriety for individuals from his region and that the Accused was well-known. His account of his knowledge of the Accused was credible.

¹⁸⁹ *Id.* p. 21.

¹⁹⁰ *Id.* pp. 18-19.

¹⁹¹ *Id.* p. 24.

¹⁹² Defence Exhibit 58 (Trafipro attestation). The witness did not insist that the Accused had formal employment there: T. 8 September 2003 p. 25 ("They sold clothings – clothing and other implements. I used to see him there, and when I saw him there, I thought he worked there, but I really do not know, but he was a very important person in that area.")

159. The Defence contends that Prosecution Witness CGY contradicts the testimony of Witness CGN. In his written statement of 3 April 2001, Witness CGN states that Witness CGY informed him that the Accused continued on the road that leads to Gisovu Commune, and testified that Witness CGY had told him that the Accused had distributed weapons there.¹⁹³ During his testimony, Witness CGY acknowledged that he knew Witness CGN and had spoken with him about events in 1994, but denied ever having discussed the Accused. Witness CGY denied having gone to Gisovu and stated that he did not see the Accused anywhere other than Gitwa Hill. Witness CGY also testified that he was now living in the same house as Witness CGN, but denied having any discussions about their testimony.¹⁹⁴

160. While there is a conflict in the testimonies of Witnesses CGN and CGY in respect of Gisovu, it is peripheral to the series of events to which the witness testified and is not suggestive of a deliberate attempt to mislead the Chamber. On the contrary, the discrepancy supports Witness CGY's claim that he had not consulted with Witness CGN concerning his testimony or had otherwise colluded to prepare a uniform account of events.

161. Witness CGN's testimony was not vague and evasive, as argued by the Defence, but clear and direct. He explained forthrightly alleged discrepancies with his prior statements, and his explanations were reasonable and adequate. The Chamber defers a final finding on the witness's testimony until after consideration of Defence witnesses, including the testimony of alibi.

4.5 Absence of the Accused from Gitwa Hill

Witness DC

162. Defence Witness DC testified that he participated in attacks against Tutsi in 1994, beginning in his home commune of Rutsiro on 11 April. He also participated in an attack at Gatwaro Stadium in Kibuye Town on 18 April. About a week later, the witness walked to Gitwa Hill with approximately 1,000 others to participate in attacks there. When they arrived, they found the Bourgmestre of Gishyita commune and the *Conseillers* of Kagabiro and Gishyita Sectors.¹⁹⁵ Soldiers told them that a gendarme had been killed in an attack on the Hill, and that they should leave and return the next day after more weapons had been collected.¹⁹⁶ The next day, which the witness recalled as being either 25 or 27 April, the attackers returned and joined a force of about 15,000 in a large-scale attack on Gitwa Hill that lasted from about 10 a.m. until 2 or 3 p.m. There were no survivors. The Bourgmestre of Gishyita commune launched the attack.¹⁹⁷ Witness DC testified that he was present at Gitwa Hill for two days of attacks, but that he knew that the attacks spanned a total of four or five days. Witness DC did not see any distribution of machetes at Gitwa Hill, and testified that no one came to participate in the attacks without a weapon.¹⁹⁸

163. Witness DC testified that he did not see the Accused at Gitwa Hill while he was there, and that he never heard anyone mention that he had been present. The witness believed that he would have heard if the Accused had been present, because as such an important person,

¹⁹³ T. 8 September 2003 pp. 25-26; Defence Closing Brief para. 876-878; Defence Exhibit 6.

¹⁹⁴ T. 8 September 2003 pp. 46 - 49.

¹⁹⁵ T. 30 October 2003 pp. 4, 6.

¹⁹⁶ *Id.* p. 8.

¹⁹⁷ *Id.* pp. 8, 23, 41.

¹⁹⁸ *Id.* pp. 7, 12-13.

the Accused would undoubtedly have given money to support the attackers.¹⁹⁹ Subsequently, while Witness DC was in prison in Rwanda for having participated in the killings, he did not hear the Accused's name mentioned at meetings amongst the inmates at which crimes committed in 1994 were discussed. Further, the witness alleged that he had been offered \$50 by the director of the prison in which he was detained to testify against the Accused.²⁰⁰

164. Witness DC testified that he had seen the Accused on one occasion in 1991 or 1992, when he was pointed out by the Bourgmestre of Rutsiro as a person of authority who was working in the Prime Minister's office. He never saw him again.²⁰¹

Credibility Assessment

165. The Prosecution asserts that Witness DC fabricated his testimony.²⁰² It is submitted that the witness's confessions from Rwandan court proceedings make no reference to his presence at Gitwa Hill. The witness responded that he had made an additional confession to the Rwandan Prosecutor, not amongst those tendered in court by the Prosecution, in which he describes his participation in the attacks at Gitwa Hill.²⁰³

166. Witness DC acknowledged that he was only at Gitwa Hill for the last two days of attacks. The Prosecution submits that, even assuming that the witness was present, these are days when the Accused was probably not present at Gitwa Hill. Further, the witness had only seen the Accused once before at a chance meeting at a roundabout and would probably have been unable to identify the Accused amongst the large number of attackers present.

167. The Prosecution suggests that Witness DC concocted his testimony at the urging of Witness DN, with whom he had previously been imprisoned, in order to discredit Prosecution witnesses. Witness DC went to great lengths in his testimony to distance Witness DN from any wrongdoing, placing blame for leadership and support of the attacks with another Bourgmestre. Witness DC is currently in prison and has nothing to lose by incriminating himself further for the benefit of the Accused. Absent corroboration, the witness's testimony should be rejected as not credible.

168. The Chamber considers Witness DC's testimony concerning the events at Gitwa Hill to be of limited significance to the allegations against the Accused. The witness's account of the date and scale of the final attack on Gitwa Hill are corroborated by Witnesses CGN and CGY. Further, given the scale and duration of the attacks, it is not unlikely that attackers in the area would have joined the attacks on Gitwa Hill. Without further information, the Chamber does not consider the absence of any reference to the attacks in the Rwandan proceedings submitted by the Prosecution to be persuasive.

169. The Chamber does not accept the witness's testimony that he certainly would have been aware of any visit by the Accused to Gitwa Hill. The Prosecution witnesses place the

¹⁹⁹ *Id.* pp. 10-12, 23. The witness testified that other people of importance had given the attackers money, such as the Bourgmestre of Gishyita Commune, and a *Conseiller*.

²⁰⁰ *Id.* p. 10

²⁰¹ *Id.* p. 9.

²⁰² Prosecution Closing Brief pp. 51, 82-87, 106; Defence Closing Brief paras. 186, 645-653; T. 1 March 2004 pp. 12-14, 32-33; T. 2 March 2004 pp. 5, 22-23, 26, 28-29, 41-44, 58.

²⁰³ T. 30 October 2003 pp. 29-36, 39-41. The witness testified that this confession was contained in a letter addressed to the Rwandan Prosecutor in Kibuye, and that he may have previously mentioned those activities in a confession to the Rwandan Prosecutor on 18 November 1995.

Accused at Gitwa Hill before the arrival of Witness DC. Those sightings appear to have been of limited duration and, in the case of Witness CGY, did not necessarily involve the attendance of a large crowd. Under these circumstances, Witness DC would not necessarily have been aware of the Accused's role at Gitwa Hill. For the same reason, the witness may not have subsequently heard the Accused's name mentioned as amongst the participants in the attack.

4.6 Alibi

Witness DP

170. Defence Witness DP testified that in 1994 he worked at the National Bank of Rwanda. On 12 April, he fled from Kigali, where fighting had subsided, to the house of his in-laws in Gitarama. At about 7 p.m. that day, the Accused came to his in-laws' house and told the witness that the Government had decided to re-open the banks and that he should return to work. For the next two days, the witness assisted in the transfer of funds from Kigali to the vaults of two commercial banks in Gitarama, with an armed escort of soldiers from Camp Kigali.²⁰⁴ From 15 April to around the end of May, the witness was responsible for executing payment vouchers from the national treasury, in particular to employees and suppliers of the government.²⁰⁵

171. Witness DP estimated that he saw the Accused once or twice a day, excluding weekends, from 15 April until about 28 May.²⁰⁶ The witness reported the accounting situation of the Government, including figures for payments, credits, and the account balance, directly to the Accused.²⁰⁷ These meetings took place at various times of the day, either at the Accused's office in the Government compound, or at one of the two commercial banks in Gitarama where the witness worked. The meetings were not scheduled, and the witness found the Accused at his office almost whenever he went there; he commented that the Accused was so busy that he could rarely get away.²⁰⁸ On occasion, Witness DP also met the Accused socially, at a bar close to the Government compound in Murambi, or at the house of his wife's aunt, who was a friend of the Accused.²⁰⁹ Witness DP considered it materially impossible that the Accused would have had the means or the time to distribute machetes in Kibuye during this period, noting that the roads from Gitarama to Kibuye were not in good condition.²¹⁰

172. According to Witness DP, the Accused left Gitarama for Nairobi for about one week, beginning approximately 17 May, as the Government's representative at trade discussions with neighbouring countries. The Accused also made two day-trips for Government meetings convened by the Prime Minister: the first to a meeting in Kibuye in early May, and the second to a meeting in Gikongoro in May.²¹¹ The witness did not know of any other absences

²⁰⁴ T. 7 November 2003 pp. 2, 4, 6-7.

²⁰⁵ *Id.* pp. 8-9.

²⁰⁶ *Id.* pp. 12, 27-28, 30.

²⁰⁷ *Id.* pp. 10-11, 25.

²⁰⁸ *Id.* p. 15. He estimated the distance separating the commercial banks and the Government offices to be between two and four kilometres: *Id.* pp. 11, 22.

²⁰⁹ *Id.* pp. 26-27. The witness testified that he had been acquainted with the Accused in university, but had not seen him since then. *Id.* p. 5.

²¹⁰ *Id.* p. 16.

²¹¹ *Id.* pp. 12, 14.

of the Accused from Gitarama, but conceded that he did not “see him every hour of every day”.²¹²

173. Around 28 May, Witness DP left Gitarama as a result of RPF attacks. He went to Gisenyi, along with the Government, which set up its headquarters at the Meridien Hotel. The witness continued to perform his job in a similar manner, but the situation was chaotic and he saw the Accused not more than once every two or three days.²¹³ On 14 July, the witness went to his office and found that everything had been packed up. He left Gisenyi in his car with his family that day, arriving two days later in Goma, the Congo. Witness DP observed that the Accused was already in Goma upon his arrival.

Credibility Assessment

174. The Prosecution does not contest the validity of the Accused’s alibi that he was in Nairobi from 11 to 18 May.²¹⁴ However, it challenges both the credibility and significance of Witness DP’s alibi testimony.²¹⁵ The Chamber considers this evidence in light of the legal principles set out in Chapter I.5.

175. The Chamber has not found any significant inconsistencies in the witness’s testimony. The Accused’s testimony regarding his functions in Gitarama did not contradict the witness’s account. The Prosecution’s suspicion regarding an alleged kinship between the witness and the Accused through their wives was not substantiated, and seems unlikely given the witness’s frank acknowledgement that his wife’s aunt was a long-time friend of the Accused. It is not implausible that the witness would have reported to the Accused, given the disorganization of the Government, their prior acquaintance from university, and their connection through the aunt of the Accused’s wife.

176. It is clear that the witness’s alleged contact with the Accused does not make it impossible that he visited Gitwa Hill in April or May 1994. The Defence concedes that the witness’s testimony does not provide the Accused with an alibi for “every hour of each day” during this period, but contends that a trip to Kibuye Prefecture would have been unlikely, and that the witness would have been aware of such trips had they taken place. Further, the evidence appears calculated to establish the improbability that the Accused, given the demands on him, would have travelled 150 km to distribute machetes.

177. The Chamber is of the view that Witness DP’s evidence of what he thinks he would have known, or of the general pre-occupation of the Accused with Government business, carries little weight. As the witness himself acknowledged, the Accused’s pre-occupation with Government business may have been much reduced during the weekends.²¹⁶ The Chamber takes judicial notice of the fact that 23 and 24 April, two of the days on which the Accused is alleged to have been present at Gitwa Hill, fell on the weekend.²¹⁷ The witness acknowledged that he seldom saw the Accused other than during the working week, meaning that his alibi evidence has little relevance to these days. Further, such a visit could have been made during the week, for example, on a weekday after a morning meeting with the witness.

²¹² *Id.* pp. 14-15.

²¹³ *Id.* pp. 16-17, 28.

²¹⁴ T. 1 March 2004 p. 52.

²¹⁵ Prosecution Exhibit 2 (Prosecution investigators’ report).

²¹⁶ T. 7 November 2003 p. 12.

²¹⁷ Joseph Whitaker, *Whitaker’s Almanac* (London: The Stationary Office, 1999) p. 93.

178. The witness did not explain the basis for his opinion that he would have known of any trip, even of a single day, by the Accused. The Chamber is unconvinced, without further details, that the witness would certainly have heard about such a trip based on his daily visit to the Accused. Finally, the Defence implies that the Accused's apparent pre-occupation at his office would seem to make a weekday visit to Gitwa Hill somewhat less likely. The Chamber considers such evidence to be of very little weight, however, as it relates only to a general disposition of the Accused.

4.7 Factual Findings

179. The Chamber finds that the Defence witnesses have not raised a reasonable doubt as to the credibility of the testimony of Witnesses CGN and CGY. Based on the testimony of Witness CGY, the Chamber finds that on 23 April 1994, the Accused came in a white vehicle in convoy with a Daihatsu and a Toyota pick-up, both carrying people identified as *Interahamwe*. Machetes were offloaded from the Daihatsu and distributed to the attackers assembled around the roadblock. The Accused said words to the effect that the machetes must be used according to plan, or that they knew what to do with the machetes, meaning thereby that Tutsi should be killed.

180. Based on the testimony of Witness CGN, the Chamber finds that on 24 April 1994, the Accused transported assailants to Gitwa Hill; supervised the distribution of machetes to them; and encouraged an attack on Tutsi civilians who had sought refuge on Gitwa Hill. In particular, the Accused said words to the effect that the Tutsi on the hill should be killed, and that those who participated would be rewarded. An unsuccessful attack on the Tutsi civilians took place later that day, albeit after the Accused had left the scene.

181. Finally, the Chamber finds, based on the testimony of Witnesses CGY, CGN, and DC, that on 26 April 1994, there was a massive attack against Gitwa Hill by civilians and soldiers or gendarmes. There is no evidence that the Accused was present. This was a large-scale attack from all sides, involving guns and grenades, as well as traditional weapons.²¹⁸ Some attackers wore banana leaves on their heads, while others were in uniform. Very few of the thousands of Tutsi men, women and children on Gitwa Hill survived the attack.²¹⁹ Witness CGN's entire family was killed in the attack. Witness CGY commented that senior leaders were not present for the attack, and Witness DC testified that the attacks were initiated by the Bourgmestre of Gishyita commune.²²⁰

5. Incitement By the Accused at Meeting With Bourgmestre of Gitesi Commune, April or May 1994

182. The Indictment alleges that:

19. Towards the end of May 1994 Emmanuel NDINDABAHIZI was present at a gathering at the home of *Bourgmestre* Augustin KARARA in Gitesi *commune*. Among the 10 or so guests were Annonciata MUKANGIRYE, the *Bourgmestre's* wife and communal policeman BARAYATA. While sharing drinks with those

²¹⁸ T. 9 September 2003 p. 2 (Witness CGY); T. 30 October 2003 p. 8.

²¹⁹ T. 8 September 2003 pp. 41-42 (Witness CGY); T. 9 September 2003 pp. 2, 12 (Witness CGN); T. 30 October 2003 p. 8 (Witness DC).

²²⁰ T. 8 September 2003 p. 42; T. 30 October 2003 p. 8.

present, Emmanuel NDINDABAHIZI stated that he had given instructions for the killing of Tutsi, that he had accomplished the killing of Tutsi civilians in his *cellule*, and further instructed those present that Hutu men married to Tutsi women should also be killed.

The Prosecution relies on Witness CGH to substantiate the events alleged in paragraph 19 of the Indictment.

Witness CGH

183. Prosecution Witness CGH, a Tutsi, heard of President Habyarimana's death on the radio on 6 April 1994. In the ensuing days, people were killed, houses were burned, and cattle were stolen and eaten in the witness's *cellule* of Gasharu. On the morning of 13 April, the witness saw a group of refugees passing by who said that they had come from Rutsiro and Mabanza and were heading to Gatwaro Stadium in Kibuye Town.²²¹ Later that day, the witness left for Gatwaro Stadium with his wife, two children and an elder brother. After arriving at the stadium, the witness took his wife and children to the house of her cousin, Augustin Karara, who was the Bourgmestre of Gitesi Commune; he returned to Gatwaro Stadium.²²² Witness CGH testified that on 17 or 18 April, from about 1 p.m. to 5:40 p.m., the stadium was attacked with grenades and gunfire, and that he survived the attack by hiding in a latrine. At about 6 p.m., he left the stadium intending to flee into the forest, but encountered a policeman whom he knew to be an acquaintance of Bourgmestre Karara, and whom he had previously met on several occasions.²²³ The policeman took him to Karara's house, about a kilometre away, where he remained for about a month. The witness found that his wife and children had been sent away to stay with Karara's mother at Gasura.²²⁴

184. Witness CGH testified that at the end of April, at around 8:30 a.m., the Accused visited Bourgmestre Karara in the company of an Inspector of the Judicial Polical, named Barayata, who lived and worked nearby, and other officials whom the witness could not identify.²²⁵ The witness recognized the Accused, with whom he had been neighbours in Gasharu Cellule, and testified that he had last seen him prior to this occasion at Gitaka Centre while the Accused was working at the Ministry of Finance, after he had left his employment at Trafipro. They had also been schoolmates at the Kirambo School, albeit in different classes.²²⁶

185. Witness CGH testified that he was present in the room during the Accused visit and heard him say:

I have come from Kigali. It's true that we have killed persons and we have even killed Tutsi women. As to you, you have spared Tutsi women who married Hutus. I

²²¹ Prosecution Exhibit 4 (witness information sheet); T. 2 September pp. 33, 56-57.

²²² T. 2 September 2003 pp. 33, 57; T. 3 September p. 2.

²²³ T. 2 September 2003 pp. 33, 57-60.

²²⁴ *Id.* pp. 31-35, 60.

²²⁵ *Id.* 2003 pp. 36-38, 64-65. The witness testified that Kayishema, the Prefect, visited on a different occasion. He was able to recall the date of the visit as the end of April because it occurred three days before Kambanda came to Kibuye on 3 May. He described another of the visitors present on this occasion as an attorney from Bukagira, but the witness could not recall his name.

²²⁶ T. 2 September 2003 p. 37; T. 3 September 2003 pp. 2-3.

am asking you to spare no Tutsi woman in your commune. I do not want to see any more Tutsi women in your commune.²²⁷

The Accused told Bourgmestre Karara, “When I return and you will have accomplished what I have just tasked you with, I will reward you and appoint you as a member of parliament.” The Accused then said, “Come and I will show you the weapons I have brought you.” The group left the house and went to the market. From a distance of about 200 metres, the witness observed two vehicles, a black sedan and a green Daihatsu transport vehicle, next to which were piled machetes and axes. *Interahamwe* loaded the weapons onto the truck, which then left, followed by the Accused in the sedan. Witness CGH believed that they were preparing for an attack somewhere. The witness also testified that during this meeting, the Accused described his activities in Gasharu cellule, discussed in Section 7 below.²²⁸

186. Witness CGH testified that some time later, a group from his native cellule came to the Bourgmestre’s house, asking for water, and recognized the witness. He later heard that this group returned to Gasharu and told Augustin Karara (the bar owner), Jo?l Ndabukiye, and the Accused that the witness was still alive and hiding in the Bourgmestre’s house. The Accused reportedly said, “Is it true that Augustin Karara is hiding *inyenzi*? You must do everything possible. You must attack Augustin Karara’s house, and if you find *inyenzi* there, burn his house down.... I am going to arrange for an attack to take place against Karara’s house”.²²⁹ Karara the bar owner came to warn Bourgmestre Karara, who was away at the time; he told the Bourgmestre’s wife what had occurred. Later that afternoon, gendarmes came and searched the house, but did not recognize the witness as a Tutsi as they did not know him personally and he did not have typical Tutsi features.²³⁰

187. When Bourgmestre Karara returned that evening, his wife told him that the house would be attacked if Witness CGH remained there. The next day, the witness was taken to hide elsewhere. A few days thereafter, he fled to Ijwe Island in the Congo in a canoe supplied by Bourgmestre Karara.²³¹

Credibility Assessment

188. The Defence asserts that there are numerous contradictions between the witness’s testimony and his previous statements to investigators; and between the witness’s examination-in-chief and his cross-examination. The Prosecution insists that the witness is credible.²³²

189. A record of an interview with Rwandan judicial authorities in 1995 shows that Witness CGH was asked how he had survived the massacres at the stadium. He responded that he had left the stadium at around 1 p.m., just before the massacre began, with a policeman who had been sent by Bourgmestre Karara. When asked to reconcile this statement with his testimony that he had survived the attacks by hiding in a latrine during the massacres, the witness testified that the written statement was in error; that he had not been

²²⁷ T. 2 September 2003 p. 39.

²²⁸ *Id.* p. 39.

²²⁹ *Id.* p. 42.

²³⁰ *Id.* p. 44.

²³¹ *Id.* pp. 42-44; T. 3. September 2003 pp. 9-10.

²³² Prosecution Closing Brief pp. 26-28; Defence Closing Brief paras. 190-241; T. 1 March 2004 pp. 34-36; T. 2 March 2004 pp. 5, 6, 8, 44-46.

asked that question, or given that answer; and that he had not read the document before signing it.²³³ The witness at one point denied knowing how to read, even though he had read a portion of his statement aloud in court.²³⁴

190. Witness CGH's responses were evasive and contradictory. Although the sequence of events prior to the witness's arrival at the Bourgmestre's house is of only peripheral relevance to his observation of the Accused, the Chamber considers that his responses raise some doubt about the reliability of his testimony as a whole.

191. The Defence challenges the plausibility and consistency of Witness CGH's testimony that he was present in the room during the Accused's visit to Bourgmestre Karara's house. It questions why the witness would not have gone to the room that was reserved for him as a hiding place, as there was a chance that he would be recognized by the Accused who knew him to be a Tutsi. The witness maintained that he did not believe that the Accused would recognize him because it had been a long time since they had last met; his features and physique are not typically Tutsi; and he was a man of low-standing whom the Accused would not have noticed.²³⁵ The Defence notes that the witness insisted, however, that he was well-enough acquainted to identify the Accused, and that they had gone to school together. Indeed the witness went further and stated in court that "...if the [the Accused] was not being sly, I think he does recognize me."²³⁶ When pressed by the Defence as to why he would run even a small risk of being recognized by the Accused as a Tutsi from their native cellule of Gasharu, the witness explained:

I was calm, and I said that even if Ndindabahizi was to recognize me, since he was in the same party as Karara, who was my brother-in-law, even if he had recognized me, he and Karara would have found a place to take me. They wouldn't have made an attempt on my life.²³⁷

The Defence characterizes the witness's explanation as incomprehensible and inconsistent with his testimony of what the Accused said, namely that he had arranged for Hutu to be killed.

192. Given Witness CGH's own testimony of his long familiarity with the Accused, he could not have been certain that the Accused would not have recognized him. Although they came from very different backgrounds, the witness testified that they grew up in the same small locality and attended school together. The witness acknowledged during cross-examination that he knew that the Accused might recognize him, but believed that, if discovered, the Bourgmestre and the Accused would together protect him and provide him with a hiding place. Witness CGH gave no reasonable explanation for this belief, which seemed to contradict other testimony that he did not believe that the Accused would recognize him. Nor is it plausible that he would have been in the room with a group of visiting government officials, in light of his testimony that he was hiding from visitors; that he was conscious that his host was hiding him and would be endangered by his discovery; and that he could easily have hidden on that occasion. Not only is it difficult to understand that the witness would have himself taken this risk when he had the simple and effective

²³³ T. 2 September 2003 pp. 52-53; Defence Exhibit 3.

²³⁴ T. 2 September 2003 p. 53.

²³⁵ T. 3 September 2003 pp. 6, 23.

²³⁶ *Id.* p. 6.

²³⁷ *Id.* p. 23.

alternative of remaining out of sight for a short while in another room. It is also unlikely in the circumstances that Bourgmestre Karara would have run the pointless risk of being discovered as a man who sheltered Tutsi.

193. During his examination-in-chief, Witness CGH testified that his departure from Karara's house had been precipitated by a visit of people from Gasharu cellule who recognized him, and that Bourgmestre Karara had taken him that very evening to a canoe, which he rowed to Ijwi Island. In a prior written statement, the witness stated that it was the Accused who had recognized him, and that the Accused had instructed Karara, the bar owner from Gasharu, to kill Witness CGH and to burn down Bourgmestre Karara's house. The witness insisted that the person who recorded the statement had made a mistake.²³⁸ Witness CGH was also asked how much time elapsed between being told that he had been recognized and his departure for Ijwi Island; he responded that it was several days, but that he had been taken to another house to hide while arrangements were made for a boat.²³⁹ When confronted with a prior written statement in which he said that he had left the day after he had been recognized, Witness CGH responded that it was not a matter of great importance where he had fled and that the main point was that he was in flight from Bourgmestre Karara's house.²⁴⁰

194. In the Chamber's view, the difference between being discovered by the Accused and being discovered by a group from his home cellule is substantial, as is the difference between leaving for the Congo on the very evening of discovery and leaving several days later because a canoe could not be procured. The contradictions cannot reasonably be explained by a lapse of memory or imprecise communication with the interviewer.

195. The Defence noted other inconsistencies and discrepancies between the witness's testimony and previous written statements to investigators. The witness made no previous reference to the distribution of machetes at the marketplace, which the Defence characterizes as a crucial incident that would not likely have been forgotten.²⁴¹ In a previous statement, Witness CGH dated the visit of the Accused as having occurred at the end of May, rather than at the end of April. The witness considered this to be a typographical error.²⁴² His discovery by a group from Gasharu was not mentioned in any prior written statement, where he had consistently said that he had been recognized by the Accused himself.²⁴³ Nor did the witness mention the visit by the Accused to Bourgmestre Karara, or make any other reference to the Accused, in written statements given to Rwandan investigators who were investigating charges against Karara. The witness explained that he did not mention the Accused because he had not been asked about the Accused and he was not the focus of the investigation. When asked who else was at Karara's house, he had not mentioned the Accused because he had interpreted the question as referring to others with whom he was hiding.²⁴⁴ Finally, the Defence notes that Witness CGH also makes reference to the Accused working as a Trafipro agent in Kibuye, claiming that it is a common error made in the course of false testimony of several prosecution witnesses, which it puts down to collusion between them.

²³⁸ *Id.* p. 8.

²³⁹ *Id.* pp. 9-10.

²⁴⁰ *Id.* pp. 9-12, 23-24.

²⁴¹ *Id.* pp. 27-28.

²⁴² T. 2 September 2003 pp. 65-66.

²⁴³ T. 3 September 2003 pp. 8-9.

²⁴⁴ *Id.* pp. 54-55.

196. The Chamber considers the absence of any reference to the distribution of machetes in the prior statement to be noteworthy, but the other matters are of minor importance compared to the discrepancies already noted, and need not be evaluated by the Chamber.

197. The Chamber concludes that Witness CGH's testimony concerning the presence and conduct of the Accused at Bourgmestre Karara's house is of doubtful credibility. The contradictions in the witness's testimony described above were significant, and his efforts to explain some of these contradictions were not convincing. His explanation of his presence in the room with the Accused appeared to be self-contradictory and inexplicable, given the circumstances.

Witness DN

198. Defence Witness DN, a Hutu who was present in the household of Bourgmestre Karara, contradicted Witness CGH's testimony in several significant respects. He testified that Bourgmestre Karara's sister was married to Witness CGH. The witness testified that Karara sent a communal police officer named Mbonigaba to Gatwaro Stadium to find Witness CGH on 18 April. The policeman was unable to find Witness CGH on his first visit, but on a second visit and after making inquiries, he located Witness CGH and brought him to Karara's house some time between 7 a.m. and 11 a.m. Witness DN specified that this was before the massacre at the stadium, which started around 3 p.m. Witness CGH stayed at the house until between 20 and 25 May, when the situation became more dangerous. Bourgmestre Karara rented a canoe and sent Witness CGH and others to Ijwi Island.²⁴⁵

199. Witness DN testified that Witness CGH avoided people while he was staying in the Bourgmestre's house. He would hide in his room when there were visitors, as Karara was suspected of harbouring Tutsi in his house. Further, the Accused did not visit Bourgmestre Karara until June, after Witness CGH had fled to Congo.²⁴⁶

Credibility Assessment

200. In light of the findings concerning Witness CGH's credibility, the Chamber considers it unnecessary at this stage to weigh Witness DN's testimony against that of Witness CGH.

Factual Findings

201. The Chamber finds that the Prosecution has not proven that the Accused made the statements alleged at Bourgmestre Karara's house, or showed or distributed weapons in the marketplace nearby, as described by Witness CGH.

6. Actions of the Accused at Three Roadblocks in Gitesi Commune, May 1994

6.1 Distribution of Weapons and Incitement at Gaseke Roadblock, Late May

202. The Indictment alleges that the Accused committed genocide at roadblocks in Kibuye prefecture, including at a place called Gaseke:

²⁴⁵ *Id.* pp. 36-38.

²⁴⁶ *Id.* pp. 37-39.

5. During April, May and June 1994 Emmanuel NDINDABAHIZI specifically directed persons at roadblocks in Kibuye *préfecture* to kill civilians identified as Tutsi. At times he personally addressed local administrative officials and named particular persons to be killed. The public response to Emmanuel NDINDABAHIZI's pronouncements was usually quite swift. Within days, and sometimes within hours, local residents and civilian militias attacked and killed persons identified as Tutsi, particularly those that were previously individually targeted.

11. On or about 20 May 1994, Emmanuel NDINDABAHIZI monitored or supervised the activities at a roadblock at or near Gaseke by directing BIGIRIMANA Bicikabaraguza, apparently the chief of the roadblock, and other persons present, including KOMEZA and Gaspard BAVURIKI, to kill civilians identified as Tutsi. Emmanuel NDINDABAHIZI distributed a quantity of machetes to approximately twenty men who were present at the roadblock. Emmanuel NDINDABAHIZI addressed BIGIRIMANA Bicikabaraguza, stating, in substance, 'Many Tutsi pass by here, why aren't you killing them?' Immediately following Emmanuel NDINDABAHIZI's departure, the men at the roadblock killed the occupant of a vehicle that approached the roadblock.

The Indictment also alleges that the Accused committed murder as a crime against humanity at roadblocks in Kibuye Prefecture:

25. During mid-April 1994, Emmanuel NDINDABAHIZI instigated and ordered persons at roadblocks in Kibuye *préfecture* to kill civilians identified as Tutsi, at times individually addressing local administrative officials and naming particular civilians to be killed. The public response to Emmanuel NDINDABAHIZI's pronouncements were usually quite swift; within days, and sometimes within hours, local residents and civilian militias attacked and killed civilians identified as Tutsi, particularly those that were previously individually targeted.

The Prosecution relies on the testimony of Witness CGC to prove the events at Gaseke roadblock.²⁴⁷

Witness CGC

203. Prosecution Witness CGC, born of a Tutsi father and a Hutu mother, is a detainee in Rwanda, accused of genocide. He testified that he went into hiding in the bush in his native sector in April 1994, some time before the massacre at Gatwaro Stadium in Kibuye. The witness remained there with the assistance of his neighbours, until he was apprehended by a group of Hutu attackers on 20 May.²⁴⁸ He told the attackers that he would pay them 30,000 Rwandan francs if they spared him, and that he was owed this money by someone manning a roadblock at a place called Gaseke. The attackers took him to the Gaseke roadblock, located on the road between Kigali and Kibuye, in Gitesi commune on the border of Kayenzi and

²⁴⁷ Prosecution Closing Brief pp. 16-18; T. 1 March 2004 p. 11.

²⁴⁸ Prosecution Exhibit 26 (protected witness information); T. 29 September 2003 pp. 25, 42 - 43, 45-46, 51-52.

Ruragwe Sectors.²⁴⁹ The roadblock was some forty minutes' walk away from where he had been apprehended. They arrived at the roadblock at about 11 a.m., and he sat down about two metres from the roadblock itself, which was manned by about twenty Hutus. In closed session, Witness CGC named three of those manning the roadblock.²⁵⁰

204. Shortly thereafter, the Accused arrived at the roadblock from the direction of Kibuye in a white "Pajero kind of vehicle", with a long chassis.²⁵¹ The Accused, who was wearing a black suit, got out of the car along with his driver, while a third person remained in the vehicle. The Accused asked those assembled why Tutsi were being allowed to go through the roadblock without being killed. The driver then opened the back of the vehicle and removed machetes, which were given to those manning the roadblock, who later took them to a shed near the road where the attackers were living. The Accused also gave them money. The Accused appeared to be in a hurry and then left a few minutes after his arrival, in the direction of Kigali.²⁵² Prior to the distribution of the machetes, Witness CGC only saw one person who was armed, carrying a spear.²⁵³

205. A few minutes after the departure of the Accused, a Hutu relative of Witness CGC came to the roadblock and secured his release in a matter of minutes. This person had influence with those at the roadblock, and he also paid them money for the witness's release.²⁵⁴ During the few minutes that he was at the roadblock, the witness did not see anyone killed. He testified, however, that the purpose of the roadblock was to stop Tutsi and kill them; that many people were killed there; and that he could smell corpses.²⁵⁵ Witness CGC heard that a person named Nturusu, whom he described as a "half-caste" was killed at the roadblock about five minutes after his own release. He believed this person to have had a European father and a Rwandan mother and described him as "not a Hutu or a Tutsi nor a Twa", but that had physical "traits of a Tutsi".²⁵⁶ The witness correctly identified the name of Nturusu's driver, Witness DB.²⁵⁷

206. Witness CGC stated that he knew the Accused dating back to 1991 and 1992 when he visited his ailing sister, who was living in the same sector as the witness.²⁵⁸ The witness testified that he had a close family relationship with the Accused's sister. He only saw the Accused on those occasions inside of his car, at a distance of the width of the roadway. The witness was also certain that it was the Accused at the roadblock on that occasion because he heard people there mention the Accused by name, and refer to him as the Minister of Finance.²⁵⁹

²⁴⁹ T. 29 September 2003 pp. 23-24, 27. The witness mentioned that the roadblock was some ten minutes' walk from his residence. He had previously explained to Tribunal investigators the position of the roadblock: Prosecution Exhibit 2 Sketch 2 (L0019877).

²⁵⁰ T. 29 September 2003 pp. 26-28, 38, 46, 48, 51.

²⁵¹ *Id.* pp. 29, 36-37.

²⁵² *Id.* pp. 29-31, 36-37.

²⁵³ *Id.* pp. 46-47.

²⁵⁴ *Id.* pp. 31-32, 48.

²⁵⁵ *Id.* pp. 27, 33.

²⁵⁶ *Id.* pp. 33-34, 48, 49, 51.

²⁵⁷ *Id.* p. 50; Defence Exhibit 16.

²⁵⁸ T. 29 September 2003 pp. 21-23, 45, 52-53. The witness testified that he saw the Accused at least three times, but could not be more precise.

²⁵⁹ *Id.* p. 54.

Witness DB

207. Defence Witness DB was an ambulance driver at a hospital in Kibuye Town in 1994. In May 1994, while on a trip to Rubengera to buy diesel for his vehicle, he met a medical assistant named Nors (an alias of Nturusu) who asked the witness to take him back to the hospital in Kibuye. During their trip back, they were stopped at a roadblock at Gaseke. Nors was asked questions and threatened. The witness defended him and they were eventually released. They were stopped at a second roadblock by gendarmes at the Kibuye roundabout, but were again released on the orders of a superior officer. Witness DB described Nors as a “half-caste”, having a Rwandan mother and a white European father.²⁶⁰

208. When they arrived at the hospital, Nors explained to a doctor that he was ill, but that he had returned to the hospital because his sick leave had expired. The doctor agreed to extend his sick leave, and advised him to return home when he found a vehicle that would take him. On 26 May, Witness DB left for Rubengera with Nors and another passenger. He recalled the date with precision based upon an entry in a log-book showing that he had taken the ambulance on that date.²⁶¹

209. Witness DB testified that when they reached Gaseke, the persons at the roadblock accused Nors of being Belgian, and thus an accomplice of the *inkotanyi*. They ordered him out of the vehicle and took his bag, spectacles, shirt, trousers, and sandals, leaving him wearing only his underclothes. They then removed a tree trunk which was part of the roadblock and ordered Witness DB to leave. The witness drove a certain distance and then stopped. A person at the roadblock armed with a club approached Witness DB, who immediately got back into his vehicle, but not before being struck on the back. The witness again drove slowly before stopping near a eucalyptus tree. He saw the attackers emerge contented from the bushes where they had taken and killed Nors.²⁶²

210. The witness explained that he recognized some of the attackers at the roadblock, but that after 1994 he undertook investigations to discover the names of others. He named seven attackers whom he was able to identify as having been at the roadblock: Rwibasira, Ndigabo, Ligena, Simeon, Komeza, Bamuriki and Ndikuyeze.²⁶³ Witness DB testified that he did not know the Accused, but that during his investigations no one mentioned that he had been at the roadblock before the murder of Nors, or mentioned his name as having any connection whatsoever to the roadblock.²⁶⁴

Witness DA

211. Defence Witness DA, a close relative of Nors, testified that she was living in Kigali in April 1994, and fled to the Congo in May. After she had returned from the Congo in August 1994, the witness was told about the circumstances of Nors’ death by his wife. Nors’ wife explained that her husband had been ill at their house in Rubengera, and had been prevented

²⁶⁰ Defence Exhibit 32 (protected witness information); T. 28 October 2003 pp. 80-81, 85, 89, 93.

²⁶¹ T. 28 October 2003 pp. 82-83.

²⁶² *Id.* pp. 83-85.

²⁶³ *Id.* p. 88; Defence Exhibit 33. The witness specified that he only saw Ndikuyeze on the first occasion that he passed through the roadblock, on the way to Kibuye Town. The spelling “Bamuriki” appears to be a variant spelling of the name “Bavuriki”.

²⁶⁴ *Id.* pp. 87-88, 89-90.

from going to work by the war situation. He decided to return to work and went in a vehicle owned by the hospital. When he arrived at the hospital, the doctor told him that he was not entirely well and that the driver should take him back home.²⁶⁵ Nors' wife told Witness DA that during the return journey he was forced out of the vehicle at a roadblock at Kayenzi and killed. Nors was killed at the instigation of one of his relatives named Nkubito, who told the criminals at the roadblock that Nors had a Belgian father, even though his father was in fact German. Nkubito had a long-standing grudge against Nors, originating some twenty years before the genocide, and used the tense relations between Belgians and Rwandans as a means of having him killed.²⁶⁶ The witness testified that Nors' wife died in 1996.

212. Witness DA testified that many people were informed about Nors' death and that Nkubito bragged that "I've just had the famous white man killed".²⁶⁷ The witness understood that Nors' wife first heard about her husband's death from her neighbours, and then went and spoke to Witness DB some three days after the event had occurred. Nkubito was detained upon his return from the Congo, where he had fled, after one of Nors's sons had reported him to the authorities.²⁶⁸

Witness DC

213. Defence Witness DC testified that he encountered a roadblock, manned by about eight persons, at Gaseke at the end of May as he was traveling from Kibuye back to his home in Rutsiro commune, Gatoki Sector. The people at the roadblock told him that there was a vehicle carrying a white Belgian man which had stopped in Kibuye, and they asked him to wait at the roadblock for the vehicle to return to assist them in killing this person.²⁶⁹

214. Witness DC waited at the roadblock for about three hours before the vehicle arrived in the afternoon from the direction of Kibuye, with the white man aboard. The vehicle was driven by an elderly man and there was another passenger. The white man got out of the vehicle and they took his clothes and a bag before he was killed by a young man named Shofo, about ten metres from the roadblock.²⁷⁰ The witness identified two other participants at the roadblock, Gaspard Baviriki and Kapitolo, and testified that Kapitolo had said that Nkubito had instructed that the white man be killed. Witness DC heard that the name of the white man whom they had killed was Nors.²⁷¹ The witness testified that he did not see the Accused while he was at the roadblock and had not heard from the others that the Accused had been there.²⁷²

Credibility Assessments

215. The credibility of the four witnesses to this event is considered together, given the overlapping nature of the evidence, their relationships, and the submissions of the parties.²⁷³

²⁶⁵ Defence Exhibit 43 (protected witness information); T. 5 November 2003 pp. 2-3, 6; T. 5 November 2003 pp. 3-4 (French version).

²⁶⁶ T. 5 November 2003 pp. 3, 10, 12.

²⁶⁷ *Id.* p. 5; T. 5 November 2003 p. 4 (French version).

²⁶⁸ T. 5 November 2003 pp. 3-4.

²⁶⁹ Defence Exhibit 35 (protected witness information); T. 30 October 2003 pp. 2, 13-15, 25.

²⁷⁰ T. 30 October 2003 pp. 14, 25-26.

²⁷¹ *Id.* pp. 14-15.

²⁷² *Id.* pp. 15-16.

²⁷³ Prosecution Closing Brief pp. 16-18, 85-86, 104-08; Defence Closing Brief paras. 36, 591-653; T. 1 March 2004 pp. 11-16; T. 2 March 2004 pp. 6, 25-29, 41.

Witness CGC stated during his examination-in-chief that he could only approximate the date of events at Gaseke. On cross-examination, however, the witness was adamant that 20 May was the precise date of events, though he could cite no reason for remembering the date as such.²⁷⁴ The Chamber finds the change in Witness CGC's testimony concerning his recollection of the date slightly surprising. He did not offer any convincing explanation.²⁷⁵ It is understandable for a witness not to remember the precise date in 1994, absent some distinguishing feature that would stand out in the witness's memory. On the other hand, the Chamber notes that according to his prior statement to investigators on 10 November 2000, the event occurred on 20 May, as in his testimony. The Chamber does not find that the witness's credibility is undermined by his two statements versions of the date but finds that the event took place on or about 20 May 1994.

216. Witness CGC testified that he had not witnessed the killing of Nturusu at the roadblock, but had heard about the killing later, contrary to what seems to follow from his prior written statement to Tribunal investigators of 10 November 2000.²⁷⁶ He also acknowledged that a sentence in his prior statement which suggested that he had, at times, left his commune while he was hiding in April and May 1994, was incorrect. The witness believed that both of these errors were attributable to the investigators improperly recording his statement.²⁷⁷ The Chamber does not find these inconsistencies significant but consider that they may have arisen in connection with the interview. It is also noted that Rwandans do not always express clearly the difference between what they have seen with their own eyes and what they have heard.

217. The Defence suggested that it was implausible that those manning the roadblock would have spared Witness CGC, a Tutsi, who was sitting at the roadblock while the Accused was allegedly inciting them to kill Tutsi. Witness CGC testified that he and the Accused looked at each other, but doubted whether the Accused saw or recognized him, as the witness believed that the Accused would have ordered him to be killed.²⁷⁸ The witness explained that those at the roadblock did not kill him because they knew that his mentor and protector was coming to release him, and had sent word not to kill him. The Defence questioned the plausibility of the witness's account that the Accused complained that Tutsi were not being killed at the roadblock, even though the witness testified that many Tutsi were being killed at the roadblock. The witness believed that the Accused may simply have been misinformed.²⁷⁹ The Defence also questions whether the witness is actually of Tutsi extraction, noting his testimony that he was related to his mentor, who was friendly with those at the roadblock.

218. The Chamber does not consider that these submissions undermine Witness CGC's credibility. The Accused is alleged to have been at the roadblock for only a short while, and may well have overlooked the presence of the witness, or mistaken him for one of those manning the roadblock. The statement of displeasure that Tutsi were being allowed to pass by the roadblock without being killed is not irreconcilable with the local reputation of the roadblock as a place where Tutsi were killed. Furthermore, the Chamber accepts the witness's testimony that he was a Tutsi. This is in conformity with his prior statement to

²⁷⁴ T. 29 September 2003 pp. 23, 45, 52; Defence Closing Brief paras. 599, 602, 607.

²⁷⁵ T. 29 September 2003 p.52.

²⁷⁶ Prosecution Exhibit 28.

²⁷⁷ T. 29 September 2003 pp. 33-34, 43.

²⁷⁸ *Id.* p. 31.

²⁷⁹ *Id.* p. 47.

investigators of 10 November 2000. The fact that he had a Hutu mother supports his evidence that his relative who protected him was a Hutu. Even though it is unusual that a Tutsi is accused of genocide, the witness explained the reasons convincingly. The persons manning the roadblock did not feel convinced by his explanation that he was a Hutu and forced him to kill a Tutsi boy the next day in order to prove his ethnicity.

219. The Defence questions Witness CGC's identification of the Accused, noting that he could only recall the first name of the Accused's sister, and that he had only seen the Accused in his vehicle when he visited his sister in 1991 and 1992. The Chamber accepts that the witness recognized the Accused from the times he had seen him in his vehicle, at a short distance. The Accused was well-known in his native cellule, and the witness was related to the Accused's sister. Moreover, the Accused's name was mentioned when he visited the roadblock, dressed in a black suit. During its considerations, the Chamber has taken into account that the witness was 17 years old in 1994.

220. The Defence considers unlikely Witness CGC's claim that he apparently learned by chance that investigators were at the Kibuye Guest House seeking information about the Accused.²⁸⁰ The Chamber does not have any evidence to dispute this part of the witness's testimony. As for the suggestion that the witness may wish to incriminate the Accused in order to obtain advantages as a detainee in Rwanda, the Chamber notes that he implicated the Accused in his statement of 10 November 2000, before he was arrested on 23 December 2000.

221. The Chamber now turns to Witness DB, who was of the view that the Accused played no role in the killing of Nors, based on his investigations into the circumstances of the Gaseke roadblock conducted after 1994.²⁸¹ Aside from being hearsay evidence, the witness did not indicate the sources of his information. Under these circumstances, the Chamber considers the evidence of what he subsequently discovered to have little weight against the eyewitness testimony of Witness CGC.

222. Witness DB's eyewitness testimony of the events at the roadblock is arguably inconsistent with certain elements of Witness CGC's testimony, or renders them less plausible. Witness DB testified that the attackers at the roadblock were armed only with used clubs and machetes, which he inferred had been brought from their homes; he saw no new weapons.²⁸² The Prosecution argues that the testimony as to the origin of the weapons is pure speculation and, further, is evidence that the witness was briefed in order to contradict the evidence of Witness CGC.²⁸³ The Chamber considers it unlikely that, under the circumstances, Witness DB would have been able to observe with certainty whether the attackers were armed with any new machetes.

223. The Prosecution questions Witness DB's credibility. The vehicle logbook, which purported to show that the witness had returned to Rubengera with Nors on 26 May, showed certain anomalies which raised doubts as to its accuracy. The dates in the date column appeared to be out of sequence, and some of them, including the entry of the date of 26 May, appeared to be in a different handwriting than the rest. The witness testified that both the doctor and the accountant were responsible for filling in the dates and that the dates that were

²⁸⁰ *Id.* p. 44.

²⁸¹ T. 2 March 2004 p. 28.

²⁸² T. 28 October 2003 pp. 93-94

²⁸³ Prosecution Closing Brief p. 106.

out of sequence had been improperly recorded by the accountant. He testified that he had himself written the date field for 26 May, and that the doctor had filled in the comment field.²⁸⁴ The Prosecution questions the plausibility of the witness's account that he and Nors would have returned to the Gaseke roadblock despite the threats they endured on their journey to Kibuye.

224. The Chamber finds Witness DB to be credible. His testimony was clear and detailed, and the Prosecution was unable to establish any significant discrepancies with the witness's prior written statements, including one that appears to have been written in 1995 and was purportedly submitted to the Rwandan Prosecutor in Kibuye.²⁸⁵ The anomalies in the logbook are minor and it appears to be a routinely updated document. The witness did not describe precisely how long he and Nors spent in Kibuye before returning to Rubengera, but the logbook seems to indicate that they arrived in Kibuye Town on 24 or 25 May.²⁸⁶ The Chamber does not consider it implausible that Witness DB and Nors believed that they could safely make the return journey to Rubengera, despite the threats they had faced. Finally, Witness CGC testified that Witness DB was indeed the driver of the car carrying Nors when it was stopped at the roadblock.²⁸⁷

225. Witness DB's account of the killing of Nors is not inconsistent with Witness CGC's. Witness CGC testified that the Accused departed before the killing of Nors. The only basis for contradicting Witness CGC's evidence of the Accused's presence at the roadblock before the arrival of Nors, is Witness DB's unreliable hearsay evidence. Accordingly, the Chamber finds that Witness DB's testimony does not weaken or detract from Witness CGC's credibility.

226. As for Witness DA's testimony of the circumstances surrounding Nors' death, most of it is based on information given to her by Nors' wife, who was herself informed by Witness DB. The distinct element of her testimony was her allegation that a certain Nkubito, who had a long-standing grudge against Nors, had bragged that he had Nors killed. The Chamber is again of the view that her testimony is not inconsistent with that of Witness CGC concerning the alleged presence and activities of the Accused at the roadblock prior to the arrival of Nors.

227. Witness DC's testimony, on the other hand, directly contradicts that of Witness CGC in that he claims to have been present at the roadblock for some three hours before the arrival of Nors, without seeing the Accused.

228. Witness DC's account of the events at Gaseke roadblock lacked credibility. The Prosecution entered as an exhibit documents from the witness's judicial proceedings in Rwanda which make no mention of the event at Gaseke roadblock or at Gitwa Hill, the two subjects on which he was called to testify before the Chamber. The witness maintained that he had written a letter to the Rwandan Prosecutor dated 4 March 1998 in which he had made confessions on these matters. He then seemed to alter his explanation, suggesting that his security would have been threatened if he had mentioned these events.²⁸⁸ The Chamber observes that no letter was produced and considers his responses unconvincing.

²⁸⁴ T. 28 October 2003 pp. 91-93.

²⁸⁵ *Id.* p. 85.

²⁸⁶ *Id.* pp. 82-83; Defence Exhibit 34.

²⁸⁷ T. 29 September 2003 p. 50; Defence Exhibit 16.

²⁸⁸ T. 30 October 2003 pp. 29, 32.

229. Witness DC explained that he was at the roadblock because the attackers who were manning it asked him to stay and wait for the return of a vehicle carrying a white man. Witness DB, whom the Chamber has found credible, testified to the effect that he and Nors stayed for at least a day in Kibuye before returning to Rubengera. It is implausible that the attackers would have had an expectation of the imminent return of the vehicle carrying Nors. On the basis of these elements, the Chamber doubts that the witness was present at the roadblock during and before the killing of Nors, and rejects his testimony.

Factual Finding

230. Witness CGC's testimony of the utterances and acts of the Accused at Gaseke roadblock was credible and no reasonable doubt concerning its veracity has been raised by the Defence witnesses. The Chamber finds that in late May, 1994 the Accused encouraged those manning a roadblock at Gaseke to stop and kill Tutsi, and distributed machetes and money to them.

231. The Chamber also finds that on the same day, shortly after the Accused's departure, a man named Nors, also known by the name Nturusu, was apprehended there and killed at the Gaseke roadblock. The nature of this event will be further discussed in Section 1.2 of the Legal Findings chapter.

6.2 Distribution of Weapons and Incitement at Faye Roadblock, Late May 1994

232. The Indictment specifically alleges that the Accused committed genocide at another roadblock along the Kibuye-Kigali road in Kibuye Prefecture, at a place known as Faye:

13. In late-May 1994 in Kayenzi *secteur*, at or near Faye, Emmanuel NDINDABAHIZI supervised or participated in attacks upon the Tutsi by requiring or directing *Interahamwe* militia and other persons present to kill civilians identified as Tutsi.

The Prosecution submits that the alleged events at Faye are also encompassed by the allegation in paragraph 25 of the Indictment, quoted above in Section 6.1, that the Accused engaged in murder as a crime against humanity at "roadblocks in Kibuye Prefecture". The Prosecution relies on the testimony of Witness CGK in support of these allegations.

Witness CGK

233. Prosecution Witness CGK, a Tutsi, testified that the killing of Tutsi in her sector in Gitesi Commune began on 12 April, and that she fled to Kayenzi Sector and hid in the home of a Hutu friend on 13 April. About three weeks later, *Interahamwe* came to the house looking for Tutsi. The witness then left her friend's house and hid in the bush at a place called Faye, also in Kayenzi Sector, arriving there at the beginning of May and staying for about two weeks.²⁸⁹ Her hiding place in Faye was some five metres from a roadblock, but above the road on a mound amongst eucalyptus trees where she could not be seen. The roadblock was manned by about fifteen people wielding machetes and clubs called *ntompongano*. They stopped people and asked them to show their identity cards.²⁹⁰

²⁸⁹ Prosecution Exhibit 5 (protected witness information); T. 3 September 2003 pp. 36-37, 49, 52.

²⁹⁰ T. 3 September 2003 pp. 37-38, 53-54, 55-56.

234. Witness CGK testified that one day while she was hiding at Faye, at about 1 p.m., she saw a black car and a green Daihatsu arrive at the roadblock from the direction of Kigali. The Accused was in the black car, accompanied by two or three others, including a driver, who were armed. The Daihatsu carried three *Interahamwe* who were armed with guns.²⁹¹ The Accused, who was wearing black clothes, trousers and a shirt, got out of the vehicle and asked those at the roadblock whether they had finished killing the Tutsi; they replied “We spared the women who – Tutsi women who were married to Hutu men and their children”. The Accused then ordered them to off-load the machetes from the Daihatsu and use them to kill those whose lives had been spared. Many machetes were unloaded and then the vehicles left.²⁹²

235. The witness testified that she remained at Faye for two weeks and then went to hide along the banks of the Nyabahanga River, about a kilometre from Faye, where she survived by digging sweet potatoes from the fields, eating wild fruit and drinking from the river.²⁹³ Some time in June, she was attacked and wounded by someone with a spear. She gave her attacker 5,000 Rwandan francs and he left her alone.²⁹⁴ Also in June, the witness saw planes flying overhead and was told that they were French planes which had come to put an end to the war.

236. Witness CGK testified that she had seen the Accused before 1994, when he came to Gitaka Centre in Gitesi Sector, about a kilometre from where his parents lived. The witness saw the Accused there on separate occasions in 1990, 1991, and 1992. She also claimed to know the parents of the Accused. The witness identified the Accused in the court.²⁹⁵

Credibility Assessment

237. The parties disagree on the credibility of Witness CGK.²⁹⁶

238. The Defence submits that the date on which the witness testified that she saw the Accused at Faye roadblock is not consistent with her description of the timing and sequence of her hiding places in April and May. Witness CGK testified that beginning on 13 April, she spent three weeks in hiding at a house in Kayenzi; that she fled from there to Faye in early May; and that she stayed at Faye for two weeks and saw the Accused during that period. Accordingly, she must have left the roadblock around the middle of May. However, the witness repeatedly insisted that she saw the Accused at the end, not the middle, of May.²⁹⁷ The Defence implies that the witness’s insistence on the end of May was an attempt to avoid the period during which the Accused has an alibi, from 11 to 18 May.²⁹⁸

239. There is clearly an inconsistency between the date on which Witness CGK says that she saw the Accused, and the sequence of events she recounts. The Chamber does not consider this inconsistency to be proof that the witness was intentionally trying to mislead the

²⁹¹ *Id.* pp. 37, 55.

²⁹² *Id.* pp. 38, 41.

²⁹³ *Id.* pp. 38, 49, 51.

²⁹⁴ *Id.* pp. 50, 57.

²⁹⁵ *Id.* pp. 38-40, 46-47.

²⁹⁶ Prosecution Closing Brief pp. 10-12; Defence Closing Brief paras. 900-949; T. 1 March 2004 pp. 7-12, 16, 35; T. 2 March 2004 pp. 6, 10, 23-24.

²⁹⁷ T. 3 September 2003 pp. 49, 51-52.

²⁹⁸ T. 1 March 2004 p. 52; T. 2 March 2004 p. 24.

Chamber, or was consciously attempting to place the event outside of the period of the alibi. However, the reliability of the witness's testimony is called into doubt in some degree by her refusal or inability to acknowledge the incongruity in her testimony.

240. The Defence invokes the testimony of Witness DC and Witness DN to the effect that there was no roadblock along the Kibuye-Gitarama road at Faye. The Chamber has previously rejected parts of Witness DC's evidence and is not persuaded that his testimony is reliable.²⁹⁹ Further, Witness CGM testified that there were many roadblocks generally, although he does not specifically refer to this stretch of the Kibuye-Gitarama road.³⁰⁰ Witness DB, however, whom the Chamber has found to be credible, and who had reason to know that stretch of road well, testified specifically that the only roadblock between Kibuye and Rubengera on 26 May was the one located at Gaseke.³⁰¹ Witness DN testified that there were roadblocks at Nyabahanga Bridge and Gaseke.³⁰² Accordingly, Witness CGK is the only witness to testify that there was a roadblock at Faye, and her testimony is directly contradicted by that of Witnesses DB and DN.

241. Witness CGK testified that while she was hiding at Faye, she "didn't have anything to drink or eat. Sometimes I was able to have bananas that were given to me by people who, like me, were fleeing".³⁰³ The Defence considers this to be a physical impossibility and that the witness is lying. The Defence's interpretation of the witness's testimony as meaning that she spent every minute hiding five metres from the roadblock is unreasonable. On the other hand, the witness gave few details of her movements near the roadblock in order to obtain food while remaining concealed.

242. The Chamber has considered alleged discrepancies in the witness's testimony of the number of people in the car in which the Accused allegedly arrived at the roadblock. The alleged discrepancies, if any, are insignificant.

243. Witness CGK's claim to have possessed a 5,000 Rwandan franc note, which she gave to an attacker at Nyabahanga River after having left Faye, is not inherently implausible. Nor is that claim undermined by her failure to recall the colour of such a note. The Chamber notes, however, that the witness's description of the attack at Nyabahanga River varied. During her examination-in-chief, she stated that she had been threatened with a spear, whereas during her cross-examination, she testified that she had been struck with a knife on the head.³⁰⁴

244. Witness CGK was asked why she only revealed this information seven years after the event. The witness responded that she had never previously been interviewed about it, and only disclosed the information when requested by ICTR investigators. The Chamber accepts

²⁹⁹ T. 30 October 2003 p. 4.

³⁰⁰ T. 15 September 2003 p. 33.

³⁰¹ T. 28 October 2003 p. 88 ("Q: Now, in the trip you made from Kibuye to Rubengera, when on the 26th [May] you were taking Nors back home, did you come across any other roadblocks, that is, on the 26th of [May]? A: No, sir. That was the only roadblock that I came across on my trip. Q: Did you not come cross other roadblocks in that area? A: Perhaps I came across a group of persons that were on the road, but they hadn't erected a roadblock, so that there was no roadblock. I would say that there were a group of bandits.")

³⁰² T. 3 November 2003 pp. 29-30; T. 3 November 2003 p. 34 (French version, correctly identifying the place name as "Gaseke").

³⁰³ T. 3 September 2003 p. 56; T. 3 September 2003 p. 60 (French version).

³⁰⁴ T. 3 September pp. 38, 50. T. 3 September 2003 pp. 40, 52 (French version, where the two terms used are "sword" and "knife").

this explanation, particularly in light of the witness's testimony that she did not know any of the other attackers at the roadblock, about whom she might potentially have been called upon to testify in judicial proceedings in Rwanda.³⁰⁵ The witness's alleged failure to exactly identify the names the Accused's parents, and her inability to recall where the Accused lived before 1994, does not undermine the basis of her identification.

245. The witness described the Accused as "a very big person".³⁰⁶ Having observed the Accused and numerous Rwandan witnesses in court, the Chamber considers this description to be inaccurate, and raises doubts concerning the witness's identification of the Accused. In light of the concern raised repeatedly by the Defence that a witness could infer the position of the Accused from visual indicators in the court room, the Chamber is of the view that the doubt raised by this description is not dispelled by the witness's in-court identification.³⁰⁷

246. Witness CGK's testimony contained few details. As discussed above, it was also in some respects contradictory and unclear. The testimony is not corroborated and the Chamber entertains some doubt about her reliability.

Factual Findings

247. The Chamber finds that the allegation concerning the presence of the Accused in late May along the Kibuye-Gitarama Road, at a roadblock near Faye, has not been proven beyond a reasonable doubt.

6.3 Distribution of Weapons and Incitement at Nyabahanga Bridge Roadblock, Late May

248. The Indictment alleges that the Accused committed genocide at a third roadblock in Kibuye Prefecture, at Nyabahanga Bridge, along the Kibuye-Gitarama road:

12. Towards the end of May 1994, at or near the Nyabahanga Bridge, Emmanuel NDINDABAHIZI supervised or participated in a roadblock by directing *Interahamwe* and other persons present to kill civilians identified as Tutsi and by distributing a quantity of machetes to men at the roadblock, including Hasan BYIYGOMA, and by stating, in substance, "Are you standing well – Have you killed Tutsi women married to Hutus? ... Go and kill them – They risk to poison you – Take arms."

The Prosecution submits that the alleged events Nyabahanga Bridge are also encompassed by the allegation in paragraph 25 of the Indictment, quoted in Section 6.1 above, that the Accused engaged in murder as a crime against humanity at "roadblocks in Kibuye prefecture".³⁰⁸ The evidence of Witness CGM is relied upon in proof of this allegation.

Witness CGM

249. Prosecution Witness CGM, a Tutsi, testified that he was attacked in his home the day after the announcement of the President's death on the radio. The witness managed to escape

³⁰⁵ T. 3 Septemeber 2003 p. 55.

³⁰⁶ T. 3 September 2003 p. 42.

³⁰⁷ Defence Exhibit 48 (Tribunal brochure showing layout of courtroom).

³⁰⁸ T. 1 March 2004 p. 15.

and fled with his wife, who was Hutu, and their children to her parent's house. There was another attack the next day and Witness CGM escaped out the window and went into hiding in the bush, where he survived with the assistance of his wife, who would bring him food and tell him where the attackers were likely to be operating. He moved from one place to another to avoid discovery.³⁰⁹

250. At the end of May 1994, Witness CGM saw the Accused at a roadblock that had been set up near Nyabahanga Bridge, along the Kibuye-Gitarama Road. The Accused arrived at about 1 p.m. in a white car, followed by a green Daihatsu vehicle. He got out of the right-hand side of the car and asked Witness DR, who was an *Interahamwe* leader at the roadblock, whether he recognized him, and whether he was there on his own. Witness DR responded "Yes, I remember you" and the Accused answered "I am the Minister".³¹⁰ Witness DR then called to people who were lying down nearby and who were drinking in two nearby bars, saying, "The Minister has arrived".³¹¹ Many people gathered around and machetes were offloaded from the Daihatsu by Witness DR and two other Hutu *Interahamwe* leaders named Abdullah and Patrice Miraso. The Accused then ordered people to kill Tutsi women married to Hutu men, saying: "If you have not killed Tutsi women married to the men, they will poison you, if these persons are not killed. Therefore, you have to kill them." The Accused appeared to be in a hurry and left five or six minutes after his arrival.³¹²

251. Witness CGM testified that by this time, most Tutsi had been exterminated except for Tutsi women married to Hutu men, who had been defended by their husbands. The witness learnt that after the Accused departed, some Hutu husbands killed their Tutsi wives. The witness gave the example of one Gatwa, who murdered his second wife with a machete.³¹³

252. Witness CGM testified that he observed the Accused from a hiding place in a bush close to a banana grove. His estimate of the distance from the Accused was about thirty to thirty-five metres.³¹⁴ Although the witness generally avoided roadblocks, he had been near the roadblock when day broke and had concealed himself. He recognized the Accused as soon as he had stepped out of the vehicle, and confirmed this identification as he watched the Accused speaking to Defence Witness DR and the others who were crowded around. Witness CGM testified that he was attending the second year of primary school when he first saw the Accused, whom he believed to have been teaching there for a brief period, or to have attended a course there.³¹⁵ He also saw the Accused at the Trafipro store in Kibuye after Habyarimana came to power.³¹⁶ The witness identified the Accused in court.³¹⁷

³⁰⁹ Prosecution Exhibit 12 (protected witness information); T. 15 September 2003 pp. 5-6, 31-33. The location of the house belonging to the witness's parents-in-law is indicated in Prosecution Exhibit 14. The witness is still married to his Hutu wife: T. 15 September 2003 p. 6.

³¹⁰ T. 15 September 2003 pp. 7, 10-13, 36-37, 42-43, 48-49.

³¹¹ *Id.* pp. 10, 12.

³¹² *Id.* pp. 7-8, 16, 45.

³¹³ *Id.* pp. 8-9.

³¹⁴ *Id.* pp. 12, 43, 44, 45. During cross-examination, he also mentioned the distance of 60 metres, but that statement was not quite clear (p. 38). In Prosecution Exhibit 16, the witness encircled his hiding place on sketch 4 in Prosecution Exhibit 2.

³¹⁵ The location of the school is contained in Prosecution Exhibit 13.

³¹⁶ T. 15 September 2003 pp. 3-5, 45-47.

³¹⁷ *Id.* p. 21. The Defence observed that amongst thirteen persons only the Accused was black and dressed in civilian clothing.

Credibility Assessment

253. Witness CGM's credibility is challenged.³¹⁸ The Defence questions why he had not named the Accused in previous testimony before Rwandan courts. The witness explained his understanding from the Kibuye Prosecutor that allegations should only be made against people who were known to be in the jurisdiction of Rwanda and could be prosecuted.³¹⁹ The Chamber accepts this explanation as credible.

254. The Defence argues that the witness's identification of the Accused is implausible. The witness was unlikely to have seen the Accused while he was in the second year of primary school, as the Accused is about ten years older than the witness and was studying elsewhere. The Accused was neither a teacher nor followed a course at the school attended by the witness. Witness CGM could not have seen the Accused at Trafipro in Kibuye, where the Accused denied ever having worked. Further, the witness makes no mention in his written statement of having seen the Accused at Trafipro. The Defence produced documentary evidence that the Accused worked at the Trafipro headquarters in Kigali as a financial manager from November 1976 until December 1981.³²⁰

255. Witness CGM acknowledged that he was uncertain what the Accused may have been doing at his school, and that the visit was brief. The fact that the Accused was older and attending a different school does not undermine the credibility of the witness. Nor is the Chamber persuaded that the Accused never visited the Kibuye Trafipro shop from the headquarters in Kigali where he was based. The witness said that the Accused only worked there "only for a short time" but he insisted that he saw him there several times and explained that he did not mention Trafipro in his interview with investigators on 27 February 2001 because "one cannot say everything".³²¹ The Chamber considers the Accused's testimony to be outweighed by the Prosecution witnesses who testified that they saw the Accused at the Trafipro store in Kibuye. The Defence allegation that all of these witnesses have colluded in their testimony to place the witness at the Kibuye Trafipro is not credible, in light of the detail of the testimony and the plausibility that the Accused would have visited a branch office.

256. The Defence asserts that it was implausible or impossible for the witness to have hidden near the Nyabahanga roadblock. Witness DR testified that there was nowhere to hide where Witness CGM said he was hiding, particularly because the area was very busy.³²² Witness CGM stated that he was far enough away to avoid being discovered and that he was well-hidden amongst bushes. He further explained that he had not intended to hide at that location, but was seeking a route to an area where he hoped to find food. Witness DR further testified that there were around eight, not two, bars at that location, thus contradicting Witness CGM's testimony.³²³

257. The Chamber observes that Witness CGM's identification of Witness DR at the roadblock is corroborated by Witness DR himself, who testified that he was there, although

³¹⁸ Prosecution Closing Brief pp. 19-20, 45, 97; Defence Closing Brief paras. 654-730; T. 1 March 2004 pp. 15-17, 35; T. 2 March 2004 pp. 29-33, 59.

³¹⁹ T. 15 September 2003 p. 29-30.

³²⁰ Defence Exhibit D58.

³²¹ T. 15 September 2003 pp. 45-46. Witness CGM's prior statement was admitted as Defence Exhibit 10.

³²² T. 3 November 2003 p. 2.

³²³ *Id.*

he gives a very different account of his activities. This supports Witness CGM's claim of having been able to observe the roadblock without discovery, and contradicts Witness DR's categorical assertion that Witness CGM would certainly have been discovered. The Chamber accepts that the witness could hide without being discovered at a distance of about thirty-five metres from the roadblock. It also finds that Witness CGM was able to hear what the Accused said; according to the testimony, the Accused used a loud voice as he was giving orders in Kinyarwanda to a big crowd.³²⁴

258. The Defense claimed that Witness CGM's account of his flight from his home, the date on which he observed the Accused, and the sequence of events at the roadblock, fluctuated throughout his testimony and contradicted his prior written statement.³²⁵ The Chamber notes that the witness attended school up to his fourth year of primary school and has been working as a farmer since then. His testimony in Arusha was his first travel outside his prefecture.³²⁶ He did not grasp all the questions on the first occasions, and explained that he found it difficult to give coherent explanations about traumatic events and to be precise about dates.³²⁷ However, the witness's testimony was consistent and coherent, and he gave a precise description of the event at the Nyabahanga roadblock. His account appeared to be sincere. There was no indication of any attempt to mislead the Chamber. The Chamber considers Witness CGM to be a credible witness.

259. Witness CGM testified that Pierre Mugemangango, a *conseiller*, gave instructions to Witness DR to man and supervise the roadblock.³²⁸ Witness DR acknowledged that he knew *conseiller* Pierre Mugemangango but denied that he had any jurisdiction over the roadblock, and that other officials were in charge of Gitarama Sector where the roadblock was located. The Chamber finds that the difference in testimony is insignificant and does not affect Witness CGM's credibility.

Witness DR

260. Witness DR testified that he was one of the people manning a roadblock that was set up on the main road from Gitarama to Kibuye at Nyabahanga Bridge, in Gitarama Sector, at the end of May or in early June. The roadblock had been set up by the *Conseiller* of Gitarama Sector, Etienne Ngerabayeyi, who gave instructions to the head of the Kigesi cellule, Pierre Damien Nseguze, that they were to intercept Hutu refugees fleeing from the RPF towards Cyanguu and Kibuye. A "transit camp" was set up at Nyamuyeve to accommodate the refugees. Identity cards were to be checked at the roadblock and those suspected of being an *inkotanyi* or a member of the RPF were to be arrested and taken to competent authorities.³²⁹ One person at the roadblock was armed with a gun; others were armed with machetes brought from home, sticks and clubs. Witness DR was later given a grenade. Witness DR testified that no one was killed at the roadblock, but that four Tutsi were killed nearby, but not by those manning the roadblock.³³⁰

³²⁴ T. 15 September 2003 p. 15.

³²⁵ Defence Closing Brief paras. 657-691.

³²⁶ T. 5 September p. 47.

³²⁷ T. 15 September 2003.

³²⁸ *Id.* pp. 34-35, 39, 41, 49.

³²⁹ Defence Exhibit 39 (personal information sheet); T. 31 October 2003 p. 56; T. 3 November 2003 pp. 1, 6, 8.

³³⁰ T. 31 October 2003 p. 57; T. 3 November 2003 p. 6.

261. Witness DR stated that he did not see the Accused at the roadblock, and did not hear of his presence there. The witness claimed that he would have heard if the Accused had distributed machetes there but that, in any event, there was no need for machetes as they already had a sufficient number. The witness clarified that he might not have heard if the Accused had simply gone through the roadblock with his bodyguards.³³¹

262. The Prosecution characterizes the witness's explanation of the purpose of the roadblock as "bizarre". It further notes that, contrary to the witness's testimony that he did not see the Accused, the Accused himself admitted that he travelled along that road from Gitarama to Kibuye on 2 June 1994. The Prosecution considers it unlikely that the witness would not at least have heard about the passage of the Accused.³³²

Credibility Assessment

263. The Chamber is of the view that Witness DR's description of the purpose of the roadblock, and his desire to exculpate himself from any wrongdoing, seriously undermines his credibility. It is obvious that Witness DR was motivated to exculpate the Accused, perhaps to avoid implicating himself in crimes committed at the roadblock. Witness DR's failure to recognize that the Accused had passed through the roadblock on even one occasion, despite the Accused's own acknowledgement that he had done so, strikes the Chamber as a deliberate attempt to distance the Accused from any wrongdoing that might be associated with the roadblock. Having considered the parties' submissions, the Chambers finds that the testimony of Witness DR lacks credibility.³³³

Factual Finding

264. The Chamber finds that the Accused caused the distribution of machetes at a roadblock near Nyabahanga Bridge, along the Kigali-Kibuye road, some time around the end of May or early June. Furthermore, the Chamber finds that the Accused encouraged those at the roadblock to kill Tutsi women married to Hutu men.

6.4 Alibi

265. The testimony of Witness DP, discussed in section 4.5 above, is also relevant to the allegations against the Accused in relation to his alleged presence at roadblocks in Gitesi commune in May 1994. For the reasons set forth in that section, the Chamber finds that no reasonable doubt concerning the evidence of Witnesses CGC and CGM has been raised by the testimony of Witness DP.

7. Incitement By the Accused at Gitaka Centre, May 1994

266. The Accused is charged with genocide for his alleged actions at Gitaka Centre, in Gasharu Cellule:

8. In early May 1994, Emmanuel NDINDABAHIZI, accompanied by a soldier, stopped at a roadblock in Gisharu cellule. Present at the roadblock was the chief of

³³¹ T. 3 November 2003 pp. 3-5.

³³² T. 1 March 2004 p. 17.

³³³ *Id.* pp. 15-17; Prosecution Closing Brief pp. 96-99; Defence Closing Brief paras.721-730.

the local *Interahamwe*, Jo?l NDABUKIYE. Emmanuel NDINDABAHIZI thanked members of the public who were there for their efforts, but warned that two men known as KAREGEYA and MUKANTABANA were still alive. Emmanuel NDINDABAHIZI publicly called for their deaths and stated that Jo?l NDABUKIYE would be appointed as the new *préfet*, NDABUKIYE's son would be bourgmestre and Augustin KARARA would be a new member of parliament if all of the Tutsi in the area were killed.

9. In early May 1994, Jo?l NDABUKIYE and his son killed KAREGEYA and MUKANTABANA with clubs and *Interahamwe* killed other civilians identified as Tutsi in the cellule, as ordered by Emmanuel NDINDABAHIZI.

10. During May 1994 at Gitaka Centre in Gasharu cellule, in front of Jo?l NDABUKIYE's house, Emmanuel NDINDABAHIZI supervised or participated in activities at a roadblock by directing *Interahamwe* militia and other persons present to kill civilians identified as Tutsi.

267. A charge of murder as a crime against humanity is also laid against the Accused on the basis of these alleged events:

27. Sometime in early May 1994, Emmanuel NDINDABAHIZI publicly called for the deaths of KAREGEYA and MUKUNTABANA, civilian Tutsi, and offered rewards or public office to Jo?l NDABUKIYE and Augustin KARARA if all of the Tutsi in the area were killed. Shortly thereafter, Jo?l NDABUKIYE and his son killed KAREGEYA and MUKANTABANA with clubs.

28. The killings of Tatiane NYIRAMARITETE, KAREGEYA and MUKANTABANA in early May 1994 were in direct response to order from Emmanuel NDINDABAHIZI.

Witness CGF

268. Prosecution Witness CGF testified that in late May 1994, he went to the roadblock at Gitaka Centre. He had been alerted that his daughter, whom he had sent to fetch water from a tap near the roadblock, was going to be killed.³³⁴ The roadblock was located on the road from Kibuye to Kirambo Health Centre, between the houses of Augustin Karara and Joël Ndabukiye. Karara and Ndabukiye, both Hutu, were the owner of a bar and the headmaster of a primary school, respectively. The roadblock had been set up by, and was under the supervision of, Ndabukiye.³³⁵ Though the witness was Hutu, his daughter was threatened because of her mother's Tutsi ethnicity. Witness CGF was able to save his daughter, with the assistance of others who took his side.³³⁶

269. Around midday, while Witness CGF was still at the roadblock with his daughter, the Accused arrived in a small white car, accompanied by a driver and a soldier.³³⁷ He understood at the time that this person was the Accused because he heard Karara say

³³⁴ Prosecution Exhibit 8 (protected witness information); T. 9 September 2003 pp. 22-24, 39, 41-42, 44-45.

³³⁵ T. 9 September 2003 pp. 23-24. The witness also mentioned one Rukundakuvunga (a.k.a. Rukunda) as one of the killers at the roadblock. *Id.* pp. 30, 49. This name is more commonly spelled "Rukundakuvuga" and, unless otherwise indicated, this is the spelling adopted by the Chamber.

³³⁶ *Id.* pp. 24, 44-45.

³³⁷ *Id.* pp. 22, 25, 32.

“Ndindabahizi is coming, Ndindabahizi is coming”, and because he knew the Accused’s sisters. The people who were present shouted for joy, which the witness considered to be a reaction to the arrival of a person of authority. The witness had heard it said that the Accused was the Minister of Finance in the Interim Government.³³⁸

270. The Accused emerged from his vehicle and spoke to those at the roadblock, in particular, Ndabukiye and Karara. He asked to see Karegeya. When they responded that Karegeya was not yet dead, the Accused asked “Why then?”³³⁹ He then told those present to chase out the Tutsi who were responsible for the death of the President, wherever they may be. He further instructed that the cattle of the Tutsi should be bred, not eaten, because the Tutsi were going to be exterminated. Those who followed these orders would be rewarded with land.³⁴⁰ Witness CGF knew that Karegeya, a Tutsi livestock breeder, was the cousin of the Accused. He did not know the motive of the Accused in wishing to apprehend his cousin, but said that “there was no more love among people”.³⁴¹ The Accused also asked Ndabukiye about a Tutsi woman named Nyeramaritete: “I have heard that Tasihani Nyeramaritete is still alive, is that true? And I heard that Nyeramaritete gave you cows, when I come back and I hear that she is still alive, that is going to bring friction between you and I.”³⁴² The witness estimated that he heard these remarks from a distance of about eight metres.³⁴³ The Accused did not stay at the roadblock for long. He left in the direction of Kibuye Town.³⁴⁴

271. Witness CGF testified that several days later he heard that both Nyiramaritete and Karegeya were killed on the same day, by civilians armed with spears, clubs and machetes. He did not witness the killings and could not identify the killers by name.³⁴⁵ He also testified that he saw a pit downhill from the road in which bodies had been thrown, including the corpse of his brother-in-law’s wife, a Tutsi.³⁴⁶

Credibility Assessment

272. Both parties have addressed the credibility of Witness CGF.³⁴⁷ In the Chamber’s view, the witness gave a consistent description of the event during examination-in-chief and cross-examination. His answers were not evasive. However, the Defence argues that there are several significant inconsistencies between the testimony of the witness and his prior written statement to investigators, dated 19 October 2000.³⁴⁸

273. According to the Defence, Witness CGF’s testimony that the Accused visited Gasharu in late May contradicts his earlier statement, which situates the events at the roadblock no later than the end of April. Witness CGF declared, both during his testimony and in his prior

³³⁸ *Id.* pp. 25, 42.

³³⁹ *Id.* p. 26.

³⁴⁰ *Id.* pp. 26-27.

³⁴¹ *Id.* pp. 27, 31, 33.

³⁴² *Id.* pp. 27, 31. The orthography of Nyeramaritete varies in the Indictment, Pre-trial Brief and trial transcripts. The Chamber adopts the spelling Nyiramaritete unless quoting directly from a document in which a different spelling is indicated.

³⁴³ *Id.* p. 28. The witness first estimated the distance as five or six metres, but then compared it to a distance in the courtroom that is 8.4 metres (from himself to the interpreters’ booth).

³⁴⁴ *Id.* p. 30.

³⁴⁵ *Id.* pp. 27-28.

³⁴⁶ *Id.* p. 29.

³⁴⁷ Prosecution Closing Brief paras. 13-17; Defence Closing Brief paras. 242-286; T 1 March 2004 pp. 22-23, 50; T. 2 March 2004 pp. 5, 6, 13, 44-45.

³⁴⁸ Defence Exhibit 9.

statement, that a vehicle sent by Bourgmestre Karara came to Gasharu during the month of April, and that the driver offered to take Tutsi to Kibuye Stadium where they would be protected.³⁴⁹ The Defence pinpoints the arrival of Karara's vehicle on 13 April, based on the testimony of Witness DN. Witness CGF's statement indicates that he was in hiding with his family, and sent his daughter to go and fetch water, "around the same week" as the visit of Karara's driver.

274. Uncontradicted evidence indicates that the massacres at Kibuye Stadium commenced on 18 April 1994.³⁵⁰ Therefore, as argued by the Defence, the vehicle sent by the Bourgmestre must have arrived before this date. However, in his testimony Witness CGF was quite consistent that the Accused's visit occurred in May. The Chamber does not consider that this confusion about dates in itself undermines the witness's testimony.

275. The Defence finds it surprising that the witness would have sent his daughter to fetch water while he was in hiding with his wife. The Chamber recalls that according to Rwandan tradition, Witness CGF's daughter would have been considered a Hutu. Accordingly, it is not implausible that she would have been sent on an errand. Despite having been called to the roadblock to rescue his daughter, the Chamber accepts that the witness could have remained there openly, even if he may have been regarded with suspicion because he was married to a Tutsi. The Chamber has noted the witness's account that his house was demolished and that he was injured, but understands that this happened at a later date, after he had sent his wife away to his native sector.³⁵¹

276. Witness CGF's written statement indicates that he already knew the Accused well, and that he recognized him when he arrived at the roadblock. The witness also testified that he knew the Accused's sisters.³⁵² During his testimony, however, the witness acknowledged that he saw the Accused for the first time at the roadblock and identified him based on Karara's contemporaneous statement that it was the Accused. The Chamber considers this to be a contradiction.³⁵³

277. Witness CGF also gave evidence about Mukantabana. As to the alleged words of instigation, the Chamber has noted that Witness CGF's prior written statement indicates unambiguously that Mukantabana was herself present when the Accused threatened her. This makes little sense, and the witness claimed that this was an error by the investigators. However, given the manner in which the episode is described in the witness statement – that the Accused "turned to" Mukantabana, and addressed her directly as "you" in quotation marks – the error should have been discovered when the statement was read out to the witness afterwards.³⁵⁴

³⁴⁹ T. 9 September 2003 pp. 36-37, 40-41.

³⁵⁰ T. 30 October 2003 p. 4 (Witness DC); T. 3 November 2003 p. 30 (Witness DN); T. 2 September 2003 p. 33 (Witness CGH).

³⁵¹ T. 9 September 2003 pp. 46, 50-51.

³⁵² *Id.* pp. 42-43.

³⁵³ *Id.* p. 31. The Defence generally disputed the value of in-court identification of the Accused by witnesses. See Chapter I, Section 5 above.

³⁵⁴ The last page of the statement contains a paragraph to the effect that the English version had been orally translated into Kinyarwanda, and that the witness heard and understood the translation. Witness CGF signed that page. The Chamber has also noted that in his statement, Witness CGF submits that Witness CGX was at the roadblock and heard the Accused "exactly as I heard him say". During her subsequent testimony, Witness CGX did not mention Mukantabana but stated that she saw Witness CGB at the roadblock.

278. The Chamber has also considered the other submissions by the Defence, including the allegation that the witness's credibility was compromised by his claim that he had never been in the courtroom before, whereas such visits are routinely arranged by the Registry before a witness testifies.³⁵⁵ The Chamber does not consider this significant.

279. During his testimony, Witness CGF appeared to be a generally credible witness. There are, however, four clear discrepancies between the testimony and the written statement: first, the statement indicates that the Accused's car was black, not white; second, there is no mention of Karegeya; third, the Mukantabana is said to have been present at Gitaka during the Accused's visit; and fourth, that he knew the Accused by sight before his visit. Throughout his testimony, Witness CGF insisted that the car was white. He suggested that the investigators had not asked him about Karegeya, or that he had forgotten to mention Karegeya's name because he was uncertain why he was being interviewed and was nervous.³⁵⁶ The Chamber notes that the witness was a gentleman of limited education who speaks only Kinyarwanda. Although he may, therefore, have had communication problems with the investigators who prepared his statement, the Chamber considers these four discrepancies, combined with the witness's changed recollection as to the date of the visit, to be relevant to his credibility. The Chamber will weigh his testimony in light of the totality of the evidence, discussed further below.

Witness CGE

280. Prosecution Witness CGE, a Tutsi, testified that he grew up and lived in a house some 200 metres from the house of the Accused's parents in Gasharu cellule, Gitesi Commune. The Accused had moved away from Gasharu, but the witness often saw the Accused when he visited his parents' house and also when the Accused came to get married there.³⁵⁷ The witness heard people say that the Accused was living in Kigali, and that he was a senior official at Electrogaz.³⁵⁸

281. The witness recalled seeing the Accused on two specific occasions, once in 1993 and once in 1994. On the first occasion, the Accused distributed PSD party hats, with the assistance of one Albert Gatwa, at Gitaka Centre in Gasharu, but only to Hutus.³⁵⁹ The witness also understood that the Accused made a similar distribution at Nyagahinga cellule. The witness believed that the Accused was an official of the PSD at that time, before becoming the Chairman of the party in Kibuye Prefecture in 1994.³⁶⁰

282. Witness CGE next saw the Accused standing at a roadblock at Gitaka Centre some time before noon in late May 1994, having arrived in a small white sedan accompanied by a driver and a soldier.³⁶¹ The roadblock was located between the houses of Joël Ndabukiye, the principal of Kirambo school, and Augustin Karara, a businessman, both of Hutu ethnicity.³⁶² Ndabukiye, the leader at the roadblock, and Karara were present at the roadblock when the

³⁵⁵ T. 9 September 2003 p. 43.

³⁵⁶ *Id.* pp. 46-47.

³⁵⁷ Prosecution Exhibit 9 (protected witness information); T. 10 September 2003 pp. 5, 20-21; T. 10 September 2003 (French version) p. 5, properly identifying Gasharu as a cellule (rather than a sector in the English version).

³⁵⁸ T. 10 September 2003 pp. 6, 21.

³⁵⁹ *Id.* pp. 5-6, 21-22.

³⁶⁰ *Id.* p. 6. He recalled the chairman of the PSD in Kibuye in 1993 to be a certain Ndindabo.

³⁶¹ *Id.* 2003 pp. 7-10.

³⁶² *Id.* pp. 7-8.

Accused arrived, as were many others, including *Interahamwe*, carrying clubs, machetes, spears and swords.³⁶³ The Accused asked them whether Karegeya was dead yet. When they answered that he was not, the Accused said:

Well, if he's not dead – you are claiming that you're killing people. If he's not dead, you're not doing your job ... You must kill all Tutsi so ... that, in future, Hutu children will ask what Tutsi looked like.³⁶⁴

The Accused then said that when the Tutsi were killed, their land would be shared amongst themselves. Those at the roadblock immediately rushed off to find and kill Karegeya. Witness CGE heard that within a week of the Accused's visit, Karegeya was killed in a bush and that his body was devoured by dogs.³⁶⁵ Some of the individuals did, in fact, benefit from the promises of the Accused that they would receive lands formerly owned by Tutsi. Ndabukiye and the Accused's younger brother Seyeze were among those who received such land. The witness believed that the Accused wanted Karegeya dead in order to appropriate his farm, and that this happened after Karegeya's death. Karegeya, a Tutsi farmer who raised livestock, was the Accused's cousin.³⁶⁶

283. Witness CGE observed events at the roadblock from a hiding place in a bush that he estimated to be about eight metres from the Accused and the others at the roadblock.³⁶⁷ He chose this hiding place deliberately, so that he could hear the plans of the attackers and also because they would not suspect that anyone would be hiding so close.³⁶⁸ He described the purpose of the roadblock as a place to kill Tutsi, and personally witnessed three persons killed there: Etienne Habimana, whose body was then thrown into a mass grave near the roadblock; Serumondo; and Simeon Nsengimana, alias Mugambi, who was beheaded by Rukunda. Witness CGE also heard that Tatiane Nyiramaritete, a Tutsi who was married to Charles Munyankindi, was killed at the roadblock after having sought refuge with Ndabukiye, but did not see that killing.³⁶⁹ The witness was himself considered to be a Tutsi because he had a Tutsi father, who died before 1994. He lost several brothers and sisters during the events in 1994.³⁷⁰

Credibility Assessment

284. The Chamber has assessed Witness CGE's credibility in light of the submissions of the parties.³⁷¹ In particular, the Defence considers his claim to have been hidden a few metres from the roadblock to be incredible. It argues that a photograph of the place where the

³⁶³*Id.* pp. 9, 12, 25. The witness also named Sendiragora, the nephew of the Accused, and Rukundakuvuga (Rukunda), among Hutu manning the roadblock, but did not specify whether they were there at the time of the Accused's visit.

³⁶⁴*Id.* pp. 10, 12, 28.

³⁶⁵*Id.* pp. 13, 17.

³⁶⁶*Id.* pp. 12, 28.

³⁶⁷*Id.* p. 9. The witness originally estimated the distance to be about five metres, but subsequently described it with reference to a distance from himself in the courtroom (the wall behind the Prosecution benches) which is 8.4 metres.

³⁶⁸*Id.* pp. 10, 25-27.

³⁶⁹*Id.* pp. 13, 32. Two of these individuals were killed before the Accused's arrival, and one afterwards. After the cross-examination, the witness mentioned the name of another person, Ateyum Habyarimana, who was killed at the end of April. *Id.* pp. 31-32.

³⁷⁰*Id.* pp. 15-16.

³⁷¹ Prosecution Closing Brief pp. 14-15; Defence Closing Brief paras. 287-323; T. 1 March 2004 pp. 17, 23-24, 50; T. 2 March 2004 pp. 5, 6, 13, 45-46, 58.

witness claims to have been hiding demonstrates that there was no place for the witness to have concealed himself. They also suggest that even if Witness CGE was hidden there, his testimony that he came and went from his hiding spot by crawling on his belly across a clearing near the bush is unbelievable.³⁷² The Defence also argues that the witness's close relative, Prosecution Witness CGX, testified that the location in which the witness said he was hiding was, in fact, heavily travelled.³⁷³

285. Though Witness CGE's hiding place would have entailed serious risks, the Chamber does not accept that this itself makes his testimony unbelievable. During the extraordinary events in Rwanda in 1994, unusual strategies were sometimes adopted to survive. The witness explained his thinking in a logical and consistent way. He would move primarily at night, when the people manning the roadblock were asleep. He was able to point out on a photograph where he had been hiding, which showed that his hiding place was above the roadblock. This would have reduced the risk of the witness being seen from the roadblock.

286. The Defence also challenges the identification of the Accused. The witness admitted that he was still a boy when the Accused left the cellule, and the Defence alleges that the witness's claim to have attended the marriage of the Accused is a fabrication. At best, the witness may have seen the Accused pass in his vehicle on rare occasions. The Chamber accepts that Witness CGE knew the Accused. He grew up about 200 metres from the Accused's house and saw him several times when the Accused visited the village, including as late as 1993. The witness identified him in the courtroom.³⁷⁴ The Chamber also notes that he stated correctly that the Accused worked at Electrogaz and later became Minister of Finance.

287. The Defence argues that Witness CGE's testimony is contradicted by a number of Defence witnesses in several important respects. Those witnesses asserted that Karegeya was buried, not eaten by dogs; that killings occurred behind some shops, not at the roadblock; that the Accused did not call for the killing of Tutsi at the roadblock; and that he simply wished to find out who had killed his cousin, Karegeya. These matters are discussed in full after a review of the testimony of Defence witnesses.

288. The Defence questions the circumstances in which the witness came to meet the investigators of the Tribunal. The witness admitted that he had been summoned to meet the investigators by another Prosecution witness, Witness CGH. The Defence alleges that this supports its theory of collusion between Prosecution witnesses in concocting the narrative of events at the Gitaka roadblock.³⁷⁵ In the Chamber's view, it is not surprising that one survivor, when contacted by investigators, contacts other survivors who may have witnessed events involving an accused, particularly in a tiny community such as Gasharu. The witness frankly acknowledged those contacts and the Chamber discerns no element of concealment.

289. The Chamber defers its assessment of the credibility of Witness CGE until it has reviewed and summarized the totality of the evidence presented.

³⁷² Prosecution Exhibit 10. According to Prosecution Exhibit 2, the photograph was taken in 2003.

³⁷³ Defence Closing Brief para. 314.

³⁷⁴ T. 10 September 2003 pp. 16-17. The Chamber notes that the witness's testimony does not indicate that the witness "attended" the Accused's wedding in the sense that he was invited to his house. *Id.* pp. 20-21.

³⁷⁵ *Id.* pp. 19-20; Defence Closing Brief paras. 27-28. Defence Witness DC alleges that Witness CGH offered him a bribe to testify against the Accused, and Witness DF testified that Witness CGH boasted that he was going to fabricate evidence against the Accused. T. 5 November 2003 p. 29; T. 30 October p. 16.

Witness CGX

290. Prosecution Witness CGX, an elderly Hutu woman, is a relative of Witness CGE. She was living in Gasharu cellule, Gitesi Commune in 1994. The witness testified that some of her children were killed because her husband, who died before April 1994, was a Tutsi.³⁷⁶

291. Witness CGX saw the Accused one morning at Gitaka Centre at a roadblock manned by *Interahamwe*, located opposite the house of Karara, a trader, which was next door to the house of Ndabukiye, the school headmaster.³⁷⁷ She estimated that this was four weeks after the death of President Habyarimana. The witness stated that she had forgotten the date and could not remember the month, but thought it was some time in April or May.³⁷⁸ The Accused had arrived in a small car, and was standing at the roadblock surrounded by a crowd, amongst whom she recognized Ndabukiye, Karara, Jean Sibomana, Rukunda, Sendiragora, and Abiya. The witness was there openly, standing on a mound overlooking the roadblock at a distance of about five metres from the Accused.³⁷⁹

292. The witness heard the Accused ask Ndabukiye where his cattle were. He responded that the *Interahamwe* had taken them. She understood that the Accused had entrusted his cattle to Ndabukiye. The Accused then asked where Karegeya was, and when Ndabukiye responded that he did not know, the Accused said that they should find Karegeya wherever he might be. The witness knew Karegeya to be the Accused's cousin, or the son of his cousin. She subsequently heard people boasting that they had killed Karegeya. She testified that she did not remain at the roadblock long, because she needed to feed her children who were in hiding.³⁸⁰

293. The witness said that she had previously lived in the same village as the Accused, but that he had not been there for a long time, and that people said that he was living in Kigali. She testified that before the event at the roadblock, the Accused had last visited the village for his wedding, which she had attended. She identified the Accused in the courtroom.³⁸¹

294. Witness CGX testified of other killings. Her son was killed at the Gitaka roadblock by Rukunda, who was armed with a sword, some time after the Accused's visit.³⁸² Several other of her children were also killed, some as they fled to Kibuye. A woman by the name of Nyiramaritete, who was a teacher living in Kirambo, was also killed, although she could not recall if this was after or before the Accused's visit. There was a pit near the roadblock, from which the witness later saw bones being exhumed and placed in coffins.³⁸³

Credibility Assessment

295. Whereas the Prosecution considers Witness CGX to be credible, the Defence argues that her recollection is unreliable and that her testimony contradicted that of other

³⁷⁶ Prosecution Exhibit 11 (protected witness information); T. 10 September 2003 pp. 35-36.

³⁷⁷ T. 10 September 2003 pp. 36-37.

³⁷⁸ *Id.* pp. 40, 44.

³⁷⁹ *Id.* pp. 38-40, 44. The witness stated that all of these individuals were Hutu, except for Sibomana, whose ethnicity she did not identify. An alternate spelling for Sendirodoga is Senderodoga.

³⁸⁰ *Id.* pp. 40, 47.

³⁸¹ *Id.* pp. 42-43.

³⁸² *Id.* p. 41. As explained previously, Rukunda is an abbreviation of Rukunduvuga.

³⁸³ *Id.* pp. 41-42.

Prosecution witnesses.³⁸⁴ The Chamber recalls that the witness is elderly and illiterate, and had obvious difficulty remembering dates, both in her statement and during her testimony.³⁸⁵

296. According to the Defence, Witness CGX offered incriminating testimony not recorded in her written statement. The Chamber disagrees. Her statement and testimony contained the same main elements. The additional details provided orally completed the statement but did not contain additional accusations. It is noteworthy that she refrained from involving the Accused in the killing of her son and of Nyiramaritete.

297. The Defence submits that the witness's testimony contradicts that of Witness CGF, who testified that he had been at the roadblock rescuing his daughter prior to the arrival of the Accused. Witness CGX, in contrast, testified that Witness CGF "ran there when he heard the sound of the engine of the car. He came to see what was happening".³⁸⁶ In the Chamber's view, this does not affect the credibility of either witness. It is quite possible that Witness CGF moved towards the vehicle after having rescued his daughter, and that Witness CGX was not aware of the threats against his daughter. Witness CGX testified that she remained at the roadblock for only a short period. It is, therefore, of limited significance that Witness CGF allegedly also heard the Accused speak about livestock and Karegeya, whereas Witness CGX only heard talk of Nyiramaritete.

298. The issue of contradictions with the testimony of Witness CGE was also raised. Witness CGX testified that when she left the roadblock, she followed a well-travelled path uphill along the road. The Defence argues that the existence of this path contradicts Witness CGE's description of his vantage point on the roadblock. However, the Chamber recalls that Witness CGX was unable to identify a photograph of the site. As it has not been established how close the path was to the roadblock this does not necessarily reduce the credibility of Witness CGE.³⁸⁷ The other discrepancies invoked by the Defence are also of little relevance.

299. Witness CGX acknowledged that she had travelled with Witness CGE and Witness CGB to Kibuye to meet Prosecution investigators in May 2001. The Defence argues that this shows contact between the witnesses, and also questions the credibility of her claim about the presence of Witness CGB, whom it submits was interviewed by Prosecution investigators on an earlier date. The Chamber notes Witness CGX's openness about having met other Prosecution witnesses and does not find any basis for collusion. Her testimony was not identical to that of the two other witnesses. It appears normal that she was accompanied to the investigators by her close relative, Witness CGE, who had already given his statement. The fact that Witness CGB's statement was taken in November 2000 does not exclude the possibility that he also accompanied her.

300. Witness CGX's account of events is brief and does not unequivocally indicate that the Accused ordered that Karegeya be killed. Her testimony corroborates Witness CGF's evidence that he was at the roadblock during the Accused's visit, as well as the identity of the

³⁸⁴ Prosecution Closing Brief pp. 12-13; Defence Closing Brief paras. 324-342; T. 1 March 2004 pp. 17, 20-22, 28, 50; T. 2 March 2004 pp. 5, 6, 45-46.

³⁸⁵ According to Witness CGX's written statement from 2001, Karegeya was killed one week after the event at the roadblock. During her testimony she assessed this period to be between four and five months, which was obviously a mistake.

³⁸⁶ T. 10 September 2003 p. 40.

³⁸⁷ *Id.* pp. 44-46. The witness also mentioned that people would normally follow a footpath to the Gitaka Centre which comes from Mirambo, but did not expressly say that this was the footpath that she took that day. *Id.* p. 40.

persons operating the roadblock given by several Prosecution witnesses. A final assessment of the witness's testimony will be made in light of the totality of the evidence.

Witness CGB

301. Prosecution Witness CGB, a Hutu, testified that following the death of President Habyarimana in April 1994, there were attacks by Hutu against Tutsi civilians in Gahigiro, where he lived. The witness fled with his family to Kirambo parish on or around 14 April, and then on to Gitwa Hill about two days later. Following attacks at Gitwa Hill, he went to Kayenzi for two weeks, hiding in a valley close to the Nyakagenzi River. He then returned to Gahigiro cellule and took refuge in the house of a Hutu, where he remained for three weeks. Three other Tutsi were also hiding in that house. The refugees left the house one morning in late May at around 4 a.m., when it was attacked or threatened by *Interahamwe*.³⁸⁸ Witness CGB then hid in a small stand-alone kitchen structure, measuring about two by five metres, near a deserted house. This kitchen, which had been built by Swiss visitors, was about twenty metres from a roadblock located at Gitaka Centre, Gasharu.³⁸⁹

302. Between 9 and 10 a.m. that same morning, the witness saw the Accused arrive at the roadblock in a white vehicle accompanied by a soldier.³⁹⁰ The roadblock was manned by Joël Ndabukiye, his son Emmanuel, and a certain Rukunduvuga. A group of *Interahamwe* were drinking at a nearby bar, run by a trader named Augustin Karara.³⁹¹ Those in the bar and in the neighbourhood ran to greet the Accused and were happy at his arrival. He moved towards the bar where Karara was and people gathered around.³⁹² The witness heard the Accused say:

I am coming to congratulate you. However, I must reproach you. One Cyprien Karegeya and one Mukantabana, alias Tatiane Nyiramaritete, are still alive. I am from Kigali. In Kigali, no Tutsi has remained; all have been exterminated. Now, what are you doing? If you do your job well, we will be happy with you. Now, you Ndabukiye, you will be appointed the *préfet* and your son Emmanuel will be appointed *bourgmestre*. As for Karara, he will be member of parliament. I am going away, I am going to Kibuye. When I come back, I would like to see that there is no Tutsi here and at that time, I will reward you by appointing you to the posts that I have mentioned so that we can ensure the progress of the region.³⁹³

303. The Accused left fifteen minutes later, saying that he was going to Kibuye. The witness knew Mukantabana to be a teacher at the Kirambo school complex, married to a certain Charles Munyankindi. Cyprien Karegeya, a farmer who kept livestock, was the Accused's cousin. Mukantabana and Karegeya were Tutsi.³⁹⁴

304. About four days later, Witness CGB saw Joël and Emmanuel Ndabukiye kill Karegeya at the Gitaka Centre roadblock with a club. On that same day, he also saw

³⁸⁸ Prosecution Exhibit 19 (protected witness information); T. 22 September 2004 pp. 2-4, 21-22. Prosecution Exhibit 20 contains the name of the Hutu with whom he found refuge.

³⁸⁹ T. 22 September 2003 pp. 4-7, 9.

³⁹⁰ *Id.* pp. 5, 7, 8, 12 (visit of the Accused to the roadblock towards the end of May occurs on the same day that he finds refuge in the kitchen), 18, 22, 23, 26.

³⁹¹ *Id.* pp. 5, 7-8, 9, 26.

³⁹² *Id.* pp. 5, 26.

³⁹³ *Id.* pp. 8-9.

³⁹⁴ *Id.* pp. 9, 10. (In these transcripts the name of Nyiramaritete's husband is spelt Munyanhindi instead of the usual spelling, Munyinkindi or Munyankindi.)

Mukantabana being led away by Joël and Emmanuel Ndabukiye, and a third person, Vuguziga. Her body was later brought back to the roadblock to be thrown into a pit, along with the bodies of others who had been killed, and the witness inferred that they had killed her. He identified two other persons that were killed at or near the roadblock, Kiranyuye and Nahiko.³⁹⁵

305. The Accused was known to Witness CGB before 1994, first as having worked at the Bralirwa brewery and lemonade factory, and then later when he returned to his village to have the road to his parents' house paved, and to visit his parents. Witness CGB observed that the Accused would normally arrive in his vehicle, park it somewhere on the road, and walk to his parents' house on foot. The witness recalled that these visits began in the 1970's and that he had last seen the Accused in 1987. After the death of the President in 1994, the witness heard the Accused introduce himself as the Minister of Finance.³⁹⁶

Credibility Assessment

306. The parties disagree on the credibility of Witness CGB.³⁹⁷ The Defence considers it unlikely that the witness would have left the relative safety of his hiding place near the Nyakagenzi River to return to Gahigiro, from which he had previously fled attacks. The witness explained that he returned to find refuge with the Hutu who had been one of his former teachers at an Adventist school, and by whom he had been converted to the Adventist faith.³⁹⁸ The Chamber does not find it improbable that the witness decided to seek shelter indoors with a friend where, for example, he might more easily obtain food.

307. The Defence also argued that it was unlikely that Witness CGB would have hidden so near an *Interahamwe* roadblock. The witness explained that he was near the kitchen at 4 a.m., the time at which one had to stop moving in order to avoid being discovered. He knew that there was a roadblock nearby, but had nevertheless hidden there because he believed that it was highly improbable that the *Interahamwe* would conduct searches so close to their roadblock.³⁹⁹ As mentioned previously, the Chamber is of the view that a strategy to hide close to dangerous places is not in itself implausible in view of the extraordinary situation in Rwanda in 1994. Moreover, the witness only stayed in the kitchen for a limited period. However, the Chamber is mindful that two of the four Prosecution witnesses at Gitaka claim to have adopted the same unusual strategy.

308. Witness CGB was shown a photograph which he identified as the area near the roadblock. He explained that the kitchen was not visible because the area had been overgrown by bush.⁴⁰⁰ In the Chamber's view, this is possible. When asked how he had found food, the witness testified that it had been brought by his former teacher during the four days that he hid in the kitchen.⁴⁰¹ The Defence asked how his friend knew where to find him. The witness explained that friends can find traces of one another; that signals were given; and that

³⁹⁵ *Id.* 11, 12, 13, 30-31.

³⁹⁶ *Id.* pp. 13, 28-29.

³⁹⁷ Prosecution Closing Brief pp. 15-16; Defence Closing Brief paras. 343-375; T. 1 March 2004 pp. 17-19; T. 2 March 2004 p. 46.

³⁹⁸ T. 22 September 2003 p. 21; Defence Closing Brief p. 62.

³⁹⁹ T. 22 September 2003 pp. 4, 22, 24.

⁴⁰⁰ *Id.* pp. 25-26.

⁴⁰¹ *Id.* pp. 11, 30.

they were able to move around at night between 11 p.m. and 4 a.m.⁴⁰² The Chamber accepts this explanation, particularly in light of the witness's ability to move about at night.

309. The Defence also raises inconsistencies between Witness CGB's testimony and his prior statement to investigators, given in May 2000. The previous statement dates the event as having occurred in early May 1994; at trial he testified that it was late May. The Chamber has considered the possibility that the witness aligned his testimony to the evidence of other Prosecution witnesses who testified that the event took place in late May 1994. However, the witness's explanation appeared convincing. He stated that he had difficulty remembering dates, but recalled that he had arrived in the Congo on 4 June 1994, which was about one week after he had seen the Accused at the roadblock.⁴⁰³ His testimony of the sequence of events was consistent during examination-in-chief and cross-examination.

310. In his prior statement, the witness declares that he saw the killing of Charles Munyankindi. On cross-examination, however, Witness CGB acknowledged that he had not seen the killing with his own eyes, but had only heard of it from the alleged killer.⁴⁰⁴ Additionally, the witness declared previously that he had witnessed the killing of Mukantabana, but testified at trial that he only saw the body of Mukantabana being brought to the roadblock.⁴⁰⁵ Witness CGB refused to acknowledge any contradiction in the description of either event, arguing that he had personally seen Mukantabana being led away and, later, her corpse brought back to the roadblock; and that he had personally heard the confession of Vuguziga, the alleged killer of Munyankindi.⁴⁰⁶ The Chamber considers the differences between the statement and the testimony to be minor discrepancies. They have no bearing on the role of the Accused and do not affect the credibility of the witness.

311. The Defence pointed out that the witness omitted any reference to Augustin Karara in his declaration. The witness responded that the investigators had only asked him who was manning the roadblock. As Karara was at his bar nearby, the witness did not mention him.⁴⁰⁷ The Chamber observes that the relevant paragraph in the statement is very brief and focuses on the persons manning the roadblock.

312. Witness CGB acknowledged that he gave his statement to investigators at the Kibuye Guesthouse in the company of other Prosecution witnesses. The Defence suggests that this provided an opportunity for collusion amongst the witnesses.⁴⁰⁸ The Chamber notes the witness's response that he did not know whether the other witnesses would testify against the Accused in the present case. None of the other witnesses in the trial were interviewed by investigators on the same day as Witness CGB.⁴⁰⁹

313. The Chamber observes that Witness CGB's testimony contained no reference to Karara. Moreover, Witness Defence Witness DL testified that the Swiss kitchen was 120-150

⁴⁰² *Id.* p. 31.

⁴⁰³ *Id.* pp. 13, 22-23.

⁴⁰⁴ Defence Exhibit 15 (statement of 12 November 2000); T. 22 September 2003 pp. 19-20.

⁴⁰⁵ T. 22 September 2003 pp. 11, 19-20.

⁴⁰⁶ *Id.* pp. 19-20, 30-31.

⁴⁰⁷ *Id.* p. 26.

⁴⁰⁸ *Id.* p. 32; Defence Closing Brief para. 375.

⁴⁰⁹ Witness CGB was interviewed on 12 November 2000. Witness CGD, interviewed on 9 November 2000, is the only Prosecution witness who gave his statement on about the same date as Witness CGB, but his declaration makes no mention of the alleged events at Gitaka roadblock.

meters from the roadblock. The Chamber will evaluate the credibility of the witness's testimony in relation to the totality of the evidence.

Witness CGH

314. Prosecution Witness CGH's testimony is discussed more fully in Section II.5. The testimony is relevant to the events at Gitaka because Witness CGH testified that during a meeting shortly after his alleged visit to Gasharu, the Accused said:

I have just come from home, from my cellule, and I was looking for Charles Munyankindi and his family. I did not find them, but I left a message for – with Jo?l Ndabukiye to search for them, and he said that the message should come that these person should no longer exist.⁴¹⁰

Munyankindi was a Tutsi teacher who was the witness's cousin, and a neighbour of the Accused. Munyankindi's wife, whom the witness did not identify by name, was also a teacher.⁴¹¹

Credibility Assessment

315. The Chamber has previously considered the witness's credibility in Chapter II.5. It found that Witness CGH's claim to have been present at a meeting between the Accused and Witness DN is not credible. It follows that the testimony of this statement by the Accused at that meeting is also not credible. Further, it is noted that, according to this testimony, the Accused did not mention Karegeya.

Witness DJ

316. Defence Witness DJ was born of Tutsi parents in Gasharu cellule. In 1994, she was living in nearby Gahigiro cellule with her husband, who was Hutu.⁴¹² After hearing of the death of President Habyarimana, she went into hiding, sometimes inside or on the roof of her house, at other times outside in sorghum fields. She testified that at the outbreak of violence, women married to Hutu men were not targeted, but that this changed about two weeks into the war.⁴¹³ As a Hutu, her husband was able to walk about freely during the daytime and reported to her every night what he had seen, including the deaths of her family members. He told her that her father had been killed in April at Gitaka, in Gasharu cellule, by Rukundavuga, assisted by Buregeya and that, subsequently, Joël Ndabukiye and Tabeya had taken his property. Witness DJ's husband also told her that Ndabukiye had told him to bury his father-in-law. After the war, he showed her where he had buried her father. The witness's mother was also killed in April by Rukundavuga, assisted by Niyongira, in Kayenzi. In addition, seven of her eight siblings were killed at the beginning of the war, at the Gatwaro Stadium in Kibuye, by gunshots and grenades.⁴¹⁴

317. Witness DJ heard from her husband that the Accused had visited Gasharu between the end of May and early June, saying that anyone who killed would be imprisoned. According to

⁴¹⁰ T. 2 September 2003 p. 39.

⁴¹¹ *Id.*; T. 3 September 2003 p. 6.

⁴¹² Defence Exhibit 18 (protected witness information); T. 27 October 2003 pp. 8-9, 12.

⁴¹³ T. 27 October 2003 pp. 27-28.

⁴¹⁴ *Id.* pp. 9-11, 17-18.

her husband, who was present, the Accused asked Witness DL who had ordered him to kill. The Accused also asked Witness DL why he had not hidden the Accused's cousins, or intervened to prevent them from being killed, even though they had given him land. The Accused then arrested Witness DL.⁴¹⁵

318. The witness testified that there were no more killings after the Accused's visit, and that she came out of hiding, although she stayed near or inside her house. She testified that it would have been impossible for the Accused to have ordered killings during that visit without her coming to know of it, because "everything was being said. Anyone could go out and inform himself or herself about what was happening, and it would not have escaped my knowledge if he had done so." After the war, Witness DJ was told that Sehire and Sekamonyo were responsible for killings in her area.⁴¹⁶

319. Witness DJ said that Prosecution Witness CGB was in hiding with her husband's elder brother, who lived nearby. She said that she exchanged information with Witness CGB every night, but that in mid-April, he fled to the Congo in a boat along with his two sisters, his child, and his little brother. Witness DJ pinpointed the departure as about two weeks after the start of the war. The witness was aware that they had left and did not see them after this date.⁴¹⁷

320. The witness explained that she knew of the Accused before the war. He would come to Gasharu about twice a year to visit his parents, who died some time before the war, and thereafter to visit his sister, who also lived in Gasharu. The witness testified that sometimes she would see him on these visits, whereas on other occasions she would be told by others of his visits. Vehicles were rare in Gasharu, and the presence of the Accused's vehicle was, therefore, a noteworthy event.⁴¹⁸

Credibility Assessment

321. The parties disagreed on the credibility of Witness DJ.⁴¹⁹ The Prosecution tried to establish that Witness DJ was biased by an alleged kinship to the Accused, as well as kinship between those who had saved her during the war – and therefore to whom she owed a debt of gratitude – and the Accused. She acknowledged that a close relative of her husband was married to the Accused's younger brother, Ezekias Seyeze.⁴²⁰ The person who asked her to testify in the case is Witness DG, a relative of the Accused. Another relative of the Accused, killed during the genocide, was the godfather of Witness DJ's husband.⁴²¹ The witness also testified that she was grateful to those who had protected her during the genocide in Rwanda in 1994.⁴²² The Prosecution suggests that bias can be discerned from her failure to mention these relations of kinship to the Accused during her direct examination or in her prior written

⁴¹⁵ *Id.* pp. 12-13, 21.

⁴¹⁶ *Id.* pp. 13-14.

⁴¹⁷ *Id.* pp. 15-16, 17, 23. The witness testified that she heard that the President's plane had been shot down in late March, and that the war had begun in April. *Id.* p. 17.

⁴¹⁸ *Id.* pp. 12, 22. The French version of the transcript provides a clearer indication that the witness saw the Accused himself on some of these visits. T. 27 October 2003 (French version) p. 23.

⁴¹⁹ Prosecution Closing Brief pp. 58-62; Defence Closing Brief paras. 379-395; T. 1 March 2004 pp. 25-26, 28; T. 2 March 2004 p. 47.

⁴²⁰ T. 27 October 2003 pp. 20-21. She also testified that Seyeze, along with Ndabukiye and Tabeya, had appropriated some of her father's property after he was killed.

⁴²¹ *Id.* pp. 25-26.

⁴²² *Id.* p. 27.

statement. The Defence argues, on the other hand, that Witness DJ's father, mother and three of her four siblings were killed during the genocide and, therefore, that she would be disinclined to exculpate the Accused on the basis of family or other attachments. The witness testified that her father and mother had been killed at Gitaka Centre and in Kayenzi, respectively; that she believed that Witness DO had been involved in their murder; and that Ndabukiye had stolen her father's property.⁴²³ Further, the witness disputed the Prosecution contention that the relations between her and the Accused would be described as kinship in Rwandan culture.⁴²⁴

322. The Chamber finds that the Prosecution has not established that the witness is, or was likely to be, biased in favour of the Accused. Her family connections might equally lead to a bias in the opposite direction. Nor was Witness DJ evasive: she was not asked about her relationship to the Accused during examination-in-chief and forthrightly answered such questions during her cross-examination.

323. Witness DJ's testimony is of limited value in relation to the alleged actions of the Accused, however, as it is based entirely on the account given to her by her husband. Nothing in the circumstances of that account assures the Chamber of its reliability. Nor does it have any possible corroborative value, as her husband was not called as a witness. In light of the direct evidence available, from both Defence and Prosecution witnesses, the Chamber accords this testimony very little weight.

324. One element of Witness DJ's testimony which is arguably not based on hearsay is the end of her nightly meetings with Witness CGB in April, who was in hiding nearby, and his presumed departure. This contradicts the testimony of Witness CGB that he left for the Congo no earlier than July 1994, and had observed the Accused at Gitaka Centre in late May.⁴²⁵ The Chamber notes, however, that Witness DJ could only assert through personal observation that Witness CGB had apparently left his hiding place in mid-April, not where he had gone. This is not inconsistent with Witness CGB's testimony, who acknowledged that he fled from Gahigiro on 14 April, but later returned after having hidden elsewhere in Kibuye Prefecture.

Witness DG

325. Defence Witness DG, a Tutsi who is a relative of the Accused, took refuge in the house of the Accused's sister in Gasharu in April 1994, along with another Tutsi, Witness DH.⁴²⁶ At first he simply stayed inside the house. About three days after the death of President Habyarimana, Witness DG saw one Simon Higiroy being taken past the house by a group of attackers. He did not actually see Higiroy being killed, but considered that to be the intention of the attackers. According to the witness, this marked the beginning of the killing of Tutsi in the cellule, and he thereafter concealed himself in the ceiling, and later under some dry grass in the compound of the house.⁴²⁷

326. Witness DG testified that the Accused's sister told him that Cyprien Karegeya and Tatiane Mukantabana (a.k.a Nyiramaritete), were killed during the month of May. He was

⁴²³ *Id.* pp. 9-11.

⁴²⁴ *Id.* pp. 20-21, 25, 26.

⁴²⁵ *Id.* pp. 16, 17-18.

⁴²⁶ Defence Exhibit 19 (protected witness information); T. 27 October 2003 p. 33, 36.

⁴²⁷ T. 27 October 2003 pp. 33, 35, 45.

told that Rukunduvuga had killed Tatiane, and that Karegeya had been killed at the Gitaka Centre by Witness DM, Niyonzira, and Ruganamanzi.⁴²⁸ The witness did not himself see these killings. Others whom he understood to have been killed because they were Tutsi included Mutemberezi, Nkurinziza, Kajjira and Habimana.⁴²⁹

327. At the beginning of June, Witness DG was told that the Accused had visited Gasharu and had held a meeting at which he told people to stop killing Tutsi, and that the Accused had arrested one man on suspicion of having done so. The witness did not see the Accused himself, but was told of these events by the Accused's brother, who was at the meeting, and the Accused's sister, who said that the Accused had visited her and reported what he had said.⁴³⁰ The Accused's sister reported to Witness DG that she had told the Accused that she was hiding two Tutsi. The witness did not emerge to greet the Accused only because he did not trust others who were with him.⁴³¹

328. Witness DG testified that he and other survivors speak about the events of 1994 and that the name of the Accused is never mentioned as one of those responsible for having committed crimes during the genocide.⁴³²

329. According to the witness, the Accused used to visit his family in Gasharu about once a year. In 1984, the Accused's parents died. The members of his family still remaining in the cellule included the Accused's sister, his nephew, and an elder and a younger brother.⁴³³

Credibility Assessment

330. The Prosecution argues that Witness DG does not possess any direct knowledge of the event and disputes his credibility.⁴³⁴ According to the Prosecution, the witness had been briefed to testify directly contrary to Prosecution evidence. Witness DG knew seven other Defence witnesses, and it is suggested that he had encouraged them to testify, and to show bias in favour of the Accused. This allegation is not substantiated by any evidence. The Prosecution further submits that the witness's assertion that not all members of the Government hated Tutsi showed bias, as he had no basis for making such a statement.⁴³⁵ Having reviewed the exchange between the Prosecution and the witness, it is clear that the basis of Witness DG's statement is his understanding of what the Accused said during his visit to Gitaka Centre. If true, the witness's statement has a foundation, and the allegation of bias is groundless. The Chamber also considers it of limited significance that the Accused, according to the witness's prior statement, visited Gasharu "frequently" before 1994, whereas he testified that the Accused came once a year.⁴³⁶

331. The Chamber finds that the testimony of Witness DG carries limited weight. He was not at the meeting attended by the Accused, nor did he see any killings, including those of

⁴²⁸ *Id.* pp. 34, 35, 44-46, 51-52.

⁴²⁹ *Id.* pp. 34, 52-53.

⁴³⁰ *Id.* pp. 36, 38, 42.

⁴³¹ *Id.* pp. 36-37.

⁴³² *Id.* pp. 38, 47.

⁴³³ *Id.* pp. 33-34.

⁴³⁴ Prosecution Closing Brief pp. 62-65; Defence Closing Brief paras. 396-412; T. 1 March 2004 pp. 25-27; T. 2 March 2004 pp. 47-48.

⁴³⁵ T. 27 October 2003 pp. 40-41.

⁴³⁶ *Id.* pp. 47-48.

Karegeya and Tatiane.⁴³⁷ His evidence is almost entirely hearsay, based on accounts of events given to him by the Accused's brother and sister, whose views may be biased and whose credibility has not been tested before the Chamber. The witness's perception that the visit of the Accused, allegedly in June, stopped all killings of Tutsi with immediate effect, is not credible and gives an appearance of bias.

Witness DH

332. Defence Witness DH, a Tutsi, was twelve years old in April 1994 and living in Gasharu Sector, when he heard of the death of President Habyarimana on the radio. People became afraid and went into hiding or sought refuge at places of safety. Karegeya took him to the house of Jo?l Ndabukiye, to be hidden, while Karegeya himself went to hide in the bush.⁴³⁸ Tatiane Mukantabana and her daughter were also hiding at Ndabukiye's house with the witness. After two weeks, when their hiding place was discovered, Karegeya returned and took the witness to hide at the house of the sister of the Accused, where Witness DG was already in hiding.⁴³⁹ Witness DH testified that he was welcomed and that Karegeya had a very good relationship with the Accused. While he was there the house was searched, but he avoided being discovered by concealing himself in the compound surrounding the house.⁴⁴⁰

333. Witness DH did not see Karegeya being killed. He testified that he heard that Karegeya had been killed during the last few days of April, downhill from the bar which is located near the Nyabahanga River, by a group of attackers among whom was Witness DM. He was told this by the Accused's sister, with whom he was hiding, who had heard people shouting about the killing. She told him: "Well, the person has been found, the fellow has been found ... Look, [Karegeya] has been found." The witness suggested that Augustin Karara, the trader, was quite close to the place where Karegeya was killed, and had also seen him being taken away to be killed. Witness DH did not, however, know of any eyewitnesses to the actual killing. He further heard that Tatiane Mukantabana was killed on the same day, by Rukundavuga.⁴⁴¹

334. Witness DH testified that he knew of the Accused before 1994 from the visits that the Accused made to Gasharu about twice a year from his home in Kigali. The Accused came to Gasharu for the first time since the start of the war at the very beginning of June.⁴⁴² The witness did not see the Accused himself, but was told of the visit by the Accused's sister. She recounted to the witness that she had told the Accused that children were hiding in her house; in response, he had advised her to keep them concealed for the time being. Witness DH inferred that the Accused had accepted their presence as he encountered no problems hiding there, even after the departure of the Accused. The witness was also told that the Accused had gone to Gitaka and had asked who had killed members of his family. From the day of the Accused's visit, the killing ceased, and houses were no longer searched.⁴⁴³

⁴³⁷ *Id.* pp. 42-46.

⁴³⁸ Defence Exhibit 20 (protected witness information); T. 27 October 2003 pp. 56-57, 67. The witness mentioned, in particular, that people sought refuge at the Kirambo Health Centre.

⁴³⁹ T. 27 October 2003 pp. 57, 59-60. The witness describes the house as "Ndindabahizi's house", but states that Ndindabahizi's sister was living there.

⁴⁴⁰ *Id.* p. 63; Defence Exhibit 22.

⁴⁴¹ T. 27 October 2003 pp. 61-62, 64, 70.

⁴⁴² *Id.* pp. 59-60, 62, 64.

⁴⁴³ *Id.* pp. 62, 64.

335. The witness stated that he had testified as a Prosecution witness before a Rwandan court in a trial concerning the killing of Karegeya. As far as he knew, the name of the Accused never came up during the trial. Witness DH asserted that the Accused was not present at the time of the killing of Karegeya and, therefore, that he had nothing to do with the killing. He also believed that the Accused could not have come to Gasharu in April or May without his knowing about it.⁴⁴⁴

Credibility Assessment

336. The Prosecution argues that Witness DH's testimony consists of third-hand information and is completely unreliable because of a family relationship with, and gratitude to, the Accused, for saving him during the war and helping him afterwards. According to the Defence, the witness is credible.⁴⁴⁵

337. The Chamber observes that the witness was twelve years old in 1994. He hid inside the compound of a house throughout the relevant period and did not see the Accused at all. He received his information about the visit of the Accused and the killing of Karegeya and Mukantabana from the Accused's sister, who had herself learned about these events, in whole or in part, from third parties. In relation to the direct evidence offered by both Prosecution and Defence witnesses, his information should be accorded little weight.

338. The Defence has emphasized that Witness DH is a Tutsi and that he would not testify in favour of someone who had been involved in killing Karegeya, who was his close relative.⁴⁴⁶ The Prosecution suggests, on the other hand, that the witness has a close relationship to the Accused's family. Witness DH himself acknowledged that many Tutsi were killed in Gasharu, and that he is grateful to the Accused and his relatives for saving his life.⁴⁴⁷ The Prosecution has not established that the witness is, or was likely to be, biased in favour of the Accused, but the Chamber acknowledges that bias may have infected the witness's knowledge of events through the intermediary of the Accused's sister. Without being able to test the credibility of her knowledge of events, including her potential bias, the Chamber is unable to give significant weight to Witness DH's testimony. Nonetheless, it is striking that Witness DH, a close relative of Karegeya, would testify in favour of the person accused of having killed him.

339. The Chamber notes that Witness DH's prior statement does not mention that he stayed for some time with Joël Ndabukiye. He referred to this briefly in his testimony and said that he left that house when his hiding place was "discovered". He had no information that Ndabukiye was involved in the killing of Karegeya. However, his half-sister DI explained that Ndabukiye had "changed" during the events in 1994 and even chased Witness DH out of his house. She did not exclude Ndabukiye's involvement in the killing of Karegeya.

Witness DI

⁴⁴⁴ *Id.* p. 66.

⁴⁴⁵ Prosecution Closing Brief pp. 66-68; Defence Closing Brief paras. 413-428.

⁴⁴⁶ T. 27 October 2003 p. 66.

⁴⁴⁷ *Id.* p. 70.

340. Defence Witness DI is Witness DH's half-sister. She was seventeen years old in 1994 and living in Gasharu cellule with her parents, both of whom were Tutsi.⁴⁴⁸ The first attacks by Hutu against Tutsi after the death of President Habyarimana consisted of Tutsi homes being burned down. Tutsi went into hiding in the bush or in their neighbours' houses, where they were pursued and killed by attackers using machetes, clubs, and even daggers.⁴⁴⁹ Initially, Witness DI sought refuge in the bush with her younger brother (who was not Witness DH) and her mother. In the middle of April, attackers found their hiding spot and killed her mother, but she and her younger brother escaped. A week later, her brother was captured, and she later learned that he had been killed that very day. Witness DI was again able to escape but some days later, as she was searching for her brother, she was apprehended and taken to Gitaka Centre. Witness DL, a family friend, gave money to the leader of the attackers to secure her release and hid her in his house. Cyprien Karegeya visited her while she was in hiding at Witness DL's house.⁴⁵⁰

341. A couple of days after Karegeya's visit, which Witness DI estimated to be during the last week of April, she learned from Witness DL that Karegeya had been clubbed to death at Gitaka Centre.⁴⁵¹ She was unsure whether Witness DL had seen the killing, but she understood that he had arranged the burial.⁴⁵² Witness DI subsequently learned that Witness DM had confessed to killing Karegeya.⁴⁵³ Witness DI testified that her brother was killed about a week after her mother, and that Karegeya was killed a week after that.⁴⁵⁴

342. Witness DI was told that the Accused came to Gasharu at the beginning of June 1994 and that he was saddened and angered to learn that people were being killed. The Accused ordered the arrest of a certain Gatete, who fled before he could be apprehended. He then had Witness DL arrested based on accusations that he was involved in the killings.⁴⁵⁵ In the witness's opinion, accusations that the Accused was responsible for killings of Tutsi in Gasharu are lies.⁴⁵⁶

Credibility Assessment

343. According to the Prosecution, Witness DI's testimony is unreliable. It is mostly based on hearsay and is biased by family ties and gratitude to the Accused and his family. The Defence considers the witness credible and argues that it is unlikely that she would be biased in favour of the Accused, as she is a Tutsi and a close relative of Cyprien Karegeya.⁴⁵⁷

344. The Chamber observes that Witness DI was seventeen years old in 1994. According to her testimony, she was in hiding during the events. She did not see the killing of Karegeya but was told about it by Defence Witness DL. Only eight months before her testimony in Arusha, she was informed that Defence Witness DM had confessed to having killed

⁴⁴⁸ Defence Exhibit 24 (protected witness information); T. 27 October 2003 pp. 73, 82.

⁴⁴⁹ T. 27 October 2003 p. 75.

⁴⁵⁰ *Id.* pp. 75-78, 84.

⁴⁵¹ *Id.* pp. 77-78.

⁴⁵² *Id.* pp. 89-90.

⁴⁵³ *Id.* pp. 79, 90-91. She stated that she found out about Witness DM's confession eight or nine months before her testimony at the Tribunal.

⁴⁵⁴ *Id.* p. 78.

⁴⁵⁵ *Id.* pp. 80, 88, 91.

⁴⁵⁶ *Id.* p. 80.

⁴⁵⁷ Prosecution Closing Brief pp. 68-72; Defence Closing Brief paras. 429-446; T. 1 March 2004 p. 27; T. 2 March 2004 p. 48.

Karegeya. She did not see the Accused during the events but was told that he arrived in Gasharu in the month of June and was angry because of the killing of Tutsi. There is no indication as to the source for this information or when she received it. Consequently, Witness DI's testimony has limited value in relation to the Accused's alleged conduct at Gitaka roadblock, or its consequences.

345. The Defence has stressed that Witness DI is a Tutsi who would not testify in favour of someone who has been involved in the killing of Karegeya, a close relative. On the other hand, the witness also had a certain family relationship to the Accused. She has reason to be grateful for having been protected in 1994 by the Accused's sister, who also took care of her until she was married. The Chamber sees no need to speculate about her motives, but finds that her testimony is based principally, if not exclusively, on what she was told by Witness DL. As Witness DL testified himself about his observation of the Accused's visit and of killings in Gasharu, the Chamber prefers to assess the credibility of his testimony directly. The Chamber will revisit Witness DI's testimony to the extent that it may have a bearing on the credibility of Witness DL.

346. In view of these findings, there is no need for the Chamber to consider the Prosecution's other submissions. It notes, however, that the Prosecution is wrong in arguing that Witness DL testified that Karegeya was dead before Witness DI took refuge in his house. It is also not incorrect that Witness DM, whom the witness believed to have killed Karegeya, denied in his testimony that he had any involvement in the killing. Witness DM testified that he was part of the group of attackers who killed Karegeya, although he did not himself strike him.

Witness DL

347. Defence Witness DL, a Hutu, ran a small business at Gitaka Centre in 1994. In the days following a radio announcement on 7 April of President Habyarimana's death, Hutu began killing and massacring Tutsi.⁴⁵⁸ Around 20 April, a roadblock was set up about two metres from the witness's business in the centre of Gasharu by Somayire Minani, and a younger brother of Joël Ndabukiye named Mbonnyubwe, both of whom were from the neighbouring sector of Kayenzi.⁴⁵⁹ The roadblock was there for about two weeks. People were charged a fee as they passed through the roadblock, but no one was killed there; killings took place some 25 to 30 metres from the roadblock itself, still within the area known as Gitaka. A group led by Witness DO from Kayenzi Sector chased, attacked and killed people in Gasharu Sector.⁴⁶⁰ The witness testified that the massacres ended in May.⁴⁶¹

348. In mid-April, someone came and told Witness DL that "Your boss has been arrested. He's been taken to the Buye Sector."⁴⁶² Witness DL explained that "his boss" referred to Cyprien Karegeya, who had given the witness many things, including the land on which he had built his house. The witness saw a large group of attackers, led by Witness DM, taking Karegeya away, but did not actually see him being killed. Witness DL understood that Karegeya was killed at Gitaka Centre. He was subsequently shown Karegeya's body and arranged for his burial in Gitaka. He buried Karegeya with the assistance of Gatwa, another

⁴⁵⁸ Defence Exhibit 25 (protected witness information); T. 28 October 2003 pp. 2-3, 17-18, 21.

⁴⁵⁹ T. 28 October 2003 pp. 3, 18-20.

⁴⁶⁰ *Id.* pp. 4, 20, 36.

⁴⁶¹ *Id.* pp. 23, 33.

⁴⁶² *Id.* p. 8.

trader at the centre in Gasharu.⁴⁶³ Witness DL told Witness DI that Karegeya had been killed, identifying Witness DM as the leader of the killers. The witness explained that he did not know Witness DM's name at the time of the incident, recognizing him only as a cobbler from Buye Sector; he testified that he learned the name in 1998 after further inquiries.⁴⁶⁴

349. Witness DL was harbouring Witness DI in his home when Karegeya was killed. The person who told him that Karegeya had been arrested also warned that "These same people will come for the girl and kill her along – together with Cyprien."⁴⁶⁵ Witness DL hid Witness DI outside; the attackers later came to search the house but could not find her. The witness testified that Witness DI stayed with him in April, May and June 1994. During the day he would sometimes hide her in the sorghum fields, and she would return in the evening.⁴⁶⁶

350. Some time in April, Witness DL saw Tatiane Nyiramaritete being taken away from the house of one Pascal Ruhara by a group of attackers led by Witness DO. He did not know whether she had ever hidden at the house of Joël Ndabukiye.⁴⁶⁷

351. Witness DL testified that prior to 1994, the Accused would visit Gasharu about once a year from his home in Kigali.⁴⁶⁸ After the start of the war, the first time that the witness saw the Accused in Gasharu was on a Sunday at the end of May or the beginning of June.⁴⁶⁹ The Accused arrived at the centre in a minibus driven by a soldier, accompanied by two children and another person. He then walked to his sister's house, some fifteen minutes' walk from the centre, where he spent about an hour. Witness DL went to church, and returned at the same time that the Accused was arriving before a crowd of people at the centre.⁴⁷⁰ The Accused was very angry about the deaths of his relatives.⁴⁷¹ People told the Accused that a certain Augustin Gatete was responsible for killings in Gasharu. He asked Gatete: "Who gave the orders to kill people? Who killed Tutsi? Where are the members – where are my relatives who live here?"⁴⁷² Gatete fled immediately and the Accused was unable to apprehend him.⁴⁷³ The Accused then asked Witness DL: "You have to give some explanations and say how these people died, because they were your neighbours ... I know you. You were a neighbour to my relatives, and you are going to explain to me how ... they were killed."⁴⁷⁴ The Accused arrested Witness DL and took him to the Gitesi Commune office in Kibuye at about 2 p.m. He was released by the police the next day. The witness believed that the Accused himself ordered his release after discovering that he had been hiding Witness DI.⁴⁷⁵

352. According to Witness DL, Bourgmestre Karara came to Gasharu at the beginning of the war and encouraged people to flee to Kibuye. He transported some people in his vehicle. The witness believes that Karara came as a saviour but that the security situation worsened and that he was unable to return to Gasharu. Witness DL denied that he went to Witness

⁴⁶³ *Id.* pp. 8-9, 14-15.

⁴⁶⁴ *Id.* pp. 8-9, 23, 29-30, 37-40.

⁴⁶⁵ *Id.* p. 8.

⁴⁶⁶ *Id.* pp. 22-23.

⁴⁶⁷ *Id.* p. 21.

⁴⁶⁸ *Id.* p. 5. The witness stated that he had known the Accused by sight since his wedding.

⁴⁶⁹ *Id.* pp. 5-7, 30-31.

⁴⁷⁰ *Id.* p. 7.

⁴⁷¹ *Id.* pp. 6, 10.

⁴⁷² *Id.* pp. 7, 13.

⁴⁷³ *Id.* pp. 11, 12.

⁴⁷⁴ *Id.* p. 10.

⁴⁷⁵ *Id.* pp. 5, 11-13.

DN's home during the war, and testified that he only left Gasharu on the day that he was arrested.⁴⁷⁶

353. Witness DL testified that there were no bushes or other hiding places where someone could hide and observe what was happening at the roadblock at the centre of Gasharu. He further testified that there is a house with a separate kitchen which had been built by the Swiss about 120 or 150 metres from where the roadblock was located. Witness DL testified that neither the house nor the kitchen would have been visible from the roadblock.⁴⁷⁷

Credibility Assessment

354. The Prosecution contests Witness DL's credibility, arguing that there are contradictions between his previous statement to the Rwandan authorities in 1993, his written statement to Defence investigators, and his testimony before the Chamber.⁴⁷⁸ The Defence emphasizes the importance of this witness, who observed the acts and remarks of the Accused during his visit in Gasharu and hence directly contradicts Prosecution evidence that the Accused incited people to kill Tutsi.⁴⁷⁹

355. The Prosecution alleges that Witness DL's identification of Witness DM as Karegeya's killer is inconsistent with his prior statement to the Rwandan judicial police in August 1998, in which he denied knowing who had killed Karegeya. The witness explained that in that earlier statement he had identified a group of attackers as Karegeya's killers but did not, at that time, know them by name. He testified that he learned the name of the leader of the attackers after Witness DM returned from exile in the Congo, which was some time in 1998, after the interview with the judicial police.⁴⁸⁰ Witness DL clarified later in his testimony that he had carried out investigations and discovered the identity of the killer in 1998, after his interview.⁴⁸¹ The Chamber cannot rule out this possibility, but notes that it allegedly took Witness DL four years to discover the identity of Karegeya's killer in a place as small as Gasharu, even if the perpetrator came from another locality.

356. The Prosecution also claims that Witness DI testified that Witness DL had named Witness DM as Karegeya's killer in 1994, at the time of the events. Witness DI's testimony on this question, however, is ambiguous. She was asked: "From what [Witness DL] said or through investigations that you yourself may have made, do you know who killed Karegeya?" Her response was simply, "Yes, I know that my father was killed by [Witness DM]".⁴⁸² She did not clarify whether she was told this at the time by Witness DL, or whether she learned this name subsequently.

357. The Prosecution challenges the veracity of Witness DL's claim that Witness DI stayed with him from April to July. It claims that Witness DI testified that she only remained at his house for a short time in April 1994, before finding refuge with the sister of the Accused. This is incorrect: Witness DI expressly stated that she only went to stay with the Accused's

⁴⁷⁶ *Id.* pp. 13-14.

⁴⁷⁷ *Id.* pp. 14, 15.

⁴⁷⁸ Defence Exhibit 25 (statement to Defence investigators of 6 August 2003); Prosecution Exhibit 33 (interview with Rwandan judicial police, dated 31 August 1998).

⁴⁷⁹ Prosecution Closing Brief pp. 73-76; Defence Closing Brief paras. 447-482; T. 1 March 2004 pp. 25, 27, 29; T. 2 March pp. 6, 48-49.

⁴⁸⁰ T. 28 October 2003 pp. 38-40; Prosecution Closing Brief pp. 74-75.

⁴⁸¹ T. 28 October 2003 pp. 38-40.

⁴⁸² *Id.* p. 79.

sister after the end of the war.⁴⁸³ The Prosecution also asserts that there is a contradiction between Witness DI's claim that Karegeya visited her while she was hiding at Witness DL's house, and Witness DL's statement to the Rwandan judicial police which the Prosecution interprets to mean that Karegeya was dead when he invited her to stay with him. In response to the question "For how long did you hide this young girl?", Witness DL responded:

Since [Karegeya's] death ... I told her that, "Since [Karegeya is] dead, let us accept that we die together; instead of spending all the time running around in the bush and hiding come and stay with me."⁴⁸⁴

The Prosecution did not put this alleged contradiction to the witness, nor is it obvious that the witness was saying that he made this statement *before* the arrival of Witness DI at his house.

358. The Prosecution notes that in a prior statement to Defence investigators in 2003, the witness claimed that Witness DM had pleaded guilty to killing Karegeya. During his testimony, Witness DL denied knowing whether Witness DM had confessed, and stated that the investigators made a mistake.⁴⁸⁵ The Prosecution further argues that Witness DM denies having killed Karegeya.⁴⁸⁶ This claim is inaccurate. Witness DM testified that he was part of the group that killed Karegeya, though he did not himself strike any blows.

359. Even if the contradictions between Witness DL and his previous statements are less significant than alleged by the Prosecution, the Chamber is not convinced of the credibility of this witness. His insistence that Joël Ndabukiye played no role at the roadblock is also surprising, given the proximity of his house. That assertion is also contradicted by the testimony of Prosecution witnesses and, implicitly, by Defence Witness DI who explained that Joël Ndabukiye "changed" during the events in 1994. Moreover, it is difficult to understand how Witness DI could have successfully hidden with Witness DL for three months, albeit moving from place to place, when "people knew" that she was staying with him.⁴⁸⁷ Finally, Witness DL is the only witness other than the Accused who testified that the Accused arrived accompanied by two children.⁴⁸⁸ This raises the issue whether the witness is actually telling the truth or describing an event other than that referred to by other witnesses.

360. The Prosecution alleges that the evidence concerning the possibility of hiding near the roadblock at the centre, and of the distance of the kitchen built by the Swiss from the roadblock, was concocted purely to contradict the testimony of the Prosecution witnesses.

361. The Chamber defers final evaluation of the witness credibility until after it has reviewed the totality of the evidence concerning events at Gasharu.

Witness DU

362. Defence Witness DU, a Tutsi, lived with her Hutu husband in Kirambo Cellule in 1994. When the war broke out after the death of the President, killings of Tutsi were carried

⁴⁸³ *Id.* p. 82. The Prosecution claim seems to be based on a confusion with another witness, Witness DH, who testified that he found refuge at the house of the Accused's sister after two weeks at another house. T. 27 October 2003 pp. 57, 59-60.

⁴⁸⁴ T. 28 October 2003 pp. 9-10.

⁴⁸⁵ *Id.* pp. 29-30.

⁴⁸⁶ Prosecution Closing Brief p. 75.

⁴⁸⁷ T. 28 October 2003 pp. 22-23.

⁴⁸⁸ T. 25 November 2003 p. 15

out by *Interahamwe*, initially from Kayenzi, armed with clubs, spears, machetes and sharpened sticks. After her cousin, who was a neighbour, was killed, the witness went into hiding in the bush near Nyabahanga River with her two-month-old granddaughter.⁴⁸⁹

363. At the end of June Witness DU's husband told her that the Accused, whom she had known for a long time, had come to Gitaka and had declared that no further killings should take place. Her husband immediately brought her home from her hiding place. The witness testified that after this reported visit, there were no further killings and that security was restored. She did not see the Accused during the war.⁴⁹⁰

Credibility Assessment

364. The Prosecution argues that Witness DU does not possess any direct knowledge about the Accused's visit to Gasharu, and that she was confused about time. It argues that the witness could not have remained hidden in a bush with a two-month old baby without being given away by its cries. The Defence considers the witness credible and submits that the Prosecution's argument with respect to confusion is exaggerated.⁴⁹¹

365. The Chamber observes that Witness DU's evidence about the Accused's visit at Gasharu is based entirely on information from her husband and that estimates of time were confused. She first testified that the Accused's visit took place at the end of June, then said that she could not remember whether it was at the beginning or end of June, and finally stated that it was "after the war". As pointed out by the Defence, she appeared to refer to the end of the killings. The Chamber has noted that she is a Tutsi, and that her indirect evidence corroborates the testimony of some other Defence witnesses. However, in itself, her evidence is of limited significance. The Chamber sees no need to assess whether it appears credible that she was able to hide alone with the baby for a considerable period in the sorghum field.⁴⁹²

Witness DV

366. On 6 April 1994, Witness DV, a Hutu, was in Kibuye where he attended secondary school, but was ordinarily a resident of Kayenzi Sector, bordering Gasharu Sector. On 7 April in 1994, the principal of his school announced that President Habyarimana had been killed and that, as the security situation was worsening, students should return home. Witness DV returned that same day to his home, where he lived with his grandmother, about five minutes' walk from Gasharu Cellule.⁴⁹³

367. The witness testified that after the President's death, Tutsi were killed in his cellule by Hutu and Twa from the cellule and elsewhere. Cyprien Karegeya's wife, Josephine Nyirabagesera, and Witness DI sometimes hid in his grandmother's house or banana grove.

⁴⁸⁹ Defence Exhibit 27 (protected witness information); T. 28 October 2003 pp. 42-46.

⁴⁹⁰ T. 28 October 2003 pp. 46-47.

⁴⁹¹ Prosecution Closing Brief pp. 77-78; Defence Closing Brief paras. 483-493; T. 1 March 2004 pp. 25-26; T. 2 March 2004 p. 48.

⁴⁹² Asked how it was possible to hide with the baby, the witness answered that it did not cry because the mother sometimes came to breast-feed the child, and because she herself gave the baby canned liquid to drink. T. 28 October 2003 p. 49.

⁴⁹³ Defence Exhibit 28 (protected witness information); T. 28 October 2003 pp. 52-53, 63. The witness estimated the distance from Kibuye to Gitaka as being three hours' walk. T. 28 October 2003 p. 74.

They told Witness DV that they had also hidden in Witness DL's house from time to time.⁴⁹⁴ One day at the end of April, Witness DV was digging sweet potatoes at a location above his grandmother's banana grove when he saw one Ntirihirika, with a group of attackers, chase, catch, and kill Nyirabagesera with a club. Witness DI fled towards Kirambo and escaped. Witness DV saw these events from a distance of 100 or 150 metres.⁴⁹⁵

368. Witness DV was told by people from his neighbourhood that Cyprien Karegeya had been killed at Gitaka at the beginning of May, but did not observe the killing first hand.⁴⁹⁶ The witness saw a roadblock in Gasharu, and recognized Somayire and Mbonyumve amongst those manning the roadblock. They were armed with clubs and sticks, but he did not know whether people had been killed there.⁴⁹⁷ On the way to Gasharu, the witness saw dead bodies. He had heard of the killing of a native of Nyarubuye by Witness DO near, but not at, the roadblock; and of Tatiane at a place called Nyabahanga.⁴⁹⁸ The witness understood that Gatete had killed a lot of people, including Mbonimpa and the wife of a person named Fabien. He also understood that Uwimana had killed people in Gasharu, but did not know any other killers by name.⁴⁹⁹

369. One Sunday afternoon in June when many people were returning from church, Witness DV saw the Accused speaking at Gitaka Centre. He had never previously seen the Accused, but residents of Gasharu cellule told the witness who he was.⁵⁰⁰ The witness believed that the Accused had arrived in a minibus, accompanied by two others, but did not witness his arrival or the beginning of his remarks. He heard the Accused say "You should not kill the people. You know it is the same blood which is flowing in the veins of each and every one of us."⁵⁰¹ The Accused also asked "Don't you know people who might have participated in the killings?" and was told by a woman named Colette that Gatete had been involved. When the Accused said "Bring me this Gatete", Gatete fled immediately.⁵⁰² Witness DV testified that he also heard the Accused say to Witness DL: "You have killed people, where did you put them?" The Accused arrested Witness DL, asked him to enter his vehicle and said "You should go and explain to the authorities how you killed these persons." Witness DL got into the Accused's vehicle without resisting. Witness DV saw Witness DL the next day, and inferred that he had spent only one day in custody.⁵⁰³

370. Witness DV testified that two Prosecution witnesses, CGF and CGX, were not present when the Accused visited Gasharu. The witness stated that Witness CGX's family had been killed and that she had gone to live with her brother. Witness CGF would not have been in hiding near the roadblock because he was Hutu and was not pursued by the killers.⁵⁰⁴

⁴⁹⁴ T. 28 October 2003 pp. 61, 64-65.

⁴⁹⁵ *Id.* pp. 53, 54, 65-66.

⁴⁹⁶ *Id.* p. 55.

⁴⁹⁷ *Id.* pp. 59, 70.

⁴⁹⁸ *Id.* p. 70.

⁴⁹⁹ *Id.* pp. 68-69, 75.

⁵⁰⁰ *Id.* pp. 55, 67, 72.

⁵⁰¹ *Id.* pp. 55-56, 72.

⁵⁰² *Id.* pp. 56, 68, 73.

⁵⁰³ *Id.* pp. 57-58, 68, 71, 73.

⁵⁰⁴ *Id.* p. 62.

Credibility Assessment

371. The Prosecution argues that Witness DV's testimony is contradicted by that of Witnesses DI and DL. It also suggests that he is biased because he is married to Witness DI, who has a family connection to the Accused. The Defence finds no contradictions in the testimony of Witnesses DI and DL and emphasizes that Witness DV, who is only related to the Accused through Karegeya and should have every reason to want his killer convicted, testified in favour of the Accused.⁵⁰⁵

372. Witness DV lived in a cellule neighbouring Gasharu and appeared to have limited knowledge of some Tutsi killed there, such as Simon Higiroy and a certain Habimana. In the Chamber's view, this does not mean that the witness's claim that he observed events in Gasharu is implausible. He lived only five or six minutes walking distance away. The Chamber accepts the witness's explanation that he went to Gasharu often in order to make purchases and to visit family members and neighbours.⁵⁰⁶

373. As for the alleged contradictions with Witness DI's testimony, the Prosecution has pointed to different descriptions of Nyirabagesera and Witness DI's hiding places; that Witness DI never mentioned that Nyirabagesera hid at either Witness DL's house or at the house of Witness DV's grandmother; and that, unlike Witness DI, Witness DV did not state that Nyirabagesera was also in hiding with Witness DI's brother. The Chamber observes that none of these discrepancies were put to Witness DV during cross-examination. Having compared the two testimonies carefully, the Chamber cannot exclude the possibility that the apparent contradictions could have been explained by the witness.⁵⁰⁷ Under these circumstances, the Chamber does not find that the witness's credibility is undermined by the alleged contradictions.

374. Of some concern, however, is the fact that Witness DV denied knowledge of any relationship between Karegeya and the Accused. The witness married a relative of Karegeya in 1998, who was then living like a family member with the Accused's sister. Witness DV even asked the Accused's sister for permission to marry Witness DI.⁵⁰⁸ Several Prosecution and Defence witnesses testified during the trial that Karegeya was the Accused's cousin. This appears to have been generally known at the local level.

375. Another factor of relevance to Witness DV's credibility is his testimony that there was a causal connection between the alleged visit of the Accused in June and the end of the killings in Gasharu. This is difficult to reconcile with the witness's own testimony, according to which most Tutsi had already been exterminated by June and there was "no longer anyone to hunt down".⁵⁰⁹ When asked to explain this contradiction, Witness DV stated that while it was true that there were very few Tutsi left by June, those who did survive were spared, in part because of the Accused's declaration that the killers should be punished.⁵¹⁰ The Chamber does not consider this response sufficiently convincing.

⁵⁰⁵ Prosecution Closing Brief pp. 78-82; Defence Closing Brief paras. 494-512; T. 1 March 2004 pp. 26, 28; T. 2 March 2004 p. 49.

⁵⁰⁶ T. 28 October 2003 pp. 62-63, 67.

⁵⁰⁷ Prosecution Closing Brief p. 81. Neither of these inconsistencies was put to the witness during his cross-examination.

⁵⁰⁸ T. 28 October 2003 pp. 61, 66-67.

⁵⁰⁹ *Id.* p. 67.

⁵¹⁰ *Id.* pp. 70, 75.

376. The witness's testimony concerning Witnesses CGF and CGX is puzzling. It is not obvious that the witness would have noticed their alleged absence during the Accused's visit at Gasharu. He did not simply state that he did not see them but asserted that they were not there. It is not clear to the Chamber why Witness DV would have been particularly interested in these two individuals, or why he would have specifically recalled their absence some nine years after the event. The lack of any reasonable explanation by the witness as to how he could recall this detail raises some suspicion that his evidence was tailored to meet the Prosecution case, even though he denied any knowledge that these two individuals had testified for the Prosecution. In this context, the Chamber observes that his explanations in court for saying that they were absent, were not entirely convincing.

377. The Chamber will weigh the witness's credibility by comparing his testimony to the totality of evidence presented to the Chamber.

Witness DM

378. Witness DM testified that he is a Hutu, native of Nyarusage Cellule, Buye Sector, which borders Gasharu Cellule. He is presently a detainee in Gisovu prison in Rwanda. He explained that three days following the death of President Habyarimana on 6 April 1994, Hutu began massacring, and looting the property of Tutsi.⁵¹¹

379. Witness DM testified that he witnessed the killing of Cyprien Karegeya. At the end of April, between midday and 2 p.m., the witness was on his way to Gitaka in Gasharu. At a place called Gisiza, he met a group of men escorting Karegeya, whom they had found in a sorghum field. The group took Karegeya to Gitaka and made him sit in front of Witness DL's house. One of the group named Ndagijimana struck Karegeya between his shoulders with a club. The others said, "It's not a good idea to kill him in front of someone else's house. Let's take him behind the houses." They took Karegeya behind a row of buildings somewhat below Gitaka Centre, where he was beaten to death by Rusagara and Misago.⁵¹² In addition to the three who struck Karegeya, the group included Ahingereje, Rukanamanzi, and Rwasibo, whom the witness identified as the leader.⁵¹³ Witness DM was standing about ten metres from Karegeya when he was killed, slightly uphill.

380. The witness stated that the group had not acted on anyone's instructions, as he would have been aware of any prior meeting for that purpose.⁵¹⁴ Other eyewitnesses to the event were said to be Witness DL, Mwirinde, Jotham Sebarame, and Nasone Nsengimana.⁵¹⁵ Although Witness DM did not participate in the killing of Karegeya directly, he considered himself responsible as he was armed with a club and accompanied the attackers. He acknowledged that he was part of the group of attackers, and that "for those who saw me, I was a criminal amongst others".⁵¹⁶

⁵¹¹ Defence Exhibit 37 (protected witness information); T. 30 October 2003 pp. 45-46; T. 31 October 2003 pp. 4-6.

⁵¹² T. 30 October 2003 pp. 46-49; T. 31 October 2003 pp. 9, 17. Two of the buildings behind which Karegeya was killed were owned by Myera and Sebarame.

⁵¹³ T. 30 October 2003 pp. 47-49, 52; T. 31 October 2003 pp. 9, 19-20.

⁵¹⁴ T. 30 October 2003 p. 49; T. 31 October 2003 p. 18.

⁵¹⁵ T. 31 October 2003 pp. 5-6, 21-23. Witness DL and Sebarame were shopkeepers at Gitaka; their businesses were closed, but they were standing nearby at the time.

⁵¹⁶ T. 31 October 2003 pp. 7, 9, 14.

381. Witness DM testified that he knew the Accused by sight, and recalled having seen him twice before 1994. The Accused could not have visited without the witness's knowledge because whenever he came, people would speak of the event and rush to greet him. The witness was a neighbour of the Accused's family members, including uncles, cousins and an elder brother, and the Accused would pass close by his home during such family visits.⁵¹⁷

382. During the events of 1994, Witness DM only saw the Accused at the end of June. The witness was in a house at Gitaka drinking beer when those at the door said that the Accused had arrived. He and many others came out to see the Accused, who asked: "Who killed these people around here? ... Who gave you the order to kill people?" Everyone kept quiet, so he addressed Witness DL specifically and asked him: "You live here. Who killed your neighbours? ... Who killed Karegeya? You see that his house has been destroyed." Witness DL did not respond, but someone who had come out of the bar said in a low voice that one Gatete had killed people. Gatete was called, and the Accused asked him "Is it really you who exterminated the people here?" When he heard this question, Gatete fled. The Accused then took Witness DL away, saying: "Since you haven't said who it is who has killed these people, since you are their neighbour and you see that my cattle have been looted, I'm going to arrest you."⁵¹⁸

383. The witness explained that the killings had already stopped because the French had come. He also said that the killings came to an end by the middle of May 1994.⁵¹⁹

Credibility Assessment

384. The Prosecution submits that the Chamber should consider the evidence of Witness DM with caution and should require that it be corroborated in all material respects. The Defence argues that the witness is credible with respect to the death of Karegeya, of which he was a witness, and in relation to the date on which the Accused arrived in Gitaka, which is corroborated by other witnesses.⁵²⁰

385. The Chamber recalls that Witness DM is presently detained in Gisovu Prison, Rwanda. On 16 November 2002, in pursuance of the Act relating to *gacaca*, he made a confession before the Rwandan Prosecutor's office in Kibuye.⁵²¹ In that document, he confessed to murder. The confession lists four victims, all from Buye Sector in Kibuye Prefecture. Karegeya (from Gasharu) is not included. The confession also contains the names of twenty-eight co-perpetrators, twenty-five of whom are from Buye. Ndagijimana, the attacker who allegedly struck the first blow against Karegeya, and Rwasibo, whom the witness identified as the leader, are not included. The confession refers to Ruganamanzi (in the confession called Rugenamanzi, from Buye), Misago (from Buye), Rusagara (from Kayenzi), and possibly Ahingwereje (from Buye).⁵²² The four killings, all committed in

⁵¹⁷ T. 30 October 2003 pp. 50-52.

⁵¹⁸ *Id.* p. 51.

⁵¹⁹ *Id.* p. 52.

⁵²⁰ Prosecution Closing Brief pp. 88-91; Defence Closing Brief paras. 513-526; T. 2 March 2004 pp. 48-49.

⁵²¹ Prosecution Exhibit 36 ("Procès-verbal d'aveu de plaidoyer de culpabilité et de demande de pardon; loi-organique No. 40/2000 du 26.1.2001 instituant les juridictions gacaca, articles 54-59-60-61). The witness testified that in a letter of 13 December 1998 to the Rwandan Prosecutor, he confessed his guilt. T. 30 October 2003 p. 1.

⁵²² The four names are listed amongst co-perpetrators as no. 22, 14, 25, and 13, respectively. The name of no. 13 in the statement is François Aygereje.

Buye, are described briefly at the end of the statement. The witness mentions that Witness DL observed this offence,

386. In his confession, Witness DM confessed only to four murders in Buye, and not to the killing of Karegeya in Gasharu. Either before the Kibuye Prosecutor or before the Chamber, the witness did not tell the truth. This is not in itself surprising: accused persons have an interest in diminishing their own role or, at any rate, giving no more information than they consider required to obtain the advantages of confession. The Chamber must determine the extent to which the witness's contradictory confession in Kibuye affects the credibility of his sworn testimony in Arusha.

387. When his confession was placed before him during cross-examination, the witness was asked whether he could find the name of Karegeya. His answer, "I haven't found it yet", left the impression that it was included somewhere in the confession. Asked about Ndagijimana, he first stated that the name was mentioned in the confession. When it was put to him that there was no such reference, he answered: "I gave the name. Maybe they forgot to put the name there, but I recall that I gave the name".⁵²³ The Chamber considers it unlikely that the Kibuye Prosecutor would have forgotten to include a name given to him. The statement is detailed and contains an observation by the Kibuye Prosecutor which clearly indicates that office's interest in the co-perpetrators. It reads: "[The witness] did not explain the role of each co-perpetrator."

388. The witness was therefore not correct when he testified that the Kibuye Prosecutor accepted that he had told them the truth. The witness's claim that he had a document which confirmed that his confession had been accepted by the Kibuye Prosecutor's office is not credible. When a document to the contrary from the Kibuye Prosecutor was put to him, he said that he had been asked to summarise because of lack of paper. Again, this explanation is doubtful.⁵²⁴

389. Witness DM was similarly unconvincing when asked why he had not mentioned Rwasibo, the alleged leader of the attack against Karegeya. The witness first answered that he had mentioned Rwasibo in all the documents. Subsequently, Witness DM stated that Rwasibo was not included in the Kibuye confession because he had only described what he did personally. This is not convincing, as the confession describes his role in connection with one of the murders in Buye as flushing the victim out of the bush for others to kill him. The witness even confessed to such details as having eaten a cow and stolen a roof.

390. During his testimony, Witness DM suggested that his confession to the Kibuye Prosecutor was not the only written statement that he had given, and that another confession had been lost. In particular, he referred to a statement, drawn up in Gisovu prison for the purpose of the *gacaca* process, which described more generally the events that he had witnessed. The witness suggested that he possessed one of these documents which did make reference to Karegeya, but no such document was produced by the Defence. When pressed, the witness could not say for certain that Karegeya's name appeared in those other

⁵²³ T. 31 October 2003 pp. 5, 14, 19.

⁵²⁴ *Id.* p. 7: "Yes, I can see that notation. Usually when someone makes confessions to the Prosecutor's office, sometimes additional questions are put to him. I knew that I had other questions to respond to our *gacaca*. Well, I was being told to summarise because they didn't have enough paper, but when I go to *gacaca*'s jurisdiction, I shall explain everything."

documents⁵²⁵ The witness explained that he had difficulty reading handwriting and, accordingly, could not be certain that what he had said was faithfully recorded in his written statements.⁵²⁶

391. The Prosecution argues that Witness DM was not involved in events in Gasharu at all.⁵²⁷ The witness revealed his lack of involvement in events in Gasharu on cross-examination by a reference to a *gacaca* structure set up by the prisoners in Gisovu prison, which is organized geographically.⁵²⁸ Witness DM stated that he had had little to do with Witness DO, who was responsible for an area including Gasharu Cellule within the prison *gacaca* system:

I said I came at the time the *gacaca* structure was set up, and when I arrived I realized that [Witness DO] had a role in that structure, and my sector is different from his. He didn't even ask me questions about what I did because he did not know what I did. I live in ... the Kayenzi Sector sir.⁵²⁹

The Chamber finds that Witness DM operated primarily in the Buye Sector. However, this does not exclude the possibility that he made incursions into the neighbouring sector and participated in killings there. Several witnesses, including Witness DO, testified that persons from neighbouring areas, for instance Kayenzi, killed and looted in Gasharu.

392. The Prosecution submits that Witness DO has confessed to extensive participation in attacks in Gasharu, a confession corroborated by the testimony of other witnesses; yet he does not mention Witness DM as having participated in criminal acts in Gasharu. Witness DM responded that there was no inconsistency in his own statements, or conflict with Witness DO's testimony. His activity in Gasharu was limited to his participation in the killing of Karegeya, and he had not collaborated with Witness DO on that or any other occasion.⁵³⁰ The Chamber will review this question in connection with Witness DO's testimony.

393. Witness DM testified that no one instructed the people to kill Karegeya, but that they acted of their own free will. He explained that if there had been orders from somewhere, there would have been a prior meeting, and he would have been aware of that meeting.⁵³¹ The Chamber observes that Witness DM operated primarily in Kayenzi Sector, not Gasharu. He testified that he arrived in Gasharu on the same day as the killing of Karegeya. Therefore he would not necessarily know whether or not such a meeting had taken place.

394. The Prosecution considers Witness DM's claim that the Accused could not have visited Gasharu before June to be false. The witness testified that he would have been aware of any such visit, but also testified that he saw the Accused only twice in the years before 1994. The Prosecution asserts that the Accused visited Gasharu far more than twice and the

⁵²⁵ *Id.* pp. 14-15, 18-19.

⁵²⁶ *Id.* p. 19.

⁵²⁷ *Id.* p. 9.

⁵²⁸ *Id.* p. 8 ("Now we, the accused, have pleaded guilty. We are very few in the prison. We held a meeting of people that had pleaded guilty. People had come from all areas of the commune ... we elected a leader ... and we called him the *préfet*. So the *préfet* appointed one person per commune, and we called him *bourgmestre*....And in the commune we appointed councillors for each sector, and each councilor appointed ... a leader for each cellule ... Now this is the structure of those that have pleaded guilty.")

⁵²⁹ *Id.* p. 10.

⁵³⁰ *Id.* pp. 9-10.

⁵³¹ T. 30 October 2003 p. 49.

witness's alleged unawareness of those other visits undermines his claim that he would know about any visit of the Accused. The Chamber notes, however, that this alleged inconsistency was not put to the witness by the Prosecution, and further that he testified that he had only *seen* the Accused twice before 1994, not that he had been *aware of* only two visits.⁵³²

395. The Chamber is of the view that Witness DM's testimony raises several unanswered questions which affect his credibility. However, an important problem remains: Why should this witness confess to participating in the killing of Karegeya if it is not true? The Prosecution submits that he had been influenced by his fellow inmates in Gisovu prison, including the younger brother of the Accused, Ezekias Seyeze, to give a false account of his role in Gasharu. The witness denied that he had been influenced by the Accused's brother, saying he had answered the questions of investigators who had come to Gisovu prison. He further explained that the informal *gacaca* courts within the prison encouraged full and complete confessions and ensured that individuals did not lie or minimize their criminal acts.⁵³³ The Chamber has no evidence to make any finding on the Prosecution's allegation but notes that the witness has minimized his purported participation in the killing of Karegeya by stressing that he was simply an armed observer, although "a criminal amongst others". The negative consequences of assuming this responsibility in addition to his confession regarding the four killings appear limited.

396. In conclusion, the Chamber considers that Witness DM's testimony is of doubtful credibility. It requires further corroboration.

Witness DO

397. Witness DO was a Hutu farmer in Kayenzi Sector, before the events of 1994. He lived in Nyagahinga Cellule which is separated by a stream from Gasharu cellule, Gitesi Commune. Immediately after the President's death, people worked together in his area to ensure security. Later, however, people named *abakiga* came to kill Tutsi who had sought refuge at Kirambo, and threatened the local population with retaliation if they did not participate in the killing. Attacks against Tutsi began four days after the death of the President, and the witness acknowledged that he had participated in more than twenty killings in Gasharu, Gitesi Commune, as well as in Kayenzi and Ruragwe Sectors.⁵³⁴ For his crimes, to which he has confessed, he is currently detained in Gisovu prison.⁵³⁵

398. The witness testified that he and his fellow attackers would meet almost every day in Gasharu cellule, at a small trading centre called Gitaka, on their way to commit attacks or have a drink afterwards. A roadblock was set up at Gitaka Centre, manned by Sumayire Minani and Nbonnyubwe. Witness DO did not know of anyone having been killed at the roadblock, but knew of, and participated in, killings in its vicinity.⁵³⁶

399. One Monday at the very beginning of May, at around 2 p.m., Witness DO saw Cyprian Nsengiyumva, a gendarme, and Nsengiyumva, alias Rutomvu, bring Thacianne

⁵³² T. 30 October 2003 p. 50.

⁵³³ T. 31 October 2003 p. 8.

⁵³⁴ T. 31 October 2003 pp. 26, 28, 42, 51. The witness testified that he had been involved in more than twenty deaths.

⁵³⁵ Defence Exhibit 38 (protected witness information); T. 31 October 2003 pp. 25-26, 41.

⁵³⁶ T. 31 October 2003 pp. 26-27.

Mukantabana to Gitaka Centre from her hiding place at Joël Ndabukiye's house.⁵³⁷ The witness and other attackers then took her to Pascal Rwuhara's house in Nyarubuye where they looted furniture which she had stored there. After doing so, the attackers wanted to take her to Nyabahinga, but the gendarme refused and they returned to Gitaka Centre to a location behind some shops about eighty or ninety metres from the roadblock. Witness DO struck Mukantabana twice with a club, and then Rutomva killed her with further blows.⁵³⁸ The witness named Ismael Mbarushimana, Mpitabakana, and Frouduel Bakinahe as others who were present when she was killed; he expressly denied that Joël Ndabukiye had any role in her killing. Mukantabana's two children were also killed at the same time, as well as a man named Zacharia Nyankiko.⁵³⁹ Witness DO testified that many people were looking for Mukantabana, whose nickname was "Nyiramaritete".⁵⁴⁰

400. Witness DO testified that he had heard that Karegeya, who lived in Gasharu and whom he knew well, was killed less than seven days after Mukantabana's death in early May. He did not witness the killing, but testified that Karegeya's death was well-known and that he had been actively sought before his death. Witness DO learned of the death of Karegeya from Witness DL, who told him that Karegeya had been killed by attackers from Buye, and that he had buried Karegeya's body. Witness DO testified that Witness DL was very sad at this news and said, "My friend has been killed".⁵⁴¹ The witness was unable to recall any of the names of the attackers, and did not know whether Rwasibo was involved in the killing.⁵⁴²

401. Witness DO stated that he had seen the Accused on two occasions before 1994: once just after the Accused's wedding when he came to visit his family; and again in 1992 when he came to Gitaka to hold a meeting at which PSD berets were distributed. During the events of 1994, Witness DO did not see the Accused. However, one Sunday his fellow attackers came and told him that the Accused had come to Gitaka, arrested Witness DL, and was "very serious". Witness DO responded, "Well, if you continue moving around like this, you may be arrested yourselves." They climbed a hill and from that vantage point saw a vehicle pass in front of Ndabukiye's house, about a kilometre away. They then went to Gitaka Centre and people said that Witness DL had been arrested. The witness testified that this event occurred after the death of Mukantabana, but did not otherwise specify the date.⁵⁴³

402. Witness DO denied that any pressure had been put on him to testify on behalf of the Accused. He stated that he had nothing to gain by testifying favourably to the Accused; that no one in prison had asked him to lie; and that, moreover, he could not be coerced into doing so. Witness DO said that groups of detainees had set up their own *gacaca* structure, organized geographically, to encourage confession of the crimes that had been committed.⁵⁴⁴

Credibility Assessment

⁵³⁷ *Id.* pp. 29-30, 42.

⁵³⁸ *Id.* pp. 29-31.

⁵³⁹ *Id.* pp. 30-31, 41-42, 52; T. 31 October 2003 (French version) p. 29.

⁵⁴⁰ T. 31 October 2003 p. 31; T. 31 October 2003 (French version) p. 30. Apparently, Mukantabana was given that nickname because it was said that she had poisoned Jacqueline Nyirabakwiza, a fellow teacher, in 1985.

⁵⁴¹ T. 31 October 2003 pp. 32, 42.

⁵⁴² *Id.* p. 52. Rwasibo was named by Witness DM as the leader of the killers of Karegeya. Witness DO confirmed that Rwasibo was from Kayenzi Sector.

⁵⁴³ *Id.* pp. 31-32.

⁵⁴⁴ *Id.* p. 34.

403. The Prosecution argues that Witness DO is a callous mass-murderer whose testimony should be treated with caution, and not accepted without corroboration. His testimony concerning the visit of the Accused to Gasharu, and of the killing of Karegeya is hearsay evidence which should not be accepted, either as corroborative of other evidence or as independently probative. According to the Defence, the credibility of the witness is beyond dispute. His evidence that Mukantabana was killed before the visit of the Accused is reliable.⁵⁴⁵

404. The Chamber observes that Witness DO was arrested in Rwanda on 30 December 1994 and is presently a detainee in Gisovu prison. On 19 August 2002, in pursuance of the Act relating to *gacaca*, he confessed to murder, conspiracy, and pillage before an official from the Ministry of Public Affairs. In his confession, he assumes direct responsibility for the killing of approximately thirty-four persons. Amongst his victims are Tatiane (in the confession called “Thacianna”) Mukantabana and her two children, as well as Zacharie Nyankiko.⁵⁴⁶ The confession lists thirty-three co-perpetrators of the various crimes, twenty-seven witnesses, and contains a description of the killing of Mukantabana and her two children. The confession was accepted by the Rwandan official taking his statement.

405. In his confession, Witness DO pleaded guilty to the killing of Tatiane Mukantabana and her two children. The description of the crime in the statement is in conformity with the witness’s testimony.⁵⁴⁷ It does not provide further details about the sequence that followed or who committed which crime. However, the list of co-perpetrators contains the same names as in his testimony without explicitly linking them to the killing of Mukantabana: Mbarushimana, Mpitabakana, Bakinahe, Cyprien Nsengiumva, and Nsengiumva (alias Rutomvu).⁵⁴⁸ Therefore, the Chamber finds no discrepancy between the testimony and the prior confession.

406. Witness DO testified that Joël Ndabukiye did not participate in the killing of Mukantabana.⁵⁴⁹ The Prosecution asserts that the witness’s confession to the Rwandan authorities lists Ndabukiye and his son amongst his collaborators in committing crimes in Gasharu and that there is no reason to believe that they did not also participate in the killing of Mukantabana. The Chamber observes that according to Witness DO’s confession, Ndabukiye was one of his co-perpetrators in Kibuye. However, his acts and utterances are described in connection with other events.⁵⁵⁰ The statement contains no description of his involvement in the killing of Mukantabana.

⁵⁴⁵ Prosecution Closing Brief pp. 91-96; Defence Closing Brief paras. 527-551; T. 2 March 2004 p. 49.

⁵⁴⁶ Nos. 24 and 25 on the list. According to the confession, the three victims hailed from Kirambo cellule in Buye Sector. However, the document states correctly that Mukantabana was married to Charles Munyankindi, and the Chamber finds that it is established that the witness confessed to killing Tatiana Mukantabana and her two children who lived in Gasharu in 1994.

⁵⁴⁷ “With respect to Mukantabana and the two children who had been hiding at Ndabukiye’s place, Cyprien Nsengiumva and Rutomvu went there and led her to Gitaka where they met Nyankiko who was led by Frouard Bakinahe.”

⁵⁴⁸ The co-perpetrators are listed as nos. 3, 12, 14, 30, and 31, respectively. The discrepancies between the confession and the testimony are minor: Mbaruhishamane’s first name is Jean de Dieu, not Ismael, and Bakinahe is called Frouard, not Frodel.

⁵⁴⁹ T. 31 October 2003 pp. 41-42.

⁵⁵⁰ Ndabukiye is no. 22 on the list of co-perpetrators (and no. 16 on the list of witnesses). He is mentioned in connection with two events: incitement to and approval of the killing of the wife of a certain Ngiriabanzi; and putting fire on three houses in the area of Gasharu or Gahigiro.

407. On 6 January 2003, Joël Ndabukiye confessed in pursuance to the Act relating to *gacaca*.⁵⁵¹ He pleaded guilty to conspiracy with respect to the killing of Rwabyuma's child, and also to stealing cattle. His statement lists three co-perpetrators and three persons who witnessed the attack. Witness DO is listed as the leader, whereas Sendiragora is named as the killer.⁵⁵² In the confession, Ndabukiye claims to have tried to save the child. He also states that he was not involved in the murder of Karegeya or Mukantabana, attributing responsibility for these killings to Witness DM and Witness DO, respectively. The Rwandan official before whom Ndabukiye pleaded rejects the confession, stating that Ndabukiye did not appear to have taken full responsibility for his actions.⁵⁵³ The Chamber observes that Ndabukiye's confession does not support the Prosecution's submissions.

408. The Prosecution implies that Witness DO was evasive and deliberately attempted to minimize the role of Ndabukiye by denying that he knew anyone named Emmanuel Ndabukiye, even though in his confession he had identified Emmanuel Ngendimana, who was the son of Ndabukiye, as one of his accomplices. However, the witness openly acknowledged during his testimony that he knew a certain Emmanuel, who was the son of Ndabukiye.⁵⁵⁴ Furthermore, in his confession, Witness DO mentions Emmanuel Ngendimana as one of his co-perpetrators and describes several killings in which he was involved.⁵⁵⁵

409. In its submissions, the Prosecution has also referred to Witness DO's testimony that he and Ezekias Seyeze (the Accused's brother) killed a certain Kanyoni together, in front of Seyeze's house. The witness was not sure whether Simeon Higiroy was the proper name of this person, but acknowledged, when shown a written confession by Seyeze, that the circumstances of the death of the person identified as Higiroy were similar to those of Kanyoni. The witness knew that Seyeze had a close family relationship with the Accused, but was not sure that they were brothers. Others whom Witness DO identified as present at the killing of Kanyoni were Boniface Mgabo and Uwimana, but he was not able to say whether the daughter of Cyprien Karegeya was a witness, as was indicated in Seyeze's confession.⁵⁵⁶ The Chamber does not find the responses of Witness DO to be evasive.

410. Having assessed the testimony of Witness DO in its entirety, the Chamber accepts his testimony that he killed Mukantabana, which is in conformity with his confession. The role of Joël Ndabukiye is not clear but there is no evidence that supports the view that he actually killed Mukantabana. The witness was not present during the killing of Karegeya but was informed of the event by Witness DL. Likewise, he did not observe the Accused's visit in Gitaka and has no direct knowledge about his utterances on that occasion. His timing of that event will be considered below together with the evidence from other witnesses.

⁵⁵¹ Prosecution Exhibit 38.

⁵⁵² Witness DO's confession (Prosecution Exhibit 39) supports this version. The killing of Rwabyuma's child is mentioned under crimes he pleads guilty to, and he states that Sendiragora (no. 19 on his list of co-perpetrators) killed the child.

⁵⁵³ The annotation reads: "Il ne montre pas sa part de responsabilité. Il semble témoigner. Ses aveux sont rejetés."

⁵⁵⁴ T. 31 October 2003 p. 53.

⁵⁵⁵ Prosecution Exhibit 9 (no. 2 on the list of co-perpetrators).

⁵⁵⁶ T. 31 October 2003 pp. 36-38.

Witness DN

411. Witness DN was a local government official in Kibuye from May 1990 through July 1994, and a fellow member of the *Parti social démocrate* with the Accused.⁵⁵⁷ The witness testified that the Accused came to the house of Bourgmestre Karara in Kibuye early one morning towards the end of June after having left a person, whom he learned was Witness DL, in detention at the communal jail. The Accused had arrested Witness DL that same day at Gitaka Centre, and Witness DN inferred that the Accused had visited his native sector of Gitesi earlier that morning. The Accused told Witness DN that Witness DL had engaged in looting and had failed to protect the Accused's cousin and a relative of his cousin. After interviewing the detainee the next morning, Witness DN concluded that he should be released, pending further investigations when the situation calmed down. He consulted the Accused about the release, and told him that failure to protect someone from being killed, given the situation in the country, was not a sufficient basis for detaining someone. Witness DN recalled that Witness DL did not spend long in jail.⁵⁵⁸

412. Witness DN testified that the Accused was also in Kibuye on 3 May at a meeting convened by Prime Minister Jean Kambanda, which is discussed above in Section 3.3. Other than the meetings on 3 May and in late June, Witness DN had no information that the Accused visited Kibuye during the war.⁵⁵⁹

Credibility Assessment

413. The Prosecution did not make specific submissions concerning Witness DN's testimony about the Accused and Witness DL. It was generally submitted that the witness is biased in favour of the Accused because of friendship and political support during 1994, and that Witness DN, who is awaiting trial in Rwanda, testified in a manner that minimizes his own culpability. The Defence argues that the witness is credible.⁵⁶⁰

414. The Chamber has also discussed Witness DN's testimony in Sections 3.3, 3.4 and 5. Witness DN was arrested in Rwanda on 6 March 1995 and is presently detained in Gisovu Prison, where he awaits trial.⁵⁶¹ A letter dated 26 March 2001, purportedly written by Witness DN to the Kibuye Prosecutor, is particularly relevant to the conversation between the Accused and Bourgmestre Karara.⁵⁶² According to the letter, the Accused was in Kibuye twice during the events in 1994: during Prime Minister Kambanda's visit on 3 May 1994; and between 15 and 20 June 1994 on the occasion of a meeting with Witness GKH and Witness DN. On the second occasion, the Accused is said to have passed through Gasharu before coming to Bourgmestre Karara's house.

415. The letter indicates that the Accused complained that his cows in Gasharu had been killed, and that "the families of his cousins: Karegeya and Kagigira had been massacred during the genocide and the massacres". Upon his arrival at the communal office, the Accused had placed Witness DL in jail, on suspicion of having had a hand in his family

⁵⁵⁷ Defence Exhibit 40 (protected witness information); T. 3 November 2003 pp. 17, 21, 24.

⁵⁵⁸ T. 3 November 2003 pp. 25-27; T. 4 November 2003 pp. 29-30.

⁵⁵⁹ T. 3 November 2003 pp. 28-29; T. 4 November 2003 p. 16.

⁵⁶⁰ Prosecution Closing Brief pp. 99-104; Defence Closing Brief paras. 552-572; T. 1 March 2004 p. 43; T. 2 March 2004 p. 7.

⁵⁶¹ T. 4 November 2003 p. 1.

⁵⁶² Defence Exhibit 41.

member's death. Other persons were subsequently called for questioning, including Joël Ndadukiye and three other persons.⁵⁶³ The investigations carried out by Witness DN did not lead to any result. There is also a paragraph about the Accused's problems because he was "in the same way as other families that were considered as traitors or pro-RPF". Further, at no point was the Accused's name mentioned during the informal *gacaca* proceedings organized by the detainees in Kibuye Prison. Witness DN ends his letter by recommending interviews with persons who have pleaded guilty in the neighbouring communes to Gasharu "in order to know the entire truth".⁵⁶⁴

416. The Chamber notes the very careful way in which the letter is written. Its reference to the difficult situation for families that were considered pro-RPF could be interpreted to include a veiled defence of members of the PSD party, to which Witness DN and the Accused belonged. At the same time, the letter does not exclude that the Accused may have committed criminal acts. This extremely balanced and careful approach corresponds to the witness's testimony at trial and is taken into account in the Chamber's assessment of his general credibility. It is significant that the letter, written in March 2001, supports the testimony of several Defence witnesses to the effect that Witness DL was arrested in June 1994, even if it is not entirely clear why he was arrested.

The Accused

417. The Accused testified that he was born on Gasharu hill of Hutu parents. In the 1960's, while he was a boy, the hill was sparsely populated and his parents were the only Hutu living there. Tutsi still predominated on the hill in 1994, unlike the neighbouring hills which were inhabited mostly by Hutu. Several of the Accused's relatives were married to Tutsi, including his aunt. She had a son named Karegeya, who was, accordingly, Tutsi. The Accused said that he had no problems with Karegeya, and that the members of their families got along well together.⁵⁶⁵ From 1990 onwards, he would visit his native area of Gasharu once or twice a year, to see his sister Mariana. Other family members, including his brother, also lived in Gasharu and in surrounding cellules.

418. On 26 June, to the best of his recollection, the Accused visited Gasharu for the first and only time between April and July 1994. He was on his way to Kibuye in a Nissan Eurovan minibus, accompanied by a driver, who was a gendarme. The children of one Uwizeye, the Prefect of Gitarama, who had been entrusted to him, were also in the minibus on their way to stay with their father. The Accused arrived around midday, stopping his vehicle at Gitaka. He did not see a roadblock, but observed that the situation was abnormal: the houses on Gasharu hill – most of which had been inhabited by Tutsi – were desolate and many houses in Gitaka had been destroyed.⁵⁶⁶ The Accused walked up the hill to see his sister, who told him that she was hiding some of the children in the family who were still alive, and asked him what to do. He responded that she should allow them to remain where they were.

419. After about half an hour, he returned to Gitaka Centre, where an assembled crowd started asking him questions. An elderly man complained that he had hidden his wife, and

⁵⁶³ According to the letter, one of these individuals was in Gisovu prison, one was dead, and one had sought refuge in the Congo.

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⁵⁶⁵ T. 24 November 2003 pp. 1, 2, 25.

⁵⁶⁶ T. 25 November 2003 pp. 15-17; T. 27 November 2003 p. 33.

asked the Accused to tell people to leave his wife alone. The Accused testified that he said: "Listen, why do you want to kill people, innocent people just like that? Who gave you the right to do so?" and "Listen, you should not kill." He recalled that he went further, saying: "If somebody kills, that person should also be killed."⁵⁶⁷ The Accused thought that Witness DL was in charge of a cellule in Gasharu and knew that he was a friend of some of his family, so he asked him what had happened. When Witness DL did not respond, the Accused loaded him angrily into the minivan. The crowd also told him that a man named Gatete, whom the Accused described as about twenty years old and unkempt, had committed killings. The Accused did not see this Gatete, who disappeared when he was mentioned by the crowd. According to the Accused, he spent a total of one to one-and-a-half hours at Gasharu.⁵⁶⁸

420. From Gasharu the Accused took Witness DL to the Gitesi communal jail in Kibuye Town. The Accused then took the children in his custody to their father, who was staying just outside Kibuye. The Accused spent the night at a hotel, along with his ten-year old daughter who had wished to accompany the Uwizeye children. The next morning the Accused met with Augustin Karara, the Bourgmestre of Gitesi Commune, explained why he had brought Witness DL to the jail, and asked the Bourgmestre to look into the case.⁵⁶⁹

421. The Chamber has assessed the Accused's testimony, which fits into the evidence provided by Defence witnesses that had testified earlier. It is noted that no Defence witness mentioned that he was accompanied by his daughter; reference was only made to two children accompanying him.

Collective Assessment of the Evidence

422. The Chamber has considered the credibility of four Prosecution witnesses and ten Defence witnesses above. Few, if any, of these witnesses were obviously credible, viewed in isolation. The unresolved issues of credibility are now addressed through a comparison of the totality of the evidence, to determine whether the Prosecution has met its burden of proof.

423. It is common ground amongst Prosecution and Defence witnesses that Tutsi were killed by Hutu in Gasharu cellule in the period May through June 1994. It is also undisputed that there was a roadblock located at Gitaka Centre, for some period between April and June 1994, very near the houses of Jo?l Ndabukiye and Augustin Karara. There seems to be disagreement, however, as to the length of the period during which the roadblock was in place. Moreover, the Prosecution witnesses testified that killings took place at the roadblock itself, and that there was a hole nearby where bodies were thrown, whereas Defence witnesses DL, DO, DM, and DV testified that people were stopped at the roadblock but that the killings took place some short distance away. The Chamber does not consider these inconsistencies between Prosecution and Defence witnesses significant.

424. The timing of the visit of the Accused is disputed. Prosecution witnesses CGF, CGE and CGB testified that the Accused came in late May. Prosecution Witness CGX had problems in estimating time but recalled the visit as being four weeks after the death of the President (in other words early-May), but she also said that it was some time in April or May. The Defence witnesses who testified that they were present during the Accused's visit varied in their recollection of the date. According to Witness DL, the visit took place in late May or

⁵⁶⁷ *Id.* pp. 17-18.

⁵⁶⁸ *Id.* p. 18.

⁵⁶⁹ *Id.* pp. 17-19.

early June. Witness DM recalled that it was in late June, and Witness DV could say only that it was on a Sunday in June. Witness DN stated that the Accused brought Witness DL to the communal jail towards the end of June, saying that he had just come from Gasharu. Witness DO remembered that one Sunday, on a date after the killing of Mukantabana, he was told that the Accused was in Gasharu and had just arrested Witness DL and taken him away.

425. The precise timing of this visit is important, as the Accused is charged with having incited people to kill Tutsi during that visit. In particular, he is alleged to have caused the deaths of Karegeya and Mukantabana. The timing of these killings is also in dispute. Prosecution witness CGB testified that he saw Karegeya being killed by Joël Ndabukiye and his son, Emmanuel, four days after the Accused's visit in late May. On that same day, Witness CGB saw Mukantabana being led away by Ndabukiye, his son, and a third person named Vuguziga. Prosecution witnesses CGF stated that he heard that Mukantabana and Karegeya were killed several days after the visit in late May, on the same day. Witness CGE was told that Karegeya was killed within a week of the Accused's visit. In contrast, Defence Witness DO explained that he and others killed Mukantabana in early May, and Witness DL testified that he saw Mukantabana in the custody of Witness DO and others some time in April. Witness DM recounted that he participated in the killing of Karegeya in late-April, near Gitaka Centre. Witness DL testified that in mid-April, he heard that Karegeya had been arrested in Buye Sector. He also saw Witness DM and others taking Karegeya away, and heard that the attackers had killed him at Gitaka.

426. Although the accounts of Prosecution and Defence witnesses of what was said at Gitaka diverge, there are some common elements. The former allege that the Accused addressed a group of *Interahamwe* and others armed with spears, machetes and other weapons at the roadblock, and urged them to kill Tutsi. Witnesses CGE, CGF and CGB specifically recall that the Accused also specifically encouraged the killing of Karegeya; Witness CGF and CGB, but not Witness CGE, testified that the Accused also named Mukantabana (a.k.a Nyiramaritete) as a target for killing. In respect of both of these individuals, the Accused understood that Karegeya and Mukantabana were still alive. Witnesses CGF and CGE testified that the Accused made a general promise that land would be given to those who assisted in the killing, and Witness CGB said that specific political advancement was promised to Joël Ndabukiye, his son, and the local shopkeeper, Augustin Karara. Witness CGX testified that the Accused asked where Karegeya was, and stated that he should be found wherever he might be. Although she did not herself testify that she understood this to mean that Karegeya should be killed, this would be a logical inference if the testimony of other Prosecution witnesses is accepted.

427. Defence witnesses tell a different story. Witnesses DL, DM, and DV testified that the Accused spoke to a group of citizens at Gitaka Centre, many of whom were returning home from church. He was angry that killings had taken place, and demanded explanations. Witnesses DL and DM stated that the Accused asked who had killed Karegeya and when no answer was given, he arrested Witness DL for further questioning. Witness DN confirms that the Accused brought Witness DL to the communal jail in June for questioning about the death of Karegeya. Witness DO explained that he was told contemporaneously of the visit of the Accused, and that he was angry and was arresting people. The witness saw a vehicle pass through Gitaka Centre and was informed shortly afterwards by bystanders that Witness DL had just been arrested by the Accused.

428. The versions provided by the two groups of witnesses appear irreconcilable. The Chamber has considered whether they could refer to two different events, but has rejected this possibility. The behaviour of the Accused, as described by the two groups, is contradictory. It is not likely that the Accused would have incited the killing of Karegeya only to return later and arrest someone for being involved in his death. The Chamber proceeds on the premise that the witnesses are providing conflicting testimony regarding a single event. The evidence in respect of Mukantabana and Karegeya is considered separately.

Killing of Mukantabana

429. Of the four Prosecution witnesses who testified that they were present during the Accused's visit at the roadblock, two witnesses did not mention that the Accused referred to Mukantabana. Witness CGX explained that she did not observe the whole event, but Witness CGE apparently observed the entire event as he was hiding in a bush about eight meters from the Accused and the others.

430. Witness CGB testified that in late May he heard the Accused name Mukantabana as a person to be killed. He also testified that he saw her being killed about four days later by Ndabukiye and his son, as well as Vuguziga. The witness's testimony concerning the killing of Mukantabana is contradicted by Witness DO who testified that he killed Mukantabana at the "very beginning of the month of May", and that Ndabukiye had no role in the killing. This testimony is corroborated by his guilty plea before Rwandan judicial authorities in August 2002, which includes the identity of his co-perpetrators. The confession makes no reference to Joël Ndabukiye, his son or Vukugiza in connection with the murder of Mukantabana. The Chamber accepts the testimony of Defence Witness DO, despite the absence of any reference to the time of the killing. Witness DO is undoubtedly a mass-murderer, but he testified candidly and in detail about the killings he perpetrated. His testimony is consistent with his prior confession, which was accepted by the Rwandan authorities. It is corroborated by Witness DL, who testified not only that he saw Mukantabana in Witness DO's custody, but also that they were returning from the house of Pascal Ruhara, as mentioned by Witness DO. The Chamber has considered whether Witness DO may wish to protect Ndabukiye but cannot discern any apparent bias, as his confession of August 2002 implicates Ndabukiye in serious criminal conduct on other occasions.⁵⁷⁰ The witness denied that anyone had instructed him to kill Mukantabana, and said that many people wanted to kill her.

431. Accordingly, the Chamber doubts the testimony of Witness CGB that he saw Joël Ndabukiye, his son Emmanuel, and Vuguziga killing Mukantabana. This raises a question as to whether Witness CGB tailored his testimony in order to strengthen the allegation of incitement. In this respect, the Chamber observes that Witness CGB allegedly heard the Accused offer to promote Augustin Karara to a member of parliament, Joël Ndabukiye to a prefect; and his son to the position of Bourgmestre. Even assuming that the Accused made such a statement it is difficult to understand why none of the other witnesses heard this.⁵⁷¹ Finally, Witness CGF's hearsay knowledge of the killing is of little weight relative to the testimony of Witnesses DO and DL.

⁵⁷⁰ E.g. Prosecution Exhibit 39C, Part VI: "[H]owever, Ndabukiye, who was not with us and had remained at Karambo, had told us: 'Go ahead and remove this dirt and then come back fast so that we can continue'".

⁵⁷¹ One question is whether Witness CGB somehow confused Karara the Bourgmestre with Karara the shopkeeper but the Chamber has no basis to speculate.

432. Having considered the evidence in its totality, the Chamber does not find it proven that the Accused incited people at the Gitaka roadblock to kill Tatiana Mukantabana.

Killing of Karegeya

433. Witness CGX's testimony is ambiguous. She did not testify explicitly that the Accused incited any killings, but simply asked where Karegeya was, and insisted that he be found. She left the scene abruptly because she felt threatened. The inference that this was intended to be incitement depends on the testimony of Witnesses CGB, CGF and CGE. Witness CGF makes no mention of Karegeya in his written statements to investigators.

434. Witness CGB not only overheard the alleged incitement to kill Karegeya, but also testified that he observed Joël Ndabukiye and his son kill Karegeya at the roadblock a few days later. The latter evidence is directly contradicted by Defence witnesses. Witness DL testified that Karegeya was killed in April, and that he arranged for his burial. Although the Chamber entertains some doubts about the credibility of Witness DL, his testimony in this regard is corroborated in some measure by Witness DI, a very close relative of Karegeya. She confirmed that Witness DL told her contemporaneously that Karegeya had been killed in April. Of more significance is the testimony of Witness DO, whose confession of having killed Mukantabana the Chamber has found credible. He testified that Karegeya was killed less than seven days after the killing of Mukantabana (which would be early- or mid-May), and that Witness DL was distressed by this news. Moreover, both Witness DL and Witness DO mentioned that the killers of Karegeya came from Buye. Witness CGB's testimony concerning the incitement to kill Karegeya cannot be divorced from the credibility of his account of Karegeya's death. Accordingly, the Chamber concludes that Witness CGB's testimony concerning the Accused's instigation of Karegeya's death is not credible.

435. Witnesses CGE and CGF did not witness the killing of Karegeya or Mukantabana. However, they both testified that they had observed the Accused encouraging others to kill him during the meeting at Gitaka Centre. As mentioned above, Witness CGF's testimony contains some discrepancies compared to his written statement. Witness CGE testimony broadly corroborates that of Witness CGF, but makes no mention of the Accused referring to Karegeya. This creates some doubt as to their reliability. Further, the testimony of Witness CGE and CGF implies that Karegeya would have been killed in late May, whereas numerous Defence testify that Karegeya was killed earlier, before the Accused's visit.

436. Defence testimony supporting the date of the Accused's visit to Gitaka as being in late May or, more probably June, is considerable.⁵⁷² Witness DL's account of his arrest by the Accused is corroborated by Witnesses DV, who saw the arrest; Witness DO, who heard about the arrest immediately afterward; and Witness DN, who subsequently found Witness DL in the communal jail and released him. This testimony is consistent with a letter written by Witness DN to the Kibuye Prosecutor in March 2001. According to that letter, the Accused brought Witness DL to the communal jail between 15 and 20 June 1994 and complained about the deaths of his family, including Karegeya. This letter, whose authenticity has not been questioned by the Prosecution, and which bears a seal of the Republic of Rwanda, pre-dates any proceedings against the Accused before this Tribunal.

⁵⁷² All the Defence witnesses mentioned in this paragraph agree that this visit occurred in June, except for Witness DL, who says that it may have been late May or June.

437. The Chamber is fortified in its conclusion by the testimony of Witnesses DI and DH, two close relatives of Karegeya, who testified that the Accused had a good relationship with Karegeya and, further, expressed their belief that the Accused had no role in his killing. Although their evidence is based entirely on hearsay, it is, on the other hand, based on contemporaneous account of events by eyewitnesses. Further, these are individuals who had a very close relationship with Karegeya. Even though they were subsequently assisted by a close relative of the Accused, it is difficult to envisage that they would testify in favour of the Accused if they believed that he had any role in the death of Karegeya. In a community the size of Gasharu, and in the context of many Tutsi in the community having been killed during the genocide, the evidence of these two witnesses is relevant, albeit of secondary importance.

438. The Chamber considers the account of Defence witnesses concerning a visit by the Accused in June 1994 to be sufficiently credible to raise a reasonable doubt concerning the allegations of incitement to kill Karegeya and Mukantabana. The Defence testimony suggests that both Karegeya and Mukantabana were dead by the time of the Accused's visit, even according to the date of that visit given by the Prosecution witnesses. It also suggests that the Accused was angry about his cousin's death and arrested Witness DL and took him to the communal jail. In the Chamber's view, this raises a reasonable doubt about the credibility of the Prosecution witnesses who allege that the Accused incited the killing of Karegeya and Mukantabana at Gitaka Centre at the end of May.

Finding

439. The Chamber finds that the Defence has raised a reasonable doubt concerning allegations that the Accused incited the killing of Tutsi, and in particular of Karegeya and Mukantabana, at Gitaka Centre.

8. Distribution of Weapons and Incitement at Kibirizi Market, Late May 1994

440. The Indictment does not expressly refer to any events at Kibirizi Market in Rubengera, Mabanza commune. Nevertheless, the Prosecution maintains that evidence given by Prosecution Witness CGL concerning the Accused at that location is referred to in paragraphs one through five of the Indictment, of which paragraphs one and four appear to be most relevant.⁵⁷³

1. From the first week of April 1994 through May and into June 1994, Emmanuel NDINDABAHIZI led a campaign of extermination against the civilian population identified as Tutsi in Kibuye préfecture. The campaign was concentrated in the region where Emmanuel NDINDABAHIZI spent his childhood, and where he had rise through the local and regional political administration to become a Government Minister.

4. During April, May and June 1994, Emmanuel NDINDABAHIZI distributed weapons to civilian militias to facilitate the killing of persons identified as Tutsi. In particular, Emmanuel NDINDABAHIZI personally monitored, visited or supervised several roadblocks to facilitate the distribution of weapons, including machetes and grenades, and participated in

⁵⁷³ T. 1 March 2004 p. 36.

organizing convoys of *Interahamwe* militia to reinforce civilian militias at sites of large-scale attacks.

The Prosecution also argues that the events at Kibirizi Market are part of a consistent pattern of conduct, relevant to the more specific incidents in the Indictment under Rule 93(A) of the Rules of Procedure and Evidence.⁵⁷⁴

441. The Chamber will examine the nature of the evidence first and, if necessary, consider whether it is relevant to any paragraph of the Indictment, or is otherwise relevant as part of a consistent pattern of conduct under Rule 93.

Witness CGL

442. Prosecution Witness CGL, a Tutsi, testified that she fled from her home in Gitesi commune at the beginning of the war and hid at Gitwa in the Karongi area, and elsewhere, before finding refuge in the house of a Hutu friend in Rubengera, Mabanza Commune.⁵⁷⁵ At the end of May, she went to Kibirizi market, near where she was staying, to buy groceries for her hosts. Between 11 a.m. and noon, the witness saw the Accused at Kibirizi market and heard people say: “Let’s go and listen to the minister who is speaking to people at a meeting”.⁵⁷⁶ There were fifty to a hundred people there, and she heard the Accused say: “In Kigali Tutsis have already been all killed, including Tutsi women who were married to Hutu men”.⁵⁷⁷ There were two vehicles at the market, a Daihatsu and a saloon car. Witness CGL heard the Accused tell people, whom she identified as *Interahamwe* who had previously carried out murderous attacks while wearing banana leaves, to take machetes from the Daihatsu. The *Interahamwe* rejoiced with the Accused at receiving the machetes and took them away. Witness CGL testified that she was standing about 4.5 metres from the Accused during his speech, but left after hearing these words as she feared for her safety. In total, she stayed at the market for about thirty minutes before returning home.⁵⁷⁸

443. Witness CGL testified that she knew the Accused prior to 1994, and had seen him twice in 1993 at a health centre in Kirambo, Gitesi commune. On the first occasion, she was told that it was the Accused, and she understood that he was working for the Ministry of Finance in Kigali.⁵⁷⁹ The witness identified the Accused in court.

444. Witness CGL testified that the killings continued in that locality until June, and that she continued to move around to different hiding places until French forces arrived in July and took her to a place called Nyarushishi.⁵⁸⁰

Witness DF

445. Defence Witness DF, who lived in Rubengera throughout the war in 1994, testified that the Kibirizi Market remained closed until June because people were unable to move around freely and that shops, if opened, would have been looted during that period. The

⁵⁷⁴ *Id.* pp. 41-42; Prosecution Closing Brief p. 28.

⁵⁷⁵ T. 16 September 2003 pp. 36-37, 47.

⁵⁷⁶ *Id.* pp. 31-32.

⁵⁷⁷ *Id.* pp. 32-33.

⁵⁷⁸ *Id.* pp. 34-36, 51-52.

⁵⁷⁹ *Id.* pp. 30, 44-45, 55.

⁵⁸⁰ *Id.* pp. 37-38.

market, located about 1.5 kilometres from Rubengera itself, gradually resumed activity in June when French forces arrived in the area. The witness testified that he knew of no meetings or gatherings at Kibirizi market prior to that time, and that he certainly would have heard of any visit by the Accused, who was a Government Minister.⁵⁸¹ Further, he did not hear of the distribution of machetes at Kibirizi Market and considered such an operation unlikely as every peasant in Rwanda had a machete. He testified that the massacres of Tutsi in Mabanza ended towards the end of April, as they had all been killed, fled elsewhere, or gone into hiding.⁵⁸²

446. Witness DF testified that he went to secondary school with the Accused in 1964 and 1965. He did not often see the Accused thereafter, but heard that he was working successively at Trafipro, Electrogaz, and then the Ministry of Planning, all located in Kigali. He also heard that the Accused had been appointed as a *chef de cabinet* in a Ministry and then, during the “Gatabazi” Government, that he had been appointed Minister of Finance.⁵⁸³

Credibility Assessment

447. The Chamber has assessed the credibility of the witness in light of the submissions of the parties.⁵⁸⁴ The Defence submits that Witness CGL could not have felt free to go openly to the market and yet have been, as she testified, in hiding with her Hutu friend. The witness acknowledged that it was dangerous for Tutsis to go to the marketplace, but contended that she had Hutu features and would not have been recognized as a Tutsi because she was not known in the town as she was from a different sector. She further explained that she had no identity card and that she would not have been asked for one as her appearance was youthful enough to give the impression that she was a child, and therefore did not need one.⁵⁸⁵ The Defence counters that she was twenty years of age at the time; that she would not have been in hiding if she was recognizable as a Tutsi; that the Accused himself might have recognized the witness; and that she would not have felt frightened by the Accused’s speech and left hurriedly if she had truly been unrecognizable as a Tutsi.

448. Witness CGL’s explanation of her presence at Kabirizi Market is problematic. It is difficult to see how she could have been in flight both before and after this alleged incident and yet felt free to walk in the marketplace without an identity card. The absence of an identity card would, at the very least, have raised doubts about the witness’s ethnicity.

449. The Defence noted a number of inconsistencies between the witness’s testimony and her prior statement, and complained that her description of the details and date of the alleged event were vague. These weaknesses in the witness’s testimony strengthen the Chamber’s apprehension that Witness CGL was not entirely candid or accurate in her account of events.

450. Having so found, the Chamber need not at this stage consider the reliability or significance of Witness DF’s testimony in relation to this event.

⁵⁸¹ T. 5 November 2003 pp. 31-32.

⁵⁸² *Id.* p. 32.

⁵⁸³ *Id.* pp. 27-28; T. 5 November 2003 p. 30 (French version).

⁵⁸⁴ Prosecution Closing Brief pp. 28-29; Defence Closing Brief paras. 137-75; T. 1 March 2004 pp. 36-37; T. 2 March 2004 pp. 34-37.

⁵⁸⁵ T. 16 September 2003 pp. 47-48, 54-55.

Finding

451. The Chamber finds that Witness CGL's account is doubtful and needs corroboration. Consequently, the Prosecution has not established that the Accused distributed machetes in late May at the Kibirizi Market, Rubengera, Mabanza Commune, beyond a reasonable doubt. Having so found, the application of Rule 93 need not be considered.

CHAPTER III

Legal Findings

1. Genocide

1.1 Applicable Law

452. The Chamber will consider the law applicable to those allegations of the Indictment which have been proven beyond a reasonable doubt. Count 1 of the Indictment charges the Accused with genocide in relation to the events at Gitwa Hill and the roadblocks along the Kibuye-Gitarama road.

453. In relevant part, Article 2(2) of the Statute defines genocide as

...any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

The Indictment charges the Accused only with “genocide” under Article 2(3)(a), and not other modes of commission of the crime providing in the Statute, such as “direct and public incitement to commit genocide” (Article 2(3)(c)) or “complicity in genocide” (Article 2(3)(e)).

454. In addition to the material elements enumerated in (a) through (e) in Article 2(2), the specific intent for genocide requires that the perpetrator target his victims because of their membership of a protected group, with the intent to destroy at least a substantial part of that group.⁵⁸⁶ The requisite intent may be proven by overt statements of the perpetrator or, as with any crime, by drawing inferences from circumstantial evidence of intent.⁵⁸⁷ The actual

⁵⁸⁶ *Semanza*, Judgement (TC), para. 312; *Krstic*, Judgement (AC), para. 12 (“The intent requirement of genocide under Article 4 of the [ICTY] Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group”); *Akayesu*, Judgement (TC), para. 521; (“Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group”); *Nahimana et al.*, Judgement (TC), para. 948.

⁵⁸⁷ *Rutaganda*, Judgement (AC), para. 525 (“In the absence of explicit, direct proof, the *dolus specialis* may therefore be inferred from the relevant facts and circumstances”); *Ntagerura et al.*, Judgement (TC), para. 663; *Semanza*, Judgement (TC), para. 313; *Akayesu*, Judgement (TC), para. 523; *Krstic*, Judgement (AC), para. 34 (“Where direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime”); *Jelusic*, Judgement (AC), para. 47 (“As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive discriminatory acts”).

destruction of a substantial part of the group is not a required material element of the offence, but may assist in determining whether the accused intended to bring about that result.⁵⁸⁸

455. The Indictment alleges that the Accused is criminally responsible under Article 6(1) of the Statute, which provides:

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

This section broadens the modes of culpable participation in offences defined by the Statute, including genocide.⁵⁸⁹ In its closing arguments, the Prosecution refined its legal characterization of the Accused's participation, specifying that, with the exception of a single event, the Accused is guilty of instigating, and of aiding and abetting, genocide.⁵⁹⁰

456. Instigation is urging or encouraging, verbally or by other means of communication, another person to commit a crime, with the intent that the crime will be committed.⁵⁹¹ In accordance with general principles of accomplice liability, instigation does not arise unless it has directly and substantially contributed to the perpetration of the crime by another person.⁵⁹² Unlike the crime of direct and public incitement, instigation does not give rise to liability unless the crime is actually committed by a principal or principals.⁵⁹³

457. Aiding and abetting, though distinct concepts, are almost universally used conjunctively, as in Article 6(1) of the Statute, to refer broadly to any form of assistance and encouragement given to another person to commit a crime.⁵⁹⁴ As with instigation, aiding and abetting is a form of accomplice liability that requires direct and substantial contribution to the perpetration of the crime by another person.⁵⁹⁵ The assistance and encouragement may consist of physical acts, verbal statements, or even mere presence. The presence of a person in a position of authority at a place where a crime is being committed, or at which crimes are notoriously committed, may convey approval for those crimes which amounts to aiding and abetting.⁵⁹⁶ It is not the position of authority itself that is important, but rather the encouraging effect that a person holding the office may lend to events.⁵⁹⁷ In relation to the requisite mental element, it is now firmly established that the person aiding and abetting need not possess the principal's intent to commit genocide, but must at the least have knowledge of the principal's general and specific intent.⁵⁹⁸

⁵⁸⁸ *Krstic*, Judgement (AC), para. 35; *Akayesu*, Judgement (AC), paras. 497, 730.

⁵⁸⁹ *Semanza*, Judgement (TC), para. 377; *Celebici*, Judgement (TC), para. 319.

⁵⁹⁰ T. 1 March 2004 p. 4. The nature of this participation had already been identified in the Indictment as arising under 6(1); the effect of the Prosecution's submission at closing arguments was to narrow, rather than add, to the Prosecution case. The single event in which the Accused is alleged to have directly participated is the attack on Gitwa Hill on or about 17 April, based on the testimony of Prosecution Witness CGV.

⁵⁹¹ *Semanza*, Judgement (TC), para. 381; *Akayesu*, Judgement (TC), para. 482.

⁵⁹² *Kayishema and Ruzindana*, Judgement (AC), para. 198; *Bagilishema*, Judgement (TC), para. 30.

⁵⁹³ *Nahimana et al.*, Judgement (TC), paras. 1015, 1029; *Musema*, Judgement (TC), para. 115.

⁵⁹⁴ *Semanza*, Judgement (TC), para. 384-385.

⁵⁹⁵ *Kayishema and Ruzindana*, Judgement (AC), para. 198; *Krstic*, Judgement (AC), para. 137; *Bagilishema*, Judgement (TC), paras. 32-33.

⁵⁹⁶ *Ntakirutimana*, Judgement (TC), paras. 788-789; *Semanza*, Judgement (TC), paras. 384-386; *Kayishema and Ruzindana*, Judgement (AC), paras. 201-202.

⁵⁹⁷ *Rutaganda*, Judgement (AC), para. 528.

⁵⁹⁸ *Akayesu*, Judgement (TC), paras. 539-541; *Semanza*, Judgement (TC), para. 338 ("The Accused need not necessarily share the mens rea of the principal perpetrator; the accused must be aware, however, of the essential

1.2 Application to Factual Findings

Gitwa Hill (Paragraphs 15 and 16 of the Indictment)

458. The Chamber has found that on two occasions, on 23 and 24 April 1994, the Accused travelled to Gitwa Hill, which was then the site of a gathering of thousands of Tutsi refugees encircled by an even larger number of primarily civilian attackers. On each of these occasions, the Accused distributed weapons to attackers taking part in the siege. Further, the Accused overtly encouraged, by his words or acts, the initiation of an attack against the Tutsi civilians sheltering on Gitwa Hill. On one occasion he said: “Go. There are Tutsi who have become difficult ... There are Tutsi on the hill and they’ve proved to be difficult. You, therefore have to kill them, and when you kill them, you will be compensated.” On a different occasion, the Accused said that the attackers “should implement the plan that was envisaged immediately”, meaning thereby that the Tutsi should be killed.

459. On one of the two visits, the Accused transported some fifty civilians, identified as *Interahamwe*, to Gitwa Hill to join the attackers. These *Interahamwe* were traveling in a truck in convoy with the Accused.

460. The Tutsi civilians on Gitwa Hill were sporadically attacked from about 17 April until a final, devastating attack on 26 April, resulting in the deaths of thousands of men, women and children. The attackers were mostly civilians, armed with guns, grenades, machetes and other weapons. Many thousands were killed that day because they were Tutsi. The events at Gitwa Hill formed part of a wider context of ethnically motivated massacres of Tutsi throughout Rwanda, including Kibuye Prefecture. Defence and Prosecution witnesses alike offered overwhelming and uncontradicted evidence of organized massacres of Tutsi, based on their ethnic identity, starting soon after 6 April.⁵⁹⁹ Indeed, thousands of attackers who had participated in attacks in Kibuye Town, proceeded to Gitwa Hill. In this context, it would have been impossible for the attackers to be unaware that their actions were part of a wave of massacres of a substantial number of Tutsi throughout Kibuye Prefecture and Rwanda.

461. Even in the absence of other massacres, a brutal attack targeting several thousand members of an ethnic group, is itself indicative of the requisite intent to destroy an ethnic group, in whole or in part. Those who participated in the attacks on Gitwa Hill on 26 April and preceding days, committed genocide.

elements of the principal’s crime including the *mens rea*”); *Krstic*, Judgement (AC), 140; *Krnojelac*, Judgement (AC), para. 51; *Aleksovski*, Judgement (AC), para. 162; *Vasiljevic*, Judgement (AC), para. 102.

⁵⁹⁹ The Defence expert testified: “Now we are at the beginning of 1994.... We understand that there's ethnic tension.... President Habyarimana's plane [is] shot down. Then this was followed by the massacre of the Tutsi. Now, the massacres ran for several months.” T. 19 November 2003 pp. 34-35. Direct evidence of massacres, in addition to that at Gitwa Hill, was offered by Witnesses DC, DN and CGH concerning a bloody attack on Tutsis at Gatwaro stadium, in Kibuye on 18 April; by Witnesses DC and DN of a massacre at Home St. Jean on 17 April; and by Witness DC of massacres at Rutsiro commune around 11 April. This testimony confirms repeated factual findings by Trial Chambers that there were widespread attacks against Tutsi civilians on the basis of their ethnicity in Rwanda from April through June 1994: *Nahimana et al.*, Judgement (TC), paras. 120-121; *Semanza*, Judgement (TC), para. 277; *Niyitegeka*, Judgement (TC), paras. 392-394, 403; *Kayishema and Ruzindana*, Judgement (TC), para. 289; *Akayesu*, Judgement (TC), para. 126; *Rutaganda*, Judgement (TC), paras. 371-77. These widespread attacks have been expressly characterized as genocide in several cases, including, *Nahimana*, Judgement (TC), para. 121; *Kayishema and Ruzindana*, Judgement (TC), para. 291; and *Akayesu*, para. 126. The characterization, in appropriate circumstances, of a massacre or series of massacres as genocide was recently approved by the Appeals Chamber: *Krstic*, Judgement (AC), para. 37.

462. The Accused instigated, and aided and abetted, this genocide at Gitwa Hill. He expressly urged the attackers to kill the “Tutsi” assembled there. He distributed machetes and, on at least one occasion, transported armed attackers to the site. He visited Gitwa Hill on two occasions, distributing machetes and urging an attack on the Tutsi. By his words and deeds, the Accused manifested an intent that the Tutsi on Gitwa Hill, who numbered in the thousands, should be attacked and killed. Further, the Accused was well aware that his remarks and actions were part of a wider context of ethnic violence, killing and massacres in Rwanda during this period.⁶⁰⁰ The Chamber finds that by urging the killing of the Tutsi on Gitwa Hill, the Accused intended to destroy, in whole or in part, the Tutsi ethnic group.

463. The words and deeds of the Accused directly and substantially contributed to the mass killing of Tutsi which subsequently took place at Gitwa Hill. When the Accused arrived, the attackers gathered around; when he spoke, they listened. His position as a Minister of Government lent his words considerable authority.⁶⁰¹ The final attack was launched as little as two days after his last visit, and smaller-scale attacks occurred shortly after his visits to the Hill.

464. By his words, the Accused is guilty of instigating genocide. By his acts of material assistance, including the distribution of weapons and the transportation of attackers, in conjunction with his words of encouragement, the Accused is guilty of aiding and abetting genocide.

Roadblocks in Gitesi Commune (Paragraphs 11, 12 and 13 of the Indictment)

465. The Chamber has found that the Accused stopped at roadblocks along the Gitarama-Kibuye Road in Gitesi Commune on two separate occasions during the month of May, 1994. At a place called Gaseke, in late May 1994, the Accused distributed machetes, gave out money to those manning the roadblock, and asked why Tutsi were being allowed to go through without being killed, meaning thereby that they should be killed. At the end of May, near Nyabahanga Bridge, the Accused distributed machetes to *Interahamwe* and others at a roadblock, telling them to kill Tutsi women married to Hutu men.

466. In order to be guilty of instigating, or aiding and abetting, genocide, the acts constituting the encouragement must directly and substantially contribute to the perpetration of genocide by another person. There is limited evidence of the acts committed by those at the roadblocks subsequent to the visits of the Accused. The Chamber has found, however, that a person known as Nors, alias Nturusu, was killed immediately after the departure of the Accused from the Gaseke roadblock. To be guilty of genocide for the killing of Nors, those at the roadblock must have intended to destroy, in whole or in part, the Tutsi ethnic group by targeting a person on the basis of membership in that ethnicity.⁶⁰²

⁶⁰⁰ T. 25 November 2004 p. 14 (“Now, I knew that people were being massacred...”); T. 28 November 2004 p. 14 (“Q. Were massacres committed in Rwanda from around the 7th of April to about the middle of July?... A. The massacres were committed....”).

⁶⁰¹ The Appeals Chamber has affirmed that an Accused’s position of authority may be relevant to his ability to aid and abet the crime of genocide. *Rutaganda*, Judgement (AC), para. 529.

⁶⁰² During closing arguments, the Prosecution appears to take the position that no act of genocidal killing need take place for the Accused to be guilty of aiding and abetting genocide, and denied that the killing of Nors was relevant to its case: “We would never argue that Nors was part of our case, Your Honour, but the act of instigation was not limited to Nors. Nors just happened to be passed by the roadblock. Therefore, if you believe Witness CGC, the Accused has to be found guilty of genocide just on the basis of that event and nothing else.”

467. Nors' ethnic identity is characterized in various ways by different witnesses. A close relative explained that Nors' father was German, and that his mother was Rwandese, without further defining her ethnicity as Hutu or Tutsi.⁶⁰³ In Rwandan culture, the ethnic identity of the child is normally determined on the basis of the ethnic identity of the father, but evidence in the present case indicates that children of Tutsi mothers were also threatened.⁶⁰⁴ Here, however, the situation is different, as the father is of an ethnicity entirely foreign to Rwanda. One witness testified that the attackers wanted to kill Nors because he was white, or Belgian. Other witnesses, including Witness CGC, described Nors as a "half-caste", and that he had the physical traits of a Tutsi, suggesting that he was perceived to be part-Tutsi.⁶⁰⁵

468. In assessing whether Nors was a member of a protected group, in this case of the Tutsi ethnicity, the subjective intentions of the perpetrators are of primary importance. As stated in *Bagilishema*:

A group may not have precisely defined boundaries and there may be occasions when it is difficult to give a definitive answer as to whether or not a victim was a member of a protected group. Moreover, the perpetrators of genocide may characterize the targeted group in ways that do not fully correspond to conceptions of the group shared generally, or by other segments of society. In such a case, the Chamber is of the opinion that, on the evidence, if a victim was perceived by a perpetrator as belonging to a protected group, the victim should be considered by the Chamber as a member of the protected group, for the purposes of genocide.⁶⁰⁶

469. The Chamber is of the view that Nors was perceived to be, at least in part, of Tutsi ethnicity. Testimony in the present case indicates that physical traits were an important, if not decisive, indicator of ethnic identity in Rwanda in 1994.⁶⁰⁷ As Nors had the physical appearance of a Tutsi, he would have been understood to be Tutsi. Having a single European parent is not mutually exclusive with being perceived as part-Tutsi; indeed, several witnesses referred to him as a "half-caste", which would seem to imply that he was understood to be part-European, and part-Rwandan. It is highly improbable that he would have been targeted if his Rwandan ethnicity was perceived to be Hutu or Twa. Further, Nors was killed very soon after the Accused had instructed that Tutsi be killed, providing circumstantial support for the inference that he was, in fact, killed for that reason. Finally, the presence of additional motives for the killing of Nors (as, for example, that he may have been part-Belgian) does not displace the killers' genocidal intent.⁶⁰⁸ In light of these factors, the Chamber infers that Nors was targeted because he was understood to be, at least in part, Tutsi.

T. 1 March 2004. However, paragraph 11 of the Indictment clearly pleads that a person was killed at the Gaseke roadblock immediately after the Accused's departure, and the circumstances are the same as those surrounding the killing of Nors. Accordingly, the Chamber is of the view that the killing of Nors is, and always was, a part of the Prosecution case which must be considered.

⁶⁰³ T. 5 November 2003 p. 12.

⁶⁰⁴ As, for example, Witness CGF's daughter. T. 9 September 2003 p. 24 ("Actually, she was being pursued because of her mother's ethnicity").

⁶⁰⁵ T. 29 September 2003, pp. 48, 49 (Witness CGC); T. 28 October 2003 p. 81 (Witness DB).

⁶⁰⁶ *Bagilishema*, Judgement (TC), para. 65; *Musema*, Judgement (TC), para. 161 ("For the purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction").

⁶⁰⁷ As indicated by Witnesses CGL and CGH, as well as CGC.

⁶⁰⁸ *Niyitegeka*, Judgement (AC), para. 53 ("In other words, the term 'as such' clarifies the specific intent requirement. It does not prohibit a conviction for genocide in a case in which the perpetrator was also driven by other motivations that are legally irrelevant in this context. Thus the Trial Chamber was correct in interpreting

470. Whether by killing Nors the attackers intended to destroy the Tutsi ethnic group, in whole or in part, must be assessed within the context of ethnic killing in Rwanda at the time. First, evidence in the present case confirms findings in many previous cases that roadblocks were places where Tutsi were identified and killed.⁶⁰⁹ Second, Witness CGC testified that he could smell decomposing bodies while he was at the roadblock, and heard that many people had been killed there, both before and after the Accused's visit. Third, Witness CGC was himself taken to the roadblock and threatened with death because he was a Tutsi, before being rescued by his mentor. Fourth, Defence Witness DC testified that those at the roadblock asked him to stay there to assist in the killing of Nors, who they believed would be returning along the road in a vehicle shortly. Fifth, the killers were undoubtedly aware that Tutsi were being indiscriminately stopped, identified and killed throughout Kibuye, including at control points such as roadblocks. On the basis of these facts, the Chamber infers that, in killing Nors, the participants at this roadblock intended to destroy, in whole or in part, the Tutsi ethnic group.

471. The fact that only a single person was killed on this occasion does not negate the perpetrators' clear intent, which was to destroy the Tutsi population of Kibuye and of Rwanda, in whole or in part.⁶¹⁰ Accordingly, the killers of Nors committed genocide.

472. The Accused explicitly urged those manning the roadblock to kill Tutsi. He gave them material assistance in the form of machetes and money. Nors was apprehended at the roadblock shortly after the Accused's visit, possibly within a few minutes. Under these circumstances, the Accused directly and substantially contributed to the perpetration of the crime of genocide at the Gaseke roadblock.

473. The Chamber finds that the Accused instigated, and aided and abetted, genocide by his acts of assistance and encouragement to the killers of Nors.

474. The Chamber notes that one witness, Witness CGM, testified that after the visit of the Accused, Tutsi women married to Hutu men were killed. There is no indication of precisely when these killings occurred or where. The only specific killing mentioned by the witness was by a person named Gatwa, who killed his second wife, who was Tutsi. The witness gives no indication that Gatwa was at roadblock during the Accused's visit or was otherwise influenced in any way by the Accused's words at Nyabahanga Bridge. The Chamber finds the Accused not guilty of instigation, or aiding and abetting, as there is insufficient evidence to establish that the Accused's conduct at the roadblocks directly and substantially contributed to the killing of Tutsi women married to Hutu men, or their children.

'as such' to mean that the proscribed acts were committed against the victims because of their membership in the protected group, but not solely because of such membership").

⁶⁰⁹ As, for example, the testimony of Witness CGE, CGF, DL and DM concerning the Gitaka Centre roadblock; Witness DN, concerning massacres at roadblocks (T. 3 November 2003 p. 2003); the expert testimony of Witness Des Forges (T. 24 September 2003) p. 35.

⁶¹⁰ Past formulations have emphasized that genocide may be committed even when there is a single victim, provided that the perpetrators possess the requisite intent: *Musema*, Judgement (TC), para. 165 ("For any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group"); *Rutaganda*, Judgement (TC), para. 60; *Semanza*, Judgement (TC), para. 316; William Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 234 ("No acceptable rationale can justify why an individual murder, if committed with the intent to destroy a group 'in whole or in part', should not be qualified as genocide").

2. Extermination as a Crime Against Humanity

2.1 Applicable Law

475. Count 2 of the Indictment charges the Accused with extermination as a crime against humanity, for his actions at Gitwa Hill in April 1994.

476. Article 3 of the Statute grants the Tribunal jurisdiction to:

...prosecute persons responsible for 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;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

477. The enumerated offence must be part of an attack which has two characteristics before qualifying as a crime against humanity. First, the attack must be either widespread or systematic. “Widespread” is defined as massive or large-scale, involving many victims; “systematic” refers to an organized pattern of conduct, as distinguished from random or unconnected acts committed by independent actors.⁶¹¹ Second, the attack must be “against any civilian population on national, political, ethnic racial or religious grounds”. In other words, the attack as a whole, but not the individual offence, must be committed on these particular grounds.⁶¹²

478. The requirement that the commission of the enumerated offence be “part of” the attack supplies the *mens rea* unique to crimes against humanity. The perpetrator need not intend to discriminate on one of the enumerated grounds, but must, at a minimum, know that his action is part of a widespread or systematic attack against civilians on discriminatory grounds.⁶¹³

479. In addition to the general requirements for a crime against humanity, extermination requires that the perpetrator intend to commit acts directed at a group of individuals

⁶¹¹ *Niyitegeka*, Judgement (TC), para. 439; *Ntakirutimana*, Judgement (TC), para. 804; *Semanza*, Judgement (TC) paras. 328-29. See also *Kunarac*, Judgement (AC), paras. 93-97, interpreting the same words as part of a judicially-created condition for the crimes against humanity offences.

⁶¹² *Ntakirutimana*, Judgement (TC), para. 803; *Semanza*, Judgement (TC), para. 331. The specific *mens rea* concerning persecution need not be discussed here, as there was no such charge in the Indictment.

⁶¹³ *Niyitegeka*, Judgement (TC), para. 446; *Ntakirutimana*, Judgement (TC), para. 803. See also *Tadic*, Judgement (AC), para. 248.

collectively, and whose effect is to bring about a mass killing.⁶¹⁴ This distinguishes the offence from murder, whose material element may be satisfied by the killing of a single person, and proof that the perpetrator intended the death of that single person alone, albeit as part of a widespread or systematic attack. Extermination may be committed less directly than murder, as by participation in measures intended to bring about the deaths of a large number of individuals, but without actually committing a killing of any person.⁶¹⁵ Causation must nevertheless be established by naming or describing the victims, and by establishing the manner in which the accused contributed to, or participated in, their deaths.⁶¹⁶ Whether an accused has contributed sufficiently to the mass killing depends on a concrete assessment of the facts.

480. The *mens rea* for the offence of extermination is that the Accused participated in the imposition of measures against many individuals intending that their deaths should be brought about on a large-scale. Given the facts of the present case, there is no need to consider whether recklessness would also satisfy the *mens rea* of extermination.⁶¹⁷

2.2 Application to Factual Findings

Gitwa Hill (Paragraph 20 of the Indictment)

481. The evidence does not establish that the Accused himself killed any person by his acts at Gitwa Hill.

482. The Chamber has found that the Accused visited Gitwa Hill on two occasions, urging the attackers to kill the Tutsi refugees, and distributing machetes and other weapons. On one occasion, he also transported attackers who were identified as *Interahamwe* to Gitwa Hill. He was known to be a Government Minister and people gathered around him during these visits attentively and respectfully. His words and deeds would undoubtedly have had a substantial motivating impact on the attackers. As little as two days after the Accused's final visit, there was a massive attack on the Hill, resulting in the deaths of thousands of Tutsi. This final attack had been preceded by smaller-scale attacks, including one which occurred in his presence and which he appears to have initiated.

483. In the Chamber's view, the specific requirements for the offence of extermination are satisfied. The Accused intended to bring about the deaths of the Tutsi besieged on Gitwa Hill on a massive scale. He manifested this intent directly, by urging that the Tutsi be killed. The material element of the crime is satisfied by his distribution of weapons, transportation of attackers, and verbal encouragement of the attack. As a Government Minister, these words and deeds contributed substantial moral support and official approval for the devastating

⁶¹⁴ *Akayesu*, Judgement (TC), para. 591 (“...extermination is a crime which by its very nature is directed against a group of individuals”).

⁶¹⁵ *Krstic*, Judgement (TC), para. 498 (“...we surmise that the crime of extermination may be applied to acts committed with the intention of bringing about the death of a large number of victims either directly, such as by killing the victim with a firearm, or less directly, by creating conditions provoking the victim's death”); *Vasiljevic*, Judgement (TC), para. 227; *Kayishema and Ruzindana*, Judgement (TC), para. 143, 146.

⁶¹⁶ *Niyitgeka*, Judgement (TC), para. 450 (the Accused must have “participated in the killing of certain named or described persons”); *Ntakirutimana*, Judgement (TC), para. 814; *Akayesu*, Judgement (TC), para. 592.

⁶¹⁷ *Kayishema and Ruzindana*, Judgement (TC), para. 144 (finding that recklessness is sufficient); cf. *Semanza*, Judgement (TC), para. 341 (requiring intent to perpetrate or participate in a mass killing); *Vasiljevic*, Judgement (TC), para. 229 (requiring actual intention to kill, or to cause grievous bodily harm or injury with the knowledge that such actions are likely to cause death).

attack which occurred shortly thereafter. Accordingly, the Accused contributed substantially to the mass killing of Tutsi which ensued.

484. The general requirements for a crime against humanity are also satisfied. The evidence is overwhelming that there were widespread attacks against Tutsi in Rwanda, and in Kibuye Prefecture, during this period. The Accused overtly manifested his intent to kill the civilian refugees at Gitwa Hill because they were Tutsi, knowing that ethnic massacres were occurring throughout Rwanda. At the least, he had knowledge of the widespread nature of the attacks and their discriminatory nature, and knew that an attack on Gitwa Hill would be part of those widespread attacks.

485. As to the mode of commission, the Chamber finds that the Accused himself committed the crime of extermination. He participated in creating, and contributed to, the conditions for the mass killing of Tutsi on Gitwa Hill on 26 April 1994, by distributing weapons, transporting attackers, and speaking words of encouragement that would have reasonably appeared to give official approval for an attack. Alternatively, the Chamber finds that by these words and deeds, the Accused directly and substantially contributed to the crime of extermination committed by the attackers at Gitwa Hill, and is thereby guilty of both instigating, and of aiding and abetting, that crime.

3. Murder as a Crime Against Humanity

3.1 Applicable Law

486. Count 3 of the Indictment charges the Accused with murder as a crime against humanity. The Indictment refers generally to the modes of responsibility in Article 6(1) of the Statute, and alleges specifically that the Accused “instigated and ordered persons at roadblocks in Kibuye Prefecture to kill civilians identified as Tutsi, at times individually addressing local administrative offices and naming particular civilians to be killed.” The Prosecution seems hereby to refer to evidence of alleged encouragement to commit murder at three roadblocks along the Kibuye-Gitarama road in Gitesi, and at an alleged roadblock in Gitaka Centre.

487. Murder is the intentional killing of a person, or intentional infliction of grievous bodily harm knowing that such harm will likely cause the victim’s death or being reckless as to whether death will result, without lawful justification or excuse.⁶¹⁸ Murder, as with extermination, is punishable as a crime against humanity “when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds”, as required by Article 3 of the Statute. These requirements have been elucidated above in relation to the requirements of extermination as a crime against humanity. In particular, it is recalled that the *mens rea* for a crime against humanity requires that the perpetrator know that their act is part of the widespread or systematic attack against a

⁶¹⁸ *Akayesu*, Judgement (TC), para. 589; *Rutaganda*, Judgement (TC), para. 81; *Musema*, Judgement (TC), para. 215. See Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003), p. 74; Kriangsak Kittichaisaree, *International Criminal Law* (Oxford: Oxford University Press, 2002), pp. 102-04. Other cases have also required that the intentional killing be “premeditated”, based upon the use of the word “*assassinat*” in the French text of the Statute. See e.g. *Semanza*, Judgement (TC), paras. 334-339. The Chamber does not consider it necessary to consider the higher threshold in this case, as the nature of the Accused’s intent is not presently in issue.

civilian population on discriminatory grounds, without necessarily sharing that discriminatory intent while committing the specific act.

488. As also discussed above, instigation, and aiding and abetting, must directly and substantially contribute to the perpetration of the crime for liability to arise.⁶¹⁹

3.2 Application to Factual Findings

Roadblocks in Gitesi Commune (Paragraph 25)

489. The Chamber has discussed its findings concerning the sequence of events leading to the death of Nors at Gaseke roadblock in Section 6.1 of its Factual Findings, and in the preceding section. On the basis of that discussion, the Chamber finds that the participants at the Gaseke roadblock were part of a widespread and systematic attack against Tutsi civilians, and that the killing of Nors was part of that systematic attack. The killing occurred at, or near, the roadblock. Nors was targeted because he was Tutsi or, alternatively, because he was perceived to be Tutsi. In either event, the killers of Nors possessed the requisite specific intent, either because they intended to kill Nors as part of the widespread or systematic attack against Tutsi, or because they knew that killing Nors would further the goals of that widespread or systematic attack.

490. For the reasons discussed above in the preceding section in relation to instigation, or aiding and abetting genocide, the Chamber also finds that the Accused directly and substantially contributed to the perpetration of the crime of murder as a crime against humanity. Accordingly, in relation to the killing of Nors, the Accused is guilty under Count 3 for instigation, and aiding and abetting, of murder as a crime against humanity.

4. Conviction for Cumulative Charges

491. It is well-established that an accused may be charged with more than one criminal offence arising out of a single incident.⁶²⁰ Multiple criminal convictions for different offences, but based on the same conduct, are permissible if each offence has a materially distinct element not contained in the other.⁶²¹ The Defence argues that there is a complete overlapping of offences between genocide and extermination as a crime against humanity. It also argues that there is a complete overlap in the elements required for conviction on the charges of genocide and murder as a crime against humanity.⁶²²

492. In *Krstic*, the ICTY Appeals Chamber recently reaffirmed established jurisprudence that genocide contains materially distinct elements from extermination, permitting cumulative convictions thereunder. In particular, it held that genocide need not be part of a “widespread or systematic attack”, as is required for crimes against humanity.⁶²³ Accordingly, both

⁶¹⁹ *Kayishema and Ruzindana*, Judgement (AC), para. 198; *Krstic*, Judgement (AC), para. 137; *Bagilishema*, Judgement (TC), paras. 32-33. For present purposes, the Chamber need not explore the submission of the Prosecution to the effect that only the *actus reus* of the encouraged crime need be established. T. 1 March 2004 pp. 4-5.

⁶²⁰ *Musema*, Judgement (AC), para. 369; *Kunarac*, Judgement (AC), para. 167.

⁶²¹ *Musema*, Judgement (AC), paras 361, 363; *Krstic*, Judgement (AC), para. 218; *Semanza*, Judgement (TC), para. 409.

⁶²² Defence Closing Brief, paras. 48-60.

⁶²³ *Krstic*, Judgement (AC), para. 223; *Musema*, Judgement (AC), para. 366.

extermination and murder as crimes against humanity possess materially distinct elements from genocide.

493. The Chamber finds that it may enter multiple convictions against the Accused as charged, on the basis of the same events.

CHAPTER IV

VERDICT

494. **FOR THE FOREGOING REASONS**, having considered all the evidence and the arguments,

495. **THE CHAMBER** unanimously finds Emmanuel Ndindabahizi:

Count 1: Guilty of Genocide

Count 2: Guilty of Extermination as a Crime Against Humanity

Count 3: Guilty of Murder as a Crime Against Humanity.

CHAPTER V

SENTENCE

1. Applicable Provisions and General Principles of Sentencing

496. The provisions of the Statute and the Rules relevant to the Chamber's consideration of an appropriate sentence for the Accused are Articles 22, 23 and 26 of the Statute and Rules 101 to 104 of the Rules. Pursuant to Article 23 of the Statute and Rule 101(A) of the Rules, the Tribunal may impose a term of imprisonment up to and including the remainder of an accused's life.

497. In the case of an accused convicted of multiple crimes, as in the present case, the Chamber may, in its discretion, impose a single sentence or one sentence for each of the crimes. The imposition of a single sentence will usually be appropriate in cases in which the offences may be recognized as belonging to a single criminal transaction.⁶²⁴ In the case of

⁶²⁴ *Blaskic* (TC) para. 807; *Krstic* (TC) para. 725.

multiple sentences, the Chamber will determine whether the sentences shall be served consecutively or concurrently.

498. In reaching its decision on an appropriate sentence to be imposed on the Accused, the Chamber has taken due consideration of the well-established principles of retribution, deterrence, and protection of society.⁶²⁵ Specific emphasis is placed on general deterrence, so as to demonstrate “that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights”.⁶²⁶ The Chamber has also considered the likelihood of the Accused’s rehabilitation.⁶²⁷

499. The Chamber has taken due notice of the intrinsic gravity of the crimes committed by the Accused. Genocide and crimes against humanity are offences which are particularly shocking to the conscience of mankind.

500. The Chamber has also considered the principle of gradation in sentencing, according to which the highest penalties are to be imposed upon those who planned or ordered atrocities, or those who committed crimes with particular zeal or sadism. Whether an accused is found guilty of genocide, of crimes against humanity or of violations of the Geneva Conventions or Additional Protocol II thereto, the principle of gradation enables the Chamber to punish, deter, and consequently stigmatize the crimes considered at a level that corresponds to their overall magnitude and reflects the extent of suffering inflicted upon the victims.⁶²⁸

501. The Chamber has also found guidance in the practice of sentencing in Rwanda, as referred to in previous judgements of the Tribunal.⁶²⁹

502. Finally, the Chamber has taken into consideration the totality of the circumstances of the case and the individual circumstances of the Accused, in mitigation as well as in aggravation. It has borne in mind that the principle according to which only matters proved beyond a reasonable doubt are to be considered at the sentencing stage extends to the assessment of any aggravating factors, while mitigating factors are to be taken into consideration if established on a balance of probabilities. This Chamber reiterates that a particular circumstance shall not be retained as aggravating if it is included as an element of the crime in consideration.⁶³⁰

2. Submissions

503. The Prosecution addressed sentencing very briefly during its closing arguments. It submitted that the maximum sentence should “generally” be imposed for each of the three counts in the Indictment.⁶³¹ As regards mitigating or aggravating circumstances, the

⁶²⁵ *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66; *Ntakirutimana* (TC) para. 882.

⁶²⁶ *Kambanda* (TC) para. 28, endorsed in *Aleksovski* (AC) para. 66. See also *Kayishema* Sentence (TC) para. 2; *Ntakirutimana* (TC) para. 882.

⁶²⁷ *Blaskic* (TC) para. 761; *Kunarac* (TC) para. 836; *Serushago* (TC) para. 39; *Kayishema* (TC) para. 2, affirmed in *Kayishema* (AC) paras. 389 and 390; *Ntakirutimana* (TC) para. 887.

⁶²⁸ On the individualization of the sentence and the principle of gradation in sentencing, see *Ntakirutimana* (TC) paras. 883-886 and case law cited therein.

⁶²⁹ See particularly the developments on the applicable law and the practice of sentencing in Rwanda in *Kayishema* Sentence (TC) paras. 5-7 and *Ntakirutimana* (TC) para. 885.

⁶³⁰ See *Ntakirutimana* (TC) para. 893, and supporting case law quoted in footnotes 1183 to 1187.

⁶³¹ T. 2 March 2004 pp. 52-53.

Prosecution argued that the involvement of the population in the commission of the crimes should be taken into account as an aggravating factor.

504. The Defence declined to make submissions on sentencing, in spite of having been invited to do so.⁶³²

3. Deliberations

Individual, Mitigating and Aggravating Circumstances

505. Emmanuel Ndindabahizi was born in 1950 in Gasharu, Gitesi Sector, Gitesi Commune, in Kibuye Prefecture, Western Rwanda. The Accused is 54 years old. He is married with five children. His personal circumstances are described in Chapter I.3 above. He was awarded a *licence* in management in 1976. He worked, from 1976 to 1981, as the general financial manager (*chef de service*) for the Trafipro co-operative in Kigali. From 1981 to 1985, he was an administrative and financial manager (*chef de service*) with Electrogaz in Kigali. He was appointed director of the internal financing division of the Ministry of Planning in 1985. From 1991 to September 1992, he left the public sector and became consultant with the Audico consulting firm in Kigali. He was then assigned to the Finance Ministry in September 1992, as Director of the Cabinet of the Minister of Finance, a position which he occupied until 6 April 1994. On 9 April 1994, the Accused became Minister of Finance of the Interim Government and remained in that position until his exile from Rwanda in July 1994.

506. In mitigation of the Accused's sentence, the Chamber has considered evidence that, before his participation in the Interim Government, the Accused was a member of the PSD, which was a moderate political party.⁶³³

507. The Chamber also takes into account that the Accused has been found guilty of participating in relatively few criminal events.

508. The Chamber considers as aggravating, in the Accused's case, the following circumstances:

(i) The Accused was a well-known and influential figure in his native prefecture of Kibuye, where his crimes were committed. As such, the Accused abused the trust placed in him by the population.

(ii) At the time of the events, the Accused held an official position at the national level, as a member of the Interim Government. The Chamber considers it particularly aggravating that instead of promoting peace and reconciliation in his capacity as Minister, he supported and advocated a policy of genocide. He also participated in the commission of the massacres in Gitwa Hill, during which thousands of persons were killed.

(iii) The Accused actively influenced others to commit crimes, by distributing machetes and money. He publicly encouraged the killing of Tutsi women who were married to Hutu.

⁶³² *Id.* p. 51.

⁶³³ T. 24 September 2003 pp. 13-14, 16-17 (Expert witness Allison Des Forges).

509. Having reviewed both mitigating and aggravating circumstances, the Chamber finds that the aggravating circumstances outweigh the mitigating circumstances in the Accused's case.

Sentencing Practices

510. The Chamber has taken into consideration the sentencing practice of the ICTR and the of ICTY, and notes particularly that the penalty must first and foremost be commensurate to the gravity of the offence. Principal perpetrators convicted of either genocide or extermination as a crime against humanity, for both which the Accused has been found guilty, have been punished with sentences ranging from fifteen years to imprisonment for the remainder of the convicted person's life. Those who held the highest official positions at the national level, such as members of the Interim Government, were generally sentenced to imprisonment for the remainder of their life.⁶³⁴

511. The Chamber has considered the general sentencing practice regarding prison sentences in Rwanda. The Chamber notes that for the most serious crimes, comparable to a conviction by this Tribunal for genocide or extermination as a crime against Humanity, a convict under the present Rwandan judicial system would be liable to imposition of the death penalty. In regard to lower categories of crimes in Rwanda, a Rwandan court has the power to impose a life sentence. The Chamber regards this as one factor supporting the imposition of a heavy penalty upon the Accused.

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments of the parties, the Statute, and the Rules, the Chamber imposes sentence as follows, delivering its decision in public, *inter partes* and in the first instance.

For the crimes of which the Accused was found guilty, the Chamber **SENTENCES** Emmanuel Ndindabahizi to:

Imprisonment for the remainder of his life

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.

Until his transfer to his designated place of imprisonment, Emmanuel Ndindabahizi shall be kept in detention under the present conditions.

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

⁶³⁴ *Kambanda*, Judgement (TC) (guilty plea on six counts, including Genocide; confirmed on appeal); *Niyitegeka*, Judgement (TC), (convicted on six counts, including Genocide; confirmed on appeal); *Kamuhanda*, Judgement (TC), (convicted on three counts, including Genocide, currently on appeal).

Signed on 12 July and issued on 15 July 2004 in Arusha, Tanzania.

Erik Møse
Presiding Judge

Khalida Rachid Khan
Judge

Solomy B. Bossa
Judge

(Seal of the Tribunal)

ANNEX A

ANNEX B

Annex B – Cited Materials/Defined Terms

A. Jurisprudence

ICTR

AKAYESU

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998

Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001

BAGILISHEMA

Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001

BAGOSORA ET AL.

Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of Witness DBY (TC), 18 September 2003

KAJELIJELI

Prosecutor v. Juvenal Kajelijeli, Case No. ICTR-99-44-AT, Judgement and Sentence (TC), 1 December 2003

KAMBANDA

Prosecutor v. Jean Kambanda, Case No. ICTR-97-23-S, Judgement (TC), 4 September 1998

KAMUHANDA

Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-95-54A-T, Judgement (TC), 22 January 2004

KAYISHEMA AND RUZINDANA

Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement (TC), 21 May 1999

Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons) (AC), 1 June 2001

MUSEMA

Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement (TC), 27 January 2000

Prosecutor v. Alfred Musema, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001

NAHIMANA ET AL.

Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003

NIYITEGEKA

Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-T, Judgement and Sentence (TC), 16 May 2003

Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-A, Judgement and Sentence (AC), 9 July 2003

NGEZE AND NAHIMANA

Hassan Ngeze and Ferdinand Nahimana v. Prosecutor, Case Nos. ICTR-97-27-AR72 and ICTR-96-11-AR72, Décision sur les appels interlocutoires (AC), Separate Opinion of Judge Shahabuddeen, 5 September 2000

NTAGERURA ET AL.

Prosecutor v. Andre Ntagerura et al., Case No. ICTR 99-46-T, Judgement and Sentence (TC), 25 February 2004

Prosecutor v. Andre Ntagerura et al., Case No. ICTR 99-46-T, Judgement and Sentence, Separate and Dissenting Opinion of Judge Dolenc (TC), 25 February 2004

NTAKIRUTIMANA

Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence (TC), 21 February 2003

RUTAGANDA

Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-T, Judgement and Sentence (TC), 6 December 1999

Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003

SEMANZA

Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003

SERUSHAGO

Prosecutor v. Omar Serushago, Case No. ICTR-98-39-S, Sentence (TC), 5 February 1999

ICTY

ALEKSOVSKI

Prosecutor v. Zlatko Aleksovski, Case No. IT-95-14/1-A, Judgement (AC), 24 March 2000

BLASKIC

Prosecutor v. Tihomir Blaškic, Case No. IT-95-14-T, Judgement (TC), 3 March 2000

DELALIC ET AL.

Prosecutor v. Zejnil Delalic et al. a/k/a “Celebici”, Case No. IT-96-21-T, Judgement (TC), 16 November 1998

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Prosecutor v. Radislav Krstic, Case No. IT-98-33-T, Judgement (TC), 2 August 2001

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Prosecutor v. Dragoljub Kunarac, et al., Case No. IT-96-23 & IT-96-23/1-A, Judgement (AC), 12 June 2002

KUPREŠKIC ET AL.

Prosecutor v. Zoran Kupreškic, et al., Case No. IT-95-16-A, Appeal Judgement, 23 October 2001.

TADIC

Prosecutor v. Duško Tadic, Case No. IT-94-1-A, Judgement (AC), 15 July 1999

VASILJEVIC

Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-A, Judgement (TC), 29 November 2002

Prosecutor v. Mitar Vasiljevic, Case No. IT-98-32-A, Judgement (AC), 25 February 2004

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C. Defined Terms

CND

Coalition pour la défense de la république

Defence Closing Brief

Prosecution v. Emmanuel Ndindabahizi, Case No. 01-71-T, Memoire de la Defence/Defence Closing Brief, filed 6 February 2004

ICTR

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

ICTR Statute

Statute of the Tribunal

ICTY

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Indictment

Prosecutor v. Emmanuel Ndindabahizi, Case No. 01-71-T, Amended Indictment, filed 1 September 2003

MDR

Democratic Republican Movement

MRND

National Republic Movement for Development and Democracy

Pre-trial Brief

Prosecutor v. Emmanuel Ndindabahizi, Case No. 01-71-T, Prosecutor's Pre-trial Brief, filed on 1 August 2003

Prosecution Closing Brief

Prosecutor v. Emmanuel Ndindabahizi, Case No. 01-71-T, The Prosecutor's Closing Brief, filed on 20 January 2004

PSD

Social Democratic Party

RPF

Rwandan (also Rwandanese) 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.

Tribunal

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994