



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 15 July 2009

THE PROSECUTOR

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA
*Case No. ICTR-98-44-T***

**DECISION ON JOSEPH NZIRORERA'S MOTIONS FOR ADMISSION OF
WRITTEN STATEMENTS AND WITNESS TESTIMONY**

Rule 92 bis of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Arif Virani
Saidou N'Dow
Sunkarie Ballah-Conteh
Eric Husketh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. In a motion filed on 10 December 2008, Joseph Nzirorera seeks to have admitted statements from 112 witnesses pursuant to Rule 92 *bis* (A) of the Rules of Procedure and evidence ("Rules") and testimony from 15 witnesses pursuant to Rule 92 *bis* (D).¹ Nzirorera submits that all the statements and testimony proposed to be admitted meet the requirements of Rule 92 *bis* of the Rules. However, Nzirorera submits that certification has not been obtained, as required by Rule 92 *bis* (B), as the Registry requested, with a view to avoiding the waste of scarce resources, that the process be delayed until the Chamber had decided on the admissibility of the statements. He has attached a letter from the Chief of the Court Management Section at Annex A to his Omnibus 92 *bis* Motion in this regard.² Consequently, Nzirorera requests the Chamber to order the Registrar to obtain certification of the statements admitted.³

2. The Prosecution opposes Joseph Nzirorera's Omnibus 92 *bis* Motion.⁴ It argues that: (i) Nzirorera has used this motion to expand his witness list and that Nzirorera has failed to provide identifying information for the 127 witnesses listed in his motion; (ii) Nzirorera has included in his application statements going to proof of the acts and conduct of the accused which is contrary to Rule 92 *bis* (A); (iii) Nzirorera has failed to adhere to the formal requirements of Rule 92 *bis* (B) and (C); (iv) the nature and the source of the evidence is unreliable; and (v) there is an obvious need for cross examination of the witnesses and this will unduly expand the length and breadth of Nzirorera's Defence case.⁵ In an annex to its

¹ Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony ("Nzirorera's Omnibus 92 *bis* Motion"), filed on 10 December 2008. Nzirorera also filed supplements to his Omnibus 92 *bis* Motion to replace six witness statements that were previously attached to his original Omnibus 92 *bis* Motion: Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, filed on 22 January 2009 ("Supplement to Omnibus 92 *bis* Motion"); Second Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, filed on 26 January 2009. Nzirorera filed a reply brief: Reply Brief: Joseph Nzirorera's Omnibus Motion for Admission of Written Statements and Testimony, filed on 6 February 2009. The Chamber notes that the public annexes to Nzirorera's motions, read in conjunction with Nzirorera's Pre-Trial Brief, could reveal the identifying information for a number of witnesses subject to protective measures in this case. Accordingly, the Chamber will order the Registrar to re-file these annexes confidentially.

² Omnibus 92 *bis* Motion, para. 5; Annex A to Nzirorera's Omnibus 92*bis* Motion, Facsimile from Jean-Péle Fomete, chief of the Court Management Section to Peter Robison, dated 29 September 2008.

³ Nzirorera's Omnibus 92 *bis* Motion, para. 9.

⁴ Prosecutor's Response to Joseph Nzirorera's Omnibus Motion for Admission of Written Statements and Testimony ("Prosecution's Response"), filed on 2 February 2009, para. 5. On 15 January 2009, the Chamber granted the Prosecution request for an extension of time to 31 January 2009 to respond to Joseph Nzirorera's Omnibus 92 *bis* Motion: *Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera *et al.*"), Decision on Prosecutor's Motion for Extension of Time, 15 January 2009.

⁵ Prosecution's Response, para. 5.

Response, the Prosecution attaches a table where it indicates its views on all the written statements and transcripts Nzirorera seeks to have admitted.⁶

3. In a motion filed on 4 May 2009, Joseph Nzirorera seeks the admission of a statement from Emmanuel Nyamuhimba pursuant to Rule 92 *bis* (A)⁷ and in a motion filed on 29 June 2009, he seeks the admission of a statements and transcripts of testimony of RPF insider witnesses pursuant to Rule 92 *bis* (C) and (D).⁸ The Prosecution opposes these motions as well.⁹

DELIBERATIONS

I. Preliminary Issues

4. The Prosecution raises two preliminary issues relating to Joseph Nzirorera's motions of 4 May 2009 and 29 June 2009. First, the Prosecution argues that Nzirorera did not show good cause for not complying with the Chamber's previous order to file all of his 92 *bis* statements by 8 December 2008.¹⁰ The Chamber notes that Nzirorera explains that he did not attach the additional statements and transcripts included in these additional motions to his 92 *bis* Omnibus Motion because the whereabouts of Emmanuel Nyamuhimba were unknown in December 2008¹¹ and because he only learned in June 2009 that the RPF insider witnesses could not be located.¹² The Chamber considers that these explanations constitute good cause for these supplementary motions.¹³ The Chamber finds it in the interests of justice to consider these motions and finds no reason to order that fees related to the motion be denied.

5. Second, the Prosecution argues that Joseph Nzirorera has failed to comply with the requirements of Rule 73 *ter* by adding Emmanuel Nyamuhimba and the RPF insider

⁶ Confidential Annex attached to Prosecution's Response.

⁷ Joseph Nzirorera's Motion to Admit Statement of Emmanuel Nyamuhimba, filed on 4 May 2009 ("Nzirorera's 92 *bis* Nyamuhimba Motion").

⁸ Joseph Nzirorera's Motion to Admit Statements and Testimony of RPF Insider Witnesses pursuant to Rule 92 *bis*, filed on 29 June 2009 ("Nzirorera's 92 *bis* RPF Insider Witnesses Motion"). Nzirorera also filed a reply: Reply Brief: Joseph Nzirorera's Motion to Admit Statements and Testimony of RPF Insider Witnesses pursuant to Rule 92 *bis*, filed on 7 July 2009 ("Nzirorera's 92 *bis* RPF Insider Witnesses Reply").

⁹ Prosecutor's Response to Nzirorera's Motion to Admit the Statement of Emmanuel Nyamuhimba, filed on 7 May 2009 ("Prosecution's Response to Nyamuhimba Motion"); Prosecutor's Response to Nzirorera's Motion to Admit the Statements and Testimony of RPF Insider Witnesses pursuant to Rule 92 *bis*, filed on 6 July 2009 ("Prosecution's Response to RPF Insider Witnesses Motion").

¹⁰ Prosecution's Response to Nyamuhimba Motion, paras 11-12; Prosecutor's Response to RPF Insider Witnesses, para. 11.

¹¹ Nzirorera's 92 *bis* Nyamuhimba Motion, paras 7-12.

¹² Nzirorera's 92 *bis* RPF Insider Witnesses Motion, para. 2; Nzirorera's 92 *bis* RPF Insider Witnesses Reply, para. 3.

¹³ *Karemera et al.*, Decision on Joseph Nzirorera's Motions for Reconsideration of 24 October 2008 Order, for Extension of Time, Subpoenas and Video-Link and on Prosecution's Motion for an Order to Nzirorera to Reduce his Witness List, 2 December 2008.

witnesses to his witness lists, without asking for leave to vary his witness list.¹⁴ The Chamber notes however that Rule 73 *ter* (E) requires the Defence to seek leave to this end only after the commencement of the Defence case. As Joseph Nzirorera has not commenced his case, he retains the right to vary his witness list without seeking leave from the Chamber to do so. Accordingly, the Prosecution's objection stands to be rejected and the Chamber will therefore consider these motions on the merits.

II. On the Merits

6. The admission of a written statement under Rule 92 *bis* (A) or a transcript of evidence under Rule 92 *bis* (D) involves an enquiry as to whether the statement or transcript sought to be admitted goes to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment and whether it satisfies Rule 89(C), in that it is relevant and has probative value.¹⁵ Definitive proof of reliability and credibility of the evidence is not required, but merely a showing of *prima facie* reliability and credibility on the basis of sufficient indicia.¹⁶ In addition, for the admission of a written statement, the non-exhaustive factors listed in Rule 92 *bis* (A) (i) and (ii)¹⁷ and the formal requirements of Rule 92 *bis* (B) must also be met.

7. Even if a statement or transcript fulfils all of these requirements, the Chamber must decide whether or not to exercise its discretion to admit it, bearing in mind the overarching necessity of ensuring a fair trial. A relevant factor in the exercise of this discretion is the proximity to the Accused of the person whose acts are described in the statement. Pursuant to Rule 92 *bis* (E), if the Chamber permits the admission of the statement or transcript, it must also decide whether or not to admit it in whole or in part and whether or not to require cross-examination of the witness. In addition to issues relating to the fairness of the trial, a relevant

¹⁴ Prosecution's Response to Nyamuhimba Motion, paras 6-9, referring to Joseph's Nzirorera's Second Revised Public Redacted Witness List, filed on 6 May 2009; Prosecution's Response to RPF Insider Witnesses Motion, paras 5-10.

¹⁵ *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41-T ("*Bagosora et al.*"), Decision on Prosecutor's Motion for the Admission of Written Statement Under Rule 92 *bis*, 9 March 2004, para. 12.

¹⁶ *Karemera et al.*, Decision on Joseph Nzirorera's Appeal of Decision on Admission of Evidence Rebutting Adjudicated Facts 29 May 2009, para. 15.

¹⁷ Factors which favour admission include the fact that oral evidence has been heard on similar facts; the statement provides an historical, political or military background; or the statement relates to the character of the accused. Factors weighing against admission include whether there is an overriding public interest to hear the evidence orally; its nature and source render it unreliable; or its prejudicial effect outweighs its probative value.

factor in this regard is whether the evidence relates to a live and important issue between the parties, as opposed to a peripheral one.¹⁸

8. The Chamber will now address each of the 116 witness statements and the 16 transcripts of evidence sought for admission. The analysis provided below is organised according to the legal basis upon which admission is granted or denied, save for the evidence of the RPF insider witnesses, which is treated in a separate section.

(A) Witness Statements that Go to Proof of the Acts and Conduct of the Accused as charged in the Indictment

*Annexes 4, 15-17, 20, 36-37, 41, 43, 47, 49, 52, 55-56, 58, 61-65, 68-69, 85, 89 and 91 – Statements of Bonaventure Hakizimana, Julius Simpakanye, Alphonse Mbonabihama, Jean-Bosco Ngayumbwiko, Cyprien Ntakaberaho, Marc Ntigura, Majaliwa Bizimana, Célestin Sezibera, Séraphin Twahirwa, Charles Bandora, François Gahigi, Jean-Claude Seyoboka, Mutuyeyezu, Simon Bikindi, Jean-Baptiste Gatete, Thomas Kifugi, Jean-Bosco Sezirahaga, Jean Berchmans Imananibishaka, Aloys Ntabakuze, Protais Zigiranyirazo, Francois-Xavier Nzuwonemeye, Hormisdas Nsengimana, André Bizimana, Samuel Imanishimwe, Moussa Zari Banganirubusa, Jean-Batiste Baligendere and Cyprien Munyampundu*¹⁹

9. The Chamber considers that the above statements sought for admission go to proof of the acts and conduct of one of the Accused as charged in the Indictment²⁰ and that they are therefore not admissible pursuant to Rule 92 *bis*.

(B) Witness Statements that are of Limited Relevance, Probative Value or Reliability

10. The Chamber finds that a number of the witness statements sought for admission are inadmissible because they are of limited relevance, probative value or reliability. In the paragraphs that follow, the Chamber provides its reasoning with respect to these statements.

Annexes 7, 8, 9, 10 and 24 – Statements of Espérance Nyirakidedeli, Antoine Mburabuze, Jérôme Nteziyaremye, Juvénal Barayasesa and Magdalena Mukamuligo

11. The Chamber notes that five of the witness statements sought for admission contain declarations to the effect that they have no knowledge of meetings held by Joseph Nzirorera with authorities in Nzirorera's mother's house. The Chamber considers that these statements

¹⁸ *Bagosora et al.*, Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under 92 *bis*, 9 March 2004, para. 16.

¹⁹ The Chamber notes that Joseph Nzirorera filed an updated and signed version of the statement identified in Annex 89 in his Supplement to 92 *bis* Motion.

²⁰ Furthermore, the Chamber observes that Annex 20 – Statement of Marc Ntigura has limited probative value as, from Ntigura's own declarations, he was not present every day at the Mukingo commune office.

are of limited probative value.²¹ Indeed, it does not appear from the statements that any of the witnesses were near Nzirorera's mother's house at all times and that they were in a special position enabling them to know what was happening in Nzirorera's mother's house.

Annex 11 – Statement of Augustin Ruremesha

12. The Chamber notes that in his witness statement, Augustin Ruremesha declares that he has no knowledge of meetings held by Joseph Nzirorera with authorities in Nzirorera's mother's house and of military training of *Interahamwe* in Mukingo *commune*. However, the Chamber considers that this statement is of limited probative value as it does not appear from the statement that Ruremesha could see what was happening at Nzirorera's mother's house at all times or how he would have been aware of any military training in Mukingo *commune* or that he was in a special position to know of either.

Annex 13 – Statement of Charles Nzabagerageza

13. In his statement, Charles Nzabagerageza declares that he was never a member of any committee that discussed or decided on the formation of the *Interahamwe* in Mukingo *commune*. He further states that he never organised, attended or heard of any meeting to announce the formation of the *Amahindure* force and that he never heard of any military training of youth in Mikungo *commune* or of any meeting held to organise such training. However, the Chamber notes that the attachments Nzabagerageza claimed to have attached to this statement are missing. Consequently, the probative value of this statement is limited.

Annexes 21, 22 and 23 – Statements of François Sekanze, Faustin Sehinda and Samuel Havugimana

14. In their statements, François Sekanze, Faustin Sehinda and Samuel Havugimana declare that there was no military training of youth from Mukingo prior 6 April 1994 and that in June 1994 they were appointed as instructors for the military training of youth from Mukingo *commune* for the purpose of sending them to the front. The Chamber notes that these three statements contain two paragraphs that are word for word identical. Having due regard to the content of these statements, the Chamber finds that this duplication casts serious doubts on their reliability. In addition, the Chamber finds that these statements are of limited relevance

²¹ In addition, the Chamber finds that parts of Annex 9 – Statement of Jérôme Nteziyaremye and Annex 24 – Statement of Magdalena Mukamuligo go to proof of a matter relating to the acts and conduct of the Accused as charged in the Indictment. Furthermore, in relation to Annex 10 – Statement of Juvénal Barayasesa, the Chamber finds that paragraph 10 is given without any foundation and paragraph 11 is too vague to present probative value as well.

and probative value: they do not explicitly refer to the *Amahindure* force, nor do they relate specifically to Paragraph 62.5 of the Indictment.

Annex 26 – Statement of Edison Munyatarama²²

15. The Chamber finds that the statement of Edison Munyatarama is of limited relevance: it is only minimally relevant to the adjudicated fact admitted in relation to meetings in Nkuli *commune* on 6 and 7 April 1994 and its relevance in relation to allegations of rapes in Mukingo *commune* is not clear. The Chamber further considers that this statement lacks probative value regarding meetings held at Nkuli *commune* as paragraph 10 of this statement is vague and contains declarations without foundation.

Annexes 27 and 29 – Statements of Anastase Ntahonkiriye and Alexis Dukuzumuremyi²³

16. The Chamber notes that these two statements relate to Prosecution evidence relating to a meeting during which Juvénal Kajelijeli was elected as new *bourgmestre* of Mukingo *commune*. The Chamber notes that these two statements are identical word for word. Having due regard to the content of these statements, the Chamber finds that this duplication casts serious doubts on their reliability. In addition, the Chamber finds that these statements are of limited relevance and probative value. Indeed, the Chamber previously ruled that Prosecution evidence would be admitted for the limited purpose of establishing the presence of Nzirorera at this meeting and not the content of the meeting itself.²⁴

Annex 34 – Statement of Winifred Musabeyezu

17. In her statement, Winifred Musabeyezu declares that she did not attend an MRND meeting in February 1992 in Vedaste's Building. Given that there is no indication in the statement that this witness was in a position to have attended all meetings of the MRND in February 1992, the Chamber finds that its probative value is limited. identical

Annex 35 – Statement of Jean-Marie Vianney Higiho

18. The Chamber notes that this statement is incomplete and that it is therefore unreliable.

²² The Chamber notes that Joseph Nzirorera filed an updated and signed version of this statement in his Supplement to 92 *bis* Motion.

²³ The Chamber notes that Joseph Nzirorera filed an updated and signed version of this statement in his Supplement to 92 *bis* Motion.

²⁴ T. 13 June 2007, pp. 36-42.

Annexes 38 and 39 – Statements of Pierre Nsengiyumva and Ibrahim Nzarigezahe

19. The Chamber notes that these two statements are almost word for word identical. Having due regard to the content of these statements, the Chamber finds that this duplication casts serious doubts on their reliability.

Annexes 50 and 86 – Statements of Aloys Zirarushya and Augustin Nzabonimpa

20. The Chamber notes that the two statements contain declarations concerning the whereabouts of two individuals. However, it doesn't appear from the statements how these witnesses could have been aware of the whereabouts of these individuals throughout the relevant period. The Chamber is of the view that these statements lack relevance and probative value.

Annex 57 – Statement of Jean-Baptiste Nemeyabahizi²⁵

21. The Chamber notes that Jean-Baptiste Nemeyabahizi's statement contains declarations relating to his arrival in Gisenyi and the people he saw there. The Chamber finds that this statement lacks probative value and relevance as the events it alludes to are not defined with sufficient precision.²⁶

Annex 70 – Statement of Théophile Gakara

22. The Chamber notes that Théophile Gakara makes declarations in relation to Prosecution Witness ZF's evidence. However, the Chamber finds that Gakara's declarations regarding the authenticity of exhibits admitted by this Chamber during Witness ZF's testimony are made without any foundation and that this casts doubt on the reliability and probative value of his assertions.

Annex 99 – Statement of Mathias Gasana

23. In an undated and unsigned document, Mathias Gasana purportedly makes declarations in relation to attacks at Mwulire Hill. The Chamber finds that this documents lacks the necessary *indicia* for the assessment of its reliability.

²⁵ The Chamber notes that Joseph Nzirorera filed an updated and signed version of this statement in his Supplement to 92 *bis* Motion.

²⁶ The Chamber also notes that this declaration is different from the summary given by Nzirorera in his Pre-Defence Brief regarding the evidence this witness was expected to present.

(C) Written Statements that Go to Matters that Require an Oral Presentation in the Public Interest

Annexes 12, 14, 25 and 51 – Statements of Jean-Claude Nsengiyumva, Haruna Manizabayo, André Gihanza and Pierre Célestin Rwigema

24. The Chamber notes that four witness statements sought for admission contain allegations of false testimony and/or fabrication of evidence. The Chamber considers that such allegations are to be taken very seriously and that accepting such evidence by way of a witness statement goes against public interest.²⁷ Consequently, the Chamber finds that the statements in Annexes 12, 14, 25 and 51 are not admissible. If Joseph Nzirorera seeks to have the testimony of these witnesses admitted, he will have to vary his *viva voce* witness list and have these witnesses testify within the limitations set by the Chamber for the presentation of his case.²⁸

(D) Admissible Witness Statements under Rule 92 bis (B)

25. The Chamber finds that a number of the witness statements sought for admission are admissible pursuant to Rule 92 *bis*. The Chamber concludes that each of the witness statements below or parts thereof go to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment and that they are relevant and of probative value as they address allegations in the Indictment or issues raised by the evidence adduced by the Prosecution. The Chamber also finds that the admissible statements are either cumulative in nature, as oral evidence has been heard or will be heard on similar facts, or provide further information regarding the background to events that occurred in Rwanda in 1994.

26. Having carefully assessed the statements for which the Prosecution presented specific arguments, the Chamber considers that the Prosecution does not demonstrate how the nature and source of these statements render them unreliable. Contrary to the Prosecution's submissions, the fact that some of these witnesses are Hutus or members of the MRND does not automatically render their statements unreliable. Their involvement in crimes allegedly

²⁷ In addition, the Chamber finds in relation to the statement in Annex 12 that there is no evidence that the witness was near Joseph Nzirorera's mother's house at all times and that he was in a special position enabling him to know what was happening in Nzirorera's mother's house and that the statement in Annex 14 is of limited probative value as it is very vague and is not substantiated by any explanation.

²⁸ *Karemera et al.*, Order to Joseph Nzirorera to Reduce his Witness List, 24 October 2008, paras I and II.

committed by the Accused or similar crimes may on the other hand require that they be cross-examined.²⁹

27. In the paragraphs that follow, the Chamber provides further particulars in relation to the source and content of these statements and sets out its decision regarding whether cross-examination is required. The Chamber notes however that these statements can only be admitted once they fulfil the requirements prescribed at Rule 92 *bis* (B) regarding the certification of witness statements.

Annex 1 – Statement of Michel Bakuzakundi

28. Michel Bakuzakundi signed a statement on 3 July 2008, without a witness present, in which he indicates that he was never invited and never participated in any meeting at Joseph Nzirorera's mother's house in Mukingo *commune*.

29. The Chamber decides not to call Michel Bakuzakundi for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 2 – Statement of Alphonse Ntilivamunda

30. Alphonse Ntilivamunda signed a statement on 19 June 2008, without a witness present, in which he declares that he never participated in any meeting at the residence of Joseph Nzirorera's mother in Mukingo *commune*. He adds that he did not take part in any meeting relating to the founding of the *Amahindure* or *Virunga* force in Mukingo *commune* and that he was never aware that weapons were hidden in the offices of the Public Works Department.

31. The Chamber considers that the issues raised by the Prosecution regarding Alphonse Ntilivamunda require that he appear for cross-examination.

Annex 3 – Statement of Dominic Gatsimbanyi

32. In a statement signed on 4 June 2008 in the presence of Joseph Nzirorera's Lead Counsel, Dominic Gatsimbanyi makes declarations relating to Kajelijeli's actions in Mukiraman on 7 April 1994, meetings at Joseph Nzirorera's mother's house, the founding of the *Amahindure* and the adjudicated facts regarding meetings in Nkuli *commune* on 6-7 April 1994.

33. The Chamber considers that the issues raised by the Prosecution regarding Dominic Gatsimbanyi require that he appear for cross-examination.

²⁹ Cf. *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Trial Judgement, 22 June 2009, paras 72-73.

Annex 6 – Statement of Pierre Ntamushobora

34. In a statement signed on 21 February 2008 in the presence of Joseph Nziroera's Lead Counsel, Pierre Ntamushobora asserts, *inter alia*, that he was the President of the MRND in Nyakimana *commune* from 1991 as well as a member of the MRND Committee for Ruhengeri *prefecture* and that the *Interahamwe* was never established in Ruhengeri.

35. The Chamber considers that the issues raised by the Prosecution regarding Pierre Ntamushobora require that he appear for cross-examination.

Annex 18 – Statement of Protais Rukeraminigo

36. Protais Rukeraminigo signed a statement on 18 October 2007, in the presence of Joseph Nziroera's Lead Counsel, in which he states that the PSD flag was never removed by the *Interahamwe* in Ruhengeri.³⁰

37. The Chamber decides not to call Protais Rukeraminigo for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 19 – Statement of Théogène Bamproeye

38. In a statement signed on 14 February 2008 in the presence of Joseph Nziroera's Lead Counsel, Théogène "Rusatira" Bamproeye makes declarations relevant to allegations of *Interahamwe* attacks against Tutsi in 1992-93 and in relation to the adjudicated fact of massacres in Munyemvano's compound.

39. The Chamber considers that the issues raised by the Prosecution regarding Théogène Bamproeye require that he appear for cross-examination.

***Annex 28 – Statement of Jérôme Bicamumpaka*³¹**

40. In a statement signed on 26 January 2009 in the presence of Joseph Nziroera's Lead Counsel, Jérôme Bicamumpaka makes declarations in relation to Witness BTH's testimony and the allegation according to which he is part of a joint criminal enterprise with the three Co-Accused in this case.

41. The Chamber considers that the issues raised by the Prosecution regarding Jérôme Bicamumpaka require that he appear for cross-examination.

³⁰ On 8 June 2006, Joseph Nziroera also sought to have the statement of Protais Rukeraminigo admitted in relation to violence committed against opposition parties. The Chamber declared evidence on this issue admissible as background evidence: T. 8 June 2006, pp. 24-25.

³¹ The Chamber notes that Joseph Nziroera filed an updated and signed version of the statement identified in Annex 28 in his Second Supplement to 92 *bis* Motion.

Annex 30 – Statement of Aloys Simba

42. In a statement signed on 12 March 2008, without the presence of a witness, Aloys Simba declares that he was not part of a joint criminal enterprise as stated in the Indictment. He also claims that he was not a member of a network often referred to as “Friends of the Alliance”.

43. The Chamber considers that the issues raised by the Prosecution regarding Aloys Simba require that he appear for cross-examination.

Annex 31 – Statement of Charles Nyandwi

44. In his statement signed on 3 May 2008, in the presence of a witness, Charles Nyandwi makes declarations in relation to killings in March 1992 in Bugesera and the investigation he undertook thereafter showing no involvement of the MRND in the Bugesera attacks. He also makes declarations in relation to Ahmed Mbonyunkiza's credibility.

45. The Chamber considers that the issues raised by the Prosecution regarding Charles Nyandwi require that he appear for cross-examination.

Annexes 32 and 33 – Statements of Bernard Habyarimana and Léon Habyarimana

46. Bernard Habyarimana and Léon Habyarimana signed statements on 29 June 2006, without a witness present, in which they declare that they were not in Rwanda in 1992, that they did not participate in any MRND meetings, especially any meeting that would have taken place in Védaste's building, that they do not know Ahmed Mbonyunkiza and that they never heard about a collection of funds in July 1993 for the *Interahamwe* held at Hôtel Rebero in Kigali.

47. The Chamber considers that the issues raised by the Prosecution regarding the Bernard Habyarimana and Léon Habyarimana require that they appear for cross-examination.

Annex 40 – Statement of Marcel Gatsinzi

48. In a statement signed on 20 March 2008 in the presence of Joseph Nzirorera's lead counsel, Marcel Gatsinzi declares that he never attended any meetings at the office of the Kigali ville *préfecture* from April 1994 onwards, contrary to the evidence of Prosecution witnesses UB and ALG.

49. The Chamber considers that the issues raised by the Prosecution regarding Marcel Gatsinzi require that he appear for cross-examination.

Annexes 42 and 44 – Statements of Justin Ugiyekera and Dieudonné Ndayisenga

50. In statements signed on 1 May 2007 and 11 May 2007, respectively, in the presence of the investigator for Joseph Nzirorera, Justin Ugiyekera and Dieudonné Ndayisenga make various declarations in relation to the testimony of Prosecution Witness HH.

51. The Chamber decides not to call Justin Ugiyekera, nor Dieudonné Ndayisenga for cross-examination as their statements touch upon a peripheral issue between the Parties.

Annex 45 – Statement of Séraphin Rwabukumba

52. In a statement signed on 19 May 2008, without a witness present, Séraphin Rwabukumba declares that he never received weapons crates from Roumania and that he left Rwanda in April 1994.

53. The Chamber, finding the contents of this statement to be an important issue in this trial, considers that the Prosecution should be allowed to cross-examine Séraphin Rwabukumba, as it has requested.

Annex 46 – Statement of Godélieve Barushwanubusa

54. In a statement signed in the presence of Co-Counsel for Joseph Nzirorera on 3 February 2008, Godélieve Barushwanubua declares that she never lived in Kanombe and that she never received weapons.

55. Taking into account the relevant part of the issues addressed in this statement and finding them to be important issues in this trial, the Chamber considers that the Prosecution should be allowed to cross-examine Godélieve Barushwanubua.

Annex 48 – Statement of Stanislas Mbonyimana

56. In a statement signed on 25 September 2007, in the presence of Joseph Nzirorera's Lead Counsel, Stanislas Mbonyimana declares that on 26 March 1994 he was seriously injured in an attack by *Interahamwe* and stayed at the Kigali Central Hospital until the second half of May. He adds that on 28 March 1994, Madjirwa Bizimana was appointed as his replacement and that he did not attend a meeting at the Kigali *préfecture* office at the end of April and beginning of May.

57. The Chamber decides not to call Stanislas Mbonyimana for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 53 – Statement of Innocent Twagiramungu³²

58. In a statement signed on 2 December 2008, in the presence of the investigator for Joseph Nzirorera, Innocent Twagiramungu makes declarations in relation to killings at Kabeza.

59. Taking into account the relevant part of the issues addressed in this statement and finding them to be important issues in this trial, the Chamber considers that the Prosecution should be allowed to cross-examine Innocent Twagiramungu.

Annex 54 – Statement of Runyinya Barabwiriza³³

60. In a statement signed on 9 January 2009, in the presence of the investigator for Joseph Nzirorera, Runyinya Barabwiriza declares that President Habyarimana and the MRND supported the Arusha Accords.

61. The Chamber decides not to call Runyinya Barabwiriza for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 59 – Statement of Abdulmohamed Bandali

62. In a statement signed on 13 October 2006, in the presence of Joseph Nzirorera's Lead Counsel, Abdulmohamed Bandali makes declarations in relation to the testimony of Jean-Bosco Twahira about weapon importation to Rwanda. Some documents in relation to Twahirwa's employment at the *Établissements Rwandais* are also attached to the statement.

63. Taking into account the issues addressed in this statement and finding them to be important issues in this trial, the Chamber considers that the Prosecution should be allowed to cross-examine Abdulmohamed Bandali as it has requested. However, the Chamber finds that the documents attached to the statement are not admissible pursuant Rule 92 *bis*.

Annex 66 – Statement of Vincent Rutaganira

64. In an unsigned and undated statement, Vincent Rutaganira makes declarations in relation to Prosecution Witness ZF's testimony. Joseph Nzirorera also seeks to have this statement admitted in relations to adjudicated facts 99-101 and 107.

65. The Chamber considers that the issues raised by the Prosecution regarding Vincent Rutaganira require that he appear for cross-examination.

³² The Chamber notes that Joseph Nzirorera filed an updated and signed version of this statement in his Supplement to 92 *bis* Motion.

³³ The Chamber notes that Joseph Nzirorera filed an updated and signed version of this statement in his Supplement to 92 *bis* Motion.

Annex 67 – Statement of Jérôme Ngendahimana

66. In a statement signed on 12 October 2006, in the presence of Joseph Nzirorera's Lead Counsel, Jérôme Ngendahimana makes declarations in relation to Prosecution Witness ZF's evidence.

67. The Chamber decides not to call Jérôme Ngendahimana for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 71 – Statement of Jean Chrysostome Ntirugiribambe

68. In a statement signed on 11 March 2008, in the presence of Joseph Nzirorera's Lead Counsel, Jean Chrysostome Ntirugiribambe makes various declarations in relation to the Gisenyi events.

69. The Chamber considers that paragraphs 6 and 7 of this statement are unclear and excludes them. The Chamber decides not to call Jean Chrysostome Ntirugiribambe for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 72 – Statement of Félicien Muberuka

70. In a statement signed on 23 October 2008, in the presence of Joseph Nzirorera's Lead Counsel, Félicien Muberuka makes declarations in relation to Prosecution Witness ZF's evidence.

71. The Chamber decides not to call Félicien Muberuka for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annexes 73 to 83 – Statements of Emmanuel Mbigtamba, Joseph Bamporineza, Ildephonse Ntatiye, Jonathan Ntarugo, Anastase Abiyungima, Gaspard Mnurano, Thacien Munana, Oreste Habarurema, Jean Damascène Semanza, Faustin Gakumbe and Perry Willard Munger III

72. The above statements, signed in the presence of a witness, contain declarations relevant to Witness XBM's testimony.

73. The Chamber decides not to call the authors of these statements for cross-examination as they touch upon a peripheral issue between the Parties.

Annex 84 – Statement of Hassan Ngeze

74. In a statement signed on 24 May 2008, without the presence of a witness, Hassan Ngeze makes declarations relating to the evidence of Witnesses ZF and XMB regarding the existence of the Zero network and MRND meetings.

75. The Chamber considers that the issues raised by the Prosecution regarding Hassan Ngeze require that he appear for cross-examination.

Annex 87 – Statement of Alphonse Nzungize

76. In a statement signed on 5 October 2006, without a witness present, Alphonse Nzungize makes declarations in relation to Prosecution Witness ZF's testimony.

77. The Chamber decides not to call Alphonse Nzungize for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 88 – Statement of Alphonse Higaniro

78. In a statement signed on 4 December 2008, without a witness present, Alphonse Higaniro declares that no national-level MRND meeting was held in Gisenyi after the February 1993 RPF attack. He adds that neither Colonel Bagosora nor Colonel Nsengiyumva took the floor at any MRND meeting during the multiparty system era.

79. The Chamber decides not to call Alphonse Higaniro for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 90 – Statement of Clément Kayishema

80. In a statement signed on 29 April 2008 in the presence of Joseph Nzirorera's Lead Counsel, Clément Kayishema asserts that while he was *préfet* of Kibuye *préfecture* from 3 July 1992 to July 1994, the MRND never applied to organize a meeting at Gatwaro Stadium after July 1992 and that he never attended any MRND meeting or rally at Gatwaro Stadium.

81. The Chamber decides not to call Clément Kayishema for cross-examination as his statement touches upon a peripheral issue between the Parties.

Annex 92 – Statement of Donatille Niyitegeka

82. Donatille Niyitegeka signed a statement on 29 September 2008, without a witness present, stating that she never attended an MRND rally in Gatwaro Stadium in June 1993 or at any time during the multi-party era.

83. The Chamber decides not to call Donatille Niyitegeka for cross-examination as her statement touches upon a peripheral issue between the Parties.

Annexes 93 and 94 – Statements of Shadrack Sendugu and Shadrack Nikobasanze

84. In statements signed in the presence of Joseph Nzirorera's Lead Counsel on 24 September 2007 and 21 February 2008 respectively, Shadrack Sendugu and Shadrack

Nikobasanzwe make declarations in relation to meetings in Nkuli *commune* on 6-7 April 1994.

85. The Chamber decides not to call Shadrack Sendugu or Shadrack Nikobasanzwe for cross-examination as their statements touch upon a peripheral issue between the Parties.

Annexes 95 and 96 – Statement of François Xavier Mvuyekure and Manayeri Nkundabakura

86. Francis Xavier Mvuyekure and Manayeru Nkundabakura signed statements on 19 February 2008, in the presence of Joseph Nzirorera's Lead Counsel in which they make declarations in relation to the massacre in Munyemvano Compound.

87. The Chamber decides not to call Francis Xavier Mvuyekure and Manael Nkundabakura as their statements touch upon a peripheral issue between the Parties.

Annexes 97, 100, 105 and 106 – Statements of François Rwabukumba, Évariste Micoyabagabo, Amandin Mboniyintwali and Litric Danko

88. François Rwabukumba, Évariste Micoyabagabo, Litric Danko and Amandin Mboniyintwali signed statements on 15 October 2007 and 16 February 2008, in which they make declarations in relation to the massacre in Musha Church. The first three witnesses signed in the presence of Joseph Nzirorera's Defence Counsel, while the last witness' statement, in Annex 105, was signed without a witness present.

89. The Chamber decides not to call François Rwabukumba, Evariste Micoyabagabo, Amandin Mboniyintwali or Litric Danko as their statements touch upon a peripheral issue between the Parties.

Annexes 98, 103 and 104 – Statements of Antoine Rutikanga, Callixte Bitegwmaso and Jean Nsanzumuhire

90. Antoine Rutikanga, Callixte Bitegwmaso and Jean Nsanzumuhire signed statements on 15 October 2007 and 31 October 2007, in which they make declarations in relation to the attack on Esther Mukanukaka's home. The first witness signed his statement in the presence of Joseph Nzirorera's Lead Counsel while the other statements, in Annexes 103 and 104, were signed without a witness present.

91. The Chamber decides not to call Antoine Rutikanga, Callixte Bitegwmaso and Jean Nsanzumuhire for cross-examination as their statements touch upon a peripheral issue between the Parties.

Annexes 101 and 102 – Statements of Évariste Munyabarambe and Marcel Gakwisi

92. In statements signed on 16 October 2007 in the presence of Joseph Nzirorera's Lead Counsel, Évariste Munyabarambe and Marcel Gakwisi declare that Laurent Semanza was not present during the attack against the Mabare Mosque.

93. The Chamber decides not to call Évariste Munyabarambe, nor Marcel Gakwisi for cross-examination as their statements touch upon a peripheral issue between the Parties.

Annex 107 –Statement Enos Kagaba

94. In a statement signed on 27 September 2007, in the presence of Joseph Nzirorera's Lead Counsel, Kagaba makes declarations in relation to the attack of Muyira Hill and his attendance at meetings in Kibuye *préfecture* office in June 1994.

95. The Chamber decides not to call Enos Kagaba as his statement touches upon a peripheral issue between the Parties.

Annexes 108 and 109 – Statements of Omar Bizimungu and Hashim Uwayisaba

96. In a statement signed on 18 October 2007, in the presence of Joseph Nzirorera's Defence Counsel, Omar Bizimungu makes declarations in relation to events that allegedly happened in Kibuye. In a statement made without the presence of a witness on the same day, Hashim Uwayisaba makes a similar declaration.

97. The Chamber decides not to call Omar Bizimungu or Hashim Uwayisaba as their statements touch upon a peripheral issue between the Parties.

Annexes 110, 111 and 112 – Statements of Mannasseh Gakwere, Fulgence Rukerikibaye and Jean-Baptiste Kahihura

98. Mannasseh Gakwere, Fulgence Rukerikibaye and Jean-Baptiste Kahihura signed statements in the presence of a witness on 4 November and 6 November 2008. These statements contain declarations that neither Éliezer Niyitegeka, nor Gérard Ntakirutimana were present at the attacks in Bisesero.

99. The Chamber decides not to call Mannasseh Gakwere, Fulgence Rukerikibaye or Jean-Baptiste Kahihura for cross-examination as their statements touch upon a peripheral issue between the Parties.

Annex 128 – Statement of Emmanuel Nyamuhinda

100. In a statement signed on 11 April 2009, Emmanuel Nyamuhinda states that he was never present at a meeting at the Kigali *préfecture* in late April 1994 which Joseph Nzirorera and others attended, according to Witness ALG.³⁴

101. The Chamber decides not to call Emmanuel Nyamuhinda for cross-examination as his statement touches upon a peripheral issue between the Parties.

(E) Admissible Witness Transcripts under Rule 92 bis (D)***Annexes 113 to 127 – Transcripts of Witness Testimony in the Ndindiliyimana et al., Bizimungu et al., Bagosora et al., Ntakuritamana, Zigiranyirazo and Kajelijeli trials***

102. Joseph Nzirorera seeks admission of the transcripts of the testimony of 15 witnesses from the *Ndindiliyimana et al.*, *Bizimungu et al.*, *Ntakuritamana*, *Bagosora et al.*, *Musema*, *Zigiranyirazo* and *Kajelijeli* trials.³⁵

103. The Chamber finds that all of these transcripts go to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment and that they are relevant and of probative value. The Chamber thus finds these transcripts admissible pursuant to Rule 92 bis.

104. Considering that the purpose of Rule 92 bis is to streamline the presentation of the evidence and noting that the Prosecution has already cross-examined these witnesses, the Chamber denies the Prosecution's request to cross-examine these witnesses. However, in

³⁴ The Chamber notes that the Prosecution argues that this statement goes to the acts and conduct of the accused: Prosecutor's Response to Nzirorera's Motion to Admit the Statement of Emmanuel Nyamuhimba, para. 10. However, the Chamber finds that the statement does not in fact do so – it relates to the presence of Emmanuel Nyamuhinda at a meeting and does not discuss the presence of Joseph Nzirorera or the other Accused at this meeting.

³⁵ Annexes 113 to 127 of Nzirorera's Omnibus 92 bis Motion: *The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye and Innocent Sagahutu*, Case No. ICTR-00-56-T ("*Ndindiliyimana et al.*"), DB11-2, T. 12-13 June 2007; *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka and Prosper Mugiraneza*, Case No. ICTR-99-50-T ("*Bizimungu et al.*"), Agnès Ntamabyaliro, T. 21-29 August 2006; *Bizimungu et al.*, Emmanuel Ndindabahizi, T. 30 April-3 May 2007; *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10-T and ICTR-96-17-T ("*Ntakirutimana*"), Faustin Twagiramungu, T. 4-5 February 2001; Annex *Bagosora et al.*, Joshua Ruzibiza, T. 9-10 March 2006; *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Aloys Ruyenzi, T. 3 April 2007; *Bagosora et al.*, Witness ALL-42, T. 8-9 November 2006; *Bagosora et al.*, Witness BRA-1, T. 5-6 April 2006; *Bagosora et al.*, Witness LE-1, T. 19-21 October 2005; *Bagosora et al.*, Luc Marchal, T. 30 November-5 December 2006; *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Witness JK-27, T. 17-18 September 2002; *Ntakirutimana et al.*, Gerard Ntakirutimana, T. 8-10 May 2002; *The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Alfred Musema, T. 10-27 May 1999; *Bagosora et al.*, Witness LIG-1, T. 13-14 April 2005; *Bagosora et al.*, Witness BDR-1, T. 14-15 April 2005. Annex A to Joseph Nzirorera's 16th Notice of Rule 68 Violation and Motion for Remedial and Punitive Measures: Testimony of RPF Insiders, filed on 14 April 2009, *Ndindiliyimana et al.*, Alpha-1, T. 1-2 July 2008.

order to fully assess the testimony of these witnesses, the Chamber finds it necessary to admit into evidence the totality of the transcripts of the testimony of these witnesses as well as the exhibits admitted during this testimony.

(F) Statements and Transcripts of Evidence of RPF Insider Witnesses

105. Joseph Nzirorera seeks admission of four witness statements and one transcript of the testimony of RPF insider witnesses³⁶ pursuant to 92 *bis* (C) and (D). The Prosecution avers that three of the documents sought for admission were previously found by the Chamber to be of limited relevance or probative value in decisions rendered on Rule 68 motions submitted by Joseph Nzirorera.³⁷ It also asserts that the other two documents are of similar content and are thus equally of limited relevance and probative value.³⁸ It submits that given its prior findings on this evidence or similar evidence, the Chamber should deny the admission of the statements and transcripts of RPF insider witnesses pursuant to Rule 92 *bis*.

106. The Chamber notes that the standard for determining whether material is exculpatory under Rule 68 implies a much higher threshold than is required for determining the relevance and probative value of evidence sought for admission under Rule 89(C). Under Rule 68, the assessment of whether evidence is exculpatory depends on an evaluation of whether there is any possibility that the information could be relevant to the defence of the Accused. This is determined by whether the material may tend to disprove a material fact against the accused, undermine the credibility of evidence intended to prove those material facts, or serve to sustain a valid excuse or justification for the alleged criminal conduct.³⁹ Under Rule 89(C) however, the assessment of whether evidence is relevant and probative requires that the evidence be *in some way relevant* to an element of a crime with which the Accused is charged and have *some value in proving or disproving* an element of a crime.⁴⁰ On this basis,

³⁶ Annexes 129 to 132 to Nzirorera's 92 *bis* RPF Insider Witnesses Motion; Annex A to Joseph Nzirorera's 16th Notice of Rule 68 Violation and Motion for Remedial and Punitive Measures: Testimony of RPF Insiders, filed on 14 April 2009, *Ndindiliyimana et al.*, Alpha-1, T. 1-2 July 2008.

³⁷ Prosecution's Response to RPF Insider Witnesses Motion, paras 17-18 (in relation to Annex 129, referring to *Karemera et al.*, Decision on Prosecutor's Rule 68(D) Application and Joseph Nzirorera's 12th Notice of Rule 68 Violation, 26 March 2009, paras 18, 23 (in relation to Annex 130, referring to *Karemera et al.*, Decision on Prosecutor's Rule 68(D) Application and Joseph Nzirorera's 12th Notice of Rule 68 Violation, 26 March 2009, para. 16), and 39 (in relation to Annex A, referring to *Karemera et al.*, Decision on Joseph Nzirorera's 16th Notice of Rule 68 Violation: Testimony of RPF Insiders, 3 July 2009, para. 14).

³⁸ *Ibid.*, paras 29 (in relation to Annex 131) and 33 (in relation to Annex 132).

³⁹ *Karemera et al.*, Decision on Joseph Nzirorera's 16th Notice of Rule 68 Violation: Testimony of RPF Insiders, 3 July 2009, para. 13 (and sources cited therein).

⁴⁰ *Bagosora et al.*, Decision on Admissibility of Proposed Testimony of Witness DBY, 18 September 2003, para. 4.

Trial Chambers have admitted evidence that provides further particulars in relation to the background and context of the events that occurred in Rwanda in 1994.⁴¹

107. The Chamber recalls that it previously found that the evidence of ERN and ALPHA-1 relating to alleged RPF infiltration activities was not exculpatory⁴² and that similar evidence by R223 was only “marginally exculpatory.”⁴³ Nonetheless, the Chamber finds that the evidence of R223, R289 and ALPHA-1, despite its generality, is sufficiently relevant and probative for the purposes of Rule 89(C) as it alleges that some of the crimes which were blamed on the MRND, the *Interahamwe* or the Habyarimana regime were committed by the RPF.

108. The Chamber also finds that the evidence of R217 and R297 is also of sufficient relevance and probative value as it provides further context and background to events that took place in Rwanda in 1994.⁴⁴ The Chamber recalls, in this regard, that it admitted evidence during the Prosecution case for the purposes of background and context.⁴⁵

109. The Chamber is moreover of the view that all of these statements and transcripts go to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment and thus finds that this evidence is admissible pursuant to Rule 92 *bis*.

110. With respect to the witness statements for which admission is sought under Rule 92 *bis* (C), the Chamber is satisfied, on the balance of the probabilities, that the authors of the written statements are persons who can no longer with reasonable diligence be traced. Indeed, in a letter dated 1 June 2009, the Witnesses and Victims Support Section reported that it was unable to locate any of these witnesses⁴⁶ and Joseph Nzirorera submits that he has also been unable to do so.⁴⁷ The Chamber is also satisfied, as per Rule 92 *bis* (C), that the circumstances in which the statements were made and recorded evince sufficient indicia of their reliability, having been signed and countersigned in the presence of a representative of the Office of the Prosecution.

⁴¹ See, e.g., *ibid.*, paras 30-33.

⁴² *Karemera et al.*, Decision on Prosecutor's Rule 68(D) Application and Joseph Nzirorera's 12th Notice of Rule 68 Violation, 26 March 2009, para. 18; *Karemera et al.*, Decision on Joseph Nzirorera's 16th Notice of Rule 68 Violation: Testimony of RPF Insiders, 3 July 2009, para. 14.

⁴³ *Karemera et al.*, Decision on Prosecutor's Rule 68(D) Application and Joseph Nzirorera's 12th Notice of Rule 68 Violation, 26 March 2009, para. 16

⁴⁴ Cf. Bagosora et al., Decision on Disclosure of Defence Witness Statements in Possession of the Prosecution Pursuant to Rule 68 (A), 8 March 2006, para. 6.

⁴⁵ See, e.g., T. 23 February 2006, p. 15; T. 16 May 2006, pp. 53-54; T. 8 June 2006, p. 25.

⁴⁶ See Confidential Annex A to Nzirorera's 92 *bis* RPF Insider Witnesses Motion.

⁴⁷ Nzirorera's 92 *bis* RPF Insider Witnesses Motion, paras 7-8.

111. With respect to the transcript for which admission is sought under Rule 92 *bis* (D), the Chamber finds it necessary to admit into evidence the totality of the transcripts of the testimony of this witness as well as the exhibits admitted during this testimony.

(G) Joseph Nzirorera's Obligation to Provide Full Identifying Information for his Witnesses

112. The Chamber recalls that Édouard Karemera was required to provide full identifying information for all of his witnesses prior to the commencement of his defence,⁴⁸ information that is routinely required by Chambers in this Tribunal.⁴⁹

113. The Chamber finds that Joseph Nzirorera must comply with this requirement and provide full identifying information with respect to each of his Rule 92 *bis* witnesses within ten days of this decision. Nzirorera is further reminded to provide sufficient detail so as to enable the Parties to undertake meaningful investigations.

(H) The Time Allocated to Joseph Nzirorera for the Presentation of his Case

114. By an order dated 24 October 2008, the Chamber reduced the number of Joseph Nzirorera's live witnesses to 55 witnesses fitting within 45 trial days' length of time and directed him to file his application for admission of written statements pursuant to Rule 92 *bis*.⁵⁰ In making this Order, the Chamber did not take into account the need to cross-examine the authors of written statements admitted pursuant to Rule 92 *bis*. The Chamber therefore considers it necessary to vary its previous Order regarding the time allotted for the presentation of Nzirorera's defence.

115. However, this does not mean that Nzirorera should be allotted further time in a manner that would go against the objectives of the Chamber's previous Order, in particular the principle of proportionality and the expeditiousness of the proceedings. The Chamber thus accords 1 hour for the cross-examination and 15 minutes for the re-direct examination of each

⁴⁸ *Karemera et al.*, Decision on Prosecutor's Submission Concerning Édouard Karemera's Compliance with Rule 73ter and Chamber's Orders, 2 April 2008, paras 7-8.

⁴⁹ *Ndindiliyimana et al.*, Decision on Prosecutor's Extremely Urgent Motion for Disclosure of Further Identifying Information Relating to Defence Witnesses, 17 April 2007; *Muvunyi*, Decision on Prosecutor's Motion for Disclosure of Identifying Information Concerning Defence Witnesses Pursuant to Rules 69(c) and 73ter, 9 November 2005; *Bogosora et al.*, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005.

⁵⁰ *Karemera et al.*, Order to Joseph Nzirorera to Reduce his Witness List, 24 October 2008, paras I and II.

of the fourteen authors of admitted 92 *bis* statements, for which it requires cross-examination. The Chamber thus grants Nzirorera three extra days for the presentation of his case.

FOR THESE REASONS, THE CHAMBER

ORDERS the Registrar to re-file the Public Annexes to Joseph Nzirorera's Omnibus Motion for Admission of Written Statements and Testimony, Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion and Second Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion confidentially;

ORDERS Joseph Nzirorera to disclose to the other parties all identifying information for the authors of the statements identified in Annexes 1 (Michel Bakuzakundi), 2 (Alphonse Ntilivamunda), Annex 3 (Dominic Gatsimbanyi), 6 (Pierre Ntamushobora), 18 (Protails Rukeraminigo), 19 (Théogène Bamproeye), 28 (Jérôme Bicamumpaka), 30 (Aloys Simba), 31 (Charles Nyandwi), 32 (Bernard Habyarimana), 33 (Léon Habyarimana), 40 (Marcel Gatsinzi), 42 (Justin Ugiyekera), 44 (Dieudonné Ndayisenga), 45 (Séraphin Rwabukumba), 46 (Godélieve Barushwanubusa), 48 (Stanislas Mbonyimana), 53 (Innocent Twagiramungu), 54 (Runyinya Barabwiriza), 59 (Abdulmohamed Bandali), 67 (Jérôme Ngendahimana), 66 (Vincent Rutaganira), 71 (Jean Chrysostome Ntirugiribambe) 72 (Félicien Muberuka), 73 (Emmanuel Mbigtambe), 74 (Joseph Bamporineza), 75 (Ildephonse Ntatiye), 76 (Jonathan Ntarugo), 77 (Anastase Abiyigima), 78 (Gaspard Mnurano), 79 (Thacien Munana), 80 (Oreste Habarurema), 81 (Jean Damascène Semanza), 82 (Faustin Gakumbe) 83 (Perry Willard Munger III), 84 (Hassan Ngeze), 87 (Alphonse Nzungize) 88 (Alphonse Higaniro), 90 (Clément Kayishema), 92 (Donatille Niyitegeka), 93 (Shadrack Sendugu), 94 (Shadrack Nikobasanzwe) 95 (François Xavier Mvujekure), 96 (Manayeri Nkundabakura), 97 (François Rwabukumba), 98 (Antoine Rutikanga), 100 (Évariste Micoyabagabo), 101 (Évariste Munyabarambe), 102 (Marcel Gakwisi), 103 (Callixte Bitegwmaso), 104 (Jean Nsanzumuhire), 105 (Amandin Mbonyintwali), 106 (Litric Danko), 107 (Enos Kagaba), 108 (Omar Bizimungu), 109 (Hashim Uwayisaba), 110 (Mannasseh Gakwere), 111 (Fulgence Rukerikibaye) and 112 (Jean-Baptiste Kahihura) of his Omnibus Motion for Admission of Written Statement and Testimony and Annex 128 (Emmanuel Nyamuhinda) of his Motion to Admit Statement of Emmanuel Nyamuhimba, within ten days of this Decision;

ORDERS Joseph Nzirorera to obtain certification, as prescribed by Rule 92 *bis* (B), of the uncertified statements identified in Annexes 1-3, 6, 18-19, 28, 30-33, 40, 42, 44-46, 48, 53,

59, 66-67, 71-84, 87-88, 90, 93-98, 100-112 of his Omnibus Motion for Admission of Written Statement and Testimony, Annexes 53 and 54 of his Supplement to Joseph Nziroera's Omnibus Rule 92 *bis* Motion, Annex 28 of his Second Supplement to Joseph Nziroera's Omnibus Rule 92 *bis* Motion and Annex 128 of his Motion to Admit Statement of Emmanuel Nyamuhimba, within 45 days of this Decision;

DECLARES ADMISSIBLE, subject to the disclosure of the identifying information of their authors and their certification pursuant to Rule 92 *bis* (B), the entirety of the statements identified in Annexes 1-3, 6, 18-19, 28, 30-33, 40, 42, 44-46, 48, 53, 59, 66-67, 71-84, 87-88, 90, 93-98, 100-112 of Joseph Nziroera's Omnibus Motion for Admission of Written Statement and Testimony, Annexes 53 and 54 of his Supplement to Joseph Nziroera's Omnibus Rule 92 *bis* Motion, Annex 28 of his Second Supplement to Joseph Nziroera's Omnibus Rule 92 *bis* Motion, and Annex 128 of his Motion to Admit Statement of Emmanuel Nyamuhimba, within 45 days of this Decision;

DECLARES ADMISSIBLE, subject to the disclosure of the identifying information of Jean Chrysostome Ntirugiribambe and the certification of his statement pursuant to Rule 92 *bis* (B), the statement identified in Annex 71 of Joseph Nziroera's Omnibus Motion for Admission of Written Statement and Testimony, save for paragraphs six and seven of this statement;

GRANTS the Prosecution the right to cross-examine the authors of the statements identified in Annexes 2 (Alphonse Ntilivamunda), 3 (Dominic Gatsimbanyi), 6 (Pierre Ntamushobora), 19 (Théogène Bamproeye), 28 (Jérôme Bicamumpaka), 30 (Aloys Simba), 31 (Charles Nyandwi), 32 (Bernard Habyarimana), 33 (Léon Habyarimana), 40 (Marcel Gatsinzi), 45 (Séraphin Rwabukumba), 46 (Godélieve Barushwanubusa), 53 (Innocent Twagiramungu), 59 (Abdulmohamed Bandali), 66 (Vincent Rutaganira) and 84 (Hassan Ngeze) of Joseph Nziroera's Omnibus Motion for Admission of Written Statement and Testimony, should their statements be admitted pursuant to the present Decision;

ADMITS INTO EVIDENCE, pursuant to Rule 92 *bis* (C), the entirety of the statements identified in Annexes 129 to 132 of Joseph Nziroera's Motion to Admit Statements and Testimony of RPF Insider Witnesses pursuant to Rule 92 *bis*;

REQUESTS the Registrar to assign these statements with an exhibit number in the instant case;

ADMITS INTO EVIDENCE the totality of the transcripts of oral testimony as well as the exhibits admitted during this testimony for the 16 witnesses identified in Annexes 113 to 127 in Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony and for the witness identified in Annex A to Joseph Nzirorera's 16th Notice of Rule 68 Violation and Motion for Remedial and Punitive Measures: Testimony of RPF Insiders;

REQUESTS the Registrar to assign these transcripts and their accompanying exhibits with an exhibit number in the instant case;

DENIES Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony in all other respects.

Arusha, 15 July 2009, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]