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International Criminal Tribunal for Rwanda

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TRIAL CHAMBER I

Before Judges: Navanethem Pillay, presiding
Erik Møse
Asoka de Zoysa Gunawardana

Registrar: Adama Dieng

Judgement of: 3 December 2003

THE PROSECUTOR

V.

FERDINAND NAHIMANA
JEAN-BOSCO BARAYAGWIZA
HASSAN NGEZE
Case No. ICTR-99-52-T

JUDGEMENT AND SENTENCE

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GLOSSARY

Akazu	"Little house"; used to refer to group of individuals close to President Habyarimana
CDR	Coalition pour la Défense de la République (Coalition for the Defence of the Republic)
CRP	Le Cercle des Républicains Progressistes (Circle of Progressive Republicans)
Gukora	To work; sometimes used to refer to killing Tutsi
Gutsembatsemba	"Kill them" in the imperative form
Icyitso/Ibyitso	Accomplice; RPF sympathizer/accomplice; sometimes used to refer to Tutsi
Impuzamugambi	"Those who have the same goal"; Name of youth wing of CDR
Inkotanyi	RPF soldier; sometimes used to refer to Tutsi
Inkuba	"Thunder"; Name of youth wing of MDR
Interahamwe	"Those who attack together"; Name of youth wing of MRND
Inyenzi	Cockroach; group of refugees set up in 1959 to overthrow the new regime; sympathizer of RPF; sometimes used to refer to Tutsi
Kangura	"Awaken" in the imperative form; Name of newspaper published in Kinyarwanda and French
MDR	Mouvement Démocratique Républicain (Democratic Republican Movement)
MRND	Mouvement Révolutionnaire National pour le Développement (National Revolutionary Movement for Development)
PL	Parti Libéral (Liberal Party)
PSD	Parti Social Démocrate (Social Democratic Party)
RDR	Rassemblement Républicain pour la Démocratie au Rwanda (Republican Assembly for the Democracy of Rwanda)
RPF	Rwandan Patriotic Front
RTLM	Radio Télévision Libre des Milles Collines
Rubanda nyamwinshi	Majority people, Hutu majority or the democratic majority of Rwanda
Tubatsembatsembe	"Let's kill them"

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CHAPTER I

INTRODUCTION

1. International Criminal Tribunal for Rwanda

1. This Judgement in the case of *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza* and *Hassan Ngeze,* Case No. ICTR-99-52-T, is rendered by Trial Chamber I ("the Chamber") of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judges Navanethem Pillay, presiding, Erik Møse, and Asoka de Zoysa Gunawardana.

2. The Tribunal was established by United Nations Security Council Resolution 955 of 8 November 1994[1] after it had considered official United Nations reports which indicated that genocide and other systematic, widespread and flagrant violations of international humanitarian law had been committed in Rwanda.[2] 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 to the restoration and maintenance of peace in Rwanda. Accordingly, the Security Council established the Tribunal, pursuant to Chapter VII of the United Nations Charter.

3. The Tribunal is governed by the Statute annexed to Security Council Resolution 955 ("the Statute"), and by the Rules of Procedure and Evidence adopted by the Judges on 5 July 1995 and subsequently amended ("the Rules").

4. Pursuant to the provisions of the Statute, the Tribunal has the power 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 between 1 January 1994 and 31 December 1994. Individual criminal responsibility, pursuant to Article 6, shall be established for acts falling within the Tribunal's material jurisdiction, as provided in Articles 2, 3, and 4.

2. The Accused

5. Ferdinand Nahimana was born on 15 June 1950, in Gatonde commune, Ruhengeri prefecture, Rwanda. From 1977, he was an assistant lecturer of history at the National University of Rwanda, and in 1978, he was elected to be Vice-Dean of the Faculty of Letters. In 1980, he was elected to be Dean of the faculty and remained in that position until 1981. From 1981 to 1982, he held the post of President of the Administrative

[1] U.N. Doc. S/RES/955 (1994).
[2] Preliminary Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), 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 on Human Rights (U.N. Doc. S/1994/1157, Annexes I and II).

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Committee of the Ruhengeri campus of the University. He was Assistant Secretary-General for the Ruhengeri campus of the University from 1983 to 1984. In 1990, he was appointed Director of ORINFOR (Rwandan Office of Information) and remained in that post until 1992. In 1992, Nahimana and others founded a *comité d'initiative* to set up the company known as *Radio Télévision Libre des Mille Collines, S.A*. He was a member of the party known as *Mouvement Révolutionnaire National pour le Développement* (MRND).

6. Jean-Bosco Barayagwiza was born in 1950 in Mutura commune, Gisenyi prefecture, Rwanda. A lawyer by training, he was a founding member of the *Coalition pour la Défense de la République* (CDR) party, which was formed in 1992. He was a member of the *comité d'initiative*, which organized the founding of the company *Radio Télévision Libre des Mille Collines, S.A*. During this time, he also held the post of Director of Political Affairs in the Ministry of Foreign Affairs.

7. Hassan Ngeze was born on 25 December 1957 in Rubavu commune, Gisenyi prefecture, Rwanda.[3] From 1978, he worked as a journalist, and in 1990, he founded the newspaper *Kangura* and held the post of Editor-in-Chief. Prior to this, he was the distributor of the *Kanguka* newspaper in Gisenyi. He was a founding member of the *Coalition pour la Défense de la République* (CDR) party.

3. The Indictments

8. Ferdinand Nahimana is charged, pursuant to the Amended Indictment filed on 15 November 1999 (ICTR-96-11-I), with seven counts: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity (persecution, extermination and murder), pursuant to Articles 2 and 3 of the Statute. He is charged with individual responsibility under Article 6(1) of the Statute for these crimes, and is additionally charged with superior responsibility under Article 6(3) in respect of direct and public incitement to commit genocide and crimes against humanity (persecution). He stands charged mainly in relation to the radio station called *Radio Télévision Libre des Mille Collines* (RTLM).

9. Jean-Bosco Barayagwiza is charged, pursuant to the Amended Indictment filed on 14 April 2000 (ICTR-97-19-I), with nine counts: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, complicity in genocide, crimes against humanity (persecution, extermination and murder), and two counts of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, pursuant to Articles 2, 3 and 4 of the Statute. He is charged with individual responsibility under Article 6(1) of the Statute in respect of these counts, except the two counts relating to serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. He is additionally charged with superior responsibility under Article 6(3) of the Statute in respect of all the counts, except that of conspiracy to commit genocide. He stands charged mainly in relation to the radio station called RTLM and the CDR Party.

[3] T. 24 Mar. 2003, p. 38.

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10. Hassan Ngeze is charged, pursuant to the Amended Indictment (ICTR-97-27-I) dated 10 November 1999, with seven counts: conspiracy to commit genocide, genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity (persecution, extermination and murder), pursuant to Articles 2 and 3 of the Statute.[4] He is charged with individual responsibility under Article 6(1) of the Statute for these crimes, and is additionally charged with superior responsibility under Article 6(3) in respect of all but one of the crimes - conspiracy to commit genocide. He stands charged mainly in relation to the newspaper *Kangura*.

11. The Indictments are set out in full in Annex I of this Judgement.

12. Pursuant to motions for acquittal filed by all three accused, the Chamber, in a decision dated 25 September 2002, acquitted Nahimana and Barayagwiza of crimes against humanity (murder), and further acquitted Barayagwiza of the two counts of serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, as the Prosecution had conceded that there was no evidence presented of these crimes.

4. Procedural History

4.1 Arrest and Transfer

Ferdinand Nahimana

13. On 27 March 1996, Nahimana was arrested in the Republic of Cameroon. An order for his provisional detention and transfer to the Tribunal's Detention Unit was issued in Arusha on 17 May 1996 by Judge Lennart Aspegren. The transfer order was not immediately implemented and Nahimana remained detained by the Cameroonian authorities. On 18 June 1996, Judge Aspegren, upon the application of the Prosecution, issued an order for the continued detention on remand of Nahimana, pursuant to Rule 40*bis*(D), and a request to the Government of the Republic of Cameroon to effect the transfer order dated 17 May 1996. On 6 January 1997, the President of the Republic of Cameroon issued Decree No. 97/007 authorizing the transfer of Nahimana to Arusha. Nahimana was transferred to the Tribunal's Detention Facility in Arusha on 23 January 1997.

Jean-Bosco Barayagwiza

14. Barayagwiza was arrested on or about 26 March 1996 and detained in the Republic of Cameroon. On 21 February 1997, the Court of Appeal of Cameroon rejected the Rwandan Government's request for extradition and ordered the release of Barayagwiza. The same day, the Prosecution made a request, pursuant to Rule 40, for the provisional detention of Barayagwiza, and he was rearrested on 24 February 1997. An

[4] The Amended Indictment originally filed on 22 November 1999 contained typographical errors relating to the counts charged, and a corrected version of the Amended Indictment was filed on 19 November 2002.

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order for the transfer of Barayagwiza to the Tribunal's Detention Facility was issued on 3 March 1997 by Judge Lennart Aspegren. On 2 October 1997, Counsel for Barayagwiza, Justry P.L. Nyaberi, filed a motion seeking a *habeas corpus* order and his immediate release from detention in Cameroon, by reason of his lengthy detention without an indictment being brought against him. No further action was taken in respect of the motion. Barayagwiza was subsequently transferred to the Tribunal on 19 November 1997.

15. On 24 February 1998, Counsel for Barayagwiza filed a motion seeking an order to review and/or nullify Barayagwiza's arrest and provisional detention, as the arrest and detention violated his rights under the Statute and the Rules. An oral hearing of the motion was conducted on 11 September 1998, and on 17 November 1998, Trial Chamber II, composed of Judge William H. Sekule, presiding, Judge Yakov Ostrovsky and Judge Tafazzal H. Khan, dismissed the motion on the grounds that the Accused's rights were not violated by the length of the detention in Cameroon as the Accused was not initially held at the Prosecutor's request but that of the Rwandan and Belgian governments, and the period during which he was held at the Prosecutor's request did not violate his rights under Rule 40; the long delay in his transfer to the Tribunal by Cameroonian authorities was not a breach by the Prosecution; and his rights under Rule 40*bis* were not violated as the Indictment was confirmed before the Accused was transferred.

16. Counsel for Barayagwiza filed an appeal against the decision on 11 December 1998, submitting that the Chamber had made errors both in law and in fact. The Prosecution responded on 17 December 1998 by arguing that the interlocutory appeal had no legal basis under the Statute or the Rules, and that the notice of appeal was filed out of time. At the same time, the Prosecution filed a motion on 18 December 1998 to reject the Defence appeal for the same reasons. By an order dated 5 February 1999, the Appeals Chamber held that the appeal was admissible. On 3 November 1999, the Appeals Chamber allowed the appeal, ordering the immediate release of the Accused to the Cameroonian authorities and the dismissal of the Indictment against the Accused, on the grounds that the period of provisional detention was impermissibly lengthy, and his rights to be promptly charged, and to have an initial appearance without delay upon transfer to the Tribunal, were violated. The Chamber also noted that the Accused was never heard on his writ of *habeas corpus* filed on 2 October 1997.

17. On 5 November 1999, Counsel for Barayagwiza filed a notice of review, requesting a stay of the order for his release to Cameroon, in order that he might choose his final destination upon release. This notice was withdrawn on 17 November 1999, on the basis that the notice was being misused by the Prosecution to seek to change the decision of 3 November 1999 and to prolong the Accused's detention. The Prosecution subsequently informed the Appeals Chamber on 19 November 1999 of its intention to file a motion to review the decision of 3 November 1999, which motion was filed on 1 December 1999, arguing that in light of new facts regarding, *inter alia*, the period of detention in Cameroon at the Prosecutor's request, the extradition procedures of Cameroon and the delay of the Cameroonian authorities in transferring the Accused to the Tribunal, the impugned decision should be vacated and the Indictment reinstated. On

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8 December 1999, the President of the Appeals Chamber stayed the execution of the impugned decision. Counsel for Barayagwiza filed a reply to the Prosecution's motion on 6 January 2000, arguing that there were no new facts as alleged by the Prosecution, and questioning the jurisdiction of the newly-constituted Appeals Chamber, and the jurisdiction of the Appeals Chamber to hear an "appeal" of an Appeal decision.[5] In its decision dated 31 March 2000, the Appeals Chamber confirmed that the Accused's rights had been violated but not as originally found, and altered the remedy provided in the impugned decision, from that of releasing the Accused and dismissing the Indictment, to monetary compensation if found not guilty, and a reduction in sentence if found guilty.

18. On 28 July 2000, Counsel for Barayagwiza applied for a reconsideration and/or review of this decision and a reinstatement of the 3 November 1999 decision, arguing new facts and alleging that the Prosecution used false documents in its submissions to the Appeals Chamber. The Prosecution opposed the motion on 1 September 2000, and the motion was dismissed by the Appeals Chamber on 14 September 2000.

Hassan Ngeze

19. Ngeze was arrested in Kenya on 18 July 1997 and transferred to the Tribunal's Detention Facility on the same day, pursuant to an order for transfer and provisional detention issued by Judge Laïty Kama on 16 July 1997. On 12 August 1997, the Prosecution requested an additional detention period of thirty days, which was granted by Judge Kama on 18 August 1997, pursuant to Rule 40*bis*(F). The Prosecution requested a further thirty-day extension of the detention period, pursuant to Rule 40*bis*(G), on 10 September 1997. Judge Navanethem Pillay, in an oral decision delivered on 16 September 1997, granted a final extension of twenty days, to terminate on 6 October 1997.

4.2 Proceedings Relating to the Indictments

Ferdinand Nahimana

20. The Prosecution submitted the initial Indictment in respect of Ferdinand Nahimana on 12 July 1996, charging him with four counts: conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide and crimes against humanity (persecution). The Indictment was confirmed on the same day by Judge Yakov Ostrovsky. Nahimana made his initial appearance on 19 February 1997 before Trial Chamber I, composed of Judge Laïty Kama, presiding, Judge William H. Sekule and Judge Navanethem Pillay, at which time he pleaded not guilty to all four counts. Counsel for Nahimana filed a motion on 17 April 1997 requesting annulment of the original Indictment and the release of Nahimana based on defects in the manner of service and form of the Indictment. On 24 November 1997, Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Laïty Kama and Judge William H. Sekule, ordered the Prosecution to amend the Indictment in certain respects by providing specific

[5] A similar reply was filed by the newly-appointed Counsel for Barayagwiza, Carmelle Marchessault and David Danielson, on 17 February 2000.

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details of some allegations. Pursuant to the said order, the Prosecution filed an Amended Indictment on 19 December 1997.

21. In a motion filed on 22 April 1998, Counsel for Nahimana argued that the Amended Indictment was defective in that it did not reflect the amendments ordered by the Chamber on 24 November 1997. Following the Prosecution's response filed on 22 June 1998 opposing the said motion, Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Laïty Kama and Judge Tafazzal H. Khan, issued a decision on 17 November 1998 ordering the Prosecution to make amendments to the Amended Indictment with respect to certain aspects of the allegations of individual criminal responsibility under Article 6(1) and 6(3). On 1 December 1998, pursuant to the said decision, the Prosecution filed a further amended Indictment dated 26 November 1998.

22. By a motion filed on 8 February 1999, Counsel for Nahimana raised objections to the Indictment dated 26 November 1998, which included new allegations and a new count of crimes against humanity (extermination). The Prosecution filed its reply on 22 March 1999, and an oral hearing was held on 28 May 1999 before Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Laïty Kama and Judge Pavel Dolenc. Prior to a decision being rendered, the Prosecution filed a request on 19 July 1999 for leave to file an amended Indictment. The Prosecution sought, *inter alia*, to reframe the count of conspiracy to commit genocide and to add two new counts of genocide and crimes against humanity (murder). On 30 August 1999, the Chamber issued its decision on the Defence motion of 8 February 1999, ordering the Prosecution to delete the new count of crimes against humanity (extermination) and certain paragraphs containing new allegations, as no motion had been made by Prosecution to seek leave to make such amendments. An amended Indictment dated 3 September 1999 was subsequently filed in compliance with the decision.

23. With respect to the Prosecution motion of 19 July 1999, following the replies filed by Counsel for Nahimana on 15, 18 and 26 October 1999, oral submissions on 19 October 1999, and the Prosecution's supplementary brief filed on 30 October 1999, Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana, rendered its decision on 5 November 1999, allowing the addition of the counts of genocide and crimes against humanity (murder and extermination). The final Amended Indictment, pursuant to which Nahimana was tried, was filed on 15 November 1999. On 25 November 1999, Nahimana pleaded not guilty to the three new counts, and his plea of not guilty was confirmed in relation to the amended count of conspiracy to commit genocide.

24. On 15 November 1999, Counsel for Nahimana appealed the decision of 5 November 1999, submitting, *inter alia*, that the Indictment contained facts falling outside the temporal jurisdiction of the Tribunal. Pending the appeal, Counsel for Nahimana filed a motion on 17 May 2000, seeking the withdrawal of certain paragraphs from the Amended Indictment of 15 November 1999, arguing that some were beyond the temporal jurisdiction of the Tribunal, others contained amendments not ordered by the Chamber, and still others were factually imprecise. The Prosecution opposed the motion on 1 June

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2000, and argued against the admissibility of the appeal by way of its response filed on 14 July 2000. The Chamber dismissed the motion on 12 July 2000, noting with respect to the relevant paragraphs that the references in the Indictment to events prior to 1994 constituted an historical context, the amendments were not beyond the scope of the Chamber's decision, and the imprecision was not such as to render the Indictment defective. Counsel for Nahimana appealed this decision on 18 July 2000.

25. The Appeals Chamber decided this appeal and the appeal of 15 November 1999 together with an appeal by Counsel for Nahimana on the subject of joinder filed on 7 December 1999. All three appeals were dismissed in a single Appeals Chamber decision on 5 September 2000, which is discussed in more detail below in paragraphs 100-104.

Jean-Bosco Barayagwiza

26. The initial Indictment in respect of Jean-Bosco Barayagwiza was filed on 22 October 1997, charging him with seven counts: genocide, complicity to commit genocide, direct and public incitement to commit genocide, conspiracy to commit genocide, and crimes against humanity (murder, extermination and persecution). The Indictment was confirmed by Judge Lennart Aspegren on 23 October 1997, charging six counts, the count of crimes against humanity (extermination) having been withdrawn by the Prosecution. Barayagwiza made his initial appearance on 23 February 1998 before Trial Chamber II, composed of Judge William H. Sekule, presiding, Judge Yakov Ostrovsky and Judge Tafazzal H. Khan, and pleaded not guilty to all six counts.

27. Counsel for Barayagwiza filed a motion immediately thereafter, on 24 February 1998, seeking to quash the Indictment on grounds of defects in the form of the Indictment. The Prosecution filed its response on 7 October 1998, and an oral hearing was conducted on 23 October 1998 before Trial Chamber II, composed of Judge William H. Sekule, presiding, Judge Yakov Ostrovsky and Judge Tafazzal H. Khan. Counsel for Barayagwiza filed two additional motions on 6 April 1998 and 24 February 1999, respectively seeking disclosure from the Prosecution of evidence, documents and witnesses, and clarification of terms used in the Indictment. Before these three motions had been ruled upon, the Prosecution filed a motion on 28 June 1998 requesting leave to file an amended Indictment based on new evidence arising from ongoing investigations. The Prosecution sought to add three new counts namely, crimes against humanity (extermination) and two counts of serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, and to expand the count of conspiracy to commit genocide. Having found that the new counts were supported by the new facts, Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana, granted the motion on 11 April 2000. The Amended Indictment, pursuant to which Barayagwiza was tried, was filed on 14 April 2000. The same day, 14 April 2000, Trial Chamber I rejected the three Defence motions mentioned above on the grounds that the motions had been rendered moot by the decision of 11 April 2000. On 18 April 2000, upon his refusal to plead, pleas of not guilty were entered on Barayagwiza's behalf in repect of the three new counts.

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28. On 17 April 2000, Counsel for Barayagwiza appealed the 11 April 2000 decision, submitting that as the Appeals Chamber had found that the Accused's rights had been violated (see paragraphs 16 and 17 above), the Indictment was not valid to be amended, and further submitting that certain allegations fell outside the temporal jurisdiction of the Tribunal. The Prosecution opposed the appeal on 8 June 2000. Prior to the ruling of the Appeals Chamber, Counsel for Barayagwiza filed a motion on 15 May 2000 arguing lack of jurisdiction as the Indictment was not valid, and seeking a waiver of time limits under Rule 72. In its decision dated 6 June 2000, which also dealt with joinder issues, Trial Chamber I denied the motion for lack of jurisdiction but granted an extension of the relevant time limits. On 12 June 2000, Counsel for Barayagwiza appealed this decision, based on arguments similar to its appeal of 17 April 2000. The Appeals Chamber issued its decision on both appeals on 14 September 2000, dismissing both appeals, noting that the issue of temporal jurisdiction had been dealt with in its decision dated 5 September 2000, and further noting that there exists a valid Indictment against the Accused.

Hassan Ngeze

29. The initial Indictment in respect of Hassan Ngeze dated 30 September 1997 charged him with four counts: genocide, direct and public incitement to commit genocide and crimes against humanity (persecution and murder). Having considered that there was insufficient support for a *prima facie* case that the accused committed genocide, the Indictment was confirmed by Judge Lennart Aspegren on 3 October 1997 with the remaining three counts. Ngeze made his initial appearance on 20 November 1997 before Trial Chamber I, composed of Judge Laïty Kama, presiding, Judge Tafazzal H. Khan and Judge Navanethem Pillay, at which time he pleaded not guilty to all three counts.

30. On 1 July 1999, the Prosecution sought leave to file an Amended Indictment to add four new charges, that of conspiracy to commit genocide, genocide, complicity in genocide and crimes against humanity (extermination). The Prosecution argued that ongoing investigations had produced more information and the amendments sought would reflect the totality of the accused's alleged criminal conduct, and further submitted that no undue delay would be occasioned. Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana, granted leave to amend the Indictment on 5 November 1999. Counsel for Ngeze appealed the decision on 13 November 1999, arguing, *inter alia*, that the Indictment contained allegations beyond the temporal jurisdiction of the Tribunal. The Prosecution responded on 21 February 2000, arguing that the appeal was inadmissible for non-compliance with Rule 72. On 15 November 1999, Counsel for Ngeze filed a motion with the Appeals Chamber for the suspension of trial proceedings. The Appeals Chamber rejected the motion on 25 November 1999, noting that as an Appeals Chamber, it has jurisdiction to consider appeals from Trial Chamber decisions, not motions. On 5 September 2000, the Appeals Chamber rendered its decision on the appeal of 13 November 1999, finding all grounds of appeal inadmissible save that concerning the temporal jurisdiction of the Tribunal. The substance of the decision has been discussed in paragraphs 100-104. The Amended Indictment dated 10 November 1999 was duly filed

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on 22 November 1999.[6] During a hearing on 25 November 1999, the Chamber entered a plea of not guilty on behalf of Ngeze in respect of the new counts, pursuant to Rule 62(A)(iii), after he refused to plead to the new counts, stating that the Chamber had no jurisdiction whilst the appeal of 13 November 1999 was pending.

31. A motion for bill of particulars with respect to the Amended Indictment was filed by Counsel for Ngeze on 19 January 2000, to which the Prosecution responded on 3 March 2000, arguing that the motion was not founded in law. The Chamber held, in its decision dated 16 March 2000 denying the motion, that the motion was not based on the Statute or the Rules and lacked merit.

32. On 23 March 2000, Counsel for Ngeze filed a motion to dismiss the Indictment *in toto* as the Tribunal lacked subject matter jurisdiction to try the Accused for the free expression of his ideas. This was a contention challenged by the Prosecution in its response of 11 April 2000 which argued that the Accused was being tried for his alleged acts, not his right to freedom of expression. The Chamber rejected the motion on 10 May 2000, holding that there was an important difference between freedom of speech and the media on the one hand, and the spreading of messages of hatred or the incitement of heinous acts on the other, and further holding that whether the Accused's alleged acts were in the former or latter category was a substantive issue going to the merits of the case. Further, the Chamber denied costs of the motion on the basis that it was frivolous or an abuse of process.

33. Counsel for Ngeze filed a motion dated 27 April 2000 alleging defects in the form of the Amended Indictment, arguing that the addition of certain paragraphs is beyond the scope of the decision of 5 November 1999 and seeking specificity with respect to certain allegations. The Chamber rendered an oral decision on 26 September 2000, dismissing the motion on the basis that the decision of 5 November 1999 to add new counts necessarily implied the addition of new allegations, and that the imprecision complained of by Counsel for Ngeze did not prevent the Accused from understanding the charges against him, nor from preparing his defence. The Chamber also noted that the motion raised arguments similar to those raised in the Ngeze appeal of 13 November 1999, which were found inadmissible by the Appeals Chamber except for that relating to temporal jurisdiction, which was dismissed after consideration.

4.3 Joinder

34. By a motion dated 1 July 1999, the Prosecution moved for the joint trial of Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, claiming that their alleged acts formed part of a common scheme. The Prosecution subsequently limited the motion to joinder of the cases of Nahimana and Ngeze. Following responses from Counsel for Nahimana and Ngeze on 18 November 1999 and oral submissions on 25 November 1999, the Chamber granted the motion on 30 November 1999, finding that

[6] The Amended Indictment filed on 22 November 1999 contained typographical errors relating to the counts charged, and a corrected version of the Amended Indictment was filed on 19 November 2002 (*see also supra* note 4).

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there was sufficient support for the assertion that the two accused's alleged acts were part of a common scheme and in the course of the same transaction, and considering that the joinder would expedite the trial given the number of Prosecution witnesses common to both cases. Counsel for Nahimana appealed the decision on 7 December 1999, submitting, *inter alia*, that the Chamber had overstepped the bounds of its temporal jurisdiction, and Counsel for Ngeze appealed the decision on 10 December 1999, submitting the Chamber lacked jurisdiction on various grounds. The Prosecution responded on 21 February 2000, contending that the appeal was inadmissible under Rule 72. The decision of the Appeals Chamber, dismissing the appeals, was rendered on 5 September 2000. The substance of the decision on this issue has been discussed in paragraphs 100-104.

35. On 29 April 2000, Counsel for Ngeze filed a motion for separate trials, arguing that the joinder of the Nahimana and Ngeze trials violated Rule 48 of the Rules as the Accused had not been indicted together, and that there would be a conflict of interest as their defence strategies differed. The Prosecution filed a response on 22 June 2000, and on 12 July 2000, the Chamber issued its decision. Noting that Counsel for Ngeze was seeking to revisit issues dealt with in the 30 November 1999 decision, the Chamber nonetheless considered the motion as it raised new arguments. In denying the motion, the Chamber held that the joinder was justified by Rule 48*bis* and that the Defence had not shown a conflict of interest.

36. Pursuant to the joinder decision of 30 November 1999, Counsel for Ngeze filed a motion on 23 March 2000 arguing that Ngeze should be allowed to adopt and conform all motions filed on behalf of Nahimana in order to lessen the Parties' work and protect the Accused's rights. The Prosecution opposed the motion on 11 April 2000 and on 12 May 2000 the Chamber denied the motion on the basis that no authority had been invoked in its support.

37. By a motion filed on 10 April 2000, the Prosecution sought the joinder of the trials of Barayagwiza, Nahimana and Ngeze. Counsel for Barayagwiza and Counsel for Nahimana opposed the motion on 28 April 2000 and 30 April 2000, respectively. By its response on 14 May 2000, Counsel for Ngeze did not oppose the motion. On 6 June 2000, the Chamber granted the joinder motion on similar grounds as its decision of 30 November 1999.

38. Counsel for Barayagwiza filed a motion for severance and separate trial which was dismissed by the Chamber on 26 September 2000 in an oral decision, noting that the argument of conflict of interest had already been decided by the Chamber previously, and that the test for severance had not been met.

4.4 Documentary Evidence

39. Counsel for Nahimana filed a motion on 13 January 2000 arguing that the Prosecution had not complied with its disclosure obligations under Rules 66, 67 and 68, to which the Prosecution responded on 6 and 13 March 2000. The Chamber denied the

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motion on 29 March 2000 on the grounds, *inter alia*, that the deadline for disclosure under Article 66(A)(ii) had not yet expired.

40. On 19 January 2000, Counsel for Ngeze filed a motion to compel the Prosecution to produce all evidence against the Accused, to which the Prosecution responded on 3 March 2000, opposing the motion on the basis that it was premature as the Prosecution had complied with its disclosure obligations under the Rules. In its decision of 16 March 2000, the Chamber denied the motion on the grounds that there was no specific provision in the Rules enabling the Defence to request a Trial Chamber to order complete discovery.

41. In an oral decision on 26 September 2000, the Chamber decided motions for the continuance of the trial, for suppression of Prosecution evidence, and for a stay of proceedings arising from an abuse of process, filed by Counsel for the three Accused. The Chamber found that the Prosecution had been dilatory in complying with its obligations under Rule 66 but that it did not amount to an egregious violation, and found that the Defence had not demonstrated material prejudice to the Accused. Consequently, all the motions were denied, except that of continuance to a date to be decided at the pre-trial conference following the open session.

42. On 23 March 2000, Counsel for Ngeze filed a motion requesting that a *subpoena duces tecum* be issued to the Minister of Justice of Rwanda to seek the production of certified court records and documents relating to the Accused's arrest in Rwanda, for the purpose of raising the defence of alibi by showing that the Accused was in prison at the time of the commission of the crimes charged. The Prosecution submitted on 11 April 2000 that there was no legal basis for a Trial Chamber to issue such a subpoena to the Government of Rwanda. Citing with approval a decision of the Appeals Chamber of the ICTY holding that the Tribunal did not possess the power to take enforcement measures against States and that therefore the term "subpoena" was inapplicable, the Chamber denied the motion on 10 May 2000 on the basis that it was beyond the jurisdiction of the Tribunal.

43. Counsel for Ngeze filed a motion on 14 May 2000 to unseal United Nations documents regarding the assassination of the Rwandan and Burundian presidents, arguing that part of its strategy was to prove the identity of the person who killed President Habyarimana. On the same day, Counsel for Barayagwiza filed a similar motion requesting a report prepared by Michael Hourigan, an ICTR investigator, on the assassination of the Rwandan and Burundian presidents. In two separate responses filed on 27 June 2000, the Prosecution did not oppose the motions, provided certain restrictions were applied to the use of the document. In its decision rendered on 7 July 2000, the Chamber directed the Registry to serve a copy of the document on the Defence and the Prosecution, and further directed that the document be used only for the purposes of the trial.

44. It was repeatedly submitted by Counsel for Ngeze that it was necessary for the Tribunal to translate the 71 Kinyarwanda issues of *Kangura* from the original

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Kinyarwanda into French and English (the working languages of the Tribunal), in order for the Accused, who stands charged mainly in relation to the contents of the newspaper, to have a fair trial. This issue was raised by Counsel for Ngeze in the pre-trial conference on 26 September 2000. The Chamber issued a Scheduling Order dated 6 October 2000, holding that it would not be necessary to translate all issues of *Kangura*, as they were not all relevant and such extensive translation would be beyond the capacity of the Tribunal. However, extracts of *Kangura* relied upon by parties at trial would be translated. The Chamber suggested that Counsel seek the co-operation of their clients to have all the editions of Kangura read. Counsel for Ngeze sought to have this ruling reconsidered via an oral application on 23 October 2000, which was rejected by the Chamber as it had already been dealt with, although the Chamber invited Counsel to see the Presiding Judge to work out alternative mechanisms by which the issue could be resolved. Pursuant to a discussion in chambers, an agreement was adopted whereby Defence Counsel were free to enumerate issues that they wished to have translated. Defence Counsel selected Kangura issue numbers 1, 10, 20, 30 and 40, which translation was done and admitted into evidence as Prosecution Exhibit P131. On 2 November 2000, Counsel for Ngeze attempted to reopen the issue in court and was reminded by the Chamber that it had been ruled upon. Ngeze raised the issue again in court on 19 February 2001, citing it as one of the reasons he had chosen not to attend at trial. The Chamber notes that the Accused are all native Kinyarwanda speakers, that Defence Counsel availed themselves of the opportunity to select issues for translation, and that copies of all issues within the custody of the Prosecution were furnished years ago to the Defence in hard copy and electronically on a CD-ROM. The Chamber further notes that the relevant extracts of *Kangura* relied upon by both the Prosecution and the Defence have been read into the trial record during the presentation of the Prosecution's and the Defence's cases, including simultaneous translations of the same into English and French. Therefore, English and French translations of the *Kangura* extracts relied upon by the parties to support their cases have been provided to the Chamber for its consideration.

45. On 23 November 2001, Counsel for Ngeze filed a motion to compel disclosure of Radio Muhabura broadcasts, citing due process of law and fairness to the Accused. Counsel for Nahimana had also previously requested the tapes in 1998. The Prosecution filed a report regarding this issue on 3 December 2001, stating that no Muhabura tapes had been discovered but that the Prosecution was continuing to search for these tapes. Given these developments, the Chamber orally declared the motion moot on 6 December 2001 but instructed the Prosecution to continue the search for the tapes. On 16 September 2002, the Prosecution disclosed summaries of newscasts of Radio Muhabura, RTLM and Radio Rwanda in its possession.

46. Pursuant to an *ex parte* application to the Chamber by Counsel for Nahimana regarding cooperation from the Federal Republic of Germany in searching archives and records held there, the Chamber issued to the Federal Republic of Germany a request on 23 September 2002 for cooperation in obtaining certain specified information.

47. In the course of the testimony of Prosecution expert witness Alison Des Forges, she referred to microfiche material held in the US State Department. The microfiche

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material represents the results of a microfilming project undertaken by the US Government on behalf of the Tribunal to preserve the files in the possession of the Office of the Prosecutor as of July 1995. It includes internal memoranda and notes of the Prosecution, and records of interviews conducted by independent organizations relating to the involvement of specific individuals in mass killings. Counsel for Nahimana made oral requests for access to the material, and during a status conference held on 27 September 2002, Counsel for the three Accused requested access to the same. On 16 September 2002, Counsel for Nahimana filed a document alleging breaches of the Accused's right to a fair trial, arising from his inability to obtain documents from Rwanda and USA, including the microfiche material, and seeking the Chamber's assistance in this matter. The President of the Tribunal, Judge Navanethem Pillay, contacted the US Ambassador-at-large for War Crimes regarding access to the material. This extensive material, comprising 27,755 pages, was subsequently dispatched to Arusha. On 11 October 2002, the Prosecution filed an *ex parte* application to exclude certain documents from the defence inspection of the microfiche material, on the basis that some documents were privileged under Rule 70(A), and some documents would reveal the identity of witnesses not called in this trial. On 25 October 2002, the Chamber, after an examination of the material, granted the application in part, having found that it contained internal documents as defined by Rule 70(A) and documents revealing the identity of witnesses. However, the Chamber identified specific documents that were not internal documents and could be disclosed. The Chamber therefore ordered the Prosecution to make these available to the Defence for inspection. The material was subsequently provided to the Defence on a CD-ROM. On 21 January 2003, Counsel for Nahimana made a further oral application for inspection of the same material. The Chamber denied the application on 24 January 2003, noting that the material had already been disclosed to the Defence, which was seeking merely to have it in the form of a microfiche copy, rather than a CD-ROM, and further noting the efforts made by the Chamber in assisting the Defence to obtain this vast body of material that it currently possesses.

48. Counsel for Nahimana filed a motion on 13 May 2003 seeking a stay of proceedings due to breaches of fair trial proceedings, on the basis that the Defence for Nahimana had not been able to obtain necessary documents and tapes of radio broadcasts and speeches, in particular from Rwanda, in order to support its case. The Defence alleged that the Rwandan Government was withholding material from them. In its decision dated 5 June 2003 denying the motion, the Chamber noted that the Defence could not be certain that these materials still existed, and recalled the Chamber's efforts to assist the Defence to obtain documents by way of a request for State cooperation, including the microfiche material, and the assistance that had been provided by Rwanda to the Defence. The Chamber notes that Nahimana alluded during his testimony to certain documents that could prove his version of events, in particular, records relating to the dismissal of ORINFOR employees pursuant to a list he had compiled.[7] The Chamber accepts that not all documents, RTLM tapes or other material have been made available to the Defence, some of which, if still in existence, might have been helpful to the Accused's case. However, the Chamber considers that this is a question of the weight to

[7] T. 23 Sept. 2002, pp. 23-25.

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be attached to such evidence, to be deliberated upon by the Chamber.

49. In addition, numerous motions and requests were made by all parties during the course of the trial, which were ruled upon orally by the Trial Chamber and which will not be detailed here.

4.5 Witnesses

50. During the trial, the Prosecution called 47 witnesses, and the Defence for the three accused called a total of 46 witnesses, with 13 testifying for Nahimana (including the Accused), 32 testifying for Ngeze (including the Accused) and one witness called by Counsel for Barayagwiza.

51. On 9 October 2000, Counsel for Ngeze filed a motion seeking to have Hassan Ngeze shielded from the view of Prosecution eyewitnesses during their testimony, on the basis that they were mistaken as to his identification, until Defence Counsel have elicited from the witness a detailed description of him. On 12 October 2000, the Chamber denied the motion on the grounds that the Defence would have the opportunity at trial to challenge the reliability of the identification.

52. Pursuant to a motion filed by the Defence for Ngeze for a medical, psychiatric and psychological examination of Ngeze, and after having heard the parties in a closed session on 19 February 2001, the Chamber granted the motion in a closed session on 20 February 2001. The resulting medical report verified that Ngeze was competent to stand trial. Subsequent to the report's findings, Counsel for Ngeze did not pursue the matter any further.

53. Pursuant to oral decisions on 19 March, 13 May, 20 May and 1 July 2002 delivered after the Chamber heard objections from Counsel for the three Accused, four Prosecution witnesses were qualified as experts: Mathias Ruzindana, Marcel Kabanda, Alison Des Forges and Jean-Pierre Chrétien. By its decisions dated 24 January 2003 and 25 February 2003 relating to expert witnesses for the Defence, the Chamber permitted Counsel for Nahimana to call three witnesses, Counsel for Barayagwiza to call one, and Counsel for Ngeze to call two, these decisions being subject to a determination of the expert status of the witnesses at a *voir dire* hearing. On 4 March 2003, Counsel for Nahimana appealed the decision of 25 February 2003, arguing that the evidence excluded by the Chamber was relevant and the exclusion constituted a violation of the Accused's rights to a fair trial. The appeal was deemed inadmissible and rejected by the Appeals Chamber on 28 March 2003. Roger Shuy, a witness called by Counsel for Ngeze, was provisionally admitted as an expert witness during a deposition at The Hague on 28 April 2003, subject to a ruling by the full bench of the Chamber. Similarly, on 1 May 2003, Fernand Goffioul, a witness called by Counsel for Barayagwiza, was provisionally admitted as an expert witness during a deposition at The Hague, subject to a ruling by the full bench of the Chamber. The Chamber has considered the qualifications of both witnesses and is satisfied that Roger Shuy qualifies as an expert in socio-linguistics. Regarding Fernand Goffioul, the Chamber notes that his report concerns the history of

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Rwanda and the role of the media in the 1990s, which is not his professed area of expertise, that of neuropsychiatry. Consequently, the Chamber will only consider the portions of his evidence relating to his field of expertise. By an oral decision delivered on 5 May 2003 by the Chamber, Helmut Strizek was admitted as an expert witness for the Defence of Nahimana.

54. The Prosecution initially submitted, on 27 June 2000, a list of 97 witnesses it would call. Subsequently, the Prosecution was permitted by the Chamber on 26 June 2001 to vary its initial list of witnesses. A further application to vary the list was denied orally on 10 July 2001. Counsel for Nahimana submitted its initial list of witnesses on 22 August 2002. By an oral decision delivered on 2 December 2002, the Chamber granted Counsel for Nahimana's application filed on 27 November 2002 to add one additional witness. Counsel for Nahimana filed a motion on 11 December 2002 seeking to add eight additional witnesses. In its decision dated 13 December 2002, the Chamber permitted the addition of three additional witnesses. Counsel for Ngeze filed a provisional list of witnesses on 11 December 2002, and submitted its final list on 20 January 2003.

55. Counsel for Nahimana made an oral application on 9 November 2000 requesting the Chamber to direct the Prosecution to conduct an investigation into Prosecution Witness AEN's testimony for the purpose of presenting an indictment for false testimony, pursuant to Rule 91. The Chamber denied the application on 27 February 2001, finding that no strong grounds had been made out for the Chamber to conclude that the witness gave false testimony; on being questioned further, the witness had provided supplementary details. The Chamber was of the view that the weight to be attached to the witness's responses is a matter for the Chamber's evaluation when assessing the merits of the case.

56. By an application on 11 June 2001, the Prosecution sought to add Witness X to its list and to have protective measures ordered in respect of the witness. The parties' oral submissions were heard on 5 and 6 September 2001, during which Counsel for the three Accused argued that the addition of Witness X at that stage of proceedings, after a final list of Prosecution witnesses had been submitted, was a violation of the Accused's rights and of the rules on disclosure, and did not meet the conditions for new evidence under Rule 73*bis*. It was further argued that the Prosecution knew of the witness before the trial date had been fixed and knew of exculpatory material from the witness but had not complied with its disclosure obligations. After deliberations, the majority of the Chamber granted the application to add Witness X and ordered certain protective measures on 14 September 2001, on the grounds that the witness was a key witness for the Prosecution, and that the Defence had notice of the evidence to be given by the witness and therefore would not be taken by surprise. Further, the Chamber noted that the witness would replace six Prosecution witnesses and therefore this addition to the list of Prosecution witnesses would not cause undue delay. Given the witness's particular security concerns about appearing in Arusha, the Chamber also ordered that the protective measures be explained to the witness to ascertain his willingness to testify in Arusha; if he still had concerns, he could testify by video link in The Hague. Judge Asoka de Zoysa Gunawardana declared a dissenting opinion, finding that as Witness X had been available

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to the Prosecution to be called even before June 2001, and as the Prosecution had not complied with Rule 68 by disclosing exculpatory material, it should not be allowed to call Witness X. The witness finally testified by videoconference in The Hague from 18 to 26 February 2002.

57. Protective measures in respect of Prosecution witnesses were ordered on 23 November 1999 and 2 July 2001, in respect of witnesses for Nahimana on 25 February 2000, and in respect of witnesses for Ngeze, on 23 September 2002, ensuring that the witnesses' identities would be protected, thereby responding to the witnesses' fears for their safety if it became known that they had testified at the Tribunal. Certain witnesses subsequently elected to give their testimony using their own names: Prosecution witnesses Philippe Dahinden, Colette Braeckman and Agnés Murebwayire, and Defence witnesses Laurence Nyirabagenzi and Valerie Bemeriki testifying for Nahimana. Prosecution witness GO made an oral complaint to the Chamber on 28 May 2001 regarding contact with him by Counsel for Nahimana, in violation of the protection order. By its decision rendered on 11 June 2001, the Chamber accepted Counsel's representations that no direct contact had been made with the witness but considered Counsel's visit to the "safe house" to have been undertaken in an inappropriate manner and directed Counsel not to engage in any activity which would endanger the safety of a protected witness.

58. On 26 June 2001, Counsel for Nahimana filed a motion alleging that the Prosecution had violated the witness protection order. After hearing parties on 28 June 2001, the Chamber issued a decision on 5 July 2001, denying the motion on the grounds that the two Defence witnesses concerned were not notified to the Registry with the result that they were not covered by the protection order.

59. On 13 January 2003, the Prosecution filed a motion seeking a restraining order against Counsel for Ngeze's further contact with witness RM10, who at the time was a witness under the Prosecution's protection order, although it had not called the witness. By its decision dated 17 January 2003, the Chamber found Counsel for Ngeze to be in violation of the protection order, although it noted Counsel's representations that it was the witness who had initiated contact with Counsel. As the Prosecution did not call the witness, the Chamber removed the witness from the Prosecution's order and placed the witness under the Ngeze protection order, and allowed Counsel for Ngeze to contact the witness. By a letter dated 6 March 2003, Counsel for Ngeze sought assistance regarding security concerns with respect to Defence witnesses RM112, RM113 and RM114. In response to the request, the Tribunal's Witnesses and Victims Support Section filed a confidential report on 14 March 2003 detailing security arrangements for the witnesses. On 24 March 2003, a witness for the Defence for Ngeze, Witness RM117, expressed concerns in court about her security and claimed she was threatened during her travel to Arusha to testify. The Chamber requested the Witnesses and Victims Support Section to investigate the matter, the results of which investigation are contained in a confidential report dated 24 March 2003.

60. On 1 March 2001, the Chamber ruled that the testimony of Prosecution Witness

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FW relating to Ngeze would be disregarded by the Chamber as the Accused had not had prior notification that this witness would be testifying against him since the witness's statement made no mention of Hassan Ngeze. A similar issue arose in respect of Prosecution Witness ABH based on lack of notice of his testimony against Ngeze. In this case, the majority of the Chamber allowed the testimony in an oral decision on 13 November 2001 as Counsel for Ngeze had sufficient notice via a letter dated 13 August 2001. Judge Asoka de Zoysa Gunawardana considered that there had not been requisite notice and dissented on that basis.

61. Counsel for Nahimana orally requested on 30 August 2001 the disclosure of the Prosecution investigators' notes taken during the interviews of Prosecution Witness ABC for purposes of cross-examination. On the same day, the Chamber denied the application, noting that discrepancies between the testimony and the previous written statements and the inferences to be drawn from such discrepancies would be taken into account by the Chamber in the evaluation of the witness's evidence.

62. On 3 September 2001, Counsel for Ngeze sought an order for the judicial records of Prosecution Witness LAG and others against whom judicial proceedings had been brought in Rwanda. On 4 September 2001, the Chamber directed the Prosecution to obtain the records from the Government of Rwanda, including plea agreements, confessions, and dates of conviction and sentence.

63. On 31 January 2002, the Trial Chamber decided the motion by Counsel for Barayagwiza, filed on 17 January 2002, objecting to the testimony of Prosecution witness Georges Ruggiu on the basis that the Chamber had evaluated his testimony during the sentencing in his own trial and would therefore not be impartial. The Chamber held that Counsel was raising issues already ruled upon by the Chamber in its decision dated 19 September 2000, and concluded that the motion was frivolous pursuant to Rule 73(E). The motion was therefore dismissed and costs withheld.

64. By a motion filed on 20 August 2002, Counsel for Ngeze sought to have the testimony of Prosecution Witness FS struck from the record, on the grounds that he had not returned to Arusha to complete his cross-examination and had not provided the names of his family members killed in 1994. Counsel for Barayagwiza filed a motion on 12 September 2002 submitting that Witness FS's testimony should not be used against Barayagwiza as the Accused was not represented by Counsel during that time. In its decision dated 16 September 2002, the Chamber denied both applications. It was noted that both Counsel for Ngeze had cross-examined the witness for five hours which was sufficient for purposive cross-examination, and that at the time, Counsel had agreed that the cross-examination was completed save for issues relating to the witness's identity, which was for the Chamber's consideration in assessing the credibility of the witness. It was further noted that the witness had provided the names of his wife and children during his testimony.

65. The Prosecution filed a motion on 11 September 2002 to compel Counsel for the three Accused to comply with the rules on disclosure of information relating to witnesses

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and their anticipated testimony, citing the failure of Counsel for Nahimana to disclose such information adequately or in a timely manner. In its decision dated 3 October 2002, the Chamber ordered the Defence to disclose details of the witnesses and their statements within a certain time frame.

66. By a motion filed on 20 November 2002, Counsel for Ngeze sought the disclosure of the statements and supporting materials relating to protected witness ZF in another case, *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, for the purpose of supporting the Defence theory that the RPF downed the presidential plane on 6 April 1994. The Chamber denied the motion on 12 December 2002, in view of the opinion of Trial Chamber III which was seized of the case. Trial Chamber III declined to lift the protective measures as the witness was particularly vulnerable and disclosure of the statements and supporting materials would entail the revelation of sensitive information, placing the witness at risk.

67. On 8 January 2003, the Prosecution filed a motion to bar Counsel for Ngeze from calling Wayne Madsen as a witness. The Prosecution submitted that Wayne Madsen's proposed testimony on the events leading up to the genocide was irrelevant and of no probative value, and that the issue of responsibility for the shooting down of the presidential plane was not part of the Prosecution's case. Counsel for Ngeze opposed the motion, stating that the testimony went to its theory of the case. In its decision dated 23 January 2003, the Chamber denied the motion in part by limiting the testimony to factual information regarding the probable causes of the massacres in Rwanda in 1994 and the roles of RTLM and *Kangura* at the time.

68. Counsel for Ngeze sought to call a witness who previously worked with UNAMIR by a motion on 11 February 2003, to testify to Ngeze's prediction of the assassination of President Habyarimana. Noting that it was not convinced of the probative value of the witness's testimony, and further noting the restrictions placed by the UN on the ability of the witness to convey confidential information and the witness's reluctance to attend to testify, the Chamber denied the motion on 25 February 2003. Counsel for Nahimana sought by an *ex parte* application dated 20 March 2003 to call a staff of UNICEF as a witness to testify to certain aspects of the testimony of Agnés Murebwayire; however, the proposed witness refused to sign a witness statement. The application was consequently denied on 26 March 2003. Counsel sought a reconsideration of the decision on 11 April 2003 which was also denied.

69. By a decision dated 10 April 2003, the Chamber permitted the request of Counsel for Nahimana to hear the testimony of Defence Witness Y by deposition in The Hague on 1 to 2 May 2003, in light of the witness's security concerns. However, due to delays, including the withdrawal by Counsel for Nahimana of the witness from the Defence's witness list and his subsequent reinstatement, the witness could not testify at The Hague as scheduled and Counsel for Nahimana requested on 7 May 2003 a new date for his deposition. In its decision on 3 June 2003 denying the request, the Chamber noted the extent to which arrangements had been specially made for Witness Y's deposition, his subsequent refusal to testify, and difficulties with the witness's documents arising from

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the witness's own acts.

70. On 1 April 2003, Counsel for Ngeze sought to have Defence witness JF-55 testify by deposition in The Hague, on the basis that he may have SARS virus and would need to be near a major hospital. The Chamber denied the motion on 7 April 2003, noting the communicable nature of the SARS virus and that the Chamber cannot hold a deposition in these circumstances. The Chamber also noted the absence of a medical certificate from a doctor verifying this information. By a motion on 9 April 2003, Counsel sought a reconsideration of the decision, stating that a medical report would be provided. The Chamber notes that nothing new is alleged in the reconsideration motion, and that Counsel has failed to provide the medical report and has failed to pursue the matter. Consequently, the motion has lapsed.

71. Prior to giving his testimony, Ngeze informed the Chamber that he would be testifying without the assistance of his Counsel, as he had never discussed *Kangura* with his Counsel and his Counsel do not speak Kinyarwanda, the language in which *Kangura* is primarily written. The Chamber noted, however, that Counsel was present to intervene on Ngeze's behalf during his testimony. Ngeze proceeded to give his testimony without assistance from his Counsel, who was present throughout and made interventions on Ngeze's behalf.

72. On 24 and 28 April 2003**,** the Prosecution submitted two motions requesting leave to call eleven rebuttal witnesses, which was opposed by the Counsel for the three Accused on 1 and 5 May 2003. On 9 May 2003, the Trial Chamber rendered its Decision, rejecting both motions on the grounds, *inter alia*, that the Prosecution had prior notice of the matters they now sought to rebut and should have adduced such evidence during presentation of its own case. Some of the proposed rebuttal evidence was found to be too prejudicial to the Accused, thereby outweighing any unfairness to the Prosecution in not being able to rebut the Defence evidence.

73. On 15 May 2003, Counsel for Nahimana requested the disclosure of information which could show bias on the part of a Prosecution expert witness, namely, information regarding the partner of the collaborator of Prosecution expert witness Jean-Pierre Chrétien in the writing of a book. The Prosecution responded on 16 May 2003 by saying that it had not violated its disclosure obligations, and that the Defence had exercised the opportunity to cross-examine the two persons, Kabanda and Chrétien, who prepared the expert report. The Chamber noted that the ethnicity or organizational affiliations of the partner of the witness's co-author is not probative of bias on the part of the witness, and that these were issues that could have been raised during cross-examination of the witness. The request was denied on 5 June 2003, and the fees or costs of the motion withheld.

4.6 Motions for Acquittal and Provisional Release

74. Counsel for the three Accused filed motions for acquittal on 21 August 2002 (Nahimana), 16 and 23 August 2002 (Barayagwiza), and 20 and 23 August 2002 (Ngeze).

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Counsel for Nahimana argued that the allegations had not been proved beyond a reasonable doubt or were beyond the temporal jurisdiction of the Tribunal. Counsel for Barayagwiza submitted that the Prosecution had failed to prove the allegations against Barayagwiza as the witnesses called were irrelevant or not credible. Counsel for Ngeze contended that no evidence, or evidence that was tainted and not capable of belief, had been adduced in relation to the charges against Ngeze. A consolidated response to all the motions was filed by the Prosecution on 6 September 2002, in which the Prosecution argued that issues of credibility of witnesses were outside the scope of Rule 98*bis*, and outlined the evidence provided by each Prosecution witness. However, the Prosecution conceded that no evidence had been adduced in respect of the count of crimes against humanity (murder) alleged against Nahimana and Barayagwiza. In addition, the Prosecution did not oppose the striking of the two counts of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II alleged against Barayagwiza. Oral arguments were heard on 16 September 2002 and an oral decision rendered on 17 September 2002. In its reasoned decision of 25 September 2002, the Chamber acquitted Nahimana and Barayagwiza of the count of crimes against humanity (murder), and further acquitted Barayagwiza of the two counts of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. On the remaining counts, the Chamber held that there was sufficient evidence which, if believed, would sustain a conviction for each of the counts, and detailed the Prosecution evidence found to be relevant to each charge. Consequently, the motions were denied in respect of other charges.

75. Counsel for Barayagwiza filed a motion of 4 September 2001 relating to the release of Barayagwiza due to the length of Barayagwiza's custody and detention, which requested that the Chamber ask the General Assembly to establish a rule regarding the duration of custody on remand. On 27 August 2001, the Chamber orally denied the motion as it sought a remedy beyond the powers of the Chamber, and denied the costs of the motion. Counsel appealed the decision on 13 September 2001, which was dismissed by the Appeals Chamber on 1 February 2002. The Appeals Chamber ruled that the issues raised were not subject to interlocutory appeal, and further held that the appeal was frivolous and an abuse of process and consequently ordered that fees for the motion be withheld.

76. On 12 July 2002, Counsel for Nahimana filed a motion seeking the provisional release of Nahimana pursuant to Rule 65, arguing that his lengthy detention violated the Accused's rights under Article 20. In its decision of 5 September 2002, the Chamber held that given the complexity of the case and the seriousness of the charges against the Accused, the length of his detention was not irregular, and found that there were no exceptional circumstances justifying the provisional release. Consequently, the motion was denied.

77. Counsel for Barayagwiza also filed a motion for provisional release on 19 July 2002, arguing that the length of the Accused's detention violated human rights instruments. The Chamber denied the motion on 3 September 2002, noting that the text of the present motion was largely the same as that of the release motion denied on 27

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August 2001 and did not address the test of exceptional circumstances required under Rule 65. Costs of the motion were withheld.

4.7 Judges and Counsel

Judges

78. Counsel for Barayagwiza filed a motion on 18 October 1999 for the disqualification of Judges Laïty Kama and Navanethem Pillay on the basis of their alleged partiality deriving from their involvement in the judgement of *Akayesu*, in which certain statements were made about the CDR Party and RTLM, which are issues before the Chamber in the instant case. In an oral decision on 19 October 1999, it was held that the application was not relevant as the Chamber was sitting in respect of pre-trial and procedural motions, not trial proceedings. It was also held that the Chamber had no jurisdiction to rule on the disqualification of Judge Kama, as he was not part of the Chamber.

79. Counsel for Ngeze filed three motions on 24 November 1999 for the disqualification of Judges Pillay, Møse and Gunawardana respectively, and oral arguments were heard on 25 November 1999. The disqualifications were sought on the grounds, *inter alia*, that the Chamber, in re-introducing the count of genocide into the Indictment in its decision on 5 November 1999, would have examined the additional evidence relating to the count of genocide, whereas a trial judge should not have seen the evidence prior to the trial. Counsel also submitted that the impartiality of Judge Pillay was in issue as she was a judge in *Prosecutor v. Akayesu*, in which judgement certain statements were made about *Kangura*. On 25 November 1999, the Chamber dismissed these motions in an oral decision as it was stated explicitly in the decision of 5 November 1999 that the Chamber had not reviewed the supporting material. With regard to Judge Pillay's participation in *Akayesu*, it was held that an adjudication by a judge in one case did not disqualify that judge from assessing the evidence in another case impartially, as each case is decided on its merits. Counsel for Ngeze appealed the oral decision on 2 December 1999, which appeal was dismissed on 5 September 2000 as it raised issues not subject to interlocutory appeal.

80. On 7 September 2000, Counsel for Barayagwiza filed a letter seeking the recusal of Judges Pillay and Møse, submitting that their visit to Rwanda and meetings there with the President and Prosecutor-General, in light of the Rwanda Government's involvement in the matter of Barayagwiza's case, led to an appearance of lack of impartiality. The Trial Chamber dismissed the motion in an oral decision on 11 September 2000, finding that the mission had been taken for institutional reasons after a discussion at the plenary of judges, namely, the continued cooperation of the Rwanda Government with the Tribunal, and had no relation to the timing of the instant case. The Chamber also noted that this was not the first visit by judges to Rwanda and stated that no matters pending before the Chambers were discussed, and that the visit was conducted in an open and transparent manner.

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81. Counsel for Nahimana filed a motion on 15 September 2000 seeking to disqualify Judges Pillay and Møse on the basis that there was a danger of bias arising from their involvement in the sentencing judgement of Georges Ruggiu (anticipated Prosecution witness), and in respect of Judge Pillay alone, her involvement in the judgment of *Akayesu* wherein certain findings were made pursuant to the evidence of Mathias Ruzindana and Alison Des Forges (anticipated Prosecution expert witnesses). In an oral decision of 19 September 2000, the Chamber dismissed the motion, on the grounds that an objection could not be sustained merely because a judge had made adverse rulings in a previous case, and that the Defence had the opportunity to cross-examine these witnesses to test their evidence.

Counsel

82. Following a request made by Barayagwiza for the withdrawal of his Counsel J.P.L. Nyaberi, citing reasons of lack of competence, honesty, loyalty, diligence and interest, the Registrar declined the request on 5 January 2000, which decision was confirmed by the President of the Tribunal on 19 January 2000. A review of the decision by the Appeals Chamber was sought by Barayagwiza on 21 January 2000, and on 31 January 2000 the Appeals Chamber ordered the withdrawal of his Defence Counsel, J.P.L. Nyaberi, and ordered the assignment of new Counsel and Co-counsel for Barayagwiza. Carmelle Marchessault and David Danielson were subsequently appointed Lead and Co-Counsel for Barayagwiza, respectively.

83. On 23 October 2000, Counsel for Barayagwiza, Carmelle Marchessault and David Danielson, informed the Court that Barayagwiza would not be attending the trial, and had instructed Counsel not to represent him at the trial, based on his inability to have a fair trial due to the previous decisions of the Tribunal in relation to his release. However, Barayagwiza had not terminated their mandate and they were to continue to represent him outside the framework of the trial. The Chamber stated that Barayagwiza was entitled to be present during his trial and had chosen not to do so, and the trial would proceed nonetheless. The Chamber also stated that he would be free to attend whenever he changed his mind. The Chamber ordered Counsel to continue representing Barayagwiza. On 25 October 2000, pursuant to information from Counsel that Barayagwiza had instructed that they were not to be present in court, the Chamber denied Counsel leave to be excused from the courtroom. Counsel for Barayagwiza filed a motion to withdraw on 26 October 2000, given their client's instructions not to represent him at trial. The motion was denied on 2 November 2000 on the basis that the Chamber had to ensure the rights of the accused, in particular access to legal advice. The Chamber noted that Barayagwiza's actions were an attempt to obstruct the proceedings and that Counsel's mandate had not been unequivocally terminated. Judge Gunawardana delivered a concurring and separate opinion stating that the present Counsel should be appointed as standby counsel. On 5 February 2001, Counsel for Barayagwiza informed the Chamber that Barayagwiza had unequivocally terminated their mandate. On 6 February 2001, the Chamber took note of this fact and directed the Registrar to withdraw their assignment and appoint new Counsel for Barayagwiza. Giacomo Barletta-Calderera was appointed new Lead Counsel for Barayagwiza, and was placed on record on 12

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February 2001. He represented Barayagwiza for the duration of the trial. The Chamber notes that Barayagwiza did not have the benefit of legal representation during the interim period, in which Witness FS testified, on 7 and 8 February 2001. The Chamber further notes that Barayagwiza chose to absent himself from proceedings and to instruct his Counsel not to participate in the same. As a result, his Counsel were silent in the courtroom and did not conduct any cross-examination of the first four Prosecution witnesses. During this time, the Chamber undertook to ask questions of the witnesses where the evidence related to Barayagwiza.

84. According to an investigation report dated 24 August 2000 and prepared by the UNDF, Ngeze forged a letter of resignation purporting to be from his Counsel, Patricia Mongo, who had denied writing such a letter. During Ngeze's cross-examination on 4 April 2003, Ngeze denied that he had sent the letter of resignation.

85. Counsel for Ngeze, Patricia Mongo, filed requests for withdrawal on 17 and 24 August 2000 citing circumstances which have created a loss of confidence in her relations with Ngeze. Counsel was withdrawn by the Registrar on 7 September 2000 and replaced by John C. Floyd III. By a letter dated 17 February 2001, Ngeze sought the withdrawal of his Counsel John Floyd and co-counsel René Martel on the basis that he no longer had confidence in their competence to represent him. The principal grounds on which Ngeze based his motion were that Counsel had failed to hold consultations with him, and that Lead Counsel had dismissed two investigators and an assistant without consultation with the accused. In its decision dated 29 March 2001, the majority of the Chamber considered Counsel's consultations with the Accused during trial, noted that the assistant's contract was terminated by the Registry and Counsel's reasons for termination of the investigators related to honesty and professionalism. It was also noted that Ngeze had changed his Counsel four times previously and was now requesting a fifth change. The request was consequently denied. Judge Gunawardana filed a separate and dissenting opinion stating that there was insufficient evidence to rule upon the issue of consultation and noted the Accused's assertion that Counsel were not acting in his best interests. Further written requests for the withdrawal of Counsel were made by Ngeze on 31 May 2002, 25 June 2002, 28 June 2002, 4 July 2002 and 7 July 2002, and oral requests were made during trial proceedings on 20 March 2001, 26 June 2001, 12 September 2001 and 14 September 2001. These requests were denied and Counsel continued to represent the Accused during the trial.

86. The Accused had chosen all his own Counsel and was given his first choice of Counsel in every instance, including the choices of Patricia Mongo and John Floyd. In total, Ngeze has changed his Counsel four times, and John Floyd is his fifth Counsel. Apart from Patricia Mongo and John Floyd (who still represents Ngeze), all of Ngeze's previous Counsel were withdrawn at his request. The Chamber notes that while Ngeze was complaining about his Counsel, he was instructing them and consulting with them. Regarding Ngeze's investigators, the Chamber notes that the investigators were dismissed for dishonesty and further notes that Ngeze had no investigator on his team for some time because Ngeze specifically wanted the two investigators who had been dismissed.

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87. According to an oral decision on 15 May 2001 issued pursuant to a request from the Accused, Ngeze would be allowed to conduct the cross-examination of the Prosecution witnesses under the careful control of the Chamber and only after his counsel had completed his cross-examination. This would be a temporary measure until the issues relating to the Accused's Counsel were resolved. Ngeze was allowed to put questions in cross-examination to Witnesses EB on 17 May 2001, AHI on 11 September 2001 and Alison Des Forges on 9 July 2002. Ngeze was not allowed to cross-examine Witness Thomas Kamilindi. In respect of Witness Omar Serushago, the Chamber decided on 27 November 2001 that Ngeze should write down five questions for the Chamber's consideration as to relevancy. With respect to Witness Jean-Pierre Chrétien, Ngeze was directed on 4 July 2002 to put his questions through his Counsel. On 3 March 2003, Ngeze requested that he be allowed to put ten questions to each Defence witnesses. The Chamber directed him to consult with his Counsel in this regard.

4.8 Expedition of Proceedings

88. In an effort to expedite the proceedings, which were being delayed by unnecessarily prolonged examination and cross-examination, the Chamber issued a scheduling order on 5 June 2002 allocating the time that would be given to each Counsel for the cross-examination of the following six Prosecution witnesses, and stipulated the date for the commencement of the Defence cases. A scheduling order was also issued on 26 March 2003 specifying dates for the close of the Defence cases.

89. The Chamber notes that the delay in the trial was contributed to by the Prosecution through its piecemeal disclosure, changes in its team, amendments to the Indictments and changes to its witness list. As a result, the Chamber issued the scheduling order on 5 June 2002 to direct the Prosecution towards closing its case in an efficient manner.

90. The Trial and Appeals Chambers considered that some of the motions or appeals filed by Defence Counsel were frivolous or an abuse of process, and in those cases ordered the non-payment of fees associated with the application or costs thereof, pursuant to Rule 73(E). Some of these applications have been discussed above.

91. Throughout the case, Counsel repeatedly sought to reverse the rulings of the Trial and Appeals Chambers by filing reconsideration motions or motions that put forward the same arguments previously rejected by the Chambers, albeit under a different title. In addition to the motions and appeals discussed above, Counsel for Ngeze filed two reconsideration motions on 1 and 2 April 2003 regarding the scheduling order dated 26 March 2003, and a reconsideration motion on 9 April 2003 regarding Witness JF-55. Counsel for Nahimana filed a reconsideration motion on 10 April 2003 regarding assistance from Rwanda. In addition, oral applications were often made during trial regarding the same issues that had already been determined by the Chamber, leading to delays in the progress of the trial.

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92. Through the use of stipulations agreed between Prosecution and Defence Counsel, issues were agreed between the parties so as to obviate the need for calling certain witnesses to prove those issues.[8]

93. On 1 August 2003, Counsel for Nahimana filed a motion for an amendment of the Scheduling Order dated 26 March 2003, requesting that the Defence have the right of rejoinder to Prosecution's Reply Closing Brief by curtailing the period of time within which the Prosecution could file its Reply Brief to all three Defence Closing Briefs to a week. The Chamber dealt with the matter by giving an opportunity to the Defence to respond to the Reply Brief in Closing Arguments, during which they were permitted the right of rejoinder.

4.9 The Trial

94. The joint trial of Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze commenced on 23 October 2000 with the Prosecution's opening statements. The Prosecution closed its case on 12 July 2002 after calling 47 witnesses. The Defence for Nahimana opened its case on 18 September 2002 with the testimony of the accused Nahimana. After calling 10 additional witnesses, the Defence for Nahimana's case was held over on 14 January 2003 until such time as the remaining witnesses could arrive in Arusha to testify. On 15 January 2003, the Defence for Ngeze commenced the presentation of its case, calling 32 witnesses, including the accused Ngeze. It closed its case on 29 April 2003. The Defence for Barayagwiza opened its case on 1 May 2003 and closed its case the same day after calling one witness. Following the testimony of two additional witnesses called by the Defence for Nahimana, it closed its case on 8 May 2003. The joint trial concluded on 9 May 2003 after 238 trial days. The Prosecution's Closing Brief was filed on 25 June 2003. The Defence for the three accused filed their Closing Briefs on 1 August 2003, and the Prosecution filed a Reply Brief on 15 August 2003. The Prosecution's Closing Brief was 324 pages long, the Nahimana Defence's 440 pages, the Barayagwiza Defence's 239 pages, the Ngeze Defence's 226 pages, and the Prosecution's Reply 158 pages. In addition, Ngeze filed his own Closing Brief of 176 pages. Closing arguments were heard from 18 August to 22 August 2003, wherein Counsel for the three accused were given the opportunity to respond to the Prosecution's Brief and Closing Arguments, after which the accused Ngeze personally addressed the Chamber.

5. Evidentiary Matters

95. Pursuant to Rule 89(A) of the Rules, the Chamber is not bound by national rules of evidence, but by the Rules of the Tribunal. 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 consonant with the spirit of the Statute and the general principles of law, as

[8] *See e.g.,* Stipulation of the Parties Regarding What Would be the Testimony of Crystal Nix-Hinds, Denise Minor and Gregory Gordon, dated 11 December 2002; and Stipulation between Prosecution and Ngeze Defence Regarding Proposed Admission of Translations of Articles/Excerpts from Kangura, dated 19 May 2003.

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provided in Rule 89(B). Any relevant evidence deemed to have probative value is admissible in accordance with Rule 89(C).

96. The Tribunal's jurisprudence has established general principles concerning the assessment of evidence, including those concerning the probative value of evidence; the use of witness statements; false testimony; the impact of trauma on the testimony of witnesses; problems of interpretation from Kinyarwanda into French and English; and cultural factors affecting the evidence of witnesses.[9]

97. 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. Similarly, pursuant to Rule 89, corroboration, of even a single testimony, is not required; the test of admissibility of evidence is relevance, probative value, and the requirements of a fair trial.[10]

98. The Accused Barayagwiza indicated his unwillingness to participate in the trial, giving as his reason, in his statement (Chamber Exhibit C4A), his doubts as to his ability to have an impartial and fair trial, and therefore absented himself from the trial. The Chamber is mindful of the Accused's right to remain silent and has not drawn any adverse inference from his absence at his trial.

99. With respect to alibi, the Chamber notes that in *Musema*, it was held 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".[11]

6. Temporal Jurisdiction

100. In pre-trial proceedings two of the Accused, Ferdinand Nahimana and Hassan Ngeze, challenged their indictments on the grounds that they included allegations of crimes that fall outside the temporal jurisdiction of the Tribunal, which is limited by its Statute to violations committed between 1 January 1994 and 31 December 1994. The Trial Chamber noted in its decisions, which were upheld on interlocutory appeal, that while many of the events referred to in the indictment precede 1 January 1994, such events "provide a relevant background and a basis for understanding the accused's alleged conduct in relation to the Rwandan genocide of 1994"[12] and that there "may be subsidiary or interrelated allegations to the principal allegation in issue and thus may have probative or evidentiary value."[13] The Appeals Chamber confirmed the Trial

[9] See, e.g., *Akayesu* (TC) paras. 130-156.
[10] *Musema* (TC) para. 43, upheld on appeal (AC) paras. 36-38.
[11] *Musema* (TC) para. 108; confirmed on appeal (AC) paras. 205-206.

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Chamber's decision that an accused could not be held accountable for crimes committed prior to 1994 and that such events would not be referred to "except for historical purposes or information."[14]

101. A Separate Opinion of Judge Shahabuddeen concurring with the Appeals Chamber decision suggested more specifically that evidence dating to a time prior to 1 January 1994 can provide a basis from which to draw inferences, for example with regard to intent or other required elements of crimes committed within the limits of the temporal jurisdiction of the Tribunal. Moreover, evidence of prior crimes can be relied on to establish a "pattern, design or systematic course of conduct by the accused." With regard to the charge of conspiracy, where the conspiracy agreement might date back to a time prior to 1 January 1994, Judge Shahabuddeen expressed the view that so long as the parties continue to adhere to the agreement, they may be regarded as constantly renewing it up to the time of the acts contemplated by the conspiracy. Therefore a conspiracy agreement made prior to but continuing into the period of 1994 can be considered as falling within the jurisdiction of the Tribunal.

102. A Joint Separate Opinion of Judge Vohrah and Judge Nieto-Navia also addressed the crimes of direct and public incitement to commit genocide and conspiracy to commit genocide, noting, "[w]ith inchoate crimes in particular, it can be difficult to ascertain when all of the constituent elements of the offence exist so that a potential problem arises if it is intended that a conviction will be based upon not just one defined event occurring on a specific date but upon a series of events or acts which took place over an extended period of time".[15] The opinion questions whether the limitations on the Tribunal's jurisdiction were intended to apply to these crimes in a manner so as to exclude evidence of "pre-1994 incitement or conspiracy". Recalling that the Statute does not expressly define how its jurisdiction should be interpreted in relation to continuing or inchoate offices such as conspiracy or incitement, while at the same time there is no provision providing an exception to the temporal limitation for offences, the opinion noted that the Security Council expressly established the Tribunal's temporal jurisdiction from 1 January 1994, rather than 6 April 1994, "in order to capture the planning stage of the crimes".[16] The opinion concludes that the Statute should be interpreted "in a restrictive fashion in order to fulfill this intention".[17]

103. In considering how this framework applies to events, as well as the review of broadcasts, publications, and other dissemination of media by the Accused prior to 1994,

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[12] "Decision on the Prosecutor's Request for Leave to Amend the Indictment", *The Prosecutor v. Hassan Ngeze*, Case No. ICTR-97-27-I, 5 November 1999, para. 3.
[13] "Decision on the Prosecutor's Request for Leave to File an Amended Indictment", *The Prosecutor v. Ferdinand Nahimana*, Case No. ICTR-96-11-T, 5 November 1999, para. 28
[14] "Decision on the Interlocutory Appeals", *Hassan Ngeze and Ferdinand Nahimana v. The Prosecutor*, 5 September 2000, p. 6.
[15] *Ibid.*, "Joint Separate Opinion of Judge Lal Chand Vohrah and Judge Rafael Nieto-Navia", para.7.
[16] Opinion, p. 6, citing *Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955 (1994),* S/1995/134, 13 February 1995, para. 14.
[17] "Joint Separate Opinion of Judge Lal Chand Vohrah and Judge Rafael Nieto-Navia", paras. 17, 18 and 23.

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the Trial Chamber considers that with regard to the commission of crimes in 1994, such pre-1994 material may constitute evidence of the intent of the Accused or a pattern of conduct by the Accused, or background in reviewing and understanding the general manner in which the Accused related to the media at issue. To the extent that such material was re-circulated by the Accused in 1994, or the Accused took any action in 1994 to facilitate its distribution or to bring public attention to it, the Chamber considers that such material would then fall within the temporal jurisdiction established by its Statute.

104. With regard to the offences of conspiracy and direct and public incitement, the Chamber notes that the Security Council debate cited by Judge Vohrah and Judge Nieto-Navia, in which discussion was held regarding the proposal that the jurisdiction of the Tribunal cover acts from October 1990, does not differentiate between these inchoate offences and others that are not by nature continuing in time. The Chamber considers, therefore, that the Security Council debate does not provide guidance on the application of temporal jurisdiction to these particular offences, which unlike the other crimes set forth in the Statute, occur both in and prior to 1994. The Chamber considers that the adoption of 1 January 1994 rather than 6 April 1994 as the commencement of the Tribunal's temporal jurisdiction, expressly for the purpose of including the planning stage, indicates an intention that is more compatible with the inclusion of inchoate offences that culminate in the commission of acts in 1994 than it is with their exclusion. It is only the commission of acts completed prior to 1994 that is clearly excluded from the temporal jurisdiction of the Tribunal. The Chamber adopts the view expressed by Judge Shahabuddeen with regard to the continuing nature of a conspiracy agreement until the commission of the acts contemplated by the conspiracy. The Chamber considers this concept applicable to the crime of incitement as well, which, similarly, continues to the time of the commission of the acts incited.

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CHAPTER II

HISTORY OF RWANDA

105. The Accused have conveyed to the Chamber, in their testimony and otherwise, the importance of understanding the history of Rwanda, and more specifically the history of ethnic identity and inter-ethnic relations, in understanding the events that transpired in 1994 in Rwanda. The Accused Ngeze repeatedly cited and challenged the first sentence of the Indictment:

> 1.1 The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda, causing hundreds of Tutsis to die and thousands more to flee the country in the years immediately following.

106. The Chamber notes that in the first judgement of this Tribunal, the history of Rwanda was examined in detail from the pre-colonial period. The Chamber accepts the importance of this history, particularly in this case, and for this reason sets forth largely *in extenso* the comprehensive review of the historical context as described in the *Akayesu* judgement:[18]

> 80. Prior to and during colonial rule, first, under Germany, from about 1897, and then under Belgium which, after driving out Germany in 1917, was given a mandate by the League of Nations to administer it, Rwanda was a complex and an advanced monarchy. The monarch ruled the country through his official representatives drawn from the Tutsi nobility. Thus, there emerged a highly sophisticated political culture which enabled the king to communicate with the people.
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> 81. Rwanda then, admittedly, had some eighteen clans defined primarily along lines of kinship. The terms Hutu and Tutsi were already in use but referred to individuals rather than to groups. In those days, the distinction between the Hutu and Tutsi was based on lineage rather than ethnicity. Indeed, the demarcation line was blurred: one could move from one status to another, as one became rich or poor, or even through marriage.
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> 82. Both German and Belgian colonial authorities, if only at the outset as far as the latter are concerned, relied on an elite essentially composed of people who referred to themselves as Tutsi, a choice which, according to Dr. Alison Desforges, was born of racial or even racist considerations. In the minds of the colonizers, the Tutsi looked more like them, because of their height and colour, and were, therefore, more intelligent and better equipped to govern.
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> 83. In the early 1930s, Belgian authorities introduced a permanent distinction by dividing the population into three groups which they called ethnic groups, with the Hutu representing about 84% of the population, while the Tutsi (about 15%) and Twa (about 1%) accounted for the rest. In line with this division, it became

[18] *Akayesu* (TC) paras. 80-111.

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mandatory for every Rwandan to carry an identity card mentioning his or her ethnicity. The Chamber notes that the reference to ethnic background on identity cards was maintained, even after Rwanda's independence and was, at last, abolished only after the tragic events the country experienced in 1994.

84. According to the testimony of Dr. Alison Desforges, while the Catholic Church which arrived in the wake of European colonizers gave the monarch, his notables and the Tutsi population privileged access to education and training, it tried to convert them. However, in the face of some resistance, the missionaries for a while undertook to convert the Hutu instead. Yet, when the Belgians included being Christian among the criteria for determining the suitability of a candidate for employment in the civil service, the Tutsi, hitherto opposed to their conversion, became more willing to be converted to Christianity. Thus, they carried along most Hutu. Quoting a witness from whom she asked for an explanation for the massive conversion of Hutu to Christianity, Dr. Desforges testified that the reasons for the conversion were to be found in the cult of obedience to the chiefs which is highly developed in the Rwandan society. According to that witness, "you could not remain standing while your superiors were on their knees praying". For these reasons, therefore, it can be understood why at the time, that is, in the late 1920s and early 1930s, the church, like the colonizers, supported the Tutsi monopoly of power.

85. From the late 1940s, at the dawn of the decolonization process, the Tutsi became aware of the benefits they could derive from the privileged status conferred on them by the Belgian colonizers and the Catholic church. They then attempted to free themselves somehow from Belgian political stewardship and to emancipate the Rwandan society from the grip of the Catholic church. The desire for independence shown by the Tutsi elite certainly caused both the Belgians and the church to shift their alliances from the Tutsi to the Hutu, a shift rendered more radical by the change in the church's philosophy after the second world war, with the arrival of young priests from a more democratic and egalitarian trend of Christianity, who sought to develop political awareness among the Tutsi-dominated Hutu majority.

86. Under pressure from the United Nations Trusteeship Council and following the shift in alliances just mentioned, Belgium changed its policy by granting more opportunities to the Hutu to acquire education and to hold senior positions in government services. This turn-about particularly angered the Tutsi, especially because, on the renewal of its mandate over Rwanda by the United Nations, Belgium was requested to establish representative organs in the Trust territory, so as to groom the natives for administration and, ultimately, grant independence to the country. The Tutsi therefore began the move to end Belgian domination, while the Hutu elite, for tactical reasons, favoured the continuation of the domination, hoping to make the Hutu masses aware of their political weight in Rwanda, in a bid to arrive at independence, which was unavoidable, at least on the basis of equality with the Tutsi. Belgium particularly appreciated this attitude as it gave it reason to believe that with the Hutu, independence would not spell a severance of ties.

87. In 1956, in accordance with the directives of the United Nations Trusteeship Council, Belgium organized elections on the basis of universal suffrage in order

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to choose new members of local organs, such as the grassroots representative Councils. With the electorate voting on strictly ethnic lines, the Hutu of course obtained an overwhelming majority and thereby became aware of their political strength. The Tutsi, who were hoping to achieve independence while still holding the reins of power, came to the realization that universal suffrage meant the end of their supremacy; hence, confrontation with the Hutu became inevitable.

88. Around 1957, the first political parties were formed and, as could be expected, they were ethnically rather than ideologically based. There were four political parties, namely the Mouvement démocratique républicain, Parmehutu ("MDR Parmehutu"), which clearly defined itself as the Hutu grassroots movement; the Union Nationale Rwandaise ("UNAR"), the party of Tutsi monarchists; and, between the two extremes, the two others, Aprosoma, predominantly Hutu, and the Rassemblement démocratique rwandais ("RADER"), which brought together moderates from the Tutsi and Hutu elite.

89. The dreaded political unrest broke out in November 1959, with increased bloody incidents, the first victims of which were the Hutu. In reprisal, the Hutu burnt down and looted Tutsi houses. Thus became embedded a cycle of violence which ended with the establishment on 18 October 1960, by the Belgian authorities, of an autonomous provisional Government headed by Grégoire Kayibanda, President of MDR Parmehutu, following the June 1960 communal elections that gave an overwhelming majority to Hutu parties. After the Tutsi monarch fled abroad, the Hutu opposition declared the Republic of Gitarama, on 28 January 1961, and set up a legislative assembly. On 6 February 1961, Belgium granted self-government to Rwanda. Independence was declared on 1 July 1962, with Grégoire Kayibanda at the helm of the new State, and, thus, President of the First Republic.

90. The victory of Hutu parties increased the departure of Tutsi to neighbouring countries from where Tutsi exiles made incursions into Rwanda. The word Inyenzi, meaning cockroach, came to be used to refer to these assailants. Each attack was followed by reprisals against the Tutsi within the country and in 1963, such attacks caused the death of at least ten thousand of them, further increasing the number of those who went into exile. Concurrently, at the domestic level, the Hutu regime seized this opportunity to allocate to the Hutu the lands abandoned by Tutsi in exile and to redistribute posts within the Government and the civil service, in favour of the Hutu, on the basis of a quota system linked to the proportion of each ethnic group in the population.

91. The dissensions that soon surfaced among the ruling Hutu led the regime to strengthen the primacy of the MDR Parmehutu party over all sectors of public life and institutions, thereby making it the *de facto* sole party. This consolidated the authority of President Grégoire Kayibanda as well as the influence of his entourage, most of who came from the same region as he, that is the Gitarama region in the centre of the country. The drift towards ethnic and regional power became obvious. From then onwards, a rift took root within the Hutu political Establishment, between its key figures from the Centre and those from the North and South who showed great frustration. Increasingly isolated, President Kayibanda could not control the ethnic and regional dissensions. The disagreements within the regime resulted into anarchy, which enabled General

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Juvénal Habyarimana, Army Chief of Staff, to seize power through a coup on 5 July 1973. General Habyarimana dissolved the First Republic and established the Second Republic. Scores of political leaders were imprisoned and, later, executed or starved to death, as was the case with the former President, Grégoire Kayibanda.

92. Following a trend then common in Africa, President Habyarimana, in 1975, instituted the one-party system with the creation of the Mouvement révolutionnaire national pour le développement (MRND), of which every Rwandan was a member *ipso facto*, including the newborn. Since the party encompassed everyone, there was no room for political pluralism. A law passed in 1978 made Rwanda officially a one-party State with the consequence that the MRND became a "State-party", as it formed one and the same entity with the Government…

93. …Like his predecessor, Grégoire Kayibanda, Habyarimana strengthened the policy of discrimination against the Tutsi by applying the same quota system in universities and government services. A policy of systematic discrimination was pursued even among the Hutu themselves, in favour of Hutu from Habyarimana's native region, namely Gisenyi and Ruhengeri in the north-west, to the detriment of Hutu from other regions. This last aspect of Habyarimana's policy, considerably weakened his power: henceforth, he faced opposition not only from the Tutsi but also from the Hutu, who felt discriminated against and most of whom came from the central and southern regions. In the face of this situation, Habyarimana chose to relentlessly pursue the same policy like his predecessor who favoured his region, Gitarama. Like Kayibanda, he became increasingly isolated and the base of his regime narrowed down to a small intimate circle dubbed "Akazu", meaning the "President's household". This further radicalized the opposition whose ranks swelled more and more. On 1 October 1990, an attack was launched from Uganda by the Rwandan Patriotic Front (RPF) whose forebear, the Alliance rwandaise pour l'unité nationale ("ARUN"), was formed in 1979 by Tutsi exiles based in Uganda. The attack provided a pretext for the arrest of thousands of opposition members in Rwanda considered as supporters of the RPF.

94. Faced with the worsening internal situation that attracted a growing number of Rwandans to the multi-party system, and pressured by foreign donors demanding not only economic but also political reforms in the form of much greater participation of the people in the country's management, President Habyarimana was compelled to accept the multi-party system in principle. On 28 December 1990, the preliminary draft of a political charter to establish a multi-party system was published. On 10 June 1991, the new constitution introducing the multi-party system was adopted, followed on 18 June by the promulgation of the law on political parties and the formation of the first parties, namely:
- the Mouvement démocratique républicain (MDR), considered to be the biggest party in terms of membership and claiming historical links with the *MDR*-Parmehutu of Grégoire Kayibanda; its power-base was mainly the centre of the country, around Gitarama;
- the Parti social démocrate (PSD), whose membership included a good number of intellectuals, recruited its members mostly in the South, in Butare;
- the Parti liberal (PL); and

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- the Parti démocrate chrétien (PDC).

95. At the same time, Tutsi exiles, particularly those in Uganda organized themselves not only to launch incursions into Rwandan territory but also to form a political organization, the Rwandese Patriotic Front (RPF), with a military wing called the Rwandan Patriotic Army (RPA). The first objective of the exiles was to return to Rwanda. But they met with objection from the Rwandan authorities and President Habyarimana, who is alleged to have said that land in Rwanda would not be enough to feed all those who wanted to return. On these grounds, the exiles broadened their objectives to include the overthrow of Habyarimana.

96. The above-mentioned RPF attack on 1 October 1990 sent shock waves throughout Rwanda. Members of the opposition parties formed in 1991, saw this as an opportunity to have an informal alliance with the RPF so as to further destabilize an already weakened regime. The regime finally accepted to share power between the MRND and the other political parties and, around March 1992, the Government and the opposition signed an agreement to set up a transitional coalition government headed by a Prime Minister from the MDR. Out of the nineteen ministries, the MRND obtained only nine. Pressured by the opposition, the MRND accepted that negotiations with the RPF be started. The negotiations led to the first cease-fire in July 1992 and the first part of the Arusha Accords. The July 1992 cease-fire tacitly recognized RPF control over a portion of Rwandan territory in the north-east. The protocols signed following these accords included the October 1992 protocol establishing a transitional government and a transitional assembly and the participation of the RPF in both institutions. The political scene was now widened to comprise three blocs: the Habyarimana bloc, the internal opposition and the RPF. Experience showed that President Habyarimana accepted these accords only because he was compelled to do so, but had no intention of complying with what he himself referred to as "un chiffon de papier", meaning a scrap of paper.

97. Yet, the RPF did not drop its objective of seizing power. It therefore increased its military attacks. The massive attack of 8 February 1993 seriously undermined the relations between the RPF and the Hutu opposition parties, making it easy for Habyarimana supporters to convene an assembly of all Hutu. Thus, the bond built on Hutu kinship once again began to prevail over political differences. The three blocs mentioned earlier gave way to two ethnic-based opposing camps: on the one hand, the RPF, the supposed canopy of all Tutsi and, on the other hand, the other parties said to be composed essentially of the Hutu.

98. In March 1992, a group of Hutu hard-liners founded a new radical political party, the Coalition pour la défense de la republique (CDR), or Coalition for the Defence of the Republic, which was more extremist than Habyarimana himself and opposed him on several occasions.

…

101. On the political front, a split was noticed in almost all the opposition parties on the issue of the proposed signing of a final peace agreement. This schismatic trend began with the MDR party, the main rival of the MRND, whose radical faction, later known as MDR Power, affiliated with the CDR and the MRND.

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> 102. On 4 August 1993, the Government of Rwanda and the RPF signed the final Arusha Accords and ended the war which started on 1 October 1990. The Accords provided, *inter alia*, for the establishment of a transitional government to include the RPF, the partial demobilization and integration of the two opposing armies (13,000 RPF and 35,000 FAR troops), the creation of a demilitarized zone between the RPF-controlled area in the north and the rest of the country, the stationing of an RPF battalion in the city of Kigali, and the deployment, in four phases, of a UN peace-keeping force, the United Nations Assistance Mission for Rwanda (UNAMIR), with a two-year mandate.
>
> 103. On 23 October 1993, the President of Burundi, Melchior Ndadaye, a Hutu, was assassinated in the course of an attempted coup by Burundi Tutsi soldiers…
>
> 104. The assassination of President Ndadaye gave President Habyarimana and the CDR the opportunity to denounce, in a joint MRND - CDR statement issued at the end of 1993, the Arusha Accords, calling them treason. However, a few days later, pursuing his policy of prevarication towards the international community, Habyarimana signed another part of the peace accords. Indeed, the Arusha Accords no longer existed, except on paper. The President certainly did take the oath of office, but the installation of a transitional government was delayed, mainly by divisions within the political parties and the ensuing infightings.
>
> 105. The leaders of the CDR and the PSD were assassinated in February 1994. In Kigali, in the days that followed, the Interahamwe and the Impuzamugambi massacred Tutsi as well as Habyarimana's Hutu opponents…
>
> 106. At the end of March 1994, the transitional government was still not set up and Rwanda was on the brink of bankruptcy. International donors and neighbouring countries put pressure on the Habyarimana government to implement the Arusha Accords. On 6 April 1994, President Habyarimana and other heads of State of the region met in Dar-es-Salaam (Tanzania) to discuss the implementation of the peace accords. The aircraft carrying President Habyarimana and the Burundian President, Ntaryamirai, who were returning from the meeting, crashed around 8:30 pm near Kigali airport. All aboard were killed.

107. This history has been affirmed by the evidence adduced at trial, and the Accused have introduced much historical background that further elaborates on various aspects of it. In particular, the Accused Ngeze introduced into evidence numerous historical works that clearly establish the history of ethnic identity and conflict in Rwanda, which has roots long preceding 1959, contrary to the statement made in paragraph 1.1 of the Indictments of the Accused.

108. The Chamber notes the emergence of Hutu, Tutsi, and Twa ethnic group identity over the course of Rwandan history, and the concomitant ethnic prejudice that resulted from the differential distribution of social and political privilege along ethnic lines, fostered by and during colonial rule. The history of Rwanda in the twentieth century has been shaped by a complex interplay of political power and ethnic consciousness. The

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Chamber observes that political forces have greatly contributed to the transformation of ethnic consciousness into ethnic hatred.

109. This backdrop to the events that transpired in Rwanda in 1994 may explain in large measure the otherwise almost incomprehensible level and intensity of the violence that erupted in April 1994 and continued relentlessly for several months. However, the Chamber recalls and underscores that this history cannot be used to justify such violence. Efforts to do so contribute to the perpetuation of violence. The Chamber recalls that its fundamental purpose of holding individuals accountable for their conduct is intended to "contribute to the process of national reconciliation and to the restoration and maintenance of peace".[19] Justice should serve as the beginning of the end of the cycle of violence that has taken so many lives, Tutsi and Hutu, in Rwanda.

[19] Security Council Resolution 955, S/RES/955 (1994), 8 November 1994.

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CHAPTER III

FACTUAL FINDINGS

1. Violence in Rwanda in 1994

110. Prosecution Expert Witness Alison Des Forges testified that on 1 October 1990 the RPF attacked Rwanda, quickly advancing forty miles inside the country. On the night of 4 October 1990, when the RPF was still forty-five miles from Kigali, heavy firing shook the capital, and the next day the government announced that the city had been attacked by RPF infiltrators, who were driven back by the Rwandan army. More than 11,000 people were subsequently arrested and held without charge, thousands of them for many months. Although President Habyarimana stated that there was no question of considering those of an ethnic group responsible for what happened, the Minister of Justice declared that the Tutsi were *ibyitso*, or accomplices, of the invaders. Within several weeks, Rwandan troops had driven the RPF back towards the Ugandan border. As government soldiers advanced through the northeastern region of Mutura, they killed between 500 and 1,000 civilians, largely Bahima, a people usually identified with the Tutsi, who were accused of having aided the RPF. Over the next few years, the RPF and the Rwandan Government engaged in occasional negotiations. However, ceasefires were broken as regularly as they were signed. Also over the next few years were a series of attacks against the Tutsi, including one in Bugesera in March 1992. Des Forges named seventeen such attacks from 1991 to 1993, most of which took place in northwestern Rwanda.[20] Des Forges also documented human rights abuses committed by the RPF.[21]

111. Des Forges testified that a document was found in the Butare prefectural office, written by a propagandist who based his work on a French book, *Psychologie de la publicité et de la propagande*. Drawing also on Lenin and Goebbels, he advocated the use of lies, exaggeration, ridicule and innuendo against the adversary and suggests that the public must be persuaded that the adversary stands for war, death, slavery, repression, injustice and sadistic cruelty. He stressed the importance of linking propaganda to events and suggested simply "creating" events, if necessary. He proposed the use of what he called "Accusation in a mirror", meaning that one would impute to the adversary one's own intentions and plans. "In this way", he wrote, "the party which is using terror will accuse the enemy of using terror". Such a tactic could be used to persuade honest people that attack by the enemy justifies taking whatever measures are necessary for legitimate defense.[22]

112. In December 1991, a commission of ten officers prepared a secret report on how to defeat the enemy "in the military, media and political domains". The report identified as the principal enemy "the Tutsi inside or outside the country, extremist and nostalgic for power, who have never recognized and will never recognize the realities of the 1959

[20] Exhibit P158, pp. 15-16.
[21] T. 20 May 2002, p. 195.
[22] Exhibit P158, p. 44 or 28170.

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social revolution and who wish to reconquer power by all means necessary, including arms". The report several times equated the Tutsi with the enemy, saying the Tutsi were unified behind a single ideology of Tutsi hegemony. Among those categories of people from whom enemy partisans were said to be recruited were Tutsi inside the country, Hutu political opponents, and foreigners married to Tutsi wives. In late September or early October 1992, the army ordered all units to provide lists of people said to be enemy accomplices.[23]

113. The recruitment and training of militia, particularly the *Interahamwe*, in the use of firearms and other weapons increased during 1993 and early 1994. The man in the Rwandan army responsible for the training in Kigali, where the largest number of recruits were trained, estimated in early January 1994 that the 1,700 *Interahamwe* at his command, who were organized in groups of forty throughout the city, could kill 1,000 Tutsi in twenty minutes. By late 1993, thousands of firearms had been distributed through to communes for self-defence programs or to the communal police. After October 1993, the pace of distribution increased, and firearms, grenades and machetes were delivered to militia and others. Many of the weapons were kept in Kigali, and some were sent to outlying areas. As there were insufficient firearms to distribute to everyone, military officers involved in the self-defense program encouraged recruits to perfect their skills with spears and bows and arrows, and provided many of them with machetes. From January 1993 through March 1994, Rwanda imported more than half a million machetes, double the number imported in previous years.[24]

114. On 6 April, the plane carrying President Habyarimana was shot down, a crime for which responsibility has not been established. Within hours, killings began. Soldiers and militia began systematically slaughtering Tutsi. The Presidential Guard, backed by militia, murdered government officials and leaders of the political opposition. On 7 April 1994, the RPF renewed combat with government forces. United Nations troops, in Rwanda under the terms of the peace accords, tried briefly to keep the peace, then withdrew to their posts as ordered by UN headquarters in New York. A force of French, Belgian and Italian troops came to evacuate foreigners and then departed. Ten Belgian soldiers of UNAMIR, the UN peacekeeping forces, were killed, and the Belgian troops were withdrawn. On 9 April 1994, an interim government was sworn in, with Jean Kambanda as Prime Minister. A meeting of prefects took place on 11 April, and on 12 April the Minister of Defence appealed through the radio for Hutu unity, saying partisan interests must be set aside in the battle against the common enemy, the Tutsi. On 16 April, the military chief of staff and the *prefet* best known for opposing the killings were replaced. This *prefet* was later executed. Three *bourgmestres* and a number of other officials who sought to stop the killings were also killed, in mid-April or shortly after. In the instructions given to the population, killing was known as "work", and machetes and firearms were described as "tools". In the first days of killing, assailants sought out and killed targeted individuals, Tutsi and Hutu political opponents. Roadblocks were set up to catch Tutsi trying to flee. Subsequently a different strategy was implemented: driving Tutsi out of their homes to churches, schools, or other public sites where they were then

[23] *Ibid.,*pp. 19-20, 35.
[24] *Ibid.,* pp. 32-35.

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massacred in large-scale operations. In mid-May the strategy turned to tracking down the last surviving Tutsi, who had successfully hidden in ceilings, holes, or the bush, or who had been protected by their status in the community. Throughout the killing, Tutsi women were often raped, tortured and mutilated before they were killed.[25]

115. Prosecution Witness Philippe Dahinden, a Swiss journalist, visited Rwanda from 1 to 13 May 1994. He went to Butare, Gitarama, and Kigali, passing through hundreds of roadblocks – some military roadblocks, some *Interahamwe* roadblocks and some CDR roadblocks. He testified that Butare town was deserted and destroyed and had an air of total desolation. A number of buildings had been burnt down, and people had been massacred. He heard testimonies and filmed religious people who talked of heaps of dead bodies. Away from the main road Dahinden himself saw the dead bodies of people who had been massacred, mainly Tutsi. He said Hutu accused of being accomplices of the enemy or Hutu opposed to the MRND Party were also killed. He interviewed people who told him that civilians and military men came to look for Tutsi who were hiding to take them away and kill them. They said some had lists with them. Dahinden saw people being taken and killed, and he saw thousands of dead bodies. He filmed dead bodies in the river at Kanyaru, counting the bodies as they flowed by and estimated on that basis that there were 3,000 to 5,000 dead bodies per day coming down the river.[26]

116. Prosecution Witness X testified to having seen thousands of Tutsi bodies on 7, 8 and 9 April 1994 on the streets in Kigali, including those of old and young men and women, and children. Among these thousands of Tutsi bodies would be a small number of Hutu bodies. The witness did not hear any reports of there having been RPF soldiers among the dead bodies. In 1994, everyone on his mother's side of the family was killed. His mother was a Tutsi.[27]

Discussion of Evidence

117. The Chamber has found the evidence of Philippe Dahinden and Witness X to be credible, as set forth in paragraphs 546 and 547.

118. The Chamber notes that much of the evidence set forth above is not disputed as a matter of fact. What is disputed, vigorously, is the analysis of these facts. The Chamber considers it well established and virtually conceded that a widespread and systematic attack against the Tutsi population commenced following the shooting down of the plane carrying President Habyarimana and his death on 6 April 1994. This attack took place in the context of a war between the RPF and the Rwandan Government. This war began when the RPF attacked Rwanda on 1 October 1990. It continued off and on, amidst failed peace negotiations and ceasefires throughout the period from 1990 to 1994. During these years, a number of attacks directed against Tutsi civilians took place. In her evidence Des Forges named seventeen such attacks between 1990 and 1993, mostly in the northwestern part of Rwanda. The Chamber considers that these attacks formed part

[25] *Ibid.*, pp. 36-40.
[26] T. 24 Oct. 2000, pp. 97-104.
[27] T. 19 Feb. 2002 (Closed Session), pp. 85-87, 102, 121-122; T. 26 Feb. 2002, pp. 53-56.

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of a larger initiative, beginning in 1990, which systematically targeted the Tutsi population as suspect accomplices of the RPF. The Chamber notes that attacks by the RPF against civilians during this time have also been documented.

119. In the evidence recounted in this judgement, a number of incidents are described that illustrate the personal impact of these events on witnesses who testified. Witness AEU, a Tutsi woman who went to great lengths to secure a Hutu identity card in 1979, found that in 1994 this Hutu identity card saved her life. Four times she was taken to the edge of a hole that had been dug for bodies, some killed and thrown in the hole while others were buried alive. When she was about to be killed and thrown in this hole herself, her would-be killers looked at her identity card, which stated that she was a Hutu, and let her live. François-Xavier Nsanzuwera, the former Prosecutor of Kigali, described in his testimony the telephone call he received on 7 April 1994 from Charles Shamukiga, a Tutsi businessman. While they were on the telephone, the witness heard soldiers breaking into his house and Shamukiga said "This is it, I am going to die". Witness AAJ described hiding in the ceiling of a milk plant on 7 April 1994 when the *Interahamwe* and soldiers threw grenades and shot into the room. He heard them come in to finish off with knives those who were not already dead, cutting open a pregnant woman and removing her baby before killing her. Witness FY described the death of Daniel Kabaka on 7 April 1994. While the rest of the family fled, his 12 year-old daughter Chine remained with him, saying that she wanted to die with her father. He was shot three times in the chest and died immediately. She was also shot twice and died a week later.

Factual Findings

120. The Chamber finds that within the context of hostilities between the RPF and the Rwandan Government, which began when the RPF attacked Rwanda on 1 October 1990, the Tutsi population within the country was systematically targeted, as suspected RPF accomplices. This target included a number of violent attacks that resulted in the killing of Tutsi civilians. The RPF also engaged in attacks on civilians during this period.

121. Following the shooting of the plane and the death of President Habyarimana on 6 April 1994, widespread and systematic killing of Tutsi civilians, a genocide, in Rwanda commenced.

2. Kangura

2.1 Ownership and Control of Kangura

122. The first issue of *Kangura* was published in May 1990, the last in 1995. In 1994, there was a hiatus in publication. *Kangura* No. 59 appeared in March 1994, and *Kangura* No. 60, the next issue, was published in September 1994 outside Rwanda.[28] According to Prosecution Expert Witness Marcel Kabanda, who has researched the print media in Rwanda from 1990 to 1995, *Kangura* was very well known in the country as well as internationally. It was probably the most well known newspaper from Rwanda during

[28] Exhibit P115.

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that period of time. The newspaper had two versions, one primarily in Kinyarwanda and one primarily in French, referred to as the international version.[29] Prosecution Witness AHA, a Hutu journalist who worked for *Kangura*, said generally between 1,500 and 3,000 copies were printed, depending on sales and the period.[30]

123. Hassan Ngeze was Editor-in-Chief of *Kangura* from its first to its last issue. He testified that he was the owner of *Kangura* and acknowledged that the overall direction of the paper and all authority connected with the newspaper remained in his hands throughout all of its publications.[31] In every issue of *Kangura* from 1991 onwards, in compliance with a requirement imposed on all newspapers by the Kigali Prosecutor, a notice was printed on the bottom of the cover page, stating, "The content of the articles binds the author and the publisher".[32] Witness AHA testified that Ngeze was the founder of *Kangura* and noted that he was the owner and accountant, as well as the Editor-in-Chief.[33]

124. Prosecution Witness Adrien Rangira, a Tutsi journalist, testified to the circumstances that led to the creation of *Kangura*. He said Ngeze worked as a journalist for *Kanguka,* which he described as an independent newspaper, started in 1987. According to Rangira, Ngeze left *Kanguka* in May 1990 after an incident involving an attack on the house of Valens Kajeguhakwa, the owner of the paper. Kajeguhakwa said the attack had been directed against him by the government, and an article was published in *Kanguka* describing this version of the incident. Ngeze subsequently said he had done his own investigation and that there had been no attack. The story had been fabricated. He wanted the newspaper to publish the denial of two colonels whom Kajeguhakwa had named as having directed the attack and been present when it took place. When *Kanguka* refused to publish his article, which stated that the attack as reported had not taken place, Ngeze started *Kangura*, publishing this article in its first issue. Rangira explained that the words "*Kangura*" and "*Kanguka*" are similar in meaning, that "*Kanguka*" means "wake up," while "*Kangura*" means "wake others up". The witness suggested that Ngeze chose *Kangura* as a name for his paper to confuse readers. He said another factor in Ngeze's decision to leave *Kanguka* was his concern that *Kanguka* was starting to sabotage the government, and pressure from the authorities to leave the newspaper for this reason. Kajeguhakwa, a Tutsi and close friend of President Habyarimana, left the country in July 1990 and joined the RPF.[34]

125. Ngeze affirmed in his testimony that the report of the attack on Kajeguhakwa prompted him to leave *Kanguka* and start *Kangura*. He described Kajeguhakwa as someone he had known his whole life and respected as his father. Kajeguhakwa had helped him establish his kiosk in Gisenyi. Ngeze said that in 1989, Kajeguhakwa tried to recruit him for the RPF. At that time, Ngeze was involved in both *Kanguka* and Gisenyi Information. Ngeze said he had money and was funding *Kanguka* when Kajeguhakwa put

[29] T. 14 May 2002, p. 127.
[30] T. 2 Nov. 2000, pp. 100-101.
[31] T. 1 Apr. 2003, p. 67.
[32] T. 3 Apr. 2003, p. 10; T. 16 May 2002, p. 138.
[33] T. 2 Nov. 2000, pp. 100-101.
[34] T. 14 Mar. 2001, p. 79.

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his sons in as shareholders of *Kanguka*, effectively buying or taking over the newspaper. One day, Vincent Rwabukwisi (Ravi), the editor of *Kanguka*, told Ngeze that they had money from Kajeguhakwa and were going to publish RPF news, and he therefore did not know how they were going to continue to work together. In May 1990, Kajeguhakwa called Rwabukwisi and told him that they were going to forge a story to say that Kajeguhakwa had been attacked by the Rwandan Armed Forces, in order to provoke the international community to attack the government of President Habyarimana and pave the way for the RPF to come and liberate Kajeguhakwa and the Tutsi inside Rwanda. Ngeze undertook his own investigation and found that the attack did not take place. Ngeze testified that even Habyarimana believed that Kajeguhakwa had been attacked. Kajeguhakwa was a close friend of the President. Habyarimana sent Colonel Anatole Nsengiyumva, chief of army intelligence, to tell Ngeze to leave Kajeguhakwa alone.[35] Ngeze cited Kajeguhakwa's book as corroborating his evidence. In his book, Kajeguhakwa referred to the incident, saying that Rwabukwisi refused to publish the text written by Ngeze and characterizing that text as "deceitful".[36]

126. Rangira, who after leaving *Kanguka* started his own newspaper, *Le Flambeaux*, testified that considering the resources he had at that time, Ngeze would have required financial support for *Kangura*. He learned from friends of Ngeze that funding for *Kangura* was secretly provided by the intelligence agency of the government. Among these friends, Rangira mentioned Robert Kajuga, President of the *Interahamwe*, who told him that a meeting had been organized to find ways of supporting *Kangura*. Noting that he often met and spent much time with Ngeze at the printers waiting for their respective newspapers, Rangira said that on one such occasion Ngeze told him that he did receive funds for the newspaper but did not specify from where. Ngeze said that he was trying to run a business and that even if the *Inkotanyi* gave him money he would work with them, which to the witness made it clear that he was receiving funds from sources other than or in addition to sales and advertising.

127. Prosecution Witness AHA, who worked for *Kangura* and during this time lived in Ngeze's house in Kigali for several years, said he thought *Kangura* might have been funded by sales, as sales were substantial. He mentioned a bank Ngeze had written to about funding and said Ngeze had told him of a friend who had given him two million Rwandan francs to begin with, which came from the head of the intelligence agency.[37] Witness AHA also mentioned a Pastor Musave, the general manager of a bank, who supported *Kangura* financially in his personal capacity.[38] On cross-examination, Witness AHA testified that he did not see any receipts and that the chief of intelligence never came to the house or office of Ngeze.[39] Witness AGX, a Tutsi man from Gisenyi, testified that he used to read Kangura. He knew the newspaper belonged to Ngeze but it was said that there were military officers who supported it as members of the MRND and

[35] T. 26 Mar. 2003, p. 95.
[36] Exhibit 3D99, p. 244; T.2 Apr. 2003, pp. 7-9.
[37] T. 2 Nov. 2000, pp. 98, 100.
[38] *Ibid*., p. 124.
[39] T. 2 Nov. 2000, pp. 100-101; T. 6 Nov. 2000, p. 131.

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members of the government. He thought there was some truth in this as he used to see Ngeze roaming around with military officers such as Anatole Nsengiyumva.[40]

128. Prosecution Witness François Xavier Nsanzuwera, the former Kigali Prosecutor, testified that Joseph Nzirorera, the Minister for Public Works and Trade and the Executive Secretary of the MRND, was one of those who financed *Kangura*. Nsanzuwera met Ngeze in Nzirorera's office, coming out of a meeting as he was going in. Nsanzuwera recalled that when Ngeze was arrested in 1990, he had investigated these matters and learned that behind Ngeze and his newspaper there were politicians close to the MRND such as Nzirorera and other senior officers. In a confidential note he wrote subsequently to the President, Nsanzuwera mentioned Nzirorera and others he thought were involved in funding Kangura. Nzirorera summoned him and was furious. Later, when an arrest warrant was issued for Ngeze, his arrest was blocked. Ngeze had secured a note from a higher level official saying that all matters had been sorted out and judicial action should not proceed.[41]

129. Rangira testified that in the beginning, Ngeze himself wrote the articles for *Kangura*, and then advertised for journalists. In addition to the editorial staff, political personalities such as Casimir Bizimungu wrote for *Kangura* as did "MRND cadres".[42] Witness AHA testified that he responded to the job advertisement in *Kangura* for journalists and joined the paper on a permanent basis in 1992.[43] When asked about other journalists who wrote for *Kangura*, Witness AHA mentioned Noël Hitimana as well as Ngeze. Witness AHA had worked with Hitimana at Radio Rwanda, and he said that subsequently Hitimana went from *Kangura* to RTLM. He also mentioned two students, Singisa Ntabinda and Papiyas Robert, as well as himself. Others such as political party leaders wrote articles, but as most of them did not sign their articles it would be difficult to identify them.[44] There were editorial team meetings for each issue of *Kangura* but Witness AHA said that Ngeze was "the boss" and always had "the last word". In these meetings, which lasted one or two hours, no one ever disagreed over the articles to be published. When Ngeze was in prison, while Witness AHA was technically still at Radio Rwanda, Noël Hitimana served as Editor-in-Chief of *Kangura*. According to Witness AHA, Hitimana and Ngeze never disagreed or argued.[45]

130. Witness AHA testified that Nkubito, the Prosecutor General who was in the opposition, often created problems for Ngeze, detaining him and suspending publication of *Kangura*. He recalled that this happened in July 1990. *Kangura* No. 1 and *Kangura* No. 2 were published in June 1990 and then there was a hiatus while Ngeze was in detention until November of that year. He noted that between April and July 1994, there was no publication of *Kangura* and said that Ngeze got involved with a militia and was moving around. He recalled seeing him in military uniform and said he was no longer a journalist at that time. Witness GO said it was true that Ngeze was arrested several times

[40] T. 11 June 2001, pp. 26-28.
[41] T. 23 Apr. 2001, pp. 153-156.
[42] T. 12 Mar. 2001, p. 115.
[43] T. 6 Nov. 2000, p. 151.
[44] T. 2 Nov. 2000, pp. 47-49.
[45] T. 6 Nov. 2000, pp. 147-159, 166.

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by the government, but he did not know why and did not remember when and for how long.[46] Hassan Ngeze testified that he was detained repeatedly for the publication of *Kangura*, calling jail his second home. He said he would finish publishing and the day the newspaper went on sale he would pack his clothing because he knew the next day he would be in jail.[47]

Credibility of Witnesses

131. The Chamber has found the testimony of François Xavier Nsanzuwera to be credible, as set forth in paragraph 545. The credibility of Hassan Ngeze's testimony is discussed in section 7.6.

132. **Witness AHA** was questioned in cross-examination as to the circumstances of his departure in 1992 from Radio Rwanda, where he had been employed before he worked for *Kangura*.[48] It was put to him that he was fired from Radio Rwanda because of a drinking problem and that he had a history of alcoholism, which he denied. While initially working for *Kangura,* he was still on the payroll of Radio Rwanda as a full-time employee. He suggested that his dismissal was related to his connection with Ngeze.[49] The witness was asked how he knew that Ngeze had secured funding for *Kangura* from the head of the intelligence agency. He maintained his testimony that Ngeze had told him so, and when asked how the question of funding had come up, he explained that there was lots of equipment around and everyone was wondering where it had come from. Witness AHA stated that he was paid for his work at *Kangura* and explained that he lived in Ngeze's house for several years without paying rent through Ngeze's generosity. The witness was questioned on the conditions of his current detention in Kigali, where he has been awaiting trial. It was put to him that if he testified in a manner that did not please the Rwandan government, he might be subject to reprisal, and he was asked whether he felt free to tell the truth. He replied that he had sworn to tell the truth.[50] He said he had not been promised anything or given any money in exchange for his testimony.[51] Witness AHA was questioned in detail on pre-trial investigation interviews with the Office of the Prosecutor. He was not certain of the order of several meetings but said this was not due to a problem with his memory, as suggested by Counsel, but rather that he just did not register the precise dates of the meetings. The Chamber considers that the evidence of Witness AHA was not effectively challenged by cross-examination and finds his testimony to be credible.

133. **Adrien Rangira,** a Rwandan Member of Parliament at the time of his testimony, was cross-examined on the composition of the current government, both the Constitutional Committee and the Parliament. He answered reluctantly, and when asked whether the majority of each of these bodies was comprised of Tutsi, he said he did not know. He had testified in direct examination that he did not consider ethnicity

[46]T. 6 June 2001, pp. 105-106, 116-117.
[47] T. 26 Mar. 2003, pp. 79-81.
[48] T. 6 Nov. 2000, p. 99.
[49] *Ibid.*, pp. 99-101.
[50] *Ibid.,* pp. 68-69.
[51] *Ibid.*, pp. 87-89, 129.

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important. On cross-examination, Rangira was confronted with his written statement, in which he had described Casmir Bizimungu as a "Hutu extremist" and summarized the philosophy of Hutu extremism as holding that power must be held by the Hutu as they are in the majority, and the Tutsi, as they are in the minority, must be prevented from taking power. In the ensuing questioning on democracy and the concept of majority rule, Rangira maintained that the voice of the majority should not be based on ethnic rules. When asked whether the RPF represented Tutsi ideology, or was linked to the Tutsi ethnic group, he stated that he was not a member of the RPF and could not speak for that party but that he had not heard the RPF describe itself this way. He refused to answer the question of whether the current government of Rwanda was dominated by Tutsi, saying he did not know the ethnicities of all individuals.[52] When asked whether he supported the armed invasion of the RPF, he was evasive, eventually answering that he supported political avenues to power rather than military ones. He said he supported some ideas of the RPF but did not support war. He was cross-examined on his trip to the RPF-controlled zone to produce a video, which included interviews with Paul Kagame and other RPF leaders. When questioned about his access to these leaders and the RPF escort he had, Rangira said all journalists, including Hassan Ngeze, went to the RPF zone. The Chamber notes that much of the cross-examination of this witness was politically oriented. Although Rangira resisted efforts by Counsel to get him to discuss the ethnic composition of the current government, the Chamber does not consider that the witness's political views distort his ability to testify truthfully to factual matters. For this reason, the Chamber finds the testimony of Adrien Rangira to be credible.

Discussion of Evidence

134. That Hassan Ngeze was the founder and editor of *Kangura* is not contested. The Chamber notes that Ngeze accepted responsibility for and defended the publication in his testimony. Others such as Witness AHA, who worked for *Kangura*, confirmed that Ngeze was "the boss" and had the last word in editorial meetings. Although some evidence was adduced by the Prosecution suggesting that financial support for *Kangura* came from the government, and more specifically from the chief of intelligence services, the evidence is insufficient to sustain such a finding by the Chamber. Rangira's evidence in this regard is not very specific and it is hearsay, as is the evidence of Witness AHA, who acknowledged in cross-examination that he had no independent basis of confirmation for what Ngeze had told him about funding for *Kangura*. Nsanzuwera was vague in his testimony on this matter. He did not say how he learned that Nzirorera was involved in *Kangura*, and he did not specify the nature of his involvement. Nsanzuwera's evidence suggests that Ngeze had enough influence with high-level government officials to thwart an effort to arrest him. This does not establish that the government or individuals in the government had a formal role in *Kangura*.

Factual Findings

135. Hassan Ngeze was the owner, founder and editor of *Kangura.* He controlled the publication and was responsible for its contents.

[52] T. 14 Mar. 2001, p. 166.

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2.2 Content of Kangura

136. On the cover of each issue of *Kangura*, beginning in February 1991 with the publication of *Kangura* No. 10, appeared the title "*Ijwi Rigamije Gukangura No Kurengera Rubanda Nyamwinshi*", or "The Voice that Awakens and Defends the Majority People". Translation of the term "*rubanda nyamwinshi*" from Kinyarwanda into French and English was discussed extensively in the course of the proceedings. The word "*rubanda*" means "people" and the word "*nyamwinshi*" means "majority".[53] Expert Witness Marcel Kabanda noted that *Kangura* had itself translated "*rubanda nyamwinshi*" into French as "*peuple majoritaire*". He also quoted a passage from *Kangura* No. 33, explicitly defining the majority, or the masses, as the Hutu.[54] According to Witness AHA, Ngeze described *Kangura* as "a voice of the Hutu".[55]

137. The Chamber has examined a number of articles and excerpts from *Kangura*, focusing primarily on those which addressed issues of ethnicity and on those which called on readers to take action.

2.2.1 The Ten Commandments

138. *The Ten Commandments* were published in *Kangura* No. 6, in December 1990, within an article entitled *Appeal to the Conscience of the Hutu*. This article had five sections beginning with an introduction. The introduction stated that the attack on Rwanda in October 1990 by "Tutsi extremists", who relied on the support of "infiltrators within the country and the complicity of Tutsi within the country", as well as the Ugandan army, had been undertaken with the hope "to conquer the country and establish a regime based on their feudal monarchy". Noting that the attack had been successfully repelled, the introduction warned *Kangura* readers and ended with the following rallying cry:

> …The enemy is still there, among us, and is biding his time to try again, at a more propitious moment, to decimate us.
>
> Therefore, Hutu, wherever you may be, wake up! Be firm and vigilant. Take all necessary measures to deter the enemy from launching a fresh attack.

139. The second part of the article, entitled "The Tutsi ambition", described the Tutsi as "bloodthirsty", and referred to their continuing ideology of Tutsi domination over the Hutu, and to the "permanent dream of the Tutsi" to restore Tutsi minority rule. The ambition of the Tutsi was described as being regional, in conquest of power in Central Africa. In Rwanda, the Tutsi were said to be dividing the Hutu to breach their cohesion through the exacerbation of regional and ethnic divisions, and fanning of antagonism among them. The article referred to a plan of 1962, in which the Tutsi were to resort to two weapons they thought effective against the Hutu: "money and the Tutsi woman". The

[53] T. 14 May 2002, pp. 3-10.
[54] *Ibid*., Exhibit P118, Kangura No. 9, No. 33.
[55] T. 2 Nov. 2000, p. 48.

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third part of the article, on implementation of this plan, stated that the Tutsi used money dishonestly to take over Hutu companies or to gain control over State authorities. The fourth part of the article, entitled "The Tutsi woman", stated that Tutsi women were sold or married to Hutu intellectuals or highly placed Hutu officials, where they could serve as spies in influential Hutu circles and arrange government appointments, issue special import licenses, and pass secrets to the enemy. The fifth part of the article, in which *The Ten Commandments* were included, exhorted the Hutu to wake up "now or never" and become aware of a new Hutu ideology, with roots in and in defence of the 1959 revolution. Reference was made to the historical servitude of the Hutu, and readers were urged to "be prepared to defend themselves against this scourge". The Hutu were urged to "cease feeling pity for the Tutsi!" The article then set forth *The Ten Commandments*:

1. Every Hutu male should know that Tutsi women, wherever they may be, are working in the pay of their Tutsi ethnic group. Consequently, shall be deemed a traitor:
   – Any Hutu male who marries a Tutsi woman;
   – Any Hutu male who keeps a Tutsi concubine;
   – Any Hutu male who makes a Tutsi woman his secretary or protégée.

2. Every Hutu male must know that our Hutu daughters are more dignified and conscientious in their role of woman, wife and mother. Are they not pretty, good secretaries and more honest!

3. Hutu woman, be vigilant and bring your husbands, brothers and sons back to their senses.

4. Every Hutu male must know that all Tutsis are dishonest in their business dealings. They are only seeking ethnic supremacy.

   "RIZABARA UWARIRAYE"[56]

   Shall be consequently considered a traitor, any Hutu male:

   - who enters into a business partnership with Tutsis;
   - who invests his money or State money in a Tutsi company;
   - who lends to, or borrows from, a Tutsi;
   - who grants business favours to Tutsis [granting of import licenses, bank loans, building plots, public tenders…]

5. Strategic positions in the political, administrative, economic, military and security domain should, to a large extent, be entrusted to Hutus.

6. In the Education sector, (pupils, students, teachers) must be in the majority Hutu.

7. The Rwandan Armed Forces should be exclusively Hutu. That is the lesson we learned from the October 1990 war. No soldier must marry a Tutsi woman.

[56] Translated as: "Only he who spent a sleepless night can talk about the night."

PURL: https://www.legal-tools.org/doc/45b8b6/

8. Hutus must cease having any pity for the Tutsi.

9. – The Hutu male, wherever he may be, should be united, in solidarity and be concerned about the fate of their Hutu brothers.

   - The Hutus at home and abroad must constantly seek friends and allies for the Hutu Cause, beginning with their Bantu brothers.
   - They must constantly counteract Tutsi propaganda.
   - The Hutu must be firm and vigilant towards their common Tutsi enemy.

10. The 1959 social revolution, the 1961 referendum and the Hutu ideology must be taught to Hutus at all levels. Every Hutu must propagate the present ideology widely. Any Hutu who persecutes his brother for having read, disseminated and taught this ideology shall be deemed a traitor.

140. Witness GO, a Hutu who worked at the Ministry of Information monitoring the private press, testified that he had read *The Ten Commandments* and that they had been broadcast on RTLM. He described the goal of mentioning them as "to ensure that the population understood that all the Hutus must become united", that "they should have a single fighting goal that they should aim for", and "that they should have no link or relationship between Hutus and Tutsis". He said it was for this reason that some men started killing their Tutsi wives, or children of a mixed marriage killed their own Tutsi parents.[57]

141. Prosecution Witness ABE, a Tutsi, testified that he regularly read *Kangura*, from the time of its first publication in 1990. He particularly recalled reading *The Ten Commandments* in *Kangura* No. 6. He said, "for me that was incitement to hatred. The Hutus were being asked to rise up against the Tutsis". He said the commandments that really touched him were the ones prohibiting marriage to, intimate relations with, and employment of Tutsi women, which he considered to be very serious because the Hutu and Tutsi shared the same culture and lived within the same territory. With regard to the commandment that the Hutu should not take pity on the Tutsi, he understood this to mean, "In other words they can even kill them", adding, "And that is actually what happened, and I think this was meant to prepare the killings".[58] Prosecution Witness AHA, a journalist who worked for *Kangura*, testified that the effect of the publication of *The Ten Commandments* was that the Hutu started perceiving the Tutsi as enemies instead of seeing them as citizens, and the Tutsi also starting seeing the Hutu as a threat.[59]

142. Prosecution Witness MK, a Tutsi, testified on cross-examination that she occasionally read *Kangura*, which her colleagues would bring into the office where she worked. She said it was in *Kangura* that she had read *The Ten Commandments*, which she described as "how the Hutus were supposed to get rid of the Tutsis".[60] Adrian Rangira, a Tutsi journalist, testified that through the publication of *The Ten Commandments*, the mission of *Kangura* became clearer and that, in his view, giving

[57] T. 11 Apr. 2001, p. 48.
[58] T. 26 Feb. 2001, pp. 72-79.
[59] T. 6 Nov. 2000, p. 45.
[60] T. 8 Mar. 2001, p. 62.

PURL: https://www.legal-tools.org/doc/45b8b6/

commandments or instruction to Hutus as to how they should treat Tutsis constituted incitement to violence.[61] Prosecution Witness Philippe Dahinden, a Swiss journalist, testified that a few weeks before his arrival in Rwanda in January 1991, the Ten Commandments, an appeal calling for ethnic hatred, had appeared in *Kangura* and "sent a shock wave among the people" and the whole of Kigali was talking about it.[62] According to Prosecution Expert Witness Marcel Kabanda, *The Ten Commandments* were seen as a "scandal" by both Rwandans and foreigners, as "the expression of racism, as a parallel of the racism against Jews in Europe".[63]

143. In his defence, Hassan Ngeze testified that while *Kangura* did publish *The Ten Commandments*, it was not the only or even the first publication to do so. He cited *Masuwera* as having published *The Ten Commandments* before he did, and other newspapers in Rwanda including *Intera* and *Umurava*. These were publications supportive of the RPF that Ngeze said used *The Ten Commandments* to defame Hutus. In a letter dated 2 February 1995, which he wrote to the organization Africa Rights regarding its criticism of *Kangura,* Ngeze observed that Africa Rights had itself published *The Ten Commandments*. Witness AHA confirmed in cross-examination that *The Ten Commandments* appeared in many publications other than and prior to *Kangura*, specifically mentioning *Kanguka*.[64] Prosecution Expert Witnesses Mathias Ruzindana and Marcel Kabanda also confirmed in their testimony that *The Ten Commandments* were published in other newspapers in Rwanda. Kabanda additionally confirmed that *Kangura* was not the first to publish these commandments.[65]

144. Ngeze also invoked his publication of the Tutsi *19 Commandments* in *Kangura* No. 4, 1990, in an effort to show the even-handedness of *Kangura*. *The 19 Commandments* began with the statement, "We are few if we consider how many we are but following the 1960 polls, we gain power by the way of having recourse to the Bantu naivety." The text urged readers to "use all means" to submit the Hutu under "our" authority, and it referred to Rwabugili, the Tutsi king, as "our national hero". The *19 Commandments* were addressed to Tutsi, implicitly, and called on them to get into positions of authority, to get to know others in authority, befriend them, and then replace them. The fifth commandment said, for example, "As we can replace all elected Bahutu in their charges, let us make them friends of ours. Give them some gifts especially some beer. This will enable us to achieve this task very easily." There was much in the document about the importance of undermining Hutu confidence, with phrases such as "use the educated Bahutu credulity", "show them they are incapable", "ridicule the civil servants under our authority as ignorant Bahutu people", and "do whatever you can to keep the Bahutu civil servants in an inferiority complex". Commandment 13 told readers to "Keep in mind that the Hutu are created to be servant to other", and Commandment 16 issued a special call to the "youth Tutsi", stating that if "we fail to achieve our goal, we will use violence".

[61] T. 12 Mar. 2001, pp. 119-120.
[62] T. 31 Oct. 2000, p. 180.
[63] T. 14 May 2002, pp. 120-121.
[64] T. 7 Nov. 2000, p. 5.
[65] T. 28 Mar. 2001, pp. 77-79; T. 14 May 2002, p. 9.

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145. On cross-examination, Witness AHA testified that the *19 Commandments* had been in circulation for thirty years, since 1962. He said that although the document that had been reprinted in *Kangura* was not accurate *verbatim* to the original text, which he said had softer language, nevertheless the meaning was the same.[66] On re-direct examination, the Prosecution highlighted Commandment 19, which ended, "We have a lot of money obtained by fraud and 65 million francs should be given the Catholic Monitors", and suggested to the witness that the Tutsi would not write such a statement, i.e. let it be known that they had participated in fraud, thereby challenging the authenticity of the text. Witness AHA maintained that the text was different from the original "but the ideology of dividing, of hatred, of incitement of an ethnic group against the other is the same in both cases". He later added to the comparison he was asked to make of the two sets of commandments, suggesting that it was most important to look at what the reader would retain. He recalled that people had been killed and concluded, "But in the two cases one can say that one is less and the other stronger but in any case there are people who are dying and there is no death which is lesser than another".[67]

146. Prosecution Expert Witness Alison Des Forges suggested in her testimony that the *19 Commandments* was likely a part of anti-Tutsi propaganda, rather than an authentic document produced by the student authors to whom it was attributed. She observed in support of this contention that as the text was an appeal to the Tutsi to unify across national boundaries, coming from Tutsi in the Congo, it was peculiar that the text would make reference to Rwabugili as a national hero. As King of Rwanda, he had severely punished that part of the Congo where the students were said to be.[68]

147. The preface to the *19 Commandments*, when it was published in *Kangura*, read: "The old plan of those who re-conquered power is today in fashion, the plan for the colonization of the Tutsi in the Kivu region and the Central African region."[69] Ngeze explained that this preface was a comment from *Kangura* and he stated that the reason he published the *19 Commandments* was to show what the plan was, a plan he considered to be active and in progress. Ngeze maintained that the *19 Commandments* were known as the plan for colonization by the Tutsi, and that he published them in the same way as he would any other news, in his own words, "so that the political leaders, as well as the religious leaders be made aware of what - all that was happening in the country and so that they can denounce it knowing what it was all about". On cross-examination, when asked why at a time of ethnic instability he would publish this document from 1962, he said he did so "to let the public be aware of what is happening at that time".

148. In his testimony, Ngeze condemned both *The Ten Commandments* and the *19 Commandments*. He asserted that publishing a news item was not the same as authoring it, and he disavowed both texts saying, "We published them so that the public and the officials can see them, get to know them, and denounce them -- or, condemn them." On

[66] T. 7 Nov. 2000, pp. 30-31.
[67] *Ibid*., pp. 109-118.
[68] T. 28 May 2002, pp. 139-140.
[69] *Ibid.*, p. 132.

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cross-examination, a letter written by Ngeze in response to an article written by Marie France Cross, a journalist from Belgium, criticizing the publication of *The Ten Commandments,* was put to him. In the letter, published in *Kangura* Issue No. 9 in January 1991 with the title "The art of lying of Marie France Cross and complicity of the *Inkotanyi,*" Ngeze wrote:

> As a true journalist, how can you dare to declare that you felt an extremely oppressive atmosphere through the information? It is true that *Kangura* published an article on the call made to the conscience of the Bahutu, an article that you consider racist. However, your informant could have given another article that appeared in *Kangura* No. 4, an article that you consider undoubtedly more racist than that of the ten commandments of the Hutu… Among the 19 commandments which are included in this article, 13th states, for instance, that a Hutu is created to serve… Now, an extremist Hutu, who has no relationship with the views of the current government, wrote these commandments in reaction to the 19 commandments that he had just read. This should not serve as a basis for you to attack the government of Rwanda…. Besides, *Kangura* is not for Rwandans -- it is not a bible, it is not a gospel for Rwandans. They know how to judge for themselves. We end this letter by praying you dear Madam to urgently look for *Kangura* No. 4 and to objectively criticize the said plan for the colonisation of the Tutsi.[70]

149. In cross-examination, a passage from *Kangura* No. 6 was put to Ngeze, in which he wrote, "If the Hutus are divided, the dies will be cast for them", suggesting this as evidence of support for *The Ten Commandments* in its call for unity of the Hutus. Ngeze denied that this was support for the commandments. Asked whether he did not think it was necessary to tell readers that the Tutsi who were their wives and mothers were not working with the enemy, Ngeze responded that it was not Tutsi men who married Hutu women but the other way around. During cross-examination, he noted that *Kangura* No. 65 condemned *The Ten Commandments* in his published letter to Africa Rights, referred to above. In the letter, dated 2 February 1995, Ngeze stated, "So, be it the Bahutu or the Batutsi Commandments, we don't believe partly or wholly in the one or the other. We simply published them so that the authorities and citizens would… condemn those writings."[71]

150. Also put to Ngeze in cross-examination was a passage from *Kangura* No. 40, published in February 1993, which stated:

> Tutsis have laws governing them. I would also say that Hutus have the Ten Commandments which he should follow or respect in order to defend himself, that is the Hutu, when he is accused of being a murderer.

151. The article in which this passage appeared was signed by *Kangura*. Ngeze said that it represented the view of one of his journalists and that when this issue was published he was in jail.[72] He was also asked about an article published in *Kangura* No.

[70] T. 2 Apr. 2003, pp. 46-47.
[71] Exhibit P107/44, p. 2; Letter published in Kangura No. 66, p. 4.
[72] T. 2 Apr. 2003, p. 71.

PURL: https://www.legal-tools.org/doc/45b8b6/

36 by a *Kangura* reader, saying: "Let those who have Tutsi women divorce them while it's still time, otherwise you will face an adverse fate because of these women whom you are keeping." In response to the question of whether Ngeze was in this context allowing the newspaper to be used to ask Hutu men to divorce Tutsi women, he replied that the article was written by a reader, and he observed that it did not cite *The Ten Commandments*.[73]

Discussion of Evidence

152. *The Ten Commandments*, as well as *Appeal to the Conscience of the Hutu*, the article within which it was published in *Kangura,* are situated in the context of a purely ethnic conflict between the Hutu and the Tutsi. The Tutsi were portrayed as the enemy, as evil, dishonest and ambitious. The text conveys contempt and hatred for the Tutsi ethnic group, and for Tutsi women in particular as enemy agents. The Chamber notes that the article targeted all Tutsi, and the Tutsi as a group, without any political or other distinction. *The Ten Commandments* and the *Appeal to the Conscience of the Hutu* was a blanket condemnation of the Tutsi, on the basis of their ethnicity.

153. The *Appeal to the Conscience of the Hutu,* the article in *Kangura* within which *The Ten Commandments* were couched, warned readers that the enemy was "still there, among us" and waiting "to decimate us". The Chamber notes that the article was entitled an "appeal" and that it called on the Hutu to "wake up", to "cease feeling pity for the Tutsi", and to "take all necessary measures to deter the enemy from launching a fresh attack". They are written in the imperative. The text was an unequivocal call to the Hutu to take action against the Tutsi, including the implementation of *The Ten Commandments*.

154. Ngeze himself condemned *The Ten Commandments* in his testimony and distanced himself from them, arguing that he had published them so that they could be publicly denounced, that he had himself denounced them in his published letters to Marie France Cross and to Africa Rights, and that any support for them published elsewhere in *Kangura* was written by others – one of his journalists in one case and a *Kangura* reader in another case. In this manner, Ngeze acknowledged that the content of *The Ten Commandments* cannot be defended.

155. The statement made by Ngeze in *Kangura* No. 6, "If the Hutus are divided, the dies will be cast for them", does not constitute evidence of his support for *The Ten Commandments*. It is a general political statement that does not make reference, explicitly or implicitly, to *The Ten Commandments* or the particular ideas set forth in *The Ten Commandments*. The Chamber has also reviewed the two letters written by Ngeze and cited by him in his defence. In his letter to Marie France Cross, although he did refer to the author of *The Ten Commandments* as "an extremist Hutu", Ngeze did not condemn *The Ten Commandments*. He referred to the *Kangura* article in which they were published as one that "you consider racist", "you" referring to Marie France Cross. He did not say he agreed with her assessment. Hardly suggesting agreement, in fact, Ngeze

[73] *Ibid*., pp. 79-81.

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asked her in his letter, "how can you dare to declare that you felt an extremely oppressive atmosphere through the information?" The main purpose of his letter was to draw her attention to the *19 Commandments*, as a text she would "consider undoubtedly more racist than that of the ten commandments of the Hutu". In contrast, in his letter to Africa Rights, published in *Kangura* No. 65, Ngeze did distance himself from *The Ten Commandments*, together with the *19 Commandments*. In this letter he said, "we don't believe partly or wholly in the one or the other", and maintained that the two texts were published so that they could be condemned by authorities and the public. When published, however, *The Ten Commandments* were not contextualized by any critical distance. The letter to Africa Rights was written in February 1995, following the events of 1994 and the establishment of the ICTR, which might explain the changed views of the Accused. For this reason, the letter does not constitute evidence that Ngeze spoke out against or in any way distanced himself from *The Ten Commandments* prior to or during 1994.

156. Despite his general acceptance of editorial responsibility for the contents of *Kangura*, Ngeze contended that the passages of *Kangura* cited by the Prosecution as supporting *The Ten Commandments* were written by others. The Chamber notes that the editorial in *Kangura* No. 40, published in February 1993, was signed by *Kangura*. It explicitly called on the Hutu to follow the Ten Commandments. Whether or not this editorial was written by Ngeze, there is no question that it was published by him, within the scope of his authority as editor of *Kangura*, and that it represented the views of *Kangura*. Similarly, the letter published in *Kangura* No. 36 calling on men to divorce their Tutsi wives, although signed by someone other than Ngeze, was published by him. The letter did not mention *The Ten Commandments* explicitly, as he noted, but it echoed the content of *The Ten Commandments*. For this reason, it can reasonably be held to support *The Ten Commandments*, in substance if not in form.

157. Like *The Ten Commandments*, the *19 Commandments* published in *Kangura* conveyed ethnic contempt and hatred, in this case for the Hutu people, and constituted a call to the Tutsi to "use all means" to effect the subordination of Hutu people and the reconquest of power lost as a result of the 1959 revolution. The preface added to this text in *Kangura* reflected the view of the editor that although the *19 Commandments* were written in the early 1960s, in the 1990s they were still operative as a blueprint for mobilization of Tutsis against Hutus, fuelled by ethnic hatred. Ngeze confirmed in his testimony that this was his view and that *Kangura* published the *19 Commandments* to alert the public to the danger of this mobilization. However, the Chamber notes that unlike the *Appeal to the Conscience of the Hutu*, which was presented by *Kangura* as a call on the Hutu to respond, there is no suggestion that the publication of the *19 Commandments* by *Kangura* was intended as, or could be mistaken as, a call to its readers to follow the Tutsi commandments. Rather it was published to expose for *Kangura* readers the evil nature of the Tutsi and their intention to take power and subjugate the Hutu, a message consistent with that of *The Ten Commandments*. With regard to the suggestion that the *19 Commandments* were a fabrication intended to manipulate Hutu fear of Tutsi oppression, although the Prosecution introduced some

PURL: https://www.legal-tools.org/doc/45b8b6/

evidence suggesting that the *19 Commandments* was not an authentic text as represented in *Kangura*, there is insufficient evidence to make such a finding.

158. Several witnesses testified to the impact of the publication of *The Ten Commandments* in *Kangura*. These witnesses perceived a link between *The Ten Commandments* and the perpetration of violence against Tutsi. Adrian Rangira characterized this link as "incitement to violence". Witness ABE characterized it as "incitement to hatred" and added that it served in effect as a license to kill and "was meant to prepare the killings". Witness MK characterized *The Ten Commandments* as "how the Hutus were supposed to get rid of the Tutsis", and Witness GO suggested it was for this reason men started killing their Tutsi wives, or children their Tutsi parents. Having studied the text of *The Ten Commandments* and the *Appeal to the Conscience of the Hutu*, the Chamber considers the views of these witnesses to be well-founded and a reasonable illustration that an anti-Tutsi message of violence was effectively conveyed and acted upon.

159. The Chamber accepts the evidence that *The Ten Commandments* were published elsewhere and prior to publication in *Kangura* but notes that this evidence refers only to *The Ten Commandments* and not to the entire text of the *Appeal to the Conscience of the Hutu*, within which *The Ten Commandments* appeared in *Kangura*. The Chamber also notes that it is the text of the *Appeal to the Conscience of the Hutu* that called on the readers of *Kangura* to "wake up", to "cease feeling pity for the Tutsi", and to "take all necessary measures to deter the enemy from launching a fresh attack". It is clear that the "enemy" was the Tutsi.

2.2.2 Cover of Kangura No. 26

160. Several witnesses referred to the cover of *Kangura* No. 26, published in November 1991. In a black box on the left of the cover, the word "SPECIAL" is followed by the headline text: "THE BATUTSI, GOD'S RACE!"[74] Under this title is an image of the former President of Rwanda, Grégoire Kayibanda, in the center and occupying most of the cover. Under the picture of President Kayibanda is the text: "How about re-launching the 1959 Bahutu revolution so that we can conquer the *Inyenzi-Ntutsi*."[75] Just left of the picture of Kayibanda is a black box with vertical text reading "WHAT WEAPONS SHALL WE USE TO CONQUER THE

[74]"BATUTSI, BWOKO BW'IMANA!," Exhibit P7, Translation P7 bis.
[75] "Uwagarura Revolisiyo y'1959 y'abahutu kugirango dutsinde inyenzi-Ntutsi."

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INYENZI ONCE AND FOR ALL??",[76] and just left of this black box is a drawing of a machete. To the right of the picture of Kayibanda is the vertical text "We have found out why Nzirorera has a problem with the Tutsi",[77] and to the right of this text are three smaller pictures lined vertically on the right margin, two of armed soldiers and one of a vehicle with a cannon on it.

161. In interpreting the words and pictures of this cover, Prosecution Expert Witness Mathias Ruzindana noted that no written answer was given to the question of how to defeat the *Inyenzi*-Tutsi. In his view, the answer is in the drawing. The answer is the machete, and the reference to the 1959 revolution is a reference to the war by Hutu against Tutsi, in which machetes were used to kill the Tutsi.[78] Prosecution Witness AHA, a Hutu journalist who worked for *Kangura*, similarly explained the meaning of the cover as a call for a second revolution along the lines of the 1959 revolution when the people took up arms to crush the enemy once and for all. He noted that the pictures on the right of the cover indicated other types of weapons apart from the machete and explained this as meaning that the army had to work with the people to chase the enemy.[79]

162. Hassan Ngeze testified that the cover of *Kangura* No. 26 represented democracy. He said the *Kangura* team was trying to think about how to put an end to the war, and at that time the RPF was just killing people. The army was also killing people and they thought maybe what they really needed to end the war was democracy. They wanted to see if the Haybarimana regime could end the war without fighting. Ngeze noted that in the three elections held between 1973 and 1990, there was only one party – the MRND – and only one candidate, Habyarimana. President Kayibanda was the only one who had been properly elected through a truly democratic process. The *Kangura* cover showed the RPF and President Habyarimana on the right side with weapons, the machete on the left side, and President Kayibanda in the center, representing elections. By the fact that it had Kayibanda in the center, the cover conveyed that democracy was the only solution.[80] Ngeze said the headline "Tutsis, the Race of God" referred to an article in the issue. The article was quoted in part in the proceedings. It said that ethnic groups could co-exist in harmony if the Tutsi did not behave in such an arrogant manner. It described the Tutsi as people who like to boast and tell lies, as people who are never satisfied and want to have everything, as people involved in intrigues, and as hypocrites, thieves and killers. When asked whether he was not aware that this would cause ethnic strife in Rwanda, Ngeze replied that it did not. He was asked to read from another article in the same issue of *Kangura*, which stated that Tutsi never liked sharing power with the Hutu in peace because of their boasting nature and malicious conduct, and suggested they had decided to infiltrate the country and undermine the republic to reestablish their monarchy. When asked why he would say all this in 1991, the Accused replied, "This is a reality". When asked again more specifically why he was telling people about the vicious nature of the Tutsi, he replied that in his country a Tutsi was often described as a snake because he was

[76] "NI IZIHE NTWARO TUZAKORESHA KUGIRA NGO DUTSINDE INYENZI BURUNDU??"
[77] "Twamenye icyo NZIROREA apfa n'Abatutsi,"
[78] T. 21 Mar. 2002, pp. 126-128.
[79] T. 2 Nov. 2000, pp. 148-151.
[80] T. 1 Apr. 2003, pp. 40-42; T. 2 Apr. 2003, p. 86.

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malicious. The Hutu was referred to as a gorilla, and the Twa was said to be dirty. Ngeze said that was their society, maybe it was bad but that was how it was.[81]

163. When cross-examined by Counsel for Ngeze, Ferdinand Nahimana responded that the *Kangura* cover was not a call for peace but on the contrary showed that the country was facing difficulties as a result of the presence of different kinds of weapons. He suggested that the text in the black box, asking which weapons could be used to overcome the *Inyenzi* once and for all, might raise the question of calling for peace at the end of the war. Counsel described the soldiers in the pictures on the right margin as an RAF solder and an RPF soldier and suggested that together with the reference to the 1959 revolution, the question being posed was how to preserve the republic, and that the cover represented a call to that end. Nahimana agreed with this interpretation, suggesting that the question posed by the cover was how to stop the war, by coming back to the 1959 revolution or by consolidating democracy. He suggested that the picture of President Kayibanda in the center represented democracy.[82]

164. Counsel for Ngeze established in his cross-examination of Prosecution Expert Witnesses Chrétien and Des Forges that in their respective publications, which reproduced and discussed the cover of *Kangura* No. 26, the reproduction of the cover was incomplete and inaccurate in that it did not include the photographs of soldiers and arms on the right margin, and it was incorrectly dated as December 1993 rather than November 1991, the date of its publication. In his testimony, Chrétien volunteered the fact that the reproduction of the cover was incorrectly dated in his book and said this mistake had been rectified in his report and would be rectified in the republication of the book. He asserted that the mistaken date had not played a fundamental role in the interpretation of the contents and affirmed the view expressed in his report that the cover made an association between *Inyenzi* and Tutsi, and answered the question of what arms would be used with the drawing of the machete just next to the question. On cross-examination, he further stated that the correct date made this association even stronger as it showed not only continuity but the early nature of this propaganda, and he reaffirmed his view that the drawing of the machete represented the answer to the question next to it, what weapons were to be used against the *Inyenzi*.[83]

165. With regard to the omitted photographs of soldiers, Chrétien noted that these photographs were separated from the image of Kayibanda by a text that referred to an article in the newspaper entitled: "We have found out why Nzirorera has a problem with the Tutsi." He said that this title had nothing to do with what was to the left or right of it and that the photographs to the right were not part of what he wanted to illustrate.[84] In cross-examination, Chrétien acknowledged that in his book the text "The nostalgia of the 1959 revolution: the times of machete" had been added to the reproduction and did not actually appear on the cover page of *Kangura* No. 26. This was his title, used to explain

[81] T. 2 Apr. 2003, pp. 97-98.
[82] T. 25 Sept. 2002, pp. 12-13.
[83] T. 1 July 2002, pp. 204-210; T. 4 July 2002, pp. 78-84.
[84] T. 1 July 2002, pp. 204-210; T. 4 July 2002, p. 72.

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the drawing in his own words, which he noted was in bold while quotations in his book were indicated by italic type and inverted commas.[85]

166. When asked whether Kayibanda represented democracy, Chrétien replied that in Rwandan public opinion he represented the Rwandan revolution, which had an undeniable dimension of democratic change but also included other aspects. He further stated that he did not think the image of Kayibanda on the *Kangura* cover represented the elections of 1961, pointing out that it was not a polling station depicted but rather a machete. For this reason he dismissed Ngeze's interpretation as meaningless and again pointed out that the modern weapons depicted on the right margin were separated by a space and reference to another article.[86]

167. Des Forges indicated in her testimony that she had taken the incomplete cover from Chrétien's publication and credited his publication as her source, although Counsel noted that the reproduction itself in her book bore no footnote or other such citation. While acknowledging the omission of the photographs, Des Forges maintained that the meaning was not thereby distorted. She suggested that the presence of the soldiers on the cover reinforced rather than detracted from the interpretation given, as it underlined the wartime context and associated the comments on Tutsi being defeated with that context.[87] Des Forges said that President Kayibanda was a symbol of democracy for some in Rwanda, but not others. For some people he became rather a symbol of incitation to violence for the killing of Tutsi in the 1960s, and she said this part of his legacy, rather than any other part, would have remained in their minds.[88]

168. Prosecution Witness François-Xavier Nsanzuwera, the former Prosecutor of Kigali, testified that the cover of *Kangura* No. 26 was distributed free of charge in February 1992 and played an important role in the Bugesera killings that took place in March 1992. He said that if there had not been wide distribution of this cover, the numbers killed would not have been significant.[89] Des Forges and Chrétien also testified that this *Kangura* cover was circulated in Bugesera in the weeks or months shortly before the Bugesera massacres. Chrétien referred to the cover as a "tract".[90] In his testimony, Ngeze challenged this assertion stating that the Prosecution had not brought any "so-called tract" into evidence. He said that *Kangura* was not a tract, it was a newspaper for sale that could be purchased by anyone.[91]

Discussion of Evidence

169. The Chamber notes the errors made by Jean-Pierre Chrétien in his book, which were replicated by Alison Des Forges in her book. Having reviewed the full cover of *Kangura* No. 26, however, the Chamber considers that the photographs of soldiers and

[85] T. 4 July 2002, pp. 63-70.
[86] *Ibid.*, pp. 70, 75-78.
[87] T. 28 May 2002, pp. 110-123.
[88] *Ibid.*, pp. 123-126.
[89] T. 23 Apr. 2001, pp. 139, 147-148.
[90] T. 4 July 2002, p. 84.
[91] T. 27 Mar. 2003, pp. 96-97.

PURL: https://www.legal-tools.org/doc/45b8b6/

modern weaponry on the right margin are conceptually separate from the image of President Kayibanda, the depiction of the machete, and the question "What weapons shall we use to conquer the *Inyenzi* once and for all??," by the vertical text "We have found out why Nzirorera has a problem with the Tutsi". This vertical text is a promotional reference to an article inside the publication. It does not bear any relation to the other text or imagery on the cover, nor is one claimed by the Defence.

170. The Chamber notes that the text under the picture of President Kayibanda, "How about re-launching the 1959 Bahutu revolution so that we can conquer the *Inyenzi-Ntutsi*", has also been omitted from the reproduction of the cover by the expert witnesses in their respective books, presumably representing a judgement by Chrétien that nor is this text part of the conceptual collage represented by the other words and images on the cover. The Chamber considers this text relevant and integral to the interpretation of the cover. The idea of "re-launching the 1959 Bahutu revolution" with the express purpose to "conquer the *Inyenzi*-Tutsi" ties directly into the vertical text above, the question "What weapons shall we use to conquer the *Inyenzi* once and for all?"

171. Ngeze maintained that the cover posed a choice between arms, on the one hand, and democracy, on the other, as the answer to the question "What weapons shall we use to conquer the *Inyenzi* once and for all?" That the answer was intended to be the machete is clear both textually and visually. The 1959 revolution is not a reference to the 1961 election. Moreover, the reference to conquering the *Inyenzi*-Tutsi is not a reference to voting. Conquering is a process more immediately associated with force than with democracy. If the intention were to refer to democracy and elections, it would have been expressed in a very different manner. The Chamber considers the image of President Kayibanda and the reference to the 1959 revolution to be a reference to the transfer of power from Tutsi to Hutu that took place in 1959. The reference to "re-launching" the revolution, the stated goal in the vertical text "to conquer the *Inyenzi* once and for all", and the question of what "weapons" to use, are all clearly references to the use of violence. Visually, the cover design supports this interpretation as both the question about weapons and the drawing of the machete are next to each other, both to the left of the image of Kayibanda. This physical positioning of the question "What weapons shall we use to conquer the *Inyenzi* once and for all?" is inconsistent with the interpretation suggested by the Defence involving a framework of military options on the right and left and the democratic solution in the middle. The interpretive framework of the Defence is also inconsistent with the apparent lack of connection between the military photos on the right and the other images on the cover, as discussed above. The message of the cover of *Kangura* No. 26 was that the machete should be used to conquer the *Inyenzi* once and for all.

172. The Chamber notes that the term *Inyenzi* was specifically equated to ethnicity in the cover title "How about re-launching the 1959 Bahutu revolution so that we can conquer the *Inyenzi-Ntutsi*". On the same cover also appeared the headline "Tutsis, the Race of God", and the title, "We have found out why Nzirorera has a problem with the Tutsi". As illustrated by these titles, *Kangura* effectively equated the Tutsi with the enemy throughout its publications. The text of the article "Tutsis, the Race of God",

PURL: https://www.legal-tools.org/doc/45b8b6/

highlighted on the cover of *Kangura* No. 26, described the Tutsi as hypocrites, thieves and killers. Another article in the same issue described the nature of the Tutsi as marked by malice and dishonesty. Moreover, the Chamber notes that in commenting on the text in his testimony Ngeze did not in any way distance himself from these ethnic generalizations. In contrast, he maintained that they were accurate and that he published these articles because they represented reality. The Chamber considers that in this context the reference to *Inyenzi* on the cover of *Kangura* No. 26 would have been clearly understood by readers as a reference to the Tutsi, and the Tutsi were portrayed in this issue of *Kangura* as inherently evil.

173. The testimony regarding circulation of the cover of *Kangura* No. 26 in Bugesera in 1992 was not effectively contested by the Defence. However, little evidence has been presented with regard to the distribution of this cover and any link it may have had to the killings that took place in Bugesera in 1992.

2.2.3 Editorials and Articles

174. The Chamber has reviewed a number of other editorials and articles published in *Kangura* in its consideration of the editorial policy of the publication.

The Triangle that is Disturbing Peace

175. Published in *Kangura* No. 4, in November 1990, this article stated that Rwanda was first inhabited by Twa, who were hunters and gatherers. Hutu then came to Rwanda, and they were farmers. Tutsi were the last group to come, and they were livestock breeders, who consumed milk. The article then said the following about the Tutsi:

> People in this ethnic group, which came to Rwanda last, say that the Tutsi ethnic group - the Tutsis live like cats. When you have milk, they will come to you. The only thing that makes them better than cats - or, rather, their difference with cats is that once they've already drunk the milk, they'll try to find ways and means of taking the milk away from you or even to harm you or they will also try to rule you. So Hutus got close to the Tutsis, welcomed them as visitors, but instead of sleeping like visitors would do, the bad - his bad - or their bad habits got the better of them. So the Tutsis ended up by taking over power, and the Hutus were made subservient and were used as servants, and Hutus were made subservient by the people the Hutus had welcomed to their land.[92]

176. The Chamber notes the generalizations about the Hutu and Tutsi made in this passage. The Hutu were portrayed as generous and naïve, while the Tutsi were portrayed as devious and aggressive.

Hutus Should Help Kangura Defend the Hutus

177. This editorial, published in *Kangura* No. 19, in July 1991, included the following statement:

[92] Exhibit P115, *Kangura* No. 4, p. 15; T. 2 Apr. 2003, pp. 31-32.

PURL: https://www.legal-tools.org/doc/45b8b6/

> …We all know that with the exception of a few Hutus such as Kanyarengwe and Bizimungu, the refugees who have become *Inyenzi-Inkotanyi* are all descendants of the Tutsis. We dare say that when they came, shooting at us at the borders, they made no ethnic distinction. Nevertheless, they were willing to distinguish between Hutus and Tutsi within the country. There were indeed numerous Hutus in the country and army who didn't succumb on the battlefield, some of them fell into the trap of worldly women. So far, many have fallen into the trap. They include figures of authority, who consort with them even now, although they know perfectly well, and it has been proven, that when it comes to spying, the *Inkotanyi* enlist the help of their worldly sisters and daughters. You find them everywhere in all the institutions, in the Ministries, in the private sector, in legal and illegal drinking-places, as well as in our own houses, which many of them have managed to infiltrate through marriage. Having husbands does not prevent them from being accomplices and extracting secrets from people by using their worldly wiles. Hutus do not abuse others they are taken advantage of. The Hutus must understand that they are not all waging the war as the Tutsis, because everyone can see that, the Tutsis want to regain the power that was taken from them by the Hutus. If you look closely, you will see that 85% of the Tutsis who live in the country are somehow linked with the refugees from which come the *Inyenzi-Inkotanyi* who attack us… [93]

178. The Chamber notes again from this passage the divide between the wily, devious Tutsi and the innocent, vulnerable Hutu, and the association of the Tutsi population with the *Inyenzi-Inkotanyi*. It also strongly suggests that Tutsi women intentionally use their sexuality to lure Hutu men into liaisons in order to promote the ethnic dominance of the Tutsi over the Hutu. The reference to Tutsi women trapping Hutu men through marriage echoes the warnings set forth in *The Ten Commandments* about the danger of Tutsi women.

A Cockroach Cannot Give Birth To A Butterfly

179. This article, published in February 1993 in *Kangura* No. 40, talked about the Tutsi as "cockroach", the literal meaning of the word *Inyenzi*:

> Experts on human genetics inform us that the demographic weakness of Tutsis is due to the fact that they marry among themselves. People from the same family marry and procreate among themselves. If they are not careful, this search for purity may lead to their disappearance from the earth. If that occurs (and it will happen), they will be solely responsible for their demise and no one else. Will people say that Hutus decimated them? That is the message they spread everywhere, that they are few because the Hutus had decimated them with machetes…We have stated that a cockroach cannot give birth to a butterfly. This is true. A cockroach gives birth to another cockroach. If there is someone contesting this fact, I am not the one. The history of Rwanda clearly depicts that a MaTutsi has remained the same; he has never changed. The history of our country has been characterized by their malice and wickedness. When Tutsis were still on the throne, they governed with two weapons: women and cows.

[93] Exhibit P115/19A.

PURL: https://www.legal-tools.org/doc/45b8b6/

> These two weapons ruled Hutus over 400 years. When the Tutsis were overthrown by the people's revolution in 1959, they have never slept again on their laurels. They have been doing their utmost to restore the monarchy by using their women *Bizungerezi* and money which seems to have replaced cows. In the past, cows were symbols of richness.
>
> We are not mistaken in stating that a cockroach can only give birth to another cockroach. Who can establish the difference between the *Inyenzi* who attacked in October 1990 and those of the 1960s? They are all the same. The former are the offspring of the latter. Their wickedness is the same. All these attacks sought to restore the monarchy and the feudality [*Ubuhake*]. The abominable crimes committed by the present *Inyenzi* against the citizens are a reminder of those committed by their peers: killing, looting, raping young girls and women.… The fact that in our language, they are referred to as snakes is self-explanatory. This implies much. A Tutsi is someone who has a sweet tongue but whose wickedness is indescribable. A Tutsi is someone whose desire for revenge is insatiable; someone who is unpredictable, someone who laughs whereas he is suffering. In our language, a Tutsi is called cockroach because he takes advantage of the night to achieve his objectives. The word *Inyenzi* is a reminder of the redoubtable snake whose venom is extremely poisonous. The fact that the Tutsi chose such names is very significant to those who want to understand.[94]

180. In this article, the Tutsi were described as biologically distinct from the Hutu, and inherently marked by malice and wickedness. With reference to snakes, the Tutsi were portrayed as mean and vengeful, and their weapons were again defined, as in *The Ten Commandments*, to be women and money.

Ruhengeri And Byumba Attacks, The Tutsis Took "Champagne"

181. In another article also published in *Kangura* No. 40, signed by Ngeze, the war was defined entirely in ethnic terms:

> When Ruhengeri was attacked, all the Tutsis and, particularly, those who were in Kigali became famous for their arrogance and took "champagne" on grounds that their kinsmen had returned to the fold. They no longer conceal the fact that this war pits the Hutus against the Tutsis.…[95]

182. An article published in *Kangura* No. 46 in July 1993, again promulgated the theme of Tutsi malice and wickedness preying on Hutu innocence and vulnerability, using the weapons of women and money:

> We are trying to discover the wickedness and malice of Tutsis. When you cure the eye of a Tutsi, you will be the first to be glanced at with envy. We have started with this proverb so as to warn and awaken those who are not aware of the sadism, wickedness, malice and ingratitude of Tutsis. Tutsis think they are more intelligent than whosoever is but after analysis, it is discovered that their pretentiousness conceals their wickedness.

[94] Exhibit P117B, 27170; Exhibit P130, K0201423.
[95] T. 2 Apr. 2003, pp. 110-111.

PURL: https://www.legal-tools.org/doc/45b8b6/

> It is with malice or interest that a Tutsi establishes a relation with the majority people. When a Tutsi is in need of something from a Hutu, he is ready to sacrifice by using all the means including money, his sisters or his wife. … Immediately a Tutsi gets what he wants from a Hutu, he turns his back and hurts him as if they have never had anything in common. Anyone who had any relation with a Tutsi can recall this fact and can support what I am saying… In *Kiswahili*, it is stated that a small snake is a snake. So, MDR cannot convince us that the *Inyenzi* who have transformed into *Inkotanyi* are our brothers whereas they have come to exterminate us with machetes. The Hutu has been patient and now it is time for the situation to be clarified… We know that they attacked us so as to exterminate 4.5 million Hutus particularly the literate ones as was the case in Burundi but God foiled their plans. This wickedness was obvious during the attack of 8 February 1993. They caught a Hutu, cut his genitals and requested the wife to carry them and at times asked her to eat them. Their newspapers in Kigali claimed that these crimes were committed by the national army that *Inyenzi* could not carry out such atrocities. They turn to ignore the fact that escapees shall never forget the scenes of horror which they witnessed….[96]

183. As well as referencing the snake as a symbol of the Tutsi, this article harked back to the Rwandan lore of the Kalinga royal drum. According to Alison Des Forges, in the history of Rwanda it was often the custom for defeated rulers to be castrated and for their genital organs to then be attached to the royal drum.[97] Hassan Ngeze referred to this practice several times in his testimony, in an effort to place the ideas of *Kangura* in the context of Rwandan history, to which he attributed them.[98] He recited a poem by Singaymbaga, written in 1870, which included the following verses:

> The monarchy has an origin God raised.
> The creator has chosen you and has conferred power on you.
> The Hutus becoming Tutsis by climbing from their social class which has no innate right
> Were decimated by the lucky elected few
> And Kalinga, was deprived of his genital organs or spoils.[99]

184. The Chamber notes the historical antecedents to the ethnic characterizations made in *Kangura*. Tutsi domination and Hutu subordination predated the publication of *Kangura*. Nevertheless, the way in which this history was presented in *Kangura* often suggests an intent to inflame ethnic resentment, calling on history as an aide in this effort.

If One Asks Generals Why They're Favoring Tutsis

185. This article, published in *Kangura* No. 25 in November 1991, presented and questioned ongoing preferential treatment of the Tutsi in Rwanda:

> Fifty per cent of staff in government, of the staff core in government is made up of Tutsi. In private companies and bodies, they are more than 70 percent;

[96] P117B, 27169.
[97] T. 22 May 2002, pp. 83-84.
[98] T. 24 Mar. 2003, p. 78.
[99] T. 25 Mar. 2003, p. 20.

PURL: https://www.legal-tools.org/doc/45b8b6/

> whereas in the international organizations and in embassies, they are more than 90 percent and in important positions, whereas they do not make up more than 10 per cent -- whereas in the general population, these people are fewer than 10 percent.[100]

186. The Prosecution has not adduced evidence to challenge the accuracy of the statements made in this article. Unlike the article from *Kangura* No. 46 cited above, in which the discussion of ethnic identity is marked by accusations of Tutsi sadism, wickedness, and malice, and with the prospect of Hutu extermination by machete, this passage from *Kangura* No. 25 represents a straightforward analysis of the distribution of privilege within the society. The Chamber notes that a number of articles in Kangura, including articles such as this one, cited by the Prosecution, can be characterized as political analysis. Similarly, an article highlighted by the Defence in *Kangura* No. 11, published in March 1991, set forth a vision of disparate ethnic identity with peaceful co-existence:

> *Kangura* did not conceal its desire to see the birth of a new democratic movement, massively supported by the Bahutu of Rwanda without, however, excluding members of the other ethnic groups. This great force can constitute an overwhelming majority which, with all its goodwill and nebulous intentions, can transform Rwanda into a democratic country, proud of its present and sure of its future. *Kangura* is not denying the Tutsis or the Twa the right to form their own democratic political parties or associations… *Kangura* does not want to listen to those who are saying that when you refer to someone as a Hutu, or a Tutsi, or a Twa, you are sowing seeds of discord in the country. With our democratic Hutu movement which we wish to be born, we hope to hear a new slogan: Long live Diversity!!! [101]

Discussion of Evidence

187. The Chamber notes that the editorials and articles reviewed above consistently portrayed the Tutsi as wicked and ambitious, using women and money against the vulnerable Hutu. These themes echo the message of the *The Ten Commandments*. In some articles, such as the article in *Kangura* No. 11, "If One Asks Generals Why They're Favoring Tutsis", information about Tutsi privilege and Hutu disadvantage was conveyed in a manner that appears as though intended to raise consciousness regarding ethnic discrimination against the Hutu. In many other articles, however, the intent, as evidenced by the vitriolic language, was to convey a message of ethnic hatred, and to arouse public hostility towards the Tutsi population. In articles such as "A Cockroach Cannot Give Birth to a Butterfly" the Tutsi were portrayed as innately evil.

188. The presentation of Tutsi women as *femmes fatales* focused particular attention on Tutsi women and the danger they represented to the Hutu. This danger was explicitly associated with sexuality. By defining the Tutsi woman as an enemy in this way,

[100] T. 2 Apr. 2003, p. 101.
[101] Kangura No. 11, p. 2; P-115, KA02 1260, translated from French.

PURL: https://www.legal-tools.org/doc/45b8b6/

Kangura articulated a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them.

2.2.4 Publication of Lists

189. *Kangura* published several lists of people whom it named as *Inkotanyi. Kangura* No. 7, published in December 1990, included an article with several lists under the heading "The *Inkotanyi* and Their Accomplices to be Tried". The article reported a Radio Rwanda announcement that the trial of the *Inkotanyi* and their accomplices was scheduled to begin on 28 October 1990. The first list of names was introduced as the first group of accused. Charges against them were subsequently listed, followed by a smaller list of three people, referred to as comprising the other group, and charges against them were also listed. Following these lists, the article reported that the accused had requested the adjournment of their trial on the ground that they did not have sufficient time to prepare their defence, and the hearing had been postponed to 9 January 1991. After this text, twelve names were listed – some full names, some surnames only, and some first names only - with the following introduction:

> We take this opportunity to ask our readers who have any information on the individuals whose names appear below, who are suspected of being *Inkotanyi* accomplices, to send it to us in order for us to publish the investigations into their cases in *Kangura*. Please also include all the evidence.[102]

190. *Kangura* was listed with its addresses in Gisenyi and Kigali, following the names, as the place to which information should be sent.

191. Witness EB recalled seeing this list in *Kangura* No. 7, which he said qualified the persons on it as Tutsi accomplices. Readers were asked to find these people and inform the *Kangura* editorial team of their location. He mentioned Rwemalika, Semucyo, Tabaro, Dufatanye and Bwanafeza as people he knew who were on the list, subsequently identifying them on the list of twelve names. He specified that Modeste, listed only by first name as No. 5 on the list, was Modeste Tabaro. Of all those he named, Witness EB said only one, Ferdinand Dufatanye, was still alive.[103]

192. When asked about the inclusion of Modeste Tabaro's name on this list, Hassan Ngeze initially replied that Modeste Tabaro was not in his *Kangura*. He said it was someone named Modeste mentioned in *Kangura* and suggested there would be many people with that name. He then read the text at the beginning of the document referring to the court proceedings, and he said he did not know which Modeste was being referred to because this was a court document from a state newspaper, a list of persons appearing in court. Asked more specifically by the Chamber about the list at the end of the article, which included the name of Modeste, Ngeze said that when he was in jail, these people were arrested and put on trial. They told him they were innocent, but the government did not believe that they were innocent. Because he knew them and was with them in jail, Ngeze was asking people through *Kangura* if they could provide evidence because

[102] Exhibit P47.
[103] T. 15 May 2001, pp. 111-112, 127-129, 140-141, 146-148.

PURL: https://www.legal-tools.org/doc/45b8b6/

innocent people were dying in jail. Asked again by the Chamber about this last list of twelve in the article, as opposed to the other two lists of people named as being in court proceedings, Ngeze again stated that these people on the last list were in prison. He said they were among those who appeared in court but said they were innocent, and he read the passage of the article that talked of a postponement in the trial date. Asked how he had picked those names among the thousands he said were in detention, Ngeze replied that these people were in his cell with him. When the Chamber suggested to Ngeze that he would then know whether the Modeste on the list was Modeste Tabaro, he said it was Modeste Tabaro. He said the Prosecutor should have asked him whether it was Modeste Tabaro and waited for his response.[104]

193. The Chamber notes that this third list on which Modeste Tabaro's name appeared is significantly different from the other two lists of persons accused and facing charges, who are the subject of the article. The other two lists, referred to as the first group and the other group, include the charges against the individuals named and in most cases other information about the individuals, such as their age and where they were born. The third list makes no mention of charges against the individuals named, and it includes no information other than the name – in some cases not even the full name but only the first name or the surname. The manner in which the information in the first two lists is set out comports with the format of an official document, whereas the third list of twelve names bears no resemblance to an official document. From this the Chamber concludes that the third list, which has its own introduction cited above, was not related to the first two lists of individuals facing charges or the article about those individuals and their proceedings in court.

194. Ngeze's explanation that he published the list of twelve names in an effort to solicit exculpatory evidence on behalf of his cellmates to help them establish their innocence, is at odds with the text of the introduction to this list in *Kangura*. Readers were asked to send information, and include all the evidence, on the individuals named "who are suspected of being *Inkotanyi* accomplices". *Kangura* would then publish the results of the investigations. Nothing was said about their innocence, or their claim to innocence, and the text rather suggests that evidence of their guilt was being sought by *Kangura*. Witness EB testified that all but one of the people on the list were subsequently killed. He did not know the circumstances, however, and was not able to establish a connection between the naming of the twelve individuals in Kangura and their death.

195. Witness EB also testified that his father's name was mentioned in *Kangura* No. 9, published in January 1991, in an article entitled "*Kangura* Continues to Denounce People to the Intelligence Service". The article said that Ngeze had looked for him and was unable to find him, and that they should ask Valens Kajeguhakwa where he was. The witness said at that time his father was hiding in the Congo, having fled in fear. Witness EB explained that following October 1990 his father was being sought on account of his Tutsi ethnicity. It was being said that since he was a powerful trader, he was sending

[104] T. 7 Apr. 2003, pp. 31-36.

PURL: https://www.legal-tools.org/doc/45b8b6/

money to the *Inkotanyi*.[105] On cross-examination, Witness EB acknowledged that he had not read the entire article in *Kangura*, only the passage he was referred to by the Prosecution. On request he read the following subsequent passage in the same article:

> We have no concerns against those persons. However, we include them in this letter that we are sending to you so that if the concerns about these persons become - can be proved true, that you will be able to inform the President of the Republic - the prosecutor. And if any one person is innocent, inform us of this and tell us whether the concerns about this person are not - are unfounded. And if we are doing this, it is only because we seek to help you because tomorrow, or the day after tomorrow, Gisenyi shall be attacked by firearms which can be found at Kajeguhakwa's house, and which we have lost all trace of.[106]

196. Witness EB was asked after reading this passage whether he still considered the list he had talked of in *Kangura* No. 7 to be a death warrant. He affirmed this belief, saying once their names were published, these persons died, and only one survived. It was put to him that these twelve people had fled Rwanda and were RPF accomplices. He denied this, stating that none of them ever fled, but that they remained in Rwanda where they perished.[107]

197. The Chamber notes that the later passage in this article, highlighted by the Defence, clearly stated that the persons named might be innocent. In this case, the concerns would be unfounded, according to the article. In effect, though, this also constitutes an indication that there was a concern about the persons named, and the Chamber recalls that the article was entitled "*Kangura* Continues to Denounce People to the Intelligence Service". Witness EB's father was named and it was said that Ngeze was looking for him but unable to find him, in reference to a possible attack with firearms from Kajeguhakwa's house. The Chamber considers that in naming Witness EB's father and others in this manner, despite the acknowledgement that they might be innocent, *Kangura* highlighted these individuals as suspects about whom there were concerns.

198. A list of 123 names was published in *Kangura* No. 40, in February 1993. The list was preceded by an article, signed by *Kangura* and entitled "Twagiramungu Makes Massive Recruitment of the Youth into the *Inkotanyi* Ranks", which said the following about the list:

> … Following is a list of the children – with their parents' names – who have joined the *Inkotanyi* at the instigation of TWAGIRAMUNGU. People of Cyangugu, here are the people who are going to use the gun to exterminate you. Heed the advice given to you by the Prime Minister, to organize your self defence, as the security services seem to have lost their nerve…[108]

199. Prosecution Witness AHA testified that this list came from Rwandan authorities, more specifically the *bourgemestres*. The municipal councilors reported to the

[105] T. 15 May 2001, pp. 111-112, 127-129, 140-141, 146-148.
[106] T. 17 May 2001, pp. 15-16.
[107] *Ibid*., pp. 17-19.
[108] Exhibit P8.

PURL: https://www.legal-tools.org/doc/45b8b6/

bourgemestres, who reported to governors, who reported to the Central Intelligence Service. He affirmed that the document was an official one, which had merely been published by *Kangura*. The information was classified and for this reason ought not to have been publicized. He said that *Kangura* was the only newspaper that had published the list of names, and he acknowledged that the list may have served those who participated in the massacres. In cross-examination, Witness AHA agreed that Twagiramungu was recruiting people for RPF and was a supporter of RPF, but he noted that Twagiramungu did not have an armed wing, saying he was involved politically.[109]

200. Hassan Ngeze also testified that the list published in *Kangura* was an official one. He said it had been submitted by the *préfet* of Cyangugu. All *préfets* in Rwanda had been asked by a panel of the Minister of Interior, the Minister of Justice and the Minister of Defence to provide such lists of people who had joined the RPF. When he was asked whether he did not think that the publication of this list, identifying these persons as well as their parents who were left behind, would put them in danger, Ngeze laughed. He said other lists had also been published in *Kangura*. In a country at war, such lists were normal, he said. The RPF were recruiting people from inside the country, he recalled, citing acknowledgement that this was happening by Kajeguhakwa in his book.[110]

201. The list of 123 names published in *Kangura* No. 40 was clearly established as an official list compiled by government officials, which Ngeze managed to obtain and publish. Prosecution Witness AHA confirmed Ngeze's testimony as to how the list was compiled. Those named on the list were accordingly official suspects. The Chamber notes, however, that the article in which the list was contained, urged readers of *Kangura,* after warning them that they were going to be exterminated, to organize self-defence. This is cited as advice from the Prime Minister, but the article further stated that "the security services seem to have lost their nerve". The implication of this language is that the list of 123 names was not for informational purposes only. Rather it was delivered with a call to action.

202. A letter signed by Kigali Préfet Tharcisse Renzaho was published in *Kangura* No. 7, reading as follows:

> Dear Sir,
>
> I wish to ask you to kindly institute public proceedings against the persons mentioned in this letter. Indeed, Mr. Prosecutor of the Republic, these persons fled the country between 29 September and 4 October 1990, and there is an indication which can lead us to believe that they participated directly or indirectly in the conspiracy against Rwanda. Their flight on the eve of the hostilities is indicative in this regard. We, therefore, believe that they should be liable to face sentences provided for, with regard to such crimes against the security of the state. It should be indicated also that before their departure most of these persons had set aside a good amount of products in their shops and storage areas, probably in order to destabilise the national market by planning the events whose

[109] T. 6 Nov. 2000, pp. 33-39; T. 7 Nov. 2000, pp. 33, 37-38.
[110] T. 3 Apr. 2003, pp. 12-14.

PURL: https://www.legal-tools.org/doc/45b8b6/

> imminent happening they had probably become aware. Furthermore, we have heard of transfer of funds abroad possibly to the addresses of the fugitives by members of their families or by their friends who have remained in the country and are running their shops.[111]

203. The Ngeze Indictment alleges in paragraph 6.11 that this letter contained the names and addresses of Tutsi merchants who were to be persecuted, as well as members of their families, as collaborators of the *Inyenzi*. Having reviewed the text of the letter, cited above, the Chamber notes that the persons named were said to have fled the country and become involved in the hostilities against Rwanda. Public proceedings against these individuals for crimes against the security of the state were called for. It was suggested that they had set aside certain goods from their shops in an effort to destabilize the market and that those who remained behind and were running their shops might possibly transfer funds abroad to them. It is not said in the letter that they should be tried because they were Tutsi merchants. Rather it was said that their departure from the country just prior to the commencement of hostilities was suspect and indicative of their involvement as *Inyenzi* collaborators.

Discussion of Evidence

204. The Chamber accepts that some of the lists reprinted in *Kangura* were official lists of suspects. The first two lists of names in *Kangura* No. 7 clearly indicated that the persons named were facing charges and awating trial. However, the third list of twelve names in *Kangura* No. 7 was a list created by *Kangura*, and Ngeze himself by his own admission. *Kangura* readers were asked to send information on the people named, and according to Witness EB almost all of the people on the list were subsequently killed. The Chamber notes that *Kangura* did not explicitly call for the commission of acts of violence against these individuals. They were said to be suspect and information about them was solicited. Those named in *Kangura* No. 9, including Witness EB's father, about whom information was sought, were even said to be possibly innocent, although the Chamber notes that the title of the article in which they were mentioned itself indicated that in fact they were being denounced. Many of these people were subsequently killed, but the evidence does not establish a link between the publication of their names in *Kangura* and their subsequent death.

205. Similarly, the letter by Tharcisse Renzaho published in Kangura No. 7 effectively named the people listed in it as suspects and called on the government to prosecute them. Although they were apparently not people named on an official list, a basis for naming them as suspects was articulated, namely that they had left the country shortly before the RPF attack. Under these circumstances, the Chamber cannot equate a call for their prosecution with a call for their persecution, as the letter is characterized in the Indictment.

[111] T. 17 May 2001, pp. 11-13.

PURL: https://www.legal-tools.org/doc/45b8b6/

206. The list of 123 names, in contrast, was published by *Kangura* with a call on its readers to take action. The message conveyed was that the government, who had named these people, was incapable of protecting the population from the threat that they represented. Readers were urged to organize self-defence, with the clear implication that they should take action against those named, to save themselves from extermination. By generating fear, providing names, and advocating this kind of pre-emptive strike, *Kangura* clearly intended to mobilize its readers against the individuals named on the list. Witness AHA, who to some extent defended the publication of the list as an official one, nevertheless acknowledged that it may have served those who participated in the massacres. No evidence was introduced as to the fate of the 123 people named on the list.

2.2.5 Cartoons

207. A number of cartoons that appeared in *Kangura* were discussed in the proceedings. Journalist Adrien Rangira testified that the cartoons primarily targeted the opposition. He mentioned a cartoon showing Agathe Uwilingiyimana, the Prime Minister, and Faustin Twagiramungu, the designated Prime Minister of the transitional government, naked in bed together, which he said was intended to defame these two Prime Ministers.[112] Witness ABE also referred to this cartoon in his testimony, identifying Twagiramungu as President of the MDR. He thought the cartoon was disgraceful and noted the position of the two and the way they were talking. He said the language used was vulgar, citing as an example the word *icyana,* meaning that the woman was a friend to the man. He described this treatment as part of a *Kangura* strategy to encourage hatred and to persecute Tutsi, as well as opposition political parties and particularly Agathe Uwilingiyimana, who was in the opposition. Witness ABE mentioned another *Kangura* cartoon in which Uwilingiyimana was caricatured naked, and he said she had been denigrated.[113] If she was criticised in this manner, he said, it was to persecute her, to frighten her and discourage her.[114] A number of cartoons depicting Agathe Uwilingiyimana naked appeared in *Kangura* – with other members of the government in *Kangura* No. 36 and on the cover page of *Kangura* No. 46, in bed with Faustin Twagiramungu in *Kangura* No. 55, *Kangura* No. 57, and *Kangura* No. 58. In one of these cartoons, she is pictured with snakes coming from her breasts.[115]

208. Asked in cross-examination whether the cartoon of Twagiramungu and Uwilingiyimana together in a bed was not making a political point that this businessman was in bed with the Prime Minister, Witness ABE noted that Twagiramungu was not a businessman but a politician and the President of a political party. Uwilingiyimana was a member of that party and its political bureau. He said the cartoon wanted it to be understood that these two were involved in shameful activities during the period where the transitional government was to be established. The cartoon was intended to persecute

[112] T. 12 Mar. 2001, pp. 131-132.
[113] Exhibit P6.
[114] T. 26 Feb. 2001, pp. 71-82, 89-90.
[115] Exhibit P115: *Kangura* No. 36 (May 1992), p. 4; *Kangura* No. 46 (July 1993), *Kangura* No. 55 (January 1994), p. 4; Kangura No. 57 (February 1994), p. 5; *Kangura* No. 58 (March 1994), p. 5.

PURL: https://www.legal-tools.org/doc/45b8b6/

and denigrate persons opposed to MRND ideology. Asked whether it was not just intended to make people laugh, Witness ABE replied that a cartoon showing things which are not true is destabilizing. This was someone married and respectable, and the cartoon accused the person of adultery. When it was put to him in cross-examination that cartoons of heads of state are used by the press around the world and are not disrespectful, Rangira noted that a journalist from another newspaper had been sentenced to four years for cartooning President Habyarimana.[116] Witness AHA, who worked for *Kangura*, testified that Ngeze did not draw the cartoons, but gave ideas for them.[117]When asked why opposition leaders were caricatured naked, Witness AHA, who himself also participated in the creation of *Kangura* cartoons, stated that the intent was to take away their respect, and to convey that they were not good leaders.[118]

209. Witness ABE stated that Ngeze and *Kangura* played a role in the assassination of Uwilingiyimana. *Kangura* was the newspaper that always criticized her as a bad person opposed to the President, and projected a certain image of her. It was put to Witness ABE and he acknowledged that President Habyarimana's widow ordered the assassination of Uwilingiyimana and that it was carried out by the Presidential Guards.[119]

210. Several cartoons published in *Kangura* depicted UNAMIR General Dallaire with women. In *Kangura* No. 53, he is shown kneeling and sucking the breast of a woman, who is saying to two other women standing in line behind her, "When I would have finished, I would also asked you to breast feed Dallaire."[120] In *Kangura* No. 56, he is shown with his arms around two women, one of whom is kissing him. The title reads: "General Dallaire and his army fell prey to the traps of the *femmes fatales*."[121] Kabanda testified that the cartoon was to show how women had corrupted the UNAMIR head, who was there to oversee peace and the implementation of the Arusha Accords. He said this and other cartoons in *Kangura* portrayed Tutsi women as spies.[122]

Discussion of Evidence

211. The Chamber notes that these cartoons targeted public figures and that cartoons are often used in a political context to mock and critique those depicted. The accuracy of the suggestion that Uwilingiyimana and Twagiramungu were engaged in an affair is not relevant, in the view of the Chamber. Metaphorically, the cartoon could be taken as a suggestion that the two politicians were engaged in joint covert activity. It could also have been intended simply to discredit them, as the evidence suggests. The nature of cartoons is such that there is not necessarily an expectation of accuracy among readers. Political cartoons are more often a form of editorial commentary. The suggestion that UNAMIR General Dallaire had a relationship with the Tutsi, expressed in the cartoons as one of sexual intimacy, echoes the articles in Kangura accusing Dallaire of favoring the

[116] T. 13 Mar. 2001, p. 67; Exhibit P19.
[117] T. 2 Nov. 2000, p. 57.
[118]T. 6 Nov. 2000, pp. 185-186.
[119] T. 27 Feb. 2001, pp. 31-39.
[120] Exhibit P115, *Kangura* No. 53, p. 6; T. 20 Jan. 2003, p. 41.
[121] Exhibit P115, *Kangura* No. 56, p. 15; T. 14 May 2002, p. 119.
[122] T.14 May 2002, pp. 115-119.

PURL: https://www.legal-tools.org/doc/45b8b6/

Tutsi. The Chamber notes the way in which the cartoons sexualize the underlying political message.

2.2.6 1994 Issues of Kangura

212. Five issues of *Kangura* were published in 1994. The following is a discussion of excerpts from these 1994 issues that have been considered by the Chamber.

***The Last Lie*[123]**

213. An article signed by Hassan Ngeze was published in *Kangura* No. 54 in January 1994, entitled *As a Result of Their Politics of Lies, the Inkotanyi Regret Having Started the War*. In this article, a number of "lies" were set forth – the first that the *Inkotanyi* were told that there were no soldiers to defend the country, which led them to believe they could take Rwanda in three days if they attacked. According to Ngeze's article, this first lie "pushed the *Inyenzi* into committing suicide, into getting themselves exterminated because of their belief that the population had been corrupted".

214. The second "lie" was that the *Inyenzi* were "really needed in the country and that if they came, there would be no problems, that we would have forgotten our loved ones who were mercilessly killed, that there were no Hutus in Rwanda". Ngeze explained in the article that having realized it was impossible to capture Rwanda by force, the *Inyenzi* started "a second war against democracy" in which Hutu "collaborators" such as Mugenzi and other named politicians were mobilized to defend "the accomplices" and to question the 1959 revolution. He mentioned the PL and the MDR, which he said, "worked hand in hand with the *Inyenzi* to take power by all possible means". After noting that the promises of the Arusha Accords, which "stripped Habyarimana of all his powers" fell through, Ngeze noted that Mugenzi and others "returned to their fellow Hutus".

215. The third "lie" was that the *Inyenzi* would seize power immediately in a *coup d'etat*. Ngeze noted that in fact they were imprisoned as soon as they arrived in Kigali and that "the people in the majority had therefore been able to thwart their coup plans". In a section entitled *The last lie*, Ngeze warned that these prisoners would be eliminated. He wrote that if the *Inyenzi* "raise their heads again, it will no longer be necessary to go and fight the enemy who remained in the bush but rather, people will start by eliminating the enemy who remained in the country", starting with these prisoners. He stated that the *Inyenzi* accomplices had a list of 1,600 opponents who would be killed during a transition period, in order to instill fear and intimidate the population into following the *Inyenzi*, a plan which he said was referred to as the "Final Plan". The article then stated:

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

[123] Exhibit P10.

PURL: https://www.legal-tools.org/doc/45b8b6/

216. Asked in cross-examination whether this was not a threat of the coming genocide, Ngeze replied that he was doing what he could to stop the war. He was trying to put information to the public and tell them, "If the war resume again, this is the consequence of the war." It was for them to decide whether they wanted to kill people, in which case they should make war, or whether they wanted to save people, in which case they should not resume the war. He said he was trying to avoid the bloodshed and save the lives of innocent people.[124]

217. The Chamber notes that much of the article, *The Last Lie*, constitutes a discussion of the situation prevailing in Rwanda at the time, including the military aggression of the RPF forces. In the context of the article, the words *Inyenzi* and *Inkotanyi* were used interchangeably and apparently referred to the RPF. However, the term "*Inyenzi* accomplices" was used in a more ambiguous manner. The threat that if the *Inyenzi* attacked again, it would no longer be necessary "to go and fight the enemy who remained in the bush" and instead people would "start eliminating the enemy who remained in the country" stated an intent not only to eliminate those "who remained in the bush", a reference to the RPF forces, but also "the enemy who remained in the country", who were not specifically defined. Subsequently the term "accomplice" was used and it was said of the *Inyenzi* that "there will be none of them left in Rwanda, not even a single accomplice". That this term was a reference to the Tutsi, rather than more specifically to those aiding the RPF, can be inferred from the sentence immediately following, which read, "All the Hutus are united". In his testimony, Ngeze did not claim that this term was a reference only to those associated with the RPF, who would be killed. Rather he said he was trying to save the lives of innocent people who would be killed if the RPF attacked.

218. In this same issue of *Kangura,* Ngeze reminded his readers that *Kangura* had been calling for Hutu unity, in a section of his editorial entitled *The Role of Kangura in the Salvation of Rwanda*. He wrote:

> Before Rwanda was attacked, *Kangura* revealed the plan. We started urging the Hutus to unite, not to listen to what the enemy was asking them to do, especially as the enemy was the cause of the war amongst them. From that time, the truth preached by *KANGURA* has played a remarkable role in the reconciliation of Hutus and the return of those who had been misled. Today, Hutus from different parties meet, discuss and share a drink. The irrefutable proof of this is the speech Justin MUGENZI delivered during the MRND meeting the day before yesterday in Nyamirambo. Who could have thought that MUGENZI will one day become an *Interahamwe*? *Kangura's* role will be studied in the history of Rwanda and that of the region we live in where a lot of Tutsis reside; Besides, *Kangura* has revealed to the coming generation who the Tutsi is.[125]

219. In 1994, *Kangura* lauded its role in having raised awareness among the Hutu of the inherent nature of the Tutsi, captured simply in the phrase "who the Tutsi is". The

[124] T. 3 Apr. 2003, p. 32.
[125] Exhibit P115/54/A, p. K0151342; T. 16 May 2002, p. 176.

PURL: https://www.legal-tools.org/doc/45b8b6/

passage clearly conveys that the Tutsi was the enemy against whom the Hutu were being urged to unite.

Who Will Survive the War of March?

220. This article was published in *Kangura* No. 55 in January 1994.[126] Signed by *Kangura*, it warned those who believed that because of the Arusha Accords the war was over, noting that the war had two facades, a military one and a political one. The article said that while the actual fighting had stopped, the political battle was "far from over", noting that the military front followed from the political front. The article was critical of the United Nations, suggesting that while the role of UNAMIR soldiers was to ensure security and the implementation of the peace agreement, in fact they were supporting the RPF:

> Presently, these soldiers behave as if they have been sent to help the RPF to take power by force. The situation needs some clarifications. If the *Inkotanyi* have decided to massacre us, the killing should be mutually done. This boil must be burst. The present situation warrants that we should be vigilant because they are difficult. The presence of U.N. forces will not prevent the *Inkotanyi* to start the war (…). These happenings are possible in Rwanda, too. When the *Inkotanyi* must have surrounded the capital of Kigali, they will appeal to those of Mulindi and their accomplices within the country, and the rest will follow. It will be necessary for the majority people and its army to defend itself … On that day, blood will be spilled. On that day, much blood must have been spilled. Romeo Dallaire and his UNAMIR, whatever they do, must take into account this reality.[127]

221. Asked who *Kangura* was referring to as the accomplices of the enemy, based on his review of *Kangura* in its entirety, Prosecution Expert Witness Kabanda replied that *Kangura* was identifying an external enemy, which was the RPF, but also an enemy within the country, being mainly the Tutsi and Hutu who were sympathetic to their ideas. This was the enemy of the *rubanda nyamwinshi*, the majority people, and an enemy of the country. Kabanda said that while the enemy outside definitely was waging war and had accomplices inside, not all the Tutsi were necessarily accomplices. He mentioned Twagiramungu and Uwingilimana, older women and younger people, and Tutsi who were not waging war as persons who were not accomplices.[128]

222. Ngeze commented on this passage, noting that from January 1994, they had evidence that the RPF had managed to infiltrate more than 3,000 soldiers inside Kigali, further to those based in the CND, referring to the 600 soldiers provided for in the Arusha Accords. He said the other soldiers were hiding and waiting for the signal for war, and he read the next paragraph of the article:

> Evidence that war is imminent in Kigali is that the *Inkotanyi* are already carrying out provocative acts. They have started carrying out sporadic attacks in

[126] Exhibit P117B, pp. 27163-64.
[127] *Ibid.,* See also T. 15 May 2002, pp. 42-43.
[128] T. 15 May 2002, pp. 43-44.

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> neighbouring *secteurs* which are close to CND, where they are encamped. During the last two attacks carried out by the *Inkotanyi* in the Remera area, more than two people were killed and there were other people who were wounded. The *Inkotanyi* are killing innocent people and, after which, they return to their new base which has been given to them by the Arusha Peace Accords. What is worrying is that these provocations and killings are being perpetrated in front of the United Nations peacekeeping forces which are with the UNAMIR contingent.[129]

223. The Chamber notes that much of this article constitutes a political discussion of the situation prevailing in Rwanda at the time, including the potential for military aggression by RPF forces with a focus on the role of the United Nations and UNAMIR forces. In the military context of a stated fear of attack, the sentence, "If the *Inkotanyi* have decided to massacre us, the killing should be mutually done", is a clear reference to the *Inkotanyi* as the forces of the RPF. The RPF was named in an almost immediately preceding sentence. Accordingly, this sentence can be understood in the context of military defence or civil defence. The subsequent reference to "accomplices", however, is not so clear. The sense of the text is that the *Inkotanyi* would undertake military aggression and appeal to accomplices within the country, which would lead to bloodshed as the majority people and its army would act to defend themselves. The "majority people" as the term was used and understood in *Kangura*, referred to the Hutu population, suggesting that the reference to the "accomplices within the country" was a reference to the Tutsi population.

224. While this text can well be taken as threatening, the last sentence cited in the first passage above, which urged the United Nations to take this reality into account, can also suggest that the intent of the article was to convey concern over UNAMIR's support for the RPF and to indicate that this support could lead to much bloodshed.[130] Amidst its expression of concern over unauthorized military presence of the RPF inside Rwanda and the perceived political bias of UNAMIR, *Kangura* conveyed to its readers through its vague reference to "accomplices" against whom the "majority people" must defend itself, that all Tutsi were RPF accomplices and that their bloodshed would be a reaction provoked by the RPF in the event of an attack.

How Will the UN Troops Perish?

225. This question was the title of a section appearing in an editorial signed by Ngeze and published in *Kangura* No. 56 in February 1994. The editorial predicted the failure of the Arusha Accords for not addressing the problem in Rwanda, which the editorial defined to be ethnic: "a problem between Hutus and Tutsis".[131] The section of the editorial read as follows:

[129] T. 1 Apr. 2003, pp. 45-48.
[130] The Chamber notes that this sentence, translated in the course of Kabanda's testimony, was omitted from the translation of this excerpt in Chrétien's report.
[131] Exhibit P115/56-A, K0151337.

PURL: https://www.legal-tools.org/doc/45b8b6/

> As happened in Somalia where about two hundred UN soldiers were killed because of their partisan stance, in Rwanda, the government will soon be formed and those who will be left out will fight against it, and so will those participating in the government but without recognizing it. The country will be teeming with opponents. The United Nations troops will continue supporting the Arusha Accords because they justify their presence here. Those who reject the Accords will take it out on those soldiers and will massacre them; they will throw grenades at them and they will die each day. A time will come when those soldiers would grow weary and leave. And it is after their departure that blood will really flow. All the Tutsis and the cowardly Hutus will be exterminated. The *Inyenzi* would once more enlist MUSEVENI's support in attacking the Hutus, who will be tortured to death. The tragedy would be as a result of the ill-conceived accords.[132]

226. This text contains a clear and explicit reference to the Tutsi and their Hutu supporters, and foretells their extermination. The editorial's conclusion stated that these were predictions of *Kangura* about what would happen, that people would be killed in the next few days. The Chamber notes the inflammatory language used. Rather than simply stating that UN soldiers would be killed, the article stated that they would be "massacred" and then elaborated further that they would be targeted by grenades and die every day. The passage warned readers that the blood would "really flow". While the content is in the form of a political discussion, the descriptive and dispassionate tenor of journalism is notably absent from the text, which consequently has a threatening tone rather than an analytical one.

One Would Say That Tutsis Do Not Bleed, That Their Blood Does Not Flow.

227. This article, signed by *Kangura* and published in *Kangura* No. 56 in February 1994, recounted a press conference attended by Ngeze at which Tito Rutaremara, an RPF representative, spoke. *Kangura* reported:

> What Kanyarengwe did to them must be true what was said of the Tutsis, that they are like children, that they are childish. During the press conference that the *Inkotanyi* recently gave at *Hôtel Diplomate*, they stated things, which were surprising to the people in attendance. Tito Rutaremara said, 'I took arms to fight against the dictatorship. I will once again take up those arms to fight against the dictatorship, the same dictatorship.' And there was applause, there was sustained applause. The Tutsis who acclaimed Rutaremara, do they remember that they themselves can have their bloodshed? The war that was threatened by Rutaremara, it is obvious that he will be the first victim instead of those related to him. That question should be put to him.[133]

228. In cross-examination, Ngeze was asked about this article and why he did not distinguish between the Tutsi and the RPF. He replied that when one went to a CDR press conference the majority present were Hutu, and when one went to a RPF press

[132] *Ibid.*, K0151336.
[133] T. 3 Apr. 2003, pp. 33-34.

PURL: https://www.legal-tools.org/doc/45b8b6/

conference the majority present were Tutsi. At the press conference he said the Tutsi applauded.[134]

229. In the excerpt cited above, Tito Rutaremara was quoted as saying that he had taken up arms to fight dictatorship. With regard to those who applauded this statement, the article questioned whether they realized that in taking up arms they were risking their own lives. In the context of armed uprising, such a question – clearly intended to deter support for an armed uprising – is a reasonable one. Military activities by the opposition would provoke a military response that could fall within the scope of national or civil defence. The reference to the Tutsi made was not a reference to the Tutsi in general, but rather to "the Tutsis who acclaimed Rutaremara", or as Ngeze stated in his testimony, the Tutsi who applauded at the meeting indicating their support for armed insurrection.

Discussion of Evidence

230. *Kangura* issues published in 1994 are not notably distinct from issues of *Kangura* published prior to 1994. In the articles reviewed, there is more focus on the military threat of the *Inkotanyi* and repeated warnings that an attack by the RPF would provoke the killing not only of *Inkotanyi* but of those inside the country, loosely called "accomplices" but clearly intended to refer to the Tutsi population. *Kangura* described these future victims as "innocent" and several times defined or referred to the accomplices as those other than the Hutu. *Kangura* also foretold the killing of UNAMIR personnel, suggesting that UNAMIR was supporting the RPF, that UNAMIR was a silent witness to RPF killings, and that UNAMIR forces would leave the country if some of them were killed.

231. The clear message conveyed by the articles published in *Kangura* in the first three months of 1994 was that an RPF attack would provoke the slaughter of innocent Tutsi within the country and that the RPF would be responsible for having triggered this killing. Ngeze maintained that this message was a prediction or a warning, but the Chamber considers that it was a threat, particularly in light of the strong, violent language used in conveying the message. The message of *Kangura* issues in 1994 threatened the massacre of Tutsi within the country as a consquence of *Inkotanyi* aggression, equating *Inkotanyi* accomplices with the Tutsi population inside the country.

Witness Evidence on Kangura

232. A number of Prosecution witnesses testified to their general impression of *Kangura*, how the newspaper was seen by others and what they themselves thought of it. The Chamber considers their evidence critical to an assessment of the impact of *Kangura* on its readership, and the population at large.

233. Having read *Kangura* in its entirety, Prosecution Expert Witness Marcel Kabanda was asked to identify particular themes espoused by the newspaper. He enumerated four: anti-Tutsi ethnic hatred; the need for self-defense by the majority, which was threatened

[134] *Ibid*., pp. 36-38.

PURL: https://www.legal-tools.org/doc/45b8b6/

by the minority; the struggle against the Hutu who did not tow the line; and the mobilization of the Hutu population to fight this danger. Kabanda testified that in *Kangura* the enemy was well defined as those threatening the majority population, the Tutsi-*Inyenzi*. While the newspaper differentiated Tutsi in and outside the country, it underscored the fact that the two groups were in solidarity and working together to exterminate the Hutu and regain power, enslaving Hutu who survived.[135] In describing an ever present obsession in *Kangura* with the danger represented by the Tutsi, Kabanda cited a cartoon published in January 1992 in *Rwanda Rushya*, an opposition newspaper, together with an article entitled *The Kangura Syndrome*. In the cartoon, a patient on a couch looking like Hassan Ngeze says, "Doctor, I'm sick". The doctor asks, "What's your problem?" and the patient answers, "Tutsis, Tutsis, Tutsis". The accompanying article described *Kangura* as having a role in promoting ideology saying, "In this manner, *Kangura* therefore considers itself as a journal of struggle, as a newspaper of combat."[136]

234. Witness AHI, a Hutu taxi driver from Gisenyi and long-time associate of Ngeze, testified that he used to work for Ngeze selling *Kangura* newspapers. He said he used to read *Kangura* and when asked whether he remembered the issues he had read, he recalled one issue in which Ngeze spoke about the ethnic groups of the Rwandan population. He had added a fourth group to the Hutu, the Tutsi and the Twa, which was composed of persons born to Hutu fathers and Tutsi mothers. Ngeze referred to this ethnic group as the Hutsi. He said such people should not be counted among Hutu families, as they belonged to Tutsi families. Witness AHI said he himself could be referred to in this way, and there were many other examples. In 1994, he said people belonging to this fourth ethnic group were killed and he named Mama Bruki, a neighbour of Ngeze's father, who was killed by CDR members of the *Impuzamgambi* while her husband's life was spared. Her husband Muzamiru was taken to a bar for a drink and told, "Do not worry, we are going to find another wife, a Hutu for you." Amongst the killers he named was Ngeze's bodyguard, and Witness AHI said it was Ngeze who was buying drinks for Muzamiru.[137]

235. Witness GO, a Hutu civil servant who worked for the Ministry of Information, testified that from September to November 1993, he was responsible for monitoring all private press, including *Kangura*, which he described as "the most extremist paper". On cross-examination, when it was suggested to him that *Kangura* was humorous, Witness GO replied, "Nothing of what I saw in *Kangura* made me laugh. However, it did frighten me." When it was put to him that little more than 30% of the adult population was literate, Witness GO replied that in societies where people do not know how to read, there is oral tradition. Information is transmitted by word of mouth from those who know how to read to those who do not. Because *Kangura* was extremist in nature, everyone spoke of it, in buses and everywhere. He said, "thus, the news would spread like fire; it was sensational news."[138]

[135] T. 14 May 2002, pp. 14-16.
[136] T. 16 May 2002, pp.15-16, 123-124; Exhibit P122.
[137] T. 4 Sept. 2001, pp. 76-80.
[138] T. 6 June 2001, pp. 105-106, 116-117, 120, 124.

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236. Witness ABE described *Kangura* as "the most strident of all the newspapers".[139] When it was put to him that the literacy rate of adults in Rwanda in the early 1990s was less than 30%, he answered that literate people would explain to others who were not literate what they had read in *Kangura*. He said not only was this possible but in fact it is how it happened.[140] The witness testified that he started reading *Kangura* when it was established in 1990. He described the policy of the newspaper as uniting the Hutu to fight against the Tutsi and all the others, the Hutu who did not speak the same language as they did.[141] On cross-examination, Witness ABE acknowledged that it was possible even in *Kangura* to find divergent opinions but he said the person said to have written the article would be following a particular political line. When asked about violent anti-Hutu covers of *Kangura,* the witness said if there were such articles, given what he knew of *Kangura* policy, they were meant to shake up the Hutu and encourage them to follow the extremist line of *Kangura,* to fight the Tutsi and moderate Hutu. While acknowledging that there were some anti-Hutu articles, he noted that Twagiramungu was a Hutu and that Agathe Uwilingimana and Gatabazi, who were Hutu, were killed. He said they were all Hutu but they did not follow the same political policy as MRND and its newspaper *Kangura*.[142]

237. François-Xavier Nsanzuwera, the former Prosecutor of Kigali, testified that from its inception *Kangura* was a newspaper seeking to spread a racial, ethnic-based message, targeting individuals. The newspaper said itself that it was seeking to make the Hutu aware of the dangers they might have to face. By *Inkotanyi* and their accomplices, they meant Tutsi and Hutu opponents. Nsanzuwera called *Kangura* "the bell of death", because if one were targeted in *Kangura*, if a minister, he could be sure to lose his position during the next cabinet reshuffle and if a simple citizen he could be sure that he would be arrested. If an official, one could lose his function or employment. In 1990 and 1991, when there were massive arrests, all those who were mentioned in *Kangura* were arrested and thrown into prison. He said Anatole Nsengiyumva, the man responsible for army intelligence services, was the first one to pick up *Kangura* from the printer.[143]

238. Witness ABE said that there were issues of *Kangura* in which people were criticized and would then lose their jobs or their lives.[144] When asked in cross-examination to elaborate on this statement, Witness ABE recalled an article in 1990 on the *préfet* of Gisenyi, Francois Nshunjuyinka, who was accused in the article of being an *Inkotanyi* accomplice because he had suspended a *sous-préfet* who had supervised the killing of Tutsi. Nshunjukinka lost his employment about a month after the article was published and left Gisenyi immediately. His children were killed during the course of the genocide. If Nshunjukinka had been found, he would have been killed too. When asked how he knew there was a connection between the article and loss of employment, Witness ABE replied that he saw this happen several times. Other cases he mentioned included the case of Kajeguhakwa, who was considered an *Inkotanyi* and who would have been killed had he not fled. He also mentioned politicians who were killed including

[139] T. 28 Feb. 2001, p. 32.
[140] T. 27 Feb. 2001, pp. 48-50.
[141] Exhibit P6.
[142] T. 27 Feb. 2001, pp. 31-39.
[143] T. 23 Apr. 2001, pp. 126-127.
[144] Exhibit P6.

PURL: https://www.legal-tools.org/doc/45b8b6/

Gapyisi and Gatabazi and said there were several others whose names had been mentioned in *Kangura*. These names were not all published in *Kangura* at the same time. The editor would focus on someone for a period of time, saying that the person was against Habyarimana or against the Hutu, that he was against their political line, and then, after a while, that person would be killed. As far as the witness knew, no investigations would be conducted, as would normally be the case. He mentioned Felicia Ngago, who was said by *Kangura* to have been among those who killed Gatabazi and was killed subsequently. He mentioned Agathe Uwilingimana, who was killed, and Twagiramungu, who would have been killed if he had been found. Witness ABE acknowledged that *Kangura* did not call for these people to be killed. He explained that being referred to as an accomplice was enough to be put in danger and eventually lead to being killed later on. Witness ABE added that Ngeze himself would say that if he ever wrote about someone that person would not live. Ngeze terrorized people, going everywhere with his camera and blackmailing people.[145]

239. Witness ABE maintained that Ngeze was the originator of the propaganda campaign. He clarified that he was not saying that the plan for genocide came from Ngeze but rather that Ngeze was assigned an important role within the plan to propagate the ideology. Although Witness ABE had said and reaffirmed his statement that Ngeze was uneducated, he said this role suited him well, to carry out unscrupulous propaganda to contaminate the minds of people, which was the kind of propaganda one did not need to be educated to undertake.[146]

240. Witness AHA distinguished *Kangura* from other publications at the time. Noting that it was a private newspaper, he said its style was quite different from that of state newspapers, which he described as boring. In contrast, he talked about "a certain freedom of expression" in *Kangura* and "a certain extravagance due probably to the lack of knowledge of our profession". He described the paper as sensational, meaning exaggerated in expression and in facts, triggering some sort of reaction, not leaving the public indifferent.[147] Witness AHA noted that Ngeze was characterized at some point as a prophet or a visionary. He recalled Ngeze saying in an RTLM interview that he was not a visionary, that he was able to get top secret information, and based on that information he could predict what could happen. For this reason it was not surprising that he could make predictions on changes in government ministers and cabinet appointments.[148] With regard to the term "accomplices", Witness AHA testified that the word was used for those who collaborated with the enemy and wanted to see a change in regime. He noted that some named accomplices now openly admit that they were supporting the rebellion.[149] When asked about verification of information and the editorial process used by Ngeze for *Kangura*, Witness AHA replied: "The truth and the quest for the truth was not his concern. His concern was this struggle and it had to be - that struggle had to be conducted by all means…"[150]

[145] T. 28 Feb. 2001, pp. 10-18, 25, 32.
[146] T. 27 Feb. 2001, pp. 48-51.
[147] T. 2 Nov. 2000, pp. 102-104.
[148] *Ibid*., pp. 50-51.
[149] *Ibid*., p. 107.
[150] T. 6 Nov. 2000, p. 53.

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241. In his testimony, Ngeze outlined his career in journalism, beginning with the establishment of a press agency in Gisenyi. He described how he built a network of contacts by paying people to bring him news from wherever they were. For example, he would approach a minister's secretaries and offer to double their salary on the condition that they gave him a copy of whatever they typed for the minister. He would do the same thing with the person making photocopies, suggesting in his testimony that he had got information in this way from the Office of the ICTR Prosecutor.[151] With these information links, Ngeze knew what was happening. He was in contact with many ambassadors, saying he spoke with the French and US ambassadors on a daily basis because they knew that he had information, although he did not reveal his sources to them or to one another.[152] Ngeze generally maintained that what he published was accurate, and that he foretold rather than caused events such as changes in political office, attacks and assassinations, illustrating what happened through the following hypothetical:

> Let me emphasize myself, let me say, even now I came to know that this water, here this water contained poison and I tell the Court, listen, don't drink this water, it contains poison. I have evidence, I have proof that the water inside the courtroom contains poison, don't drink. Then everybody here ignore what I am telling the court, what I am telling people here, then at a later stage you decide to drink the water, then you die.[153]

Discussion of Evidence

242. The evidence of witnesses establishes that *Kangura* conveyed its message effectively. *Kangura* was seen as an anti-Tutsi publication with much power to affect the lives of the individuals mentioned in it. The evidence does not establish a specific link between the publication and subsequent events, and yet such a link was clearly perceived by many witnesses such as Witness AHI, Witness ABE and Nsanzuwera, suggesting that *Kangura* greatly contributed to the climate leading to these events, if not causing them directly. Witness ABE, for example, acknowledged that Prime Minister Agathe Uwilingiyimana was killed by the Presidential Guard on the order of Habyarimana's widow. But he clearly perceived the way in which Uwilingiyimana had been repeatedly portrayed in *Kangura* as having made Uwilingiyimana a target, such that the image of her projected by *Kangura* led to these subsequent events and resulted in her death.

243. In contrast, Prosecution Witness AHA repeated what Ngeze had told him and what Ngeze himself testified: that he predicted rather than caused these events. Ngeze described in detail his method of buying information, and his creation of a powerful network with a broad range of sources. Ngeze had access to much information, yet Witness AHA also testified that the truth and the quest for the truth were not of concern to him. This statement accords with the Tribunal's perception of Ngeze, as evidenced even by his own conduct during the proceedings. Ngeze would have the Chamber believe that *Kangura* told people not to drink water because they would die from the poison in it, that he was warning them rather than himself poisoning them. The ethnic

[151] *Ibid.*
[152] T. 26 Mar. 2003, pp. 75-81.
[153] T. 31 Mar. 2003, pp. 22-23.

PURL: https://www.legal-tools.org/doc/45b8b6/

hatred that permeates *Kangura* had the effect of poison, as evidenced by the testimony of the witnesses. At times *Kangura* called explicitly on its readers to take action. More generally, its message of prejudice and fear paved the way for massacres of the Tutsi population.

Factual Findings

244. The Chamber found the testimonies of Witnesses GO, ABE, MK, AHA and Philippe Dahinden credible in paragraphs 608, 332, 886, 132 and 546 respectively.

245. The Chamber finds that *The Appeal to the Conscience of the Hutu* and *The Ten Commandments* of the Hutu included within it, published in *Kangura* No. 6 in December 1990*,* conveyed contempt and hatred for the Tutsi ethnic group, and for Tutsi women in particular as enemy agents. *The Appeal to the Conscience of the Hutu* portrayed the Tutsi as a ruthless enemy, determined to conquer the Hutu, and called on the Hutu to take all necessary measures to stop the enemy. *Kangura* published the *19 Commandments* to alert readers to the evil nature of the Tutsi and their intention to take power and subjugate the Hutu. *The Ten Commandments* of the Hutu and the *19 Commandments* of the Tutsi were complementary efforts to the same end: the promotion of fear and hatred among the Hutu population of the Tutsi minority and the mobilization of the Hutu population against them. This appeal to the Hutu was visibly sustained in every issue of *Kangura* from February 1991 to March 1994 by the title "The Voice that Awakens and Defends the Majority People".

246. Other editorials and articles published in *Kangura* echoed the contempt and hatred for Tutsi found in *The Ten Commandments*. These writings portrayed the Tutsi as inherently wicked and ambitious in language clearly intended to fan the flames of resentment and anger, directed against the Tutsi population. The cover of *Kangura* No. 26 answered the question "What weapons shall we use to conquer the *Inyenzi* once and for all?" with the depiction of a machete. The message conveyed by this cover was a message of violence, that the machete should be used to conquer the *Inyenzi* once and for all. By *Inyenzi*, *Kangura* meant, and was understood to mean, all Rwandans of Tutsi ethnicity, who in this issue of *Kangura* were stereotyped as having the inherent characteristics of liars, thieves and killers.

2.3 The 1994 Kangura Competition

247. In *Kangura* No. 58, published in March 1994, a competition was launched, consisting of eleven questions, the answers to which were all to be found in past issues of *Kangura*. The competition was published again in *Kangura* No. 59, also in March 1994. Various points were allocated to correct answers, and ten prizes were announced for the winners in Kangura No. 58, including cash, air tickets, electronics, clothing and food. The first prize was 25,000 Frw. *Kangura* No. 59 mentions additional prizes, which can be seen at RTLM, including several series of prizes from corporate sponsors, one of whom offers to give any winner who is a member of the CDR a case of beer. To enter

PURL: https://www.legal-tools.org/doc/45b8b6/

the competition, readers were told to detach and submit the original page of *Kangura* (no photocopies accepted), together with responses to the questions, to RTLM.

248. The introduction to the competition states:

> Starting with issue 58 of *Kangura*, the management of this newspaper, assisted by the benefactors who love this newspaper, is organizing a competition for the purpose of sensitizing the public, who loves the newspaper, to its ideas.[154]

249. Virtually all of the eleven questions ask the competition participants to identify which issue of *Kangura* contained a particular text. All of the questions relate to *Kangura* in some manner, if not asking for identification of particular issues of the publication then asking for information about *Kangura* journalists or people named in *Kangura*. Questions include "In which issue of *Kangura* will you find the sentence "We have no more Tutsi because of Kanyarengwe?" and "When did *Kangura* become the voice to wake up the majority people and defend their interests?"[155] Prosecution Expert Witness Marcel Kabanda testified that in answering the questions he had identified thirteen issues of *Kangura*, but that in order to answer the questions, he had to read three times as many issues.[156] He stated that back issues of Kangura were available, citing a reference in the international edition *Kangura* No. 9 to past issues *Kangura* No. 33 and *Kangura* No. 8, encouraging readers who missed these issues to contact a magazine seller.[157]

250. Following the competition questions in both *Kangura* No. 58 and *Kangura* No. 59 was a survey, which Kabanda characterized as part of the competition,[158] asking *Kangura* readers to evaluate various RTLM broadcasters including Kantano Habimana, Gaspard Gahigi, Noël Hitimana, and Valerie Bemeriki. The introduction to this survey reads:

> Since the RTLM began broadcasting in Rwanda, 28 July 1993, tell us what you think of its activities. Tell us what you would want to change. Tell us what you consider to be its strong points and its weak points.[159]

251. Kabanda testified that the *Kangura* competition was publicized on RTLM in March 1994, encouraging listeners to participate in the competition and calling on listeners to hurry and buy issues of *Kangura* so that they could send in their responses. The Prosecution introduced the following transcript of an RTLM broadcast of 14 March 1994:

> Now, I'd like to speak to you about the *Kangura* newspaper competition….I therefore wish to inform you that you mustn't take your pens because the

[154] P115, *Kangura* No. 58, p. 7, KA022076, also in P119. Translation from French.
[155] Ibid., p. 8, KA022077, Question 7(c) and Question 8 (a). Original Kinyarwanda: Kanyarengwe atumazeho abatutsi "Ibonoko mu yiho Kangura"?; Kangura yabaye ijwi rigamije gukangure no kurengere rubanda nyamwinshi ryari?
[156] T. 14 May 2002, pp. 155-160.
[157] T. 15 May 2002, pp. 26-27.
[158] T. 14 May 2002, p. 160.
[159] Exhibit P115, *Kangura* No. 58, p. 9, KA022078, also in P119. Translation from French.

PURL: https://www.legal-tools.org/doc/45b8b6/

> questions which I will share with you are in *Kangura*…. You will see them tomorrow in Kangura issue No. 58, which will be put out on sale. These are the prizes that Kangura has been able to find for you with the assistance of those who support it. So these are the prizes…[160]

252. Kabanda testified that this broadcast, which he attributed to Gasper Gahigi, was not the only reference on RTLM to the competition and mentioned another one on the same day made by a speaker who was not identified. In an RTLM broadcast of 2 April 1994, following the publication of *Kangura* No. 59, Valerie Bemeriki also mentioned the competition, saying:

> The Kangura competition is in its second phase. We do have many prizes. Industrialists have given us many. Buy *Kangura* No. 59 and send us a paper which is inside and on which you have to answer the questions. You have also to tell us what you think about RTLM journalists. Give them grades according to how you listen to them. Students who are on holidays should also participate. So as to accept your participation you have to send three pages attached together and they have to be from *Kangura* Nos. 58, 59 and 60.[161]

253. On cross-examination, Ngeze was asked why he chose to run a competition asking his readers to go back to all the old issues of *Kangura* for the answers. He replied that it was common for media to run competitions and stated that *Kangura* had run many competitions from its beginning, citing *Kangura* No. 2, June 1990, page 17. The Chamber requested a list of such competitions from Ngeze,[162] which was not provided. The Chamber also asked Kabanda whether there had been previous competitions in *Kangura.* He answered affirmatively, recalling one that had appeared in 1992 but was unable to provide a reference. He said it was not of the same nature but rather asked very specific questions rather than questions relating to what has been read in *Kangura.*[163] On page 17 of *Kangura* No. 2, published in June 1990, there is a survey asking readers to comment on the performance of various public officials in Gisenyi. It is not a competition, and it does not refer to other information published elsewhere in *Kangura*.

254. When asked about this competition, Nahimana said it was never brought to the *Comité d'Initiative*, or Steering Committee, of RTLM. These kinds of competitions were very common and existed around the world. He stated that there was no link between RTLM and Kangura.[164] In cross-examination, it was suggested to Kabanda that the competition was a joint marketing operation, undertaken for commercial purposes. The witness agreed that there was a commercial benefit of the competition to both *Kangura* and RTLM but stated that he could not conclude that the only motivation was commercial, citing the significant pedagogical aspect of the competition.[165]

[160] T. 14 May 2002, pp. 165-169.
[161] Exhibit P103/190, K0147064.
[162] T. 3 Apr. 2003, p. 18.
[163] T. 14 May 2002, p. 171.
[164] T. 24 Sept. 2002, pp. 101-102.
[165] T. 11 July 2002, p. 190.

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Discussion of Evidence

255. The Chamber has reviewed the text of the *Kangura* competition, carefully considering the introduction, the questions, the survey on RTLM broadcasters and other references to RTLM, as well as the evidence relating to broadcasts on RTLM promoting the competition. RTLM publicity for the competition, the fact that the competition entry was to be turned in to RTLM, and that the competition prizes were located at RTLM, as well as the survey on RTLM journalists requesting feedback for improvement, all indicate that the competition was a joint enterprise of *Kangura* and RTLM. The Chamber notes that such joint enterprises among the media are quite common, and that newspapers and radios around the world often undertake such initiatives for commercial or programmatic purposes. Nevertheless, the Chamber considers the competition relevant evidence, probative of coordinated activity between *Kangura* and RTLM. The Chamber also notes that there is a prize in the competition for which only CDR members are eligible.

256. The purpose of the competition is stated in the introductory text of the competition itself as being an effort intended to sensitize the public to the ideas of *Kangura*. Expert Witness Marcel Kabanda testified that in coming up with the answers to the questions, he identified thirteen issues and to do so had to consult three times as many issues. It is clear to the Chamber that to answer questions referring to thirteen different issues, one might well have to consult a large number of the issues of *Kangura*, which seems to have been the intent. Many if not most of the questions in the competition are political in nature. In light of its stated purpose, the exercise was in fact designed to familiarize readers with past issues and the ideas of *Kangura*.

Factual Findings

257. The Chamber finds that the competition published twice in March 1994, in *Kangura* issues No. 58 and No. 59, was a joint undertaking of *Kangura* and RTLM, intended to acquaint the readers of *Kangura* and the listeners of RTLM with the content and ideas of *Kangura* as set forth in its past issues. The Chamber finds that the competition was designed to direct participants to any and to all of these issues of the publication and that in this manner in March 1994 *Kangura* effectively and purposely brought these issues back into circulation.

3. CDR

3.1 Creation and Leadership of the CDR

258. The Coalition for the Defence of the Republic (CDR), or *Impuzamugambi Ziharanira Repubulika* in Kinyarwanda, was created by statute in February 1992[166] and registered in March 1992 as a political party.[167] The preamble to the CDR Statute speaks

[166] The CDR statute is dated 18 February 1992 (Exhibit 2D9), and the minutes of the constituent assembly indicate that the meeting at which the statute was adopted took place on 22 February 1992 (Exhibit 2D12).
[167] T. 21 May 2002, p. 55.

PURL: https://www.legal-tools.org/doc/45b8b6/

of "the need to preserve the gains of the 1959 Social Revolution" and the concern "to reinforce the unity of the popular masses," concluding "The undersigned have convened to create a political party so that their voices are better heard and their ideas defended within the different organs of State, with full respect for the Constitution and the laws in force".[168] The Statute describes the red, black and yellow CDR flag - the colour red representing the blood spilled for the 1959 revolution and for the defence of democracy and the Republic, the colour black signifying the Republic, confirmed by referendum in 1961 as an irrevocable expression of the will of the people, and the colour yellow signifying the sun, meaning the victory that had risen over feudalism and monarchism, with the circle representing the unity of the popular masses. The Statute defined the motto of the party to be "Unity and Solidarity" and declared that party membership was free and voluntary, and open to all persons of Rwandan nationality over the age of majority. The structure of the party was divided geographically, with Communal and Regional Assemblies, and a General Assembly that included all members of the Regional Assemblies and an Executive Committee, the President of which was the President of the party. Among the fifty-one signatories to the CDR Statute are Théoneste Nahimana, Stanislas Simbizi, Jean-Bosco Barayagwiza, Martin Bucyana, Noël Hitimana and Hassan Ngeze.[169]

259. The Constituent Assembly of CDR met on 22 February 1992 at the Urugwiro Hotel in Kigali. The minutes of the meeting indicate that the Statute was adopted at the meeting. A provisional Executive Committee of ten were elected, including as members Martin Bucyana, Théoneste Nahimana, Antoine Rutegesha Misago, Jean Baptiste Mugimba, and Stanislas Simbizi. Martin Bucyana was elected President, Théoneste Nahimana as First Vice-President, Antoine Rutegesha Misago as Second Vice-President and Jean Baptiste Mugimba as Secretary-General.[170] In addition to the minutes, a video recording of the CDR Constituent Assembly is in evidence, together with notes summarizing the video prepared by Counsel for Nahimana.[171] According to these notes, after an introduction by Stanislas Simbizi, Barayagwiza explained why the founders had created the CDR and enumerated the objectives of the party. He said that for seventeen years, the MRND had preached unity between the Hutu and Tutsi, but that concordance between these two ethnic groups had not successfully taken root in Rwanda. Unity between the Hutu and Tutsi was impossible. Rather, a social contract was needed between the Hutu and the Tutsi so that they could live in accord and agree on the mechanisms of government. According to Barayagwiza, the CDR did not engage in ethnic discrimination and would never say that someone should destroy a Tutsi's home or cut him with a machete, and it would combat all those who wanted to create trouble in the country, whether they be Hutu, Tutsi or Twa. Barayagwiza said that the Tutsi had their

[168] The Chamber notes that in the reprint of the CDR Statute in the *Kangura* special issue of 1992, there is an additional paragraph in the preamble reading as follows: "Recognizing the right of each person to claim himself as of one of the three ethnicities that comprise Rwandan society without being sectarian or racist." Translation from French. As Exhibit 2D9 is the text of the Statute in evidence before the Chamber, and as it is a copy of a signed, notarized and witnessed document, the Chamber has not taken this additional text into its consideration of the CDR Statute.
[169] Exhibit 2D9.
[170] Exhibit 2D12.
[171] Exhibit 1D66B.

PURL: https://www.legal-tools.org/doc/45b8b6/

problems and created parties to address those problems; the Hutu also had to have their own parties to address the problems of the Hutu, which was why the people present at the constituent assembly had decided to create the CDR. After the Statute was signed before a notary, Barayagwiza responded to questions concerning the ideology of CDR. He then introduced the heads of the delegations from each of the prefectures in Rwanda, including Martin Bucyana and Stanislas Simbizi among them, and announced that they would constitute the national bureau of the CDR, presumably a reference to the Executive Committee as they were named in the minutes of the meeting. Jean-Baptiste Mugimba then proclaimed Martin Bucyana as the President of the national bureau of the CDR. Neither Barayagwiza nor Ngeze was named as a prefecture leader or member of the national bureau.[172]

260. Prosecution Expert Witness Alison Des Forges testified that during the period 1992 to 1993, there was considerable tension between Bucyana and Barayagwiza. Barayagwiza did not wish to assume public leadership of the party but wanted to be the decision-maker. This led to a crisis in July 1992 when Bucyana suspended his participation in the party, which was an embarrassment that the Executive Committee of the party had to try and smooth over. A year later, in August 1993, Barayagwiza went to Europe on a mission to represent the CDR without consulting the President or Secretary-General, an action criticized by the Executive Committee. From internal documents of the CDR, Des Forges learned about these incidents. She cited one letter indicating that Bucyana did not feel in control of the party and considered the challenge to be coming from a northerner, he being a southerner.[173] She suggested that the reference to a northerner was a reference to Barayagwiza, whom Bucyana did not feel he could name.[174] Des Forges testified that speeches written by Bucyana were subsequently corrected by Barayagwiza, based on the analysis of a handwriting expert, who examined a typewritten speech prepared for delivery by Bucyana on the occasion of the official recognition of the party in 1992. The speech contained numerous handwritten changes identified by the expert as having been written by Barayagwiza, and subsequently incorporated into the final text of the speech.[175]

261. Many witnesses testified that although Barayagwiza was not named as an office-holder in the CDR at the Constituent Assembly, he was the real leader of the party. Witness X described Barayagwiza as the most powerful member of the CDR, saying Martin Bucyana, the CDR President, was actually a straw figure, chosen to show there were powerful people from the south in CDR, as the majority of CDR members were from the north.[176] In an article written in October 1995 on the assassination of Habyarimana, Colonel Bagosora referred to Barayagwiza as leader of the CDR[177], and in his testimony Nahimana referred to Barayagwiza as being among the leaders of the CDR, together with Bucyana in front at the podium at a CDR rally.[178] Omar Serushago testified

[172] Exhibit 1D66B.
[173] Exhibit P138; T. 21 May 2002, pp. 83-89.
[174] T. 21 May 2002, pp. 83-89, 94-99.
[175] *Ibid.*, pp. 101, 107-108; Exhibit P141; T. 12 July 2002, p. 172.
[176] T. 18 Feb. 2002, pp. 63-64.
[177] Exhibit P142, p. 26; T. 21 May 2002, pp. 134-135.
[178] T. 19 Sept. 2002, pp. 106-110.

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that it was Barayagwiza who founded the extremist ideology of CDR.[179] He said there was no one higher up than the Chairman and that person was Barayagwiza.[180] Des Forges testified that Barayagwiza was the most important person involved in the organization of the CDR.[181] She stated that in a telephone interview, David Rawson, the US Ambassador to Rwanda in 1994, told her that when he had dealings with CDR, he would deal with Barayagwiza.[182] Prosecution Witness François-Xavier Nsanzuwera, the Kigali Prosecutor at the time, testified that Barayagwiza was one of the leaders of CDR and that it was Barayagwiza, in 1993 and 1994, who used to call him in that capacity when the *Impuzamugambi* militia were arrested for criminal acts, especially killings, to intervene on their behalf and ask him to release them, warning the Prosecutor to remember his career.[183] In a letter dated 30 December 1993 to General Dallaire, signed by Bucyana and seeking special protection from UNAMIR for CDR Executive Committee members, Barayagwiza and Ngeze were included at the end of the list.[184] Ngeze testified that he had asked Bucyana to include his name in this letter because the UN would only protect political party officials. UNAMIR subsequently requested documentation of the party leadership and as the documents did not include Ngeze's name, he was not granted protection. He said for the same reason Barayagwiza was denied this protection because he had not yet been elected to office in the CDR.[185]

262. Several witnesses testified that Barayagwiza served in the CDR as second to President Martin Bucyana. Prosecution Witness LAG, a Hutu member of the PL party from Cyangugu, testified that CDR was among the political parties active in Cyangugu, and that he learned from the leader of his prefecture that Bucyana was President of CDR and that Barayagwiza was "number two" in the party.[186] Prosecution Witness ABC, a Hutu man employed in a shop in Kigali rented from Bucyana, who had his office in the same building, said that CDR meetings were held in the building and that Barayagwiza, who attended these meetings, was Bucyana's deputy in CDR. They stopped meeting there after Bucyana's death in the beginning of 1994. He did not know the others named at the Constituent Assembly as CDR office-holders.[187] Prosecution Expert Witness Marcel Kabanda testified that Barayagwiza and Ngeze were both advisers for CDR while Bucyana was chairman.[188] Witness AFB testified that at a CDR rally in 1993 in Umuganda stadium, Barayagwiza and Ngeze were introduced as CDR representatives and stood up.[189]

263. Ngeze testified that he and Barayagwiza were appointed political advisers in CDR, since they had participated in its establishment. The term "adviser" was given to

[179] T. 20 Nov. 2001, p. 64.
[180] T. 21 Nov. 2001, pp. 116-117.
[181] T. 21 May 2002, pp. 55-56.
[182] *Ibid.*, pp. 150-151.
[183] T. 24 Apr. 2001, pp. 5-12.
[184] Exhibit P107/37; T. 21 May 2001, pp. 131-132.
[185] T. 28 Mar. 2003, pp. 35-37.
[186] T. 30 Aug. 2001, pp. 44-46, 57.
[187] T. 28 Aug. 2001, pp. 5-12.
[188] T. 14 May 2002, pp. 142-145.
[189] T. 6 Mar. 2001, p. 19.

PURL: https://www.legal-tools.org/doc/45b8b6/

those founding members of CDR who had signed the Statute at the inaugural meeting. According to Ngeze, due to his position as Director of Foreign Affairs in the Ministry of Foreign Affairs, Barayagwiza would sometimes be assigned the task of speaking for CDR in other countries. As he travelled frequently, CDR used this opportunity to have him speak on behalf of the party wherever he was. However, he would only do so with authorization from the party. Ngeze stated that although he had signed the CDR Statute, he himself did not become a member of CDR so as to ensure that he would be paid for CDR advertisements published in *Kangura*, which he would not have been as a member.[190] Defence Witness B3, a doctor and university lecturer who was a member of CDR, affirmed in his testimony that the CDR office-holders were those named at the Constituent Assembly of CDR. He said that Barayagwiza was never Vice-President of CDR, but that he was appointed an adviser or conseiller at the national level. He testified that he did not know of Ngeze having been elected or appointed to any position in the CDR at the national level.[191] *Kangura* No. 41, published in March 1993, includes a photograph of Barayagwiza, Ngeze and Bucyana, with a caption indicating that Barayagwiza and Ngeze were advisors to the CDR and that Bucyana was its Chairman.[192]

264. Several Prosecution witnesses testified that Barayagwiza was the President of the Gisenyi section of the CDR. Among them was Thomas Kamilindi, who said he was also a member of the Executive Committee, and Alison Des Forges, who said that Gisenyi was the strongest and most important section.[193] Prosecution Expert Witness Jean-Pierre Chrétien described Barayagwiza as a member of the Steering Committee of CDR.[194] Prosecution Witness AHI, a Hutu taxi driver currently detained in Gisenyi on charges of genocide, testified that Barayagwiza took over from Balthazar as head of the CDR in Gisenyi, after Balthazar resigned around September to November 1992.[195] Prosecution Witness EB, a Tutsi teacher from Gisenyi, described Barayagwiza as the President of the CDR at the prefectural level.[196] Prosecution Witness AFX, a Tutsi civil servant from Gisenyi, also testified that Barayagwiza was the CDR President at the Gisenyi prefectural level, and that his deputy was Hassan Ngeze. He said that Barayagwiza organized CDR meetings in Gisenyi.[197] Prosecution Witness Omar Serushago, an *Interahamwe* leader from Gisenyi, testified that Barayagwiza was the Chairman of CDR in Gisenyi prefecture and Barnabé Samvura was Chairman of the CDR youth wing in Gisenyi and chair in Gisenyi town. He said Ngeze became a member of CDR when it was set up between 1992 and 1993 and was Samvura's associate in the youth wing in Gisenyi town. Serushago testified that Ngeze was coordinator of CDR activities in Kigali and Gisenyi and an influential member of CDR, close to Barayagwiza.[198]

[190] T. 28 Mar. 2003, pp. 19-24, 26-27.
[191] T. 3 Dec. 2002, pp. 35-36.
[192] T. 14 May 2002, p. 142.
[193] T. 21 May 2001, pp. 61-62;T. 21 May 2002, pp. 127.
[194] T. 3 July 2002, pp. 241-242.
[195] T. 4 Sept. 2001, p. 54.
[196] T. 15 May 2001, pp. 151-152.
[197] T. 3 May 2001, pp. 6-7; T. 7 May 2001, pp. 32-33.
[198] T. 15 Nov. 2001, pp. 77-85.

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265. Ngeze testified that Barayagwiza replaced Samvura as President of CDR in Gisenyi. As the representative from Gisenyi he got on the national committee. [199]

266. Many Prosecution witnesses, including Witness ABC, Witness LAG, Serushago, Kamilindi, Kabanda[200] and Des Forges[201], testified that after the death of Martin Bucyana in February 1994, Barayagwiza succeeded him as President of CDR. Witness ABC said that he knew Barayagwiza had become CDR President because it was broadcast on RTLM.[202] Serushago said he heard it on Radio Rwanda, and later confirmed it during a meeting with Samvura in Gisenyi town.[203] Witness LAG testified that at the funeral of Bucyana, Barayagwiza was interviewed by Rwandan television. He was the only person interviewed and seemed to be the person who represented the party. It was said that Barayagwiza succeeded Bucyana as President when he died, although the witness never heard about elections for the appointment.[204] Witness AHB testified that he had heard that Barayagwiza was the chairman of CDR but said he had not witnessed his election to that post.[205] Kamilindi said that Barayagwiza remained also as President of the Gisenyi branch of CDR.[206] In his testimony, Ngeze denied that Barayagwiza became the leader of CDR after Bucyana's death, maintaining that Barayagwiza only became the leader of the CDR branch in Gisenyi in 1994. In *Kangura* No. 58, published in March 1994, Barayagwiza was reported to have replaced Bucyana as head of the CDR after his death. Ngeze explained that Barayagwiza had spoken on behalf of CDR at the funeral ceremony in Cyangugu and therefore people, including his journalist, assumed that Barayagwiza had replaced Bucyana as president. *Kangura* No. 59 also stated that Barayagwiza had replaced Bucyana as head of the CDR. Ngeze stated when asked to comment on this second reference that *Kangura* was not the Bible or the Koran. He reiterated that Barayagwiza never replaced Bucyana.[207]

267. In his book, *Le Sang Hutu est-il rouge?*, Barayagwiza wrote that he was never a party leader at the national level or President of the CDR, although he acknowledged being a founding member of the party with pride, and he acknowledged holding the title of Adviser to the Executive Committee. He said he served as President of the Regional Committee in Gisenyi from 5 January 1994. In conformity with the Statute, he said that on the death of President Bucyana in February 1994, the First Vice-President automatically became interim President.[208]

268. Nahimana testified that he did not participate in any way in the establishment of CDR or its meetings, other than attending its first public rally, which took place in Nyamirambo Stadium in Kigali sometime between June and August 1992. He said

[199] T. 28 Mar. 2003, p. 22.
[200] T. 14 May 2002, pp. 141-143.
[201] T. 21 May 2002, pp. 55-56.
[202] T. 28 Aug. 2001, pp. 5-12.
[203] T. 15 Nov. 2001, pp. 77-85.
[204] T. 30 Aug. 2001, pp. 44-46, 57.
[205] T. 27 Nov. 2001, p. 139.
[206] T. 21 May 2001, pp. 61-62.
[207] T. 1 Apr. 2003, pp. 73-77.
[208] Exhibit 2D35, pp. 230-231.

PURL: https://www.legal-tools.org/doc/45b8b6/

Théoneste Nahimana and others left MRND to establish CDR, and Théoneste Nahimana subsequently became Vice-Chairman of CDR. Nahimana thought that some Prosecution witnesses had confused him with Théoneste Nahimana.[209] Ngeze testified that Nahimana was not present at the inauguration of CDR and that he did not know Ferdinand Nahimana to be in the CDR.[210] Defence Witness I2 testified that Nahimana was never a member of CDR.[211] He, together with Nahimana and others, in 1992 formed an association called the Circle of Progressive Republicans (*Le Cercle des Républicains Progressistes*), or CRP, which advocated the reform of MRND and the integration of all ethnic groups and parties. Nahimana was Second Vice-President of CRP, and Witness I2 stated that people used to confuse CDR and CRP with each other, as both fought for republican values.[212] Defence Witness B3, a doctor and university professor who was a member of CDR, testified that Nahimana was a member of MRND and never joined CDR. Although Witness B3 tried to persuade him to join, Nahimana did not want to join CDR as he regarded it as an ethnicist party whereas he advocated peace and unity.[213] Defence Witness D3, a member of MDR who knew Nahimana, also testified that Nahimana did not take part in the setting up of CDR and was never officially, or unofficially, a member of CDR.[214] Nahimana is not present in the videotape of the inaugural ceremony of CDR and is not a signatory to the CDR Constitution.[215]

269. In an excerpt from the book *Les Crises Politiques au Burundi et au Rwanda (1993-1994),* by André Guichaoua, Nahimana is identified parenthetically as CDR.[216] Nahimana appears in a photograph on the back page of *Kangura* No. 35, with a group of people, some of whom were wearing CDR T-shirts and caps. Nahimana was wearing neither a CDR T-shirt nor cap. A caption underneath the photograph reads: "The party of the people, CDR, condemns the government made up of accomplices…"[217]. Nahimana identified himself in the photograph, and said that this rally took place between June and August 1992. He testified that the photograph did not show all the participants at the rally. For example, Barayagwiza, who was with Bucyana and others in the front at the podium, was not shown in the photograph.[218] Ngeze testified that the same photograph was from a football match and denied that the caption, which he wrote, was expressing their view, as Nahimana was not a CDR member and another person present in the photograph was an RPF member.[219]

270. Counsel for the Prosecution produced a series of photographs in which Ngeze was wearing CDR colours (P248). He acknowledged the photographs and admitted that he

[209] T. 19 Sept. 2002, pp. 40-44.
[210] T. 8 Apr. 2003, pp. 12-13.
[211] T. 24 Oct. 2002, pp. 72-73.
[212] T. 25 Oct. 2002, pp. 15-19, 26, 37; T. 25 Oct. 2002 (Fr.), p. 30; T. 28 Oct. 2002, pp. 129-130.
[213] T. 3 Dec. 2002, pp. 25-27.
[214] T. 13 Jan. 2003, p. 12.
[215] Exhibit 1D66A; Exhibit 2D9.
[216] Exhibit 1D151, p. 698.
[217] The original Kinyarwanda reads: "Ishyaka Rya Rubanda CDR Riramagana Guverinoma Igizwe N'Ibyitso. Byagaragariye Kuri Ministri Ngurinzira Ushinzwe Ububanyi N'Amahanga. Mu Mezi Abiri Igomba Kuba Yeguye."
[218] T. 19 Sept. 2002, pp. 106-110.
[219] T. 3 Apr. 2003, pp. 93-96.

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was wearing the colours of the CDR party. He also stated that he had attended an RPF meeting at Kinihira when he wore an RPF T-shirt and cap, although he was not a member of RPF.[220] Ngeze was also questioned by the Chamber about a photograph on the back page of *Kangura* No. 40 of Ngeze wearing a CDR tie. Under the photograph was written: "We will accept to go to jail, we will accept to allow our own blood to run, but we will protect the interests of Bahutu", followed by Ngeze's name.[221] Ngeze said that this was an apology to the Hutu from the south who were killed in large numbers by Habyarimana, as a way of protecting the interests of the Hutu.[222] The Chamber asked Ngeze why he would be shown with the CDR tie in Kangura. He explained that at the time, he had been imprisoned by the Habyarimana regime and his staff had done this to reassure them that he was not an *Inkotanyi*.[223] The same photograph appears next to the editorial in the same issue of Ngeze without the tie.

Discussion of Evidence

271. The credibility of Witnesses AFX, EB, AHB, X, LAG, ABC, AFB, AHI, Kamilindi, Serushago, D3, Nahimana and Ngeze are discussed in paragraphs 712, 812, 724, 547, 333, 331, 815, 775, 683, 816, 334, and sections 5.4 and 7.6 respectively.

272. The documentary evidence of CDR leadership clearly indicates that Martin Bucyana was the first President of CDR, and that neither Barayagwiza nor Ngeze served on the Executive Committee named by the CDR Constituent Assembly in February 1992. Despite these formal arrangements, the evidence also clearly indicates that Barayagwiza played a primary role, if not the primary role, in the creation and leadership of CDR from its beginnings. Documentary evidence to this effect includes the speech to be delivered by Bucyana at the official launch of the party, personally edited by Barayagwiza, and the videotape of the meeting, which shows Barayagwiza acting in a leadership role - presenting the party and its objectives to the meeting, introducing the delegation heads from each prefecture, and answering questions on the ideology of the CDR. The witness testimonies further indicate that Barayagwiza continued to play this leading role in 1993 and 1994. He was seen by the United States diplomatic corps to represent CDR, and he was the voice of CDR to the Prosecutor's Office in Kigali. Barayagwiza was perceived by many as the real decision maker behind the scenes, or as the deputy or "number two" to Bucyana, the President.

273. Although he was not initially named in 1992 as the Gisenyi CDR President, the Chamber finds at some point in time prior to the death of Bucyana in February 1994, Barayagwiza had formally assumed this position. Witness AHI said Barayagwiza took over from Balthazar. Ngeze said he replaced Samvura. Many witnesses in addition to AHI and Ngeze, including Witnesses BI, AFX, Serushago, Kamilindi and Des Forges, all testified that Barayagwiza was head of the CDR in Gisenyi. Several witnesses also

[220] *Ibid.*, pp. 97-102.
[221] As translated by Ngeze. The original Kinyarwanda reads: "Tuzemera Dufungwe, Twemere Tumene Amaraso Yacu Ariko Turengere Inyungu Z'Abahutu"; T. 3 Apr. 2003, p. 26.
[222] T. 3 Apr. 2003, pp. 26-27.
[223] T. 8 Apr. 2003, pp. 46-47.

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indicated that Barayagwiza was a member of the national committee, a reference to the Executive Committee. As the head of CDR in the Gisenyi prefecture, Barayagwiza appears to have been by virtue of that position a member of the national CDR Executive Committee, which is what Ngeze conveyed in his testimony. At the Constituent Assembly, the regional CDR delegates named were those who constituted the Executive Committee. Although the date on which Barayagwiza formally assumed this office is unclear, it was some time before the death of Bucyana in February 1994. The evidence clearly indicates that after the death of Martin Bucyana, Barayagwiza assumed the position of President of CDR, formalizing his leadership role in the party. Witness ABC heard this news announced on RTLM, and Serushago heard it on Radio Rwanda. The news was also published twice in *Kangura*. Ngeze's insistence that Barayagwiza did not replace Bucyana lacks credibility, particularly in light of this written record in his own newspaper.

274. Ngeze in his testimony indicated that he himself was not a member of CDR, but he explained that the reason he was not a member was to ensure that he could be paid for advertising CDR in *Kangura*. Ngeze was present and active at the Constituent Assembly and was a signatory to the CDR Constitution. He did not hold office in the party, although the evidence indicates his active involvement, such that Witness AFX thought he was deputy to Barayagwiza. Ngeze acknowledged that he was one of the founding members of CDR and that he was named as an adviser to the party. It was clear from his testimony that he was supportive of the CDR and a number of photographs of Ngeze, including one of him in *Kangura* wearing a CDR tie, publicly identified him in connection with CDR. The Chamber considers that it is clear from the photographs that the CDR tie was superimposed onto a pre-existing photograph of Ngeze. However, the Chamber notes that Ngeze did not later distance himself from the impression created by this photograph, that he was a CDR member or sympathized with their policies, when he was released from custody, assuming that he was imprisoned at the time. If he was not a card-carrying member of the CDR, he was nevertheless seen as having been actively involved in the party, and was active if on an informal basis. He supported and promoted the party.

275. There is no evidence that Nahimana attended the Constituent Assembly of the CDR or participated in the establishment of the party, and there is little evidence that he was even a member of the CDR. The Chamber accepts Nahimana's evidence that the photograph on the back page of *Kangura* No. 35 was a photograph of the CDR rally he attended, which is consistent with the photograph caption, and notes that Nahimana was not wearing a CDR cap or T-shirt, as were others in the photograph. The Chamber considers that Ferdinand Nahimana may well have been confused with Théoneste Nahimana, who was a Vice-President of CDR. This confusion may have been further compounded by Ferdinand Nahimana's role as Vice-President of the CRP.

Factual Findings

276. The Chamber finds that Jean-Bosco Barayagwiza was one of the principal founders of CDR and played a leading role in its formation and development. Although

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initially not a CDR office-holder, Barayagwiza was seen as, and was, a decision-maker for the party, working to some extent behind the scenes, in the shadow of CDR President Martin Bucyana, technically as an adviser or counsellor. At some time prior to February 1994, Barayagwiza became the head of the CDR in Gisenyi prefecture and a member of the national Executive Committee. In February 1994, following the assassination of Martin Bucyana, Barayagwiza succeeded Bucyana.

277. The Chamber finds that Hassan Ngeze was a founding member of CDR and active in the party, and held the position of adviser to the party. The Chamber finds that Ferdinand Nahimana was not a member of CDR.

3.2 CDR Policy

278. Prosecution Expert Witness Alison Des Forges testified that the objective of CDR, as seen through its press releases, the speeches of its party leaders, Barayagwiza's writings, and the behaviour of CDR members, was to rally all Hutu, regardless of their previous party allegiance, behind the defence of the Republic. They interpreted this to mean rallying all Hutu in a common front against the Tutsi, whom they took to be accomplices of the RPF. Although the party programme and Barayagwiza's writings referred to using peaceful means to attain their objectives, CDR writings also contained the underlying threat of resort to force. Des Forges cited in support of this assertion a letter written by Barayagwiza to the editor of the Belgian journal *La Libre Belgique*. The letter, dated 11 July 1992, was a reply to an article that had appeared in the publication, mentioning Barayagwiza in a manner he considered to be inaccurate and prejudicial. In it he discussed negotiations between the government and the RPF, stating:

> I am not participating in these negotiations but I hope, as any good patriot, that they lead to a compromise acceptable to the Rwandan people and especially to the Hutu majority, from whom the Tutsi minority wants to grab power through force and violence.[224]

279. Barayagwiza said in the letter that he did not have any influence over the negotiations either through his functions in the Ministry of Foreign Affairs or through his membership in the CDR, noting, "Anyway, my party, the CDR, is not taking part in the Government and was not involved in the preparation of these negotiations."[225] He then mentioned the torture and killing of Rwandan citizens by the *Inyenzi-Inkotanyi* and his surprise that their leader Kagame would claim that those who denounced these massacres were extremists, citing the dictionary definition of extremism and suggesting that those who tortured and killed rather than those who defended the innocent victims were the extremists. In closing, Barayagwiza wrote:

> The CDR never resorted to violent means in its political struggle and has no intention of taking such recourse. You only need to read its Programme-Manifesto to be convinced of this. Can the RPF of Major Kagame say the same? But despite the peaceful methods of its political action, the CDR party will

[224] Exhibit P136, translation (original in French).
[225] *Ibid.*

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> defend by any means, the interests of the Hutu popular majority against the hegemonic and violent aims of the Tutsi minority.[226]

280. In analyzing this letter, Des Forges noted the ethnic element in the definition of the conflict (Hutu and Tutsi), the juxtaposition of the Hutu popular majority against the Tutsi minority, and the idea that the Tutsi were seeking to achieve hegemony by violent means, against all of which the CDR was prepared to use any means in defence. Des Forges asserted that the phrase "any means" at that time meant specifically the killing of Tutsi. She testified that the CDR party members were to be the greatest defenders of the 1959 Revolution and stand in complete opposition to the monarchy. CDR interpreted the conflict in Rwanda as essentially an ethnic conflict and therefore sought to unite all Hutu against Tutsi. According to Des Forges, Barayagwiza's writings and the party's press releases discussed the age-old ethnic conflict as a fact of nature, instead of recognizing that the ethnic nature of the conflict was a recent development. They viewed the situation as bipolar in nature, with no position in the middle. One was on one side or the other of an ethnically-defined dividing line.[227] In his book, *Le Sang Hutu est-il rouge?*, Barayagwiza stated:

> The CDR Party considers that this war led against the Hutu who allegedly "*usurped*" the Tutsi power, has unfortunately divided the Rwandan nation into two politico-ideological poles corresponding to the two ethnic groups.[228]

281. In cross-examination, Counsel for Ngeze pointed out to Des Forges that the CDR manifesto did not contain threats of extermination or violence. Des Forges suggested that a party which openly advocated violence would not have been registered in Rwanda and therefore the programme had to be tailored to comply with the registration laws.[229] The CDR manifesto was reprinted in the special issue of *Kangura* published in 1992, and the Chamber has reviewed the text of the manifesto. It does not contain threats of extermination or violence. After a review of the history of Rwanda and particularly the circumstances of the 1959 Social Revolution, presented as the overthrow of centuries of feudal oppression by the Tutsi, the manifesto looked to the future and the question of national unity. On this question it states:

> This issue can be considered without passion only if one clearly recognizes that Rwandan society is composed of three distinct ethnic groups, whose numerical importance also differs. It will be difficult to find an adequate solution to this question if one continues to practice the policy of an ostrich rather than to take the bull by the horns. One must recognise first of all the autonomous existence of each ethnic group and its role in society, in accordance with recognized democratic principles. This is so necessary because the reinforcement of democracy is occurring when the representatives of one of the ethnic groups violently fight to recover power. This reality must be taken into account: the

[226] *Ibid.* (translation from French original).
[227] T. 21 May 2002, pp. 59-62, 65-67.
[228] Exhibit 2D35, pp. 211-212, translation from French.
[229] T. 29 May 2002, pp. 23-27.

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> Tutsi ethnic group recognizes and imposes its autonomous existence and does not hide its determination to recover power...[230]

282. The manifesto asserted that the different ethnic groups of Rwanda could co-exist in peace, in accordance with democratic principles. Before elaborating an economic programme including agriculture, population, industrial development and human resources, the manifesto concluded its general discussion of the future as follows:

> The three ethnicities must therefore resolve to co-exist in peace, each defending its own interest but in the spirit of national interest. National unity does not presuppose the symbiosis of the ethnicities but rather collaboration in diversity for the development of the nation as a whole.[231]

283. In an undated Special Communiqué issued by the CDR on the protocol signed in Arusha between the Government and the RPF on 18 August 1992, similar views on ethnicity were expressed. After noting in a section on National Unity that unity is not synonymous with the symbiosis of ethnic groups, but rather with their honest collaboration for the development of their country, the communiqué stated:

> This said, it must be recognized that socio-political relations in Rwanda have been characterized since the existence of the country by a real antagonism between the Hutu and Tutsi ethnic groups, who vie and fight for power. As a result of this struggle, the national interest has long been ignored in favour of ethnic interest. This was the case during the long reign of the Tutsi feudal monarchy. The triumph of the Social Revolution of 1959 that re-established justice and prepared the reign of democracy should have put an end to the inter-ethnic struggle to replace it with electoral competition. But this did not take into account the stubbornness of the feudal Tutsi lords who immediately organized, internally and externally, the counter-revolution. The war of October is only the extension of this counter-revolution whose aim is for the Tutsi minority to recover power.[232]

284. The communiqué stated that this fight for power between the Tutsi and Hutu was the major obstacle to unity for the national interest and said it should be recognized and addressed directly. It expressed support for democracy and said that the RPF, referred to as the champion of Tutsi ideology, did not want to recognize the existence of the Hutu majority. The policy of the CDR was set forth as follows:

> CDR Party certainly condemns any political ideology that substitutes ethnic, regional, religious or personal interest for the national interest, but it recognizes the right of each individual or group of individuals, including the ethnic groups, the right to defend through democratic means their legitimate interests.[233]

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[230] Special issue of Kangura, translation from French.
[231] *Ibid.*
[232] Exhibit 2D24 (translation from French), T. 30 May 2002, pp. 48-52.
[233] *Ibid.*

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285. The communiqué stated that when this ideology expressed itself by subterfuge, violence and war it should be condemned by all democratic forces, and it questioned the RPF's commitment to democracy as it was engaged in armed combat.[234]

286. In a subsequent Special Communiqué, No. 5, dated 22 September 1992, the CDR expressed concern over having learned that "there are people who continue to betray the country by sending their children, members of their families, or those whom they pay, to the *Inyenzi-Inkotanyi*, so that they can continue to commit their misdeeds and shed the blood of the majority population."[235] In this communiqué, the CDR accused the Nsengiyaremye Government of having proof but doing nothing because certain party members participating in the Government, even certain ministers, were partly responsible. By way of example, lists of names were published in the communiqué, including a list of those responsible for recruitment and sending recruits to the *Inyenzi-Inkotanyi*, a list of those who had sent their children to the *Inyenzi-Inkotanyi*, and a list of those who were working for the *Inyenzi-Inkotanyi*. The lists included a number of political leaders. MDR President Faustin Twagiramungu, PSD President Frédéric Nzamurambaho, and PL President Justin Mugenzi, for example, were all on the list of those working for the *Inyenzi-Inkotanyi*. The communiqué concluded:

> The CDR party urges the population to be more vigilant because the Government in place is not concerned about this problem, because most of those in the Government are cooperating with these *Inyenzi-Inkotanyi*. The population itself must be able to control how these people work and live.
>
> The CDR party again warns the Government and the Head of State to show concern for this problem and take the necessary measures against all the traitors. Otherwise, they should not think that the popular majority will continue to support them. The enemy is the enemy. Whoever supports him is himself an enemy of Rwanda.[236]

287. Several CDR communiqués introduced into evidence by the Defence set forth the party's position on the Arusha Accords in negotiation at the time. In a letter to the Prime Minister, signed on behalf of the CDR by Bucyana and dated 29 September 1992, various recommendations were made. The Constitution should not be modified or abrogated before the Accords were signed and a transitional government put in place, and the Accords should be ratified by the people through a referendum. The legislative, executive and judicial powers of state were discussed, as was the length of the transition contemplated and the need for elections. The letter called for the reintegration of persons displaced as a result of the war, on an equal footing with the repatriation of refugees. It also called for a new delegation of negotiators who were more competent and more patriotic. In closing, the letter warned that if the views of the CDR were not taken into consideration, the CDR would not adhere to the outcome of the negotiations.[237] In a communiqué dated 10 November 1992, the CDR denounced the Accords signed on 30

[234] *Ibid.*
[235] Exhibit P145.
[236] Exhibit P145 (translation from French).
[237] Exhibit 2D16; T. 30 May 2002, pp. 37-39.

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October 1992 between the Government and the RPF, with regard to the sharing of power in the transitional government. The communiqué urged all democratic forces to join together to ensure the failure of this protocol, acceptance of which was said to be out of the question.[238]

288. On 16 February 1993, a CDR communiqué was released condemning the violations of the ceasefire by the RPF and lauding the exceptional courage of the Rwandan Armed Forces in countering the RPF aggression. The CDR appealed to all the Rwandan population, especially the youth, to mobilize to defeat this aggression. Deploring the massacres and expressing concern over displaced persons, estimated as having reached one million, in this communiqué the CDR called on the Government and the international community to assist these people. It denounced the Government's acceptance of the Arusha Accords and called for their revision with regard to power sharing in the Interim Government.[239] A CDR communiqué on the Arusha Accords, dated 22 June 1993, warned the Rwandan people of the serious consequences, if certain provisions were not fixed, of the Arusha Accords and their ability to bring about a just and lasting peace. In particular, the CDR was critical of the provisions on repatriation of refugees and their right to repossess property. The communiqué expressed concern over the discrimination in treating these returning refugees better than persons displaced by the war. It ended by stating that if these unacceptable provisions were not fixed, the signatories would respond to the people.[240] A CDR communiqué, dated 9 March 1993, expressed sadness over the acceptance of the Arusha Accords by President Habyarimana, against the interests of the Rwandan people. The communiqué criticized the Prime Minister as well for having made promises to the *Inkotanyi*, and it called on them both to resign for their acts of betrayal. It concluded, "If they do not do so, the entire population will rise as one man, regardless of their political parties, to unseat them."[241]

289. A CDR communiqué dated 3 September 1993, issued in Brussels by Barayagwiza as Councillor of the Executive Committee, stated that the RPF had created a dense network of accomplices, especially inside Rwanda. The communiqué also talked of the ties between the RPF and opposition political parties, particularly the MDR, PL and PSD, and criticized the power sharing envisioned by the Arusha Accords as inequitable and anti-democratic. It suggested that in promising to demobilize, the RPF wanted to hide its ultimate goals of dismantling the national army and creating a hybrid structure that would allow RPF elements to integrate the national army and consolidate the power of the minority. At the end, the CDR communiqué stated that the only way to save the democracy and the Republic from danger, was to organize the elections as quickly as possible. The CDR urged all defenders of democracy to mobilize to demand these elections. Des Forges noted a clearer focus in this document on defining the enemy as Tutsi inside the country. She also noted similarities between this communiqué and Barayagwiza's later writings, particularly his book *Le Sang Hutu,* and RTLM broadcasts, in casting the population at large as a fallback, the ultimate defence and resource given its

[238] Exhibit 2D19; T. 30 May 2002, pp. 41-42.
[239] Exhibit 2D22, T. 30 May 2002, pp. 46-47.
[240] Exhibit 2D15; T. 30 May 2002, pp. 31-36.
[241] Exhibit 1D122; T. 11 July 2002, pp. 143-144.

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numbers, should the army be required to demobilize or be infiltrated by the RPF. Des Forges said with regard to the call for election that later on, increasing pessimism about the possibility of elections led to a belief that resort to force was a legitimate alternative to the ballot.[242]

290. On 23 November 1993, the CDR issued a communiqué condemning the massacre of civilians by the RPF in the demilitarized zone in Ruhengeri on 17 and 18 November 1993. The communiqué said the massacres showed clearly that the RPF had rejected the Arusha Accords and intended to grab power by force after having decimated the Hutu. The CDR supported the decision taken by the RAF to suspend participation in meeting with the RPF, and it called for the resignation of Prime Minister Agathe Uwilingiyimana, or failing that her dismissal by President Habyarimana for her inability to guarantee the security of Rwandan citizens. Otherwise, the President and Prime Minister would have clearly proven that they were accomplices of the *Inkotanyi* cutthroats of pregnant women, children, the elderly and other defenceless civilians. The communiqué concluded as follows:

> As the current situation in the country is on the verge of explosion at any moment, the CDR Party invites the popular majority to remain very vigilant to avoid any surprise and to react immediately and energetically to all provocation, neutralising its enemies and their accomplices by any means. Since the peace accord has been rendered void by the actions of the RPF encouraged by the presence of the Belgian contingent in Kigali, the popular majority has no choice but to find other ways and means to arrive at a just and lasting peace.[243]

291. Des Forges testified that in her view, this communiqué constituted incitement to use deadly force against the enemy and its accomplices. She said the "popular majority", in Kinyarwanda the *rubanda nyamwinshi*, referred to the Hutu, and that the use of the term coincided with the burgeoning Hutu Power movement and CDR's ideology of an ethnic coalition.[244] In an interview on Radio Rwanda interview, Hassan Ngeze said, "when the CDR was founded, we gave it the assignment of defending the interests of the majority people by all means possible." When asked in cross-examination whether CDR's policy of defending the interests of the *rubanda nyamwinshi* by all means included military means, Ngeze replied that the CDR wanted to discuss ethnic issues in Rwanda and "by all means" meant education, feeding people, and giving them a peaceful country.[245]

292. Des Forges testified that during the period from late 1993 to early 1994, CDR changed its position on the Arusha Accords. Although initially it opposed the Accords and did not sign the requisite declaration of ethics to qualify for participation in the Government, by late 1993 the CDR had decided it wanted a seat in the National Assembly. Des Forges said she believed that this change was dictated by the need of Habyarimana's bloc to have a third of the votes to block an impeachment vote, and that

[242] Exhibit P107/36; T. 22 May 2002, pp. 45-55.
[243] Exhibit P149 (translation from French).
[244] T. 22 May 2002, pp. 70-75.
[245] Exhibit P105/4H; T. 3 Apr. 2003, pp. 56-57, 91-92.

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this was an arrangement agreed to by MRND and CDR. According to Des Forges, Barayagwiza would have made this decision, and he anticipated being the CDR deputy under this arrangement.[246] Witness GO, a civil servant who worked in the Ministry of Information, also testified that while CDR initially refused to sign a statement of support of the Arusha Accords, resulting in its inability to participate in the transitional government, the party subsequently changed its position.[247]

293. Defence Witness B3 testified that he had joined the CDR because it was a party that sincerely advocated democratic principles, that is, that each person had a vote. He said that when the majority holds power it protects the minority, whereas when the minority has power, it protects itself to the detriment of the majority, as was the case with apartheid in South Africa. These were the same principles that struck him upon reading CDR's constitution. CDR wanted socio-political change - essentially it wanted the war to stop and this could be achieved with the principle of "one man one vote". CDR wanted peace and harmony between the two ethnic groups while respecting the rights and duties of the other group.[248]

294. Ngeze testified that he read the CDR Statute and realized it was a party that wanted to discuss the crisis in Rwanda, especially as pertaining to the issues of ethnicity, which he called "Hutuness" and "Tutsiness". He was convinced CDR was a good party as it wanted to put these issues on the table for discussion with the RPF, before discussion of other issues, such as, power-sharing. Ngeze stated that he still supported the CDR as the party committed to resolving the ethnic problem in Rwanda, as set forth in its Statute, and he believed that if they had been able to sit down with RPF, this problem could have been solved.[249] Nahimana testified that the political ideology of CDR, which he did not share, was that the Hutu should defend their interest and the Tutsi theirs, and they should come together at the top of the pyramid that was the Rwandan nation.[250]

Discussion of Evidence

295. The credibility of Ngeze and B3 is discussed in section 7.6 and paragraph 334 respectively.

296. The Chamber notes that from its creation, the CDR was expressly committed to addressing the question of ethnicity explicitly. From Barayagwiza's introduction at the Constituent Assembly of the CDR, and from the party manifesto, it is clear that the party stood for ethnic segregation rather than unity, for an acceptance of ethnic division and a negotiation of peaceful co-existence on that basis. The RPF was said to represent the interests of the Tutsi minority, and the CDR was formed to represent the interests of the Hutu majority. In the language used, the terms "Tutsi" and "Hutu" referred to coherent political groups as much as ethnic groups, entirely conflating political and ethnic identity.

[246] T. 22 May 2002, pp. 111-112.
[247] T. 29 May 2001, pp. 51-52.
[248] T. 3 Dec. 2002, pp. 50-52.
[249] T. 28 Mar. 2003, pp. 19-21; 7 Apr. 2003, p. 58.
[250] T. 23 Sept. 2002, pp. 62-63.

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Barayagwiza acknowledged this fusion, which he referred to in his writing as "two politico-ideological poles corresponding to the two ethnicities". Although by its Statute, CDR membership was open to all Rwandans, the Chamber notes that by law it could not be otherwise, as Des Forges testified. The party motto "Unity and Solidarity" clearly referred to unity and solidarity among the Hutu, who were the majority and who had been historically disadvantaged by the Tutsi feudal monarchy. The symbolism of the CDR flag was defined by the overthrow of this oppression in 1959, and the 1959 Social Revolution was considered by the CDR as a critical turning point in Rwandan history, a moment of liberation for the Hutu majority.

297. The underlying concern of the CDR, apparent throughout its policy statements, was that, as Barayagwiza expressed it in his letter of July 1992, "the Tutsi minority wants to grab power through force and violence." The policy of the party was driven to a great extent by the perceived need to highlight and oppose the political ambition of the RPF and their determination to realize this ambition through military aggression. But the RPF was equated with the Tutsi minority as a matter of course, and in the CDR Special Communiqué of September 1992, anyone cooperating with the RPF was deemed to be "an enemy of Rwanda". The nature of the list in that communiqué, which named virtually all the opposition political leadership, is a chilling indication of the broad scope encompassed by the CDR definition of the enemy. The Chamber also notes the warning in the CDR Communique of September 1993 that the RPF had created a network of accomplices inside the country.

298. The CDR communiqués introduced by the Defence set forth the views of the party on the Arusha Accords. Of greatest concern to the CDR, it appears, were the provisions on power sharing and the provisions relating to the repatriation of refugees. These are precisely the types of issues that political parties would have differing views on. The Chamber notes that the views of the CDR on these issues were expressed through their communiqués without reference to ethnicity. The positions of the CDR were framed in reference to democracy, and the RPF was presented as a force prepared to use violence without regard for democracy. The CDR repeatedly denounced the Arusha Accords, each time setting forth the political reasons that justified this denunciation. The warning repeatedly given in communiqués was that if changes were not made to the agreement, the CDR would not support it and the political leaders responsible for it would be answerable to the people. The communiqués called on the population to oppose the Arusha Accords but did not initially advocate violent means to do so. Even the CDR communiqué naming Government Ministers and others as enemy collaborators, while warning the Government to take action, threatened loss of support rather than violence as the consequence of inaction.

299. The letter written by Barayagwiza to the editor of *La Libre Belgique* states that the CDR had never taken recourse to violent means in its political struggle and had no intention of doing so. He charged the RPF, in contrast, as having done so and continued by saying that "despite the peaceful methods of its political action" the CDR party would defend Hutu interests from Tutsi violence "by any means". The Chamber considers that the meaning of the words "by any means" in the context of this letter, which

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characterized these means as being despite peaceful methods, clearly referred to violence and constituted a threat to violence, to counter the violence perpetrated by the RPF. Written in a letter to a newspaper by Barayagwiza, a leader of the CDR, this sentence represents a statement of CDR policy, and a justification by Barayagwiza for the use of force to defend the Hutu popular majority from the Tutsi minority.

300. The CDR communiqué of 9 March 1993 constituted a clear threat to the President and Prime Minister, publicly calling on the population to rise up and unseat them if they did not resign. The CDR communiqué of 23 November 1993 referred to the use of force through the term "by any means" and called for the use of force, implicitly suggesting that there was no other way for the popular majority to protect itself from the enemies and their accomplices in the aftermath of the massacres condemned by the communiqué. The Chamber concurs with Des Forges' interpretation of the "popular majority" as a reference to the Hutu, noting that Baraygwiza in his letter to *La Libre Belgique* spoke more specifically of the "Hutu popular majority" and that the popular majority was frequently referred to in CDR writings as the Hutu.

Factual Findings

301. The Chamber finds that the CDR was formed to promote unity and solidarity among the Hutu popular majority and to represent its political interests. The CDR equated political interest with ethnic identity and thereby equated the RPF with the Tutsi, effectively defining the enemy as the Tutsi ethnic group. The CDR also identified as the enemy prominent political opposition leaders. The formal policy of the CDR, as reflected in its political manifesto and public statements, initially condemned ethnic violence and called for peaceful co-existence among the various ethnic groups, maintaining that these ethnic groups each had their own fixed political interests and that unity among the groups was not possible. The CDR considered the RPF to be the political representation of Tutsi interest, determined to seize power back for the Tutsi through force. In an early statement of CDR policy, Barayagwiza expressed the view that force could legitimately be used if necessary to counter this aggression. In a communiqué issued in March 1993, the CDR called on the population to rise up and unseat the President and Prime Minister for their betrayal of the country by acceptance of the Arusha Accords, and in a communiqué issued in November 1993, following massacres it attributed to the RPF, the CDR called on the Hutu population to "neutralize by all means possible its enemies and their accomplices", having defined the enemies as the Tutsi ethnic group.

3.3 CDR Practice

302. In addition to the constituent documents of the CDR and its statements of policy over time, the Chamber has considered the evidence presented of CDR practice, including CDR meetings and other activities undertaken by or related to the party. Witness GO, a civil servant in the Ministry of Information, stated in his testimony, "you know a tree by its fruits." He said that although he had not read the CDR Statute, he knew CDR through its activities, which led him to conclude that it was an extremist party. Presented on cross-examination with the provisions of the CDR Statute in support of

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pluralist democracy, Witness GO said he thought pluralism within a democracy was a good thing, but he was against people who used pluralism or democracy to sow division within the population or to say who can live and who must die.[251] Witness LAG, a Hutu member of the power faction of the PL party, said the purpose of CDR was to unite all Hutu as one power to fight against the Tutsi.[252]

Party Membership

303. According to Des Forges, although the legal documents establishing the CDR were free of discriminatory language, the party's practices caused the cabinet and the Minister of Justice to seek dissolution of the party in August 1992.[253] Prosecution Expert Witness Mathias Ruzindana testified that the CDR was seen as being anti-Tutsi, as a party for the Hutu. He did not know of any Tutsi CDR members.[254] Witness ABE, a Tutsi man from Kigali, testified that the CDR was for Hutu members only and did not accept membership from those born of parents of two different ethnic groups. He said that the CDR propagated ethnic hatred and that its ideology was that the true Hutu, who did not have blood from another ethnic group, should come together to fight the Tutsi enemy.

304. Witness ABE recalled that he had asked Ngeze once if he could attend a CDR meeting. Ngeze told him it was not possible, because the party was exclusively for one ethnic group. He asked Witness ABE to put two of his fingers into one nostril, saying if those fingers could enter his nostril, he could be a member. Thereafter, as he was calling others to the meeting, Ngeze kept on saying "remember, remember" and would hold up two fingers close to his nose. It was his way of saying that the party was exclusively for pure-blooded Hutus.[255] Witness ABE recalled seeing in Rwandan newspapers a cartoon of a gorilla with two fingers in its nose, and it was said that if someone did not have a nose like that he could not participate in the CDR.[256]As Witness AFB, a Hutu businessman explained, "[P]eople were identified as Hutus by looking at their nose. If someone had a flat nose or a broad nose they were considered as Hutu..."[257] Witness MK, a Tutsi civil servant, testified that it was said that in order to be a member of the CDR, you had to be to able to stick three fingers into one nostril.[258] Witness EB, a Tutsi teacher, testified that he attended a CDR meeting in 1993 at Umuganda stadium, where among the political personalities present were Barayagwiza, who was the President of CDR at the prefectural level, and Ngeze. A huge crowd was there. The first person who spoke at this meeting was the *bourgmestre* of Rubavu commune, who said: "Dear people, look to the left and right, and look at the nose of your neighbour." Witness EB left immediately. He testified, "When I heard those words, I felt targeted. I took fright. And before I was seen, I put my hand on my nose, and I tiptoed out, away from the crowd."[259]

[251] T. 6 June 2001, pp. 7-8, 12-16.
[252] T. 30 Aug. 2001, pp. 59-70; T. 3 Sept. 2001, pp. 59-64.
[253] T. 29 May 2002, pp. 161-164.
[254] T. 10 July 2002, pp. 97-98.
[255] T. 28 Feb. 2001, pp. 135-36.
[256] T. 26 Feb. 2001, pp. 44-51.
[257] T. 6 Mar. 2001, p. 32.
[258] T. 8 Mar. 2001, p. 40.
[259] T. 15 May 2001, pp. 151-152.

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305. Witness AEU testified that she heard that Ngeze used the method of asking anyone suspect to put two fingers in one nostril to distinguish Hutu from Tutsi when he was distributing CDR cards, so that they were sure that it was only Hutu who had them. She said even Hutu who had small noses were denied these cards by him. The witness, a Tutsi who had obtained a Hutu identity card, said she was looking for a CDR card but could not get one and joined the MRND.[260] Witness AGX, a Tutsi, testified that there were no Tutsi members of CDR, that Tutsi were not allowed to join the CDR and that identity cards were checked to verify that would-be members were Hutu and ensure that they were not Tutsi infiltrators. The witness recited a proverb in Kinyarwanda: "When water will not clean you, the only answer you can give is 'I am not dirty'." He never tried to join CDR as it was a Hutu party. On cross-examination he said he had not verified this policy with CDR officials because Ngeze had said it himself and what he said was final.[261]

306. Evidence that the CDR was a party for the Hutu came from Hutu as well as Tutsi witnesses. Witness AHI, a Hutu taxi driver, testified that he joined the CDR after talking to Ngeze, who told him about a party for the Hutu and recruited him.[262] Witness AFB testified that Barayagwiza said that CDR would be a political party that would promote the interests of the Hutu population, and that a person had to be hundred per cent Hutu to be a member of the CDR party.[263] Omar Serushago, an *Interahamwe* leader from Gisenyi, testified that CDR did not accept a mix of ethnic groups, and did not welcome *Inyenzis, Inkotanyi* or Tutsi.[264] On cross-examination, Counsel for Barayagwiza suggested to Serushago that his testimony about Hutu exclusivity in CDR membership was contradicted by the fact that Barayagwiza himself had a Tutsi wife with whom he had children. Serushago replied by saying that in Rwanda, issues regarding the Hutu and Tutsi ethnic groups were not clear, and that there were people who had killed their own mother or children. He said that CDR was a radical party that promoted killing but at the same time most people in authority in Rwanda had Tutsi mistresses.[265] When asked whether he knew Barayagwiza's wife, Serushago testified that Barayagwiza had two wives and that his principal wife, the mother of his eldest children, was a Tutsi. He said many people in high authority had Tutsi mistresses, known as the *deuxieme bureau* (second office).[266] Several Prosecution witnesses testified that Barayagwiza sent his wife away when he found out that she was Tutsi. A member of the *Interahamwe,* Witness X testified that Barayagwiza tried to recruit him to the CDR but subsequently told him that in fact he was mixed, having a Tutsi mother and a Hutu father and that the CDR was for people who were one hundred percent Hutu.[267] Witness X said he did not think there were any Tutsi in the CDR.[268]

[260] T. 26 June 2001, pp. 64-65.
[261] T. 14 June 2001, pp. 83-86.
[262] T. 4 Sept. 2001, pp. 50-55, 98.
[263] T. 6 Mar. 2001, p. 43.
[264] T. 19 Nov. 2001, pp. 43, 92; T. 20 Nov. 2001, pp. 58-59.
[265] T. 22 Nov. 2001, pp. 80-82.
[266] T. 20 Nov. 2001, pp. 64-65.
[267] T. 18 Feb. 2002, pp. 61-66.
[268] T. 25 Feb. 2002, p. 95.

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307. Defence Witness B3, a CDR member, testified that anyone, regardless of ethnicity, was welcome to join the CDR, which would fight for the defence of the republic. He said that there were Tutsi in the CDR and that the party did not prohibit Tutsi from being members. When asked by Counsel for Ngeze to name some Tutsi members of the party, he could not do so.[269] Hassan Ngeze testified that CDR had Hutu and Tutsi members.[270] He said there were many Tutsi members in CDR, and there was even a Tutsi woman on the Executive Committee.[271] Ngeze was asked about an interview on Radio Rwanda, in which he said that the seed sown by CDR had borne fruit, the seed being "inviting the Hutus to unite to fight the enemy". Ngeze said he used the word "Hutu" instead of "Rwandans" because there were only Hutu in the military during Habyarimana's regime.[272] Defence Witness BAZ4, a member of the CDR, which he described as "a party of Hutus", testified that there were Tutsi in the party and cited the example of a boxer named Damas. He denied that Damas had joined as a result of a *kubuhoza* operation.[273] Defence Witness RM117 testified that Ngeze was a member of the CDR, which was said to be a Hutu party, although the witness noted that there were Tutsi in CDR as well. The witness wrote down four names of Tutsi members of CDR from Gisenyi.[274]

CDR Rallies

308. Prosecution Witness AFB, a Hutu businessman, testified that he heard Barayagwiza say publicly, at a CDR meeting in 1993 at Umuganda stadium, that CDR was a party for the Hutu. On cross-examination, when asked what was wrong with promoting a political party as one that would best represent Hutu interests, Witness AFB replied that it was a crime to sow discord, and to promote the interest of one ethnic group to the exclusion of another. Witness AHB said he went to the rally because he thought they would speak of trying to build the country but what he heard was that they were trying to promote killings. He testified that at the meeting, the CDR youth, called the *Impuzamugambi*, started threatening people and sang, "we shall exterminate them, we shall exterminate them!" He said this term, "*tubatsembabasembe*", was the same one that Barayagwiza used in his meetings.[275] Witness AFB said that the concept of exterminating Tutsi came with the birth of the CDR. He regarded them as extremists as they called for the extermination of Tutsi, the *Inyenzi* and their accomplices. After the meeting, the youth pulled down flags belonging to the MDR Party and attacked the chairmen of other parties in the prefecture. In 1994, they raised a CDR flag and at the end of the day, people would be forced to stop while the flag was being lowered. The atmosphere degenerated until the genocide took place, at which time these youth killed people, including old people. Witness AFB said that these acts were carried out by *Impuzamugambi* and *Interahamwe*. He did not believe that the CDR's goal was to gather

[269] T. 3 Dec. 2002, pp. 35-49.
[270] T. 1 Apr. 2003, p. 110.
[271] T. 8 Apr. 2003, pp. 35-37.
[272] Exhibit P105/4H; T. 3 Apr. 2003, pp. 58-59.
[273] T. 28 Jan. 2003, pp. 34-35.
[274] Exhibit 3D223; T. 24 Mar. 2003, pp. 25-26.
[275] T. 6 Mar. 2001, p. 52.

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electoral consensus. What he heard at meetings was the CDR trying to promote killings.[276]

309. Witness AHB, a Hutu farmer, testified that he saw Barayagwiza in 1991, going to a CDR meeting in Mutura. He named people he knew, Mbarushimana, Kanoti and Sinanduru, who went to the meeting and told him about it. They were told to recruit members for the CDR and they were told it was important to look for *Inkotanyi*, meaning the Tutsi. After the rally many Tutsi were killed and others were taken away. Witness AHB did not know where all of them were taken, but his conclusion when people are taken away and never come back is that they have been killed. The body of a woman called Mukera was found. She had been taken from her home by Sinanduru, who passed by with the woman where Witness AHB and others were. Later, Sinanduru was arrested and confessed that he did this, and was imprisoned. Witness AHB was asked to come to the meeting in 1991 as they were recruiting new members for the CDR. He refused to become a member. He maintained on cross-examination that this rally took place in 1991 and said that even if it did not exist elsewhere, CDR existed at that time in his region.[277]

310. Witness X testified that in either February or March 1992, he attended a CDR rally in Nyamirambo stadium, where Nahimana was present, during which Barayagwiza spoke and used the term "*gutsembatsemba*", which meant "kill the Tutsi".[278] Nahimana testified that contrary to Witness X's testimony, there was no mention of "*tubatsembatsembe*"[279] during this rally. He said the person responsible would have been prosecuted, as was Mugesera. The speakers talked about their political ideologies and CDR's programme. Nahimana stayed until the end of the meeting as he was interested to know what was attracting people from MRND to join CDR. He said that it was the end of 1993 to January/February 1994 that there were complaints against CDR for singing a song using the words "tubatsembatsembe", an accusation CDR denied.[280]

311. Defence Witness D3, a banker, testified that the statements made during CDR rallies showed an irreparable split between the Hutu and Tutsi.[281] On cross-examination by Counsel for Ngeze, Witness D3 clarified that he had only attended one CDR rally. He could not recall the number of speakers at the rally but said that it lasted four or five hours. When asked how many speakers made comments regarding a split between the Hutu and Tutsi, he replied by reciting a proverb he heard at the rally: "The Hutus and Tutsis will share what they have to share when the sun that you see would have gone down." After the speaker said this, the CDR members applauded in approval, which convinced Witness D3 that it represented CDR ideology. He said that this statement was in line with all that was said at the rally, the speakers at which were CDR members.[282]

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[276] *Ibid.*, pp. 19-21, 37-60.
[277] 27 Nov. 2001, p. 118, pp. 141-153
[278] T. 18 Feb. 2002, pp. 71-75.
[279] *Tubatsembatsembe* means "let's kill the Tutsi" and *gutsembatsemba* "kill the Tutsi" in the imperative form.
[280] T. 19 Sept. 2002, pp. 106-110.
[281] T. 13 Jan. 2003, p. 12.
[282] T. 13 Jan. 2003, pp. 37-41.

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312. Prosecution Witness François-Xavier Nsanzuwera, the Kigali Prosecutor in 1994, testified that he knew the CDR very well and described it as a political party composed of Hutu extremists. He witnessed several CDR demonstrations at the end of 1993 and in 1994 - some were peaceful and others were not.[283] The witness said CDR demonstrations targeted several institutions and individuals. He described some incidents involving CDR members. Once, they looted the office of the President of the Constitutional Court. Another time they attacked some of Nsanzuwera's officials and broke the windows. Yet another time they invaded the building of the Ministry of Justice, threatened the Minister of Justice and asked him to dismiss Nsanzuwera. They told the Minister that they had no confidence in Nsanzuwera because he was Tutsi and he was not doing his job properly.[284] Nsanzuwera testified that he is a Hutu.[285]

Acts of Violence Perpetrated by CDR Members

313. Several witnesses testified as to acts of violence perpetrated by CDR members. Des Forges cited a complaint from a priest of Kabarondo church to the local police in respect of an attack at the church in early August 1992. The priest was injured and the vicar threatened by assailants from the CDR, who came to the church after their meeting demanding that the priest hand over Tutsi they claimed had taken shelter there.[286] On cross-examination, when asked how the priest knew the assailants were CDR members, Des Forges noted that he said they had come from a CDR meeting. She said she knew this attack had taken place because she had interviewed those involved.[287] Des Forges gave other examples of violence perpetrated by the CDR, citing the case of a man called Nduwayezu who was attacked in Gisenyi in late January 1993, and identified several of his assailants as CDR members. She also mentioned a street demonstration in Kigali in late May 1992, which resulted in five deaths that involved two CDR members, including Katumba, a known CDR youth leader in Kigali. Des Forges said that several diplomatic representatives examined violence committed against the Tutsi in late 1992 and early 1993, and they concluded that the CDR was involved in organizing and executing these massacres. The International Commission of Investigation on Human Rights Violations in Rwanda since October 1 1990, which conducted its investigation in January 1993, heard witnesses speak of attacks by militia of the *Interahamwe* and the CDR.[288] Omar Serushago, an *Interahamwe* leader, testified that in 1992 and 1993 he saw Barayagwiza and Ngeze together at CDR meetings in Gisenyi town. One of the purposes of these meetings was to collect funds for the purchase of weapons.[289]

314. Des Forges testified that in the latter part of February 1994, after Bucyana was killed by a crowd in Butare in retaliation for the killing of Gatabazi, the leader of the PSD party the day before, the *Interahamwe* and the CDR reacted to these assassinations by attacking Tutsi and members of opposition political parties in Kigali, killing about 70

[283] T. 23 Apr. 2001, pp. 25-26.
[284] T. 24 Apr. 2001, pp. 11-12.
[285] T. 23 Apr. 2001, p. 182.
[286] Exhibit P137; T. 21 May 2002, pp. 71-72.
[287] T. 29 May 2002, pp. 38-39.
[288] T. 29 May 2002, pp. 161-164.
[289] T. 15 Nov. 2001, pp. 86-88.

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people.[290] Des Forges stated that Rawson, the US Ambassador to Rwanda in 1994, told her of a telephone conversation he had with Barayagwiza in the early months of 1994, which he described as virtually a shouting match. He had asked Barayagwiza to restrain CDR party members who were engaged in street violence. Barayagwiza said that he was doing his best, but it was extremely difficult to restrain party members because they were overcome with fear and anger. [291]

315. Witness AFX, a Tutsi man from Gisenyi, testified that the main activities of CDR in Gisenyi in 1994 were the erection of roadblocks and killings. The roadblocks were set up in 1993 to allow them to identify Tutsi travelling through these areas, and they were a way for the CDR to show its presence, although there were no killings at the roadblocks at that time.[292] He said those at the roadblocks were mostly youth, men and little boys. Witness AFX said there was a roadblock two kilometres from the witness's home. The witness never went to the roadblocks in 1994 but had friends who manned the roadblocks, and he said some killings even took place near his home. The killers would use machetes, guns, grenades and clubs.[293]

316. Witness ABC, a Hutu shopkeeper, testified that the CDR was an organization that purported to exterminate Tutsi and people from Butare and Gitarama. He said he knew this as they acted publicly and openly.[294] He described three roadblocks placed at one-kilometre intervals and said that the roadblocks were manned by the Impuzamugambi and members of CDR. He said Barayagwiza supervised the roadblocks in that location.[295] Witness ABC testified that in April, May and June 1994, he was forced by the *Impuzamugambi* to work at the roadblock near the Canadian Embassy. At the roadblock, those bearing identity cards saying they were Tutsi were killed. The *Impuzamugambi* were armed. If Tutsi were identified, they would be separated and told to sit at a designated place until the evening when they would be taken elsewhere to be killed.[296] He mentioned the killing of several children, and a number of others who were killed. He recounted one incident in May, where he heard people being thrown into an emptied septic pit, alive, and covered with stones. The next day he saw traces of blood in the compound and the bodies in the septic tank, covered with earth. He had previously seen eight Tutsi manning the roadblocks but they were no longer there and he realized that they had been killed and thrown into the tank. He was told by the *Impuzamugambi* to say that they had left to rejoin the *Inkotanyi*.[297]

317. Defence Witness B3, a CDR member, acknowledged that the CDR had a militia, the *Impuzamugambi*.[298] He testified that he was not proud of the excesses of CDR, which

[290] T. 23 May 2002, pp. 54-56.
[291] T. 21 May 2002, pp. 151-153.
[292] T. 7 May 2001, pp. 17-18.
[293] T. 3 May 2001, pp. 20-23.
[294] T. 28 Aug. 2001, pp. 48-51; T. 29 Aug. 2001, p. 95.
[295] T. 28 Aug. 2001, pp. 23-24, 83.
[296] T. 28 Aug. 2001, pp. 76-79; T. 29 Aug. 2001, p. 41.
[297] T. 28 Aug. 2001, pp. 26-41, 80; T. 29 Aug. 2001, pp. 13-14; T. 30 Aug. 2001, p. 7.
[298] T. 4 Dec. 2002, p. 34.

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ran counter to human rights.[299] Excesses needed to be corrected and he recognized that CDR had a dark side, like other parties, but he remained proud of the positive aspects of the party. He defined the excesses as internecine conflicts, and agreed that all forms of hatred and the killing of Tutsi and Hutu would be included within that definition.[300] When asked on cross-examination whether the CDR was the best political party to unite the Hutu and Tutsi, Witness B3 said that it had been proven not to be so.[301]

318. Hassan Ngeze testified that he did not see any CDR members at roadblocks and did not recall any CDR leaders call for arms to be provided to those at the roadblocks. He stated that if they had called on the Government to provide arms to the military and others, not to those at the roadblocks, but to protect the country and to stop the RPF, it would not have been objectionable.[302] On cross-examination, Ngeze was asked what he meant by the reference to "our men at the roadblocks", which he had made during an interview on Radio Rwanda, whether he was referring to the militia of the *Interahamwe* and *Impuzamugambi*. Ngeze denied this reference, stating that he was referring to the people inside Rwanda who were not for the RPF. The text of the broadcast does not make reference to the militia. The term "our men" has no antecedent. [303]

Impuzamugambi: The Youth Wing of CDR

319. A number of Prosecution witnesses testified as to the existence of a youth wing of CDR, which served as a militia for the party. Prosecution Witnesses AHI, AFB, AGX, and Serushago all testified that the CDR had a youth wing called the *Impuzamugambi*, as did Defence Witness ASI.[304] Prosecution Witness AHI, currently in prison in Gisenyi accused of genocide, was a member of CDR from 1992. He testified that he was a member of the youth wing, the *Impuzamugambi*. Their role was to protect the CDR officials at prefectural level. The *Impuzamugambi* played this role from May 1992 to 1994. In 1994, however, he said their role was to kill the Tutsi. Witness AHI saw them, and the *Interahamwe,* kill with machetes, guns, grenades and iron-studded clubs obtained from the military camps and distributed by military officials he named.[305] Witness AFB testified that Barayagwiza and other members of the CDR established the youth wing, or the *Impuzamugambi*, which he knew because they used the term "*tubatsembatsembe*", a term used by Barayagwiza in his meetings. He considered that it was acceptable to establish a political youth wing by inculcating in it the need to wager a political cultural war, but he said the *Impuzamugambi* members were taught to kill. [306]

320. On cross-examination, Des Forges countered the assertion made by Counsel for Barayagwiza that the CDR never had a militia. She testified that there was a recognizable

[299] T. 3 Dec. 2002, p. 84.
[300] T. 4 Dec. 2002, pp. 22-23.
[301] *Ibid.*, p. 22.
[302] Exhibt P105/4D; T. 3 Apr. 2003, p. 77.
[303] T. 3 Apr. 2003, pp. 82-84.
[304] T. 4 Sept. 2001, pp. 50-55, 98 ; T. 6 Mar. 2001, pp. 51-52 ; T. 13 June 2001, p. 38; T. 4 Nov. 2002, p. 48; T. 21 Nov. 2001, pp. 116-117.
[305] T. 4 Sept. 2001, pp. 50-55, 98.
[306] T. 6 Mar. 2001, pp. 37-60; *see supra* note 114.

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group of young people attached to CDR, with an organization and elected officers, and they were recognized to exist by tens of thousands of Rwandans. She cited Barayagwiza's book, *Le Sang Hutu est-il rouge?,* as having said that the youth wing of the CDR conducted elections in the early months of 1994 but later she corrected herself and acknowledged that the elections mentioned were for the CDR party itself. She also cited the identification of Katumba as president of the CDR youth organization in a sector of Kigali. In addition, she referred to the meeting notes of the CDR Executive Committee for November 1993 where it is stated that the youth wing had got out of hand and were interfering in political decisions, and they needed to be reorganized to provide protection for the members, not interfere in political decisions. Subsequently, there was an effort to restructure the party youth in early 1994. Des Forges also noted that the name "*Impuzamugambi"* was used in CDR press releases and possibly Barayagwiza's book, and that people understood it as referring to the youth wing, rather than to the party itself. As further proof of the existence of a CDR militia, she cited a passage from Barayagwiza's book, in which he wrote, "Our youth wing did not receive the same kind of arms until after early April and our youth wing was just getting organised."[307] Several other passages of the book were cited, including mention of the *Impuzamugambi* fighting together with the *Interahamwe*, highlighted by the Prosecution as a reference to the militia but challenged by Counsel for Barayagwiza who noted that the text referred to the *Impuzamugambi* and *Interahamwe* as "youth," not "militia".[308] The sentence in question, and the following sentence, read as follows:

> African Rights should know how to differentiate between the "militia" that fought valiantly against the RPF, its allies and accomplices and the *Interahamwe* or the *Impuzamugambi*, youth respectively from the MRND and CDR parties. If some of these youth took up arms to defend the country, they did not do so as members of the youth of these parties but as Rwandan patriots.[309]

Counsel for Barayagwiza highlighted another passage in the book stating that the CDR did not have a militia.[310]

321. Hassan Ngeze stated in his testimony that he did not know if CDR officials had encouraged their youth to kill the enemy, the Tutsi, and he did not know if CDR leaders had called for arms to be provided to the *Interahamwe* or *Impuzamugambi* to fight the enemy.[311]

The Relationship Between CDR and MRND

322. Many witnesses testified as to the relationship between the CDR and the MRND. Des Forges stated that the *Interahamwe* and the CDR militia operated jointly throughout 1992 to the end of January 1993. Subsequently, there was a break so severe that Barayagwiza wrote in his book, *Le Sang Hutu est il rouge?*, that if ever there were a time

[307] T. 29 May 2002, pp. 169-174.
[308] T. 9 July 2002, pp. 99-101.
[309] Exhibit P148, p. 99 (translation from French).
[310] Exhibit P148, p. 245; T. 9 July 2002, pp. 100-101, 242.
[311] T. 4 Apr. 2003, p. 15.

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when the CDR would have eliminated the President, it would have been in March 1993. By August 1993, CDR was moving more into alignment with MRND, which culminated in an extremely close cooperation by late October 1993 with the beginning of the Hutu Power movement. [Barayagwiza wrote in his book that after 6 April 1994, the militias of the parties essentially became fused into one force.][312]

323. Witness AHA, a friend and colleague of Ngeze who was present at meetings between Ngeze and Baryagwiza when CDR was being established, said that there was concern that MRND was becoming infiltrated with Tutsi, and CDR was envisioned as a party of Hutu that would be safe from infiltration, set up by members of the MRND who had left that party.[313] Witness ABE also testified that the CDR was a split from the MRND, but he described it as MRND's daughter, adding that the MRND supervised the activities of the CDR.[314] The CDR was founded so that it could say things which the MRND could not, as it presented itself as the party of all Rwandans, such as words sowing division on the basis of regional or ethnic differences. Witness ABE said that President Habyarimana and his collaborators were under pressure from donors and opposition parties to introduce multipartyism. CDR was the extremist mouthpiece of the MRND, which, he concluded, approved of the CDR as it did not act against the party for what it was saying, propagating hatred between the ethnic groups.[315] He stated in cross-examination that the CDR communiqué of 9 March 1993, calling for Habyarimana's resignation, was intended to fool people and that there was no follow up. He said Habyarimana fought hard for CDR to be part of the government.[316] Witness ABC said MRND and CDR were one and the same, organizations that wanted to exterminate Tutsi and did not want any Tutsi to remain alive.[317]

324. Witness AAY testified that the *Impuzamugambi* of CDR and the *Interahamwe* of MRND worked together.[318] He said the CDR and MRND were the parties that ran the country and therefore an *Interahamwe* could be more powerful than a soldier.[319] Witness AHI, a member of the CDR and its *Impuzamugambi* youth wing, was in charge of hoisting and lowering the CDR flag in Gisenyi. He was told that only MRND and CDR's flags could be hoisted, not flags of other parties. He testified that the *Impuzamugambi* had the same objectives as the youth wing of MRND, the *Interahamwe*, and they both took part in killings.[320] Witness AAM, a Tutsi farmer from Gisenyi, testified that between 1990 and 1994, Tutsi were killed by the CDR and MRND parties for the simple fact that they were Tutsi.[321] Witness ABC, a Hutu shopkeeper from Gisenyi, testified that on 7 April 1994, at about 5 a.m., he heard gunfire as well as bomb and grenade explosions. He saw *Interahamwe* and *Impuzamugambi* using whistles. At Kimihurura, he saw people

[312] T. 29 May 2002, pp. 165-166.
[313] T. 2 Nov. 2000, p. 160.
[314] T. 26 Feb. 2001, p. 44.
[315] T. 26 Feb. 2001, pp. 44-51, 127; T. 27 Feb. 2001, pp. 30, 129-132.
[316] T. 27 Feb. 2001, pp. 132-134.
[317] T. 28 Aug. 2001, pp. 48-51; T. 29 Aug. 2001, p. 95.
[318] T. 19 Mar. 2001, p. 140.
[319] T. 20 Mar. 2001, p. 23.
[320] T. 4 Sept. 2001, pp. 50-55, 98.
[321] T. 13 Feb. 2001, pp. 12-13.

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carrying machetes and guns pursuing Tutsi in the area. When the Tutsi tried to flee to Gikondo, they were killed with machetes and some members of the CDR and *Interahamwe* were shooting at them with guns. Tutsi were being pursued in other areas as well. At roadblocks, manned by CDR members and *Impuzamugambi*, Tutsi were not allowed to pass. There were many dead Tutsi bodies on the road and in the marshes.[322] He said MRND and CDR were organizations that wanted to exterminate Tutsi and did not want any Tutsi to remain alive.[323]

325. Witness BI testified after she was mentioned on RTLM a stone was thrown into her house by two persons wearing CDR berets and another person belonging to the *Interahamwe*. The witness tried twice to inform the police that she had been threatened but in vain as the *Impuzamugambi* and *Interahamwe* were the tools of those in power. On another occasion, the witness was attacked in the street. Some of her attackers were wearing CDR uniforms and berets while others were in civilian clothing. On cross-examination, Witness BI said that the violence in different parts of the country from October 1990 to 6 April 1994 was attributable to the *Interahamwe* and *Impuzamugambi*, sometimes accompanied by soldiers, and the target of the violence was the Tutsi. [324]

326. Witness LAG, a detainee in Cyangugu since 1995 for his participation in the events of 1994, testified that on 7 April 1994, at 10 a.m., a security meeting for Cyangugu prefecture was held and attended by MRND and CDR leaders. They instructed him and others to flush out the Tutsi wherever they are hiding, to set up roadblocks to prevent those with vehicles from fleeing and to organize patrols. It was the MRND and CDR leaders, in particular, the *Interahamwe* and *Impuzamugambi*, who put Witness LAG in charge of the roadblock. He said the MRND and CDR leaders composed the government of the time. They were instructed by these leaders to look for members of opposition parties. They were supposed to set their houses and flags on fire. The witness confirmed that they did as they were told – Tutsi were arrested, and houses and flags burnt. They set up roadblocks, one of which was manned by Witness LAG with about thirty people. They had grenades, machetes, clubs and the witness had a Kalashnikov. Their duty was to eliminate Tutsi trying to pass through on their way to Zaire. They received military training in the use of firearms and grenades in the name of civil defence but according to Witness LAG that was a term for the benefit of foreigners. He said, "The training was not within the framework of the civil defence, because after that people went to kill Tutsis." If civil defence were the objective, he said, these people would not have been killed, adding subsequently, "The roadblocks which were set up were not intended for any defence whatsoever. The object of these roadblocks was to stop Tutsis from fleeing and to inflict harm upon them."[325]

327. Omar Serushago testified as to two meetings that took place between January and April 1994, within a few days of each other. Members of the CDR and MRND were present, including Barayagwiza and Ngeze. The meetings were for businessmen and

[322] T. 28 Aug. 2001, pp. 20-24.
[323] T. 28 Aug. 2001, pp. 48-51; T. 29 Aug. 2001, p. 95.
[324] T. 8 May 2001, pp. 89, 112; T. 14 May 2001, pp. 144-146.
[325] T. 30 Aug. 2001, pp. 59-70; T. 3 Sept. 2001, pp. 59-64.

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intellectuals, and Barayagwiza spoke at the second meeting, saying there was a single enemy, the Tutsi, and they had to fight that enemy rapidly. The purpose of this meeting was to raise funds to buy weapons such as firearms and machetes. Both Barayagwiza and Ngeze contributed money during this meeting.[326] Serushago also testified that at the time of the death of Bucyana in February 1994, he saw a fax sent by Barayagwiza when he was in front of Ngeze's kiosk in Gisenyi. The fax was addressed to the Youth Wing of the CDR Party and the MRND Party, and it stated that now that the *Inyenzi* had killed the CDR Chairman, all Hutu were requested to be vigilant to closely follow up the Tutsis wherever they were hiding. It said that even if they were in churches, they should be pursued and killed. Serushago testified that from April to June 1994, CDR and *Interahamwe* groups held meetings every evening to report on the number of Tutsi killed.[327] These meetings were attended by the leaders, including Barayagwiza and Ngeze. The practice for all six groups of *Interahamwe* and *Impuzamugambi* in Gisenyi was to have members of both MRND and CDR in each group.[328] The dominant parties in Gisenyi were MRND and CDR.[329] Serushago testified that they were like a single party and had the same objectives, which he characterized as hatred and extremism.[330] Another member of the *Interahamwe*, Witness X, testified that the MRND and CDR were closely linked and that *Interahamwe* would assist at CDR rallies and vice versa. He said he had learned from the MRND Executive Committee that they were about to create a party purely for the Hutu.[331] He described CDR as a radical wing of MRND, the word "radical" meaning that it comprised a single ethnic group.[332]

328. Nahimana testified that several MRND members left MRND to form CDR because they subscribed to its ideology, and he spoke of them as separate parties.[333] Ngeze also spoke of MRND and CDR as separate parties, noting that Nahimana was with the MRND party and had no connection with the CDR.[334] Defence Witness I2 testified that CDR was formed because some considered MRND not to be adequately firm with the RPF, and to have a soft attitude. This was because MRND was thought to have made too many concessions in favour of RPF in the negotiations on the Arusha Accords. According to Witness I2, CDR believed that as Hutu were in the majority, they should be in the majority in the country's institutions. He disagreed as he thought they should be defined through a democratic majority, not an ethnic one, but he denied that CDR used force to achieve its objectives.[335]

329. A number of Defence witnesses called by Counsel for Ngeze, including Witnesses RM118 and BAZ1 affirmed in their testimony that the *Impuzamugambi* was the youth

[326] T. 15 Nov. 2001, pp. 111-114
[327] *Ibid.*, pp. 118-126.
[328] T. 16 Nov. 2001, pp. 39-40, 51.
[329] T. 19 Nov. 2001, pp. 43, 92; T. 20 Nov. 2001, pp. 58-59.
[330] T. 21 Nov. 2001, pp. 23, 27.
[331] T. 18 Feb. 2002, pp. 62-66.
[332] T. 25 Feb. 2002, pp. 95-104.
[333] T. 19 Sept. 2002, pp. 43-44.
[334] T. 8 Apr. 2003, pp. 12-13.
[335] T. 28 Oct. 2002, pp. 173-174.

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wing of the CDR.[336] The Witness BAZ15 testified that the Tutsi of all ages and both sexes were in danger in 1994 as they were being killed by *Interahamwe* and *Impuzamugambi*.[337] The *Impuzamugambi* wore red, yellow and black uniforms and berets during CDR rallies. He saw the militia take people away, and once he saw them killing people. The people manning roadblocks in 1994 wore military uniforms, not political party uniforms, and the witness could not identify the party to which they belonged.[338] Witness BAZ1 testified that he saw only the *Interahamwe*, who wore party colours, and never the *Impuzamugambi* in Gisenyi[339]

Credibility of Witnesses

330. The Chamber has made findings on the credibility of the testimonies of Witnesses GO, LAG, AFB, MK, EB, AEU, AGX, X, AHB, AFX, AHA, AAY, AHI, BI, Nsanzuwera, Serushago, Nahimana and Ngeze, as set forth in paragraphs 608, 333, 815, 886, 812, 814, 813, 547, 724, 712, 132, 774, 775, 465, 545 and 816, and sections 5.4 and 7.6.

331. **Witness ABC** was cross-examined on a number of details in his testimony. He was asked how he could determine from what he heard that people were being attacked by machetes rather than other weapons. He replied that when someone was attacked by a machete but did not die, he could hear their cries. Witness ABC was questioned on his testimony that he was compelled to work with the *Impuzamugambi*. He stated that they did not put a gun to his head but told him he could not remain in the house while they were outside. He said he drank with them, later clarifying that it was only once, because he thought he was going to be killed. Witness ABC was also questioned on his written statement, in which he said he could not read or write, yet he claimed to be able to read *Kangura* and had testified that Kabanabake was a writer for *Kangura*. He said he had told investigators that he had not had any schooling, and he explained that he had heard about Kabanabake working for *Kangura* on RTLM. He was questioned as to whether he was confusing Kabanabake with Kabonabake, another journalist, but he maintained his testimony, saying he knew the journalist well. It was put to Witness ABC that he was testifying to save himself as he was identified with the *Impuzamugambi* and the roadblocks. He maintained that he was testifying under oath to what he had seen. The Chamber considers that none of the issues raised on cross-examination effectively challenged the credibility of the witness. The Chamber therefore accepts the testimony of Witness ABC as credible.

332. **Witness ABE** was questioned in cross-examination on his political views regarding the war and the position of Rwandan refugees.[340] He was also questioned about his imprisonment in Rwanda in 1991 and 1992 on charges of being an RPF accomplice. He acknowledged that he was imprisoned on these charges but denied that he was an RPF

[336] T. 3 Mar. 2003, p. 38; T. 16 Jan. 2003, pp. 65-66; T. 13 Mar. 2003, p. 84.
[337] *Ibid.*, pp. 37-38.
[338] T. 3 Mar. 2003, pp. 57-58.
[339] T. 27 Jan. 2003, pp. 90-91.
[340] T. 26 Feb. 2001, pp. 100-110; T. 27 Feb. 2001, pp. 12-15, 23-24; T. 28 Feb. 2001, pp. 4-9.

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accomplice.[341] Witness ABE was questioned about his organizational affiliations and any relationship that he or the organization he belonged to, Humura, had with the Rwandan government. He said that neither he nor the organization had any affiliation with the government.[342] When asked about the fact that he testified to an MRND meeting in 1993 that he had not mentioned in his statement, Witness ABE explained that when he was interviewed for his statement, he answered the questions he was asked and may have remembered other incidents later.[343] The Chamber considers that the witness's credibility was not impaired on cross-examination and accepts his testimony as credible.

333. **Witness LAG** was convicted of genocide as an accomplice and is currently serving an 11-year sentence in Rwanda, following his guilty plea and agreement to cooperate with government prosecutors in Rwanda. He was not accused of having personally killed anyone. Witness LAG was questioned extensively on his imprisonment and his plea agreement, particularly the negotiation of the agreement. He denied that he was testifying to help some of his relatives who are detained and facing charges, and he denied that he had obtained a relatively low sentence after agreeing to testify against Barayagwiza and Ngeze.[344] Witness LAG was cross-examined on the circumstances in which he heard Barayagwiza and Ngeze speak at Bucyana's funeral, and he affirmed that he was able to see and hear both of them.[345] He was questioned about details in his testimony that seemed contradictory to Counsel, such as whether he saw the houses of Tutsi already burning or whether he was there when they started burning. Witness LAG consistently provided explanations and clarifications, and the additional detail established, in the Chamber's view, that these were not in fact contradictions.[346] The Chamber notes that Witness LAG was not forthcoming in his responses in cross-examination. Questions often had to be repeated many times before he would provide an answer. The Chamber considers that this lack of responsiveness, while unhelpful to the proceedings, did not affect the veracity of his testimony. For these reasons, the Chamber finds the testimony of Witness LAG credible.

334. **Defence Witnesses BAZ1** and **RM118** were not cross-examined further about the *Impuzamugambi*. The Chamber considers that their testimony on this matter was not challenged and finds that their evidence on this matter is credible. **Witness BAZ4** was not examined further about the CDR. The Chamber considers that his testimony on this issue was not challenged and finds that his evidence on this issue is credible. **Witness RM117** was not cross-examined further about the CDR. The Chamber considers that her testimony in this respect was not challenged and finds that her evidence on this issue is credible. **Witness BAZ15** was not cross-examined further about the *Impuzamugambi*. The Chamber considers that his testimony in this respect was not challenged and finds that his evidence on this issue is credible. **Witness B3** was clear and forthright in his testimony on CDR, even acknowledging that CDR fell short of the democratic principles

[341] T. 26 Feb. 2001, pp. 132-133.
[342] T. 27 Feb. 2001, pp. 62-68.
[343] *Ibid.*, pp. 125-126.
[344] T. 30 Aug. 2001, pp. 90-119 (Closed Session); T. 3 Sept. 2001, pp. 111-133; T. 4 Sept. 2001, pp. 1-5, 35.
[345] T. 3 Sept. 2001, pp. 14-19, 30-31.
[346] *Ibid.*, pp. 91-98.

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to which it aspired. For these reasons, the Chamber considers that his testimony on CDR was credible. **Witness D3** was not further cross-examined on CDR. The Chamber considers that he was not challenged on cross-examination on this issue and finds his evidence on CDR credible. **Witness I2's** testimony on CDR was not effectively challenged and the Chamber considers that his evidence on this issue is credible. The witnesses corroborate one another in their testimony on CDR and the *Impuzamugambi*. **Witness ASI** denied that CDR was an extremist party. He had not personally attended any CDR meetings.[347] His testimony on CDR was limited and the Chamber will not rely on his evidence on CDR.

Discussion of Evidence

335. While at a formal level membership in the CDR was officially open to all Rwandans for membership, although it purported to represent the interests of the Hutu, the evidence clearly indicates that in fact the membership of the CDR was exclusively Hutu not only as a matter of practice but as a matter of policy. The widespread perception, reflected in newspaper cartoons, was that the CDR was one hundred percent Hutu, and the testimony of Witness X suggests that even mixed parentage was a bar to CDR membership. The description of Witness EB, tip-toeing out of the stadium frightened and covering his nose, illustrates the personal impact of the ethnically based membership criteria in which public attention was drawn to physical features of those in attendance at a CDR meeting. The Chamber notes that the CDR membership policy of Hutu exclusivity, affirmed by the testimony of Hutu as well as Tutsi witnesses, was communicated personally to Witness X by Barayagwiza, and to Witness AGX by Ngeze. Witness AFB heard Barayagwiza say publicly at a CDR meeting that the CDR was a party for the Hutu, a statement consistent with the policy framework of the CDR, based on the principle that each ethnic group had its own interests and should have its own party to represent those interests. Although Witness B3 testified that CDR membership was open to all, regardless of ethnicity, he was unable to name any Tutsi members of the party. The Chamber did not find Ngeze's testimony that there were many Tutsi members in the CDR and a Tutsi woman on the Executive Committee credible, and notes his own statement, made in an interview on Radio Rwanda, that the seed sown by the CDR, an invitation explicitly directed to the Hutu population to unite and fight the enemy, had borne fruit. While there may have been a few Tutsi individuals who attended CDR meetings or were even referred to as CDR members, the Chamber considers, based on the evidence, that such number would be negligible and would not render the characterization of the CDR as a Hutu party inaccurate.

336. Evidence has been introduced regarding acts of violence perpetrated by CDR members. With regard to some individual acts of violence, such as the attacks on Witness BI by persons wearing CDR caps or uniforms, there is no evidence that the attacks were organizationally initiated by the CDR. In fact, Witness BI mentioned an RTLM broadcast as having prompted the attacks, and her attackers were not only CDR members. With regard to the attack on a church in August 1992 by CDR members, the Chamber notes that the attackers had come from a CDR meeting and were demanding that Tutsi hiding

[347] T. 4 Nov. 2002, pp. 48, 72.

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in the church be handed over to them. While not every incident of violence perpetrated by a CDR member can be traced back to a CDR directive, there is evidence that the party was promoting this violence, and so the occurrence of it following a CDR meeting suggests that it was related to the message conveyed by the meeting. That message, conveyed at meetings according to several witnesses, was not only that CDR was a party for the Hutu but also that the Tutsi should be exterminated, "*tubatsembatsembe*" or "let's exterminate them", which, according to Witness X, Barayagwiza himself said. Nahimana denied that this term was mentioned at the CDR rally he attended, but other witnesses, including Witness AFB and Witness X, testified that the term was used. Witness AFB testified, more generally, that it was a term Barayagwiza used in his meetings. Even Nahimana affirmed in his testimony that there were complaints against CDR in the end of 1993 and beginning of 1994 for singing a song using the word "*tubatsembatsembe*". The Chamber notes that a review of violence committed against the Tutsi in late 1992 and early 1993, undertaken by several diplomats, concluded that the CDR was involved in organizing and executing massacres. When asked to restrain CDR members from violence, Barayagwiza reportedly told the US Ambassador that it was extremely difficult to do so because they were overcome by fear and anger. He said he was doing his best, but the conversation was described as virtually a shouting match, which suggests that he was in fact defending the violence. According to Serushago, Baryagwiza and Ngeze were raising funds, as well as themselves contributing, for the CDR to buy weapons, although the Chamber notes that this testimony is not corroborated. The witness testimony indicates that the violence perpetrated by the CDR was increasingly organized in 1994. The testimony of Witness ABC, describing the killing of Tutsi by *Impuzamugambi* manning a roadblock, is clear evidence of a systematic effort by the *Impuzamugambi* to kill Tutsi.

337. The Defence challenged the evidence presented by the Prosecution that CDR had a youth militia. Although the formal structure of the CDR youth wing does not emerge from the evidence, it is acknowledged by Defence witnesses that the CDR had a youth wing, called the *Impuzamugambi*. The Chamber notes some confusion arising from the fact that the word *Impuzamugambi* is also a part of the name for CDR in Kinyarwanda, *Impuzamugambi Ziharanira Repubulika*. Nevetheless, it is clear from the evidence that *Impuzamugambi* referred to the youth wing of the CDR and was generally understood as such. In his book *Le Sang Hutu est-il rouge?*, Barayagwiza named the *Interahamwe* and the *Impuzamugambi* as the youth from the MRND and CDR parties, respectively. However, his words were misrepresented by the Prosecution as an acknowledgement that the youth wing was a militia. He clearly stated in the following sentence that the CDR did not have a militia and that if youth among the *Impuzamugambi* took up arms, they did so independently rather that in the capacity of their membership. Yet Defence Witness B3, a CDR member, acknowledged that the CDR had a militia and that it was the *Impuzamugambi.* He also acknowledged what he referred to as the excesses of the CDR. Several Prosecution witnesses, including Witness AHI, himself a member of the *Impuzamugambi,* testified that the *Impuzamugambi* were taught to kill, and that that was their role. While some witnesses attributed the killing to the CDR generally and others mentioned the *Impuzamugambi* more specifically, the killing was clearly attributed to the CDR, and their target was clearly the Tutsi population, as Witnesses BI, AAM, ABC,

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AHI, LAG, and Serushago all testified. Witness AFX testified that the main activities of the CDR in Gisenyi in 1994 were the erection of roadblocks and killings, and Serushago, an *Interahamwe* leader in Gisenyi, testified that there were CDR members in each of the militia groups in Gisenyi. Ngeze's testimony that he did not see any CDR members at the roadblocks is not credible.

338. The Chamber considers that the link between the CDR and the MRND was a link arising from these violent activities, in the streets and at the roadblocks, and particularly between the party youth in the *Impuzamugambi* and the *Interahamwe* and the leaders organizing the effort to flush out and attack or kill the Tutsi. The evidence of Witnesses AHI and LAG, and Serushago, all of whom were involved in these activities, indicates that there was a close collaboration, which was confirmed by the testimony of other witnesses who saw the two groups attacking together. Both Witness LAG and Serushago testified that there were joint CDR/MRND meetings to coordinate and review action. At the higher organizational level, the evidence of formal association is less conclusive. From all the testimony it is clear that the CDR was founded by those previously associated with the MRND. But Nahimana and Ngeze both testified that the parties were distinct, and it is clear that Nahimana was an MRND supporter while Ngeze was a CDR supporter. Witness ABE suggested that the CDR was founded to act covertly on behalf of the MRND, to say what the MRND was unable to say publicly. This testimony is not entirely consistent with the testimony of Witness AHA that CDR was founded out of dissatisfaction with perceived Tutsi infiltration of MRND, nor is it consistent with the testimony of Alison Des Forges that there was a severe break between the parties in the first half of 1993. By August 1993, she said the rift was closing, and by October 1993 she described an extremely close cooperation. The testimony of witnesses such as ABE that the two parties were one and the same appears to reflect a perception of their common purpose rather than an organizational affiliation, a symbiotic relationship in which the two parties shared the goal of eliminating the Tutsi population.

Factual Findings

339. The Chamber finds that the CDR was a Hutu party and party membership was not open to Rwandans of Tutsi ethnicity. This policy was explicitly communicated to members and the public by Barayagwiza and Ngeze.

340. During the year 1994, and in particular, the period 6 April to 17 July 1994, Barayagwiza continued to exercise effective leadership over the CDR Party and its members. The killing of Tutsi was promoted by the CDR, as evidenced by the chanting of "*tubatsembatsembe*" or "let's exterminate them" by Barayagiwza and by CDR members in his presence at mass rallies.

341. The CDR had a youth wing, called the *Impuzamugambi*, which became the CDR militia. The CDR members and *Impuzamugambi* were supervised by Barayagwiza and acted under his control in carrying out acts of killing and other acts of violence. Roadblocks were erected and manned by *Impuzamugambi*, for the purpose of identifying and killing Tutsi civilians. Barayagwiza gave orders to the *Impuzamugambi* at roadblocks

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that Tutsi should not be allowed to pass and that they should kill them unless they had CDR or MRND cards. Barayagwiza supplied weapons to the *Impuzamugambi* which were used for purposes of killing Tutsi. The *Impuzamugambi*, together with the *Interahamwe*, killed large numbers of Tutsi civilians in Gisenyi Prefecture.

4. RTLM

4.1 RTLM Broadcasts

342. Many witnesses testified that radio played a significant role in the lives of Rwandans. Prosecution Expert Witness Alison Des Forges testified that in the 1980s, the MRND government subsidized the production of radios, which were sold at a reduced price or even given away to those in the administrative structure of the party. According to Des Forges, radio was increasingly important as a source of information as well as entertainment and a focus of social life.[348] RTLM started broadcasting in July 1993.[349] Prosecution Witness BI testified to the popularity of RTLM when it first came on air, noting that young people could always be seen on the street with a radio listening to RTLM and that the broadcasts were a common topic of conversation in homes, offices and on the street. She said almost everyone had a radio and listened to RTLM.[350] Witness FY testified that people listened to RTLM in bars and at work, and that you could hear it in taxis and at the market. He said it was popular in Kigali, that youth especially liked the music and that the programmes were not boring.[351]

343. According to Prosecution Witness Francois Xavier Nsanzuwera, who in 1994 was Prosecutor in Kigali, RTLM was listened to constantly, and during the last months of 1993 and early 1994 one would find little radios in offices, cafes, bars and other public gathering places, even in taxis, where people listened to RTLM. Nsanzuwera testified that after 6 April 1994, militia at the roadblocks listened to RTLM. He described crossing at least four roadblocks on 10 April, finding all those manning each of the roadblocks listening to RTLM. He observed this on many occasions and described radios and weapons as the two key objects that would be found at roadblocks.[352] Witness LAG, who manned a roadblock in Cyangugu, testified that they heard about what was happening in the country and their leaders' instructions from RTLM.[353] Witness ABC, who was also manning a roadblock, testified that he only listened to RTLM as that was what the others were listening to.[354] The Chamber was shown a video of a roadblock with men listening to RTLM.

344. Several hundred tapes of RTLM broadcasts have been introduced in evidence, and various particular broadcasts have been discussed at trial. The Chamber has focused largely, though not exclusively, on those broadcasts that have been highlighted in the

[348] T. 20 May 2002, pp. 169-171.
[349] T. 23 Sept. 2002, pp. 77-78.
[350] T. 8 May 2001, pp. 61-62.
[351] T. 9 July 2001, pp. 12-15.
[352] T. 23 Apr. 2003, pp. 50-55, 84-89; T. 24 Apr. 2003, pp. 42-43.
[353] T. 30 Aug. 2001, pp. 59-70 or T. 3 Sept. 2001, pp. 59-64.
[354] T. 28 Aug. 2001, pp. 58-62.

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belief that they represent, in the view of the parties, the most incriminating and the most exculpatory evidence. The Chamber has identified several areas of inquiry in its review, looking in particular at broadcasts that raised the issue of ethnicity and broadcasts that called on the population to take action.

4.1.1 Before 6 April 1994

345. Some RTLM broadcasts focused on ethnicity in its historical context, in an apparent effort to raise awareness of the political dynamic of Hutu-Tutsi relations. In an RTLM broadcast on 12 December 1993, for example, Barayagwiza shared his own experience as a Hutu with RTLM listeners, to illustrate the role of education and culture in the development of ethnic consciousness:

> A Hutu child, …let me take my own example, for I was born a Hutu; my father is a Hutu, my grandfather is a Hutu, my great grandfather is a Hutu and all my mother's parents are Hutus. I can go up the genealogy of my family back to about the ninth generation. They are Hutus. They brought me up as a Hutu, I grew up in Hutu culture. I was born before the 1959 revolution; my father did forced labor, as Charles said. My mother used to weed in the fields of the Tutsis who were in power. My grandfather paid tribute-money. I saw all those things, and when I asked them why they go to cultivate for other people, weed for other people when our gardens were not well maintained, they would tell me: "That is how things are; we must work for the Tutsis."
>
> The Tutsi had to be brought up knowing that he was the chief, that the Hutu child was under his authority…No Hutu would share his meal with a Tutsi; that was forbidden. It was inculcated in the Tutsis never to eat with Hutus and we were told to fear the Tutsis. It was not because we did not want to eat with them, more so when they brought delicious food – potatoes baked in palm oil - while for us we brought boiled maize grain! How we wished to eat with them (laughs), but all in vain, because it was forbidden. I know you are aware that I work with the Ministry of Foreign Affairs: I have been to many foreign countries and I know very well that many Tutsis have kept that culture, especially those who live abroad.[355]

346. Prosecution Expert Witness Alison Des Forges described this passage as communicative of Barayagwiza's "insistence that the ethnic groups are a fundamental reality". She suggested that while there was nothing wrong with taking pride in one's ethnic origins, in the context of a time when Hutu power was being defined as an ideology in opposition to a minority group, which carried the threat of violence against that group, such statements could contribute to the heightening of ethnic tensions. Subsequently she clarified that she was not speaking about the very mention of ethnicity but about "the reinterpretation of all problems and conflict within Rwandan society in ethnic terms".[356] The Chamber notes that while Tutsi were a numerical minority in Rwanda, it is their history of political and social dominance that frames Barayagwiza's

[355] Exhibit P103/101B; CD 66, K0166106-07.
[356] T. 22 May 2002, pp. 175-179; T. 27 May 2002, p. 31.

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statement, which presents the Hutu, not inaccurately, as politically and socially subordinated. The statement does not therefore, in the Chamber's view, constitute a reinterpretation.

347. The same passage was discussed by Prosecution Expert Witness Jean-Pierre Chrétien as an example of "a simplistic reduction of the Rwandan past in order to create a radical opposition between Tutsi and Hutu", and he described it as "an ethnic presentation of the political situation".[357] This formulation suggests that the situation is a fundamentally political one (political in the sense of power-ordered relations), which may or may not be presented in an ethnic context. A seemingly faithful recollection of his own experience, the Chamber notes that Barayagwiza's statement is consistent with the documented historical pattern of ethnic relations in Rwanda. In the broadcast, Barayagwiza offered a political analysis of an ethnic situation, that is to say a situation in which ethnicity is integral to the dynamic.

348. Subsequently in the same broadcast, a debate moderated by Gaspard Gahigi, RTLM Editor-in-Chief, about the significance of Hutu and Tutsi ethnicity, Vincent Ravi Rwabukwisi, the Hutu[358] editor of *Kanguka*, expressed the view that ethnic identification and the education of children as Hutu or Tutsi were the root cause of conflict. Gahigi suggested that "people want to conceal the ethnic problem so that the others do not know that they are looking for power", then giving the floor to Barayagwiza, who agreed and elaborated on the point:

> Yes! Notable among them are the RPF people who are asking everybody to admit that the ethnic groups do not exist. And when one raises the issue, they say that such a person is "unpatriotic, an enemy of peace, whose aim is to divide the country into two camps. However, it looks like right from the beginning of our discussion, we have proved that the ethnic groups do exist, that the ethnic problem does exist, but that today it is being linked to … by the way, it is not only today, this dates back a long time ago, it is associated with the quest for power.
>
> The RPF claim that they are representing the Tutsis, but they deny that the Tutsis are in the minority. They are 9% of the population. The Hutus make up 80%! So, their conclusion is, "If we accepted that we are Tutsis and accepted the rules of democracy, and we went to the polls, the Hutus will always have the upper hand and we shall never rule." Look at what happened in Burundi: they also thought like that. Those who staged the coup d'Etat thought in the same way. Their mentality is like that of the *Inyenzi*, whose only target is power, yet they know very well that today it is unacceptable to attain power without going through the democratic process… They wonder: "How shall we go about acceding to power?" and they add: "The best way is to refute the existence of ethnic groups, so that when we are in power, nobody will say that it is a single ethnic group that is in power." That is the problem we are facing now.[359]

[357] T. 1 July 2002, pp. 127-129.
[358] T. 22 May 2002, pp. 179, 182-183.
[359] CD 66, K0166105-09, 14.

PURL: https://www.legal-tools.org/doc/45b8b6/

349. When asked about the apparent openness of debate represented by this broadcast featuring the editor of *Kanguka*, Des Forges acknowledged that from time to time RTLM offered opposing points of view in its programs. However, she characterized these occasions as very few and exceptional, suggesting that they were attributable to an immediate perceived political need and did not represent a change in fundamental policy.[360] The Chamber notes that the moderator of this debate, Gaspard Gahigi, the Editor-in-Chief of RTLM, voiced a position on the issues being debated, suggesting that ethnicity was concealed to disguise the political ambition of the Tutsi. The debate constitutes, in the view of the Chamber, an inquiry into the nature of ethnicity in Rwanda and its political significance.

350. On 31 October 1993, Landouald Ndasingwa, the Tutsi PL party Vice-Chair and Minister of Social Affairs, was interviewed on RTLM. In the interview Ndasingwa commended RTLM:

> Firstly, I wish to thank the RTLM radio for having given me the opportunity to react to some of the statements made about me by people with whom we are running the business of the Liberal Party. It is commendable on the part of the RTLM to -- for having afforded or given the opportunity to all the parties. This is in line with the democratic culture on which we have embarked at this point in time. My statement will focus on the statement made by Mrs. Ntamabyariro, and Mr. Mugenzi, statements they made about me in the course of the news conference that they held last Friday. On the whole, I would say that their statement contains one and the same message. In other words, each time the Government in power is faced with serious problems, it refers to inter-ethnic problems. So in order to resolve its problems and in order to hang on to power, it pits one ethnic group against the other. This is an old game beyond which we have to move particularly at this time that we have signed an agreement on peace and national reconciliation.[361]

351. In another broadcast portraying RTLM as an open forum, on 5 January 1994, Kantano Habimana interviewed an RPF leader, Tito Rutaremara. In his introduction to the interview, Habimana described his encounter with the *Inkotanyi*:

> The *Inkotanyi* said, "Kantano hates the *Inkotanyi* so much; he hates the Tutsi. We really want him. We must get that Kantano of RTLM. We must argue with him and make him change his mind. He has to become a partisan of the *Inkotanyi* ideology." All the *Inkotanyi* wanted to see that Hutu who "hates the Tutsi." I do not hate the Tutsi! I do not think it is their real opinon. It is not. Why should I hate the Tutsi? Why should I hate the *Inkotanyi*? The only object of misunderstanding was that the *Inkotanyi* bombshelled us. They chased us out of our property and compelled us to live at a loss on wastelands like Nyacyonga. That was the only reason for the misunderstanding. There is no reason for hating them anymore. They have now understood that dialogue is capital. They have given up their wickedness and handed in their weapons. . .

[360] T. 22 May 2002, pp. 186-187, 195.
[361] Exhibit 1D4B; T. 1 Nov. 2000, pp. 48-49.

PURL: https://www.legal-tools.org/doc/45b8b6/

> Then I met Dr. Rutaremara Tito.. . That tall Tutsi, from those species commonly called "prototypes", that man from Murambi is one of those haughty men who would say: "Shehe yewe sha!" [Hey, small Sheikh!]. . . Then he [Rutaremara] asked me to share a glass of beer with him. I briefed him on the situation here on our side. Their hotel was full of *Inkotanyi* [males] and *Inkotanyikazi* [females]. . . It was a big coming and going crowd of drinking people. Most of the people were drinking milk... [inaudible] Some drank milk because they simply had some nostalgy of it. It is surprising to see someone drinking 2 or 3 liters of Nyabisindu or Rubilizi dairy and so forth. There should have been a shortage of milk in the dairies. Someone wrote to me: "Please, help! They are taking all the milk out of the dairy!" I saw this myself. They hold a very big stock of milk.[362]

352. After describing his discussions with Rutaremara and others, Kantano Habimana commented, "You can really feel that they want also to get to power. They want it." Habimana noted that he was going to broadcast an interview with Rutaremara, remarking:

> He thought that his ideas could not be transmitted on RTLM. I want to prove him the contrary. An individual's ideas or an *Inkotanyi's* ideas can be transmitted on RTLM. Yes. They are also Rwandans. Their ideas would at least be known by other people. If we do not know their ideas, we will not know them either.[363]

353. Following the interview, in which Rutaremara criticized the MRND as a dictatorial regime that killed people, Kantano Habimana concluded by saying:

> I hope that he now understood that even the *Inkotanyi* can speak on our radio. We do not want anybody to be silenced. Even the *Inkotanyi* can speak on our radio... So, those who think that our radio station sets people at odds with others will be amazed. You will find out that you were wrong. At the end, it will prove to be the mediator of people. It is that kind of radio that does not keep any rancor. Even its journalists do not have any ill feelings. So, the truth is said in jokes. It is not a radio to create tension as it is believed to. Those who believes [sic] that it "heats up heads" are those who lost their heads. They cannot keep on telling lies.[364]

354. Des Forges testified that she recalled this RTLM broadcast but was not aware of any other occasion on which an RPF member was given an opportunity to speak on RTLM. She said this interview and the debate cited above with Rwabukwisi, the editor of *Kanguka*, were the only two times she knew of that RTLM had allowed other voices to be heard. She also noted that Rutaremara was ridiculed in the RTLM broadcast as a tall milk-drinking Tutsi and explained the association of milk with Tutsi, who were historically pastoralists.[365]

355. In the first passage cited above, Kantano Habimana equated the *Inkotanyi* with the Tutsi several times, asking, for example, "Why should I hate the Tutsi? Why should I

[362] Exhibit 1D9, 3354bis-3353bis; CD 44, K198097-98; 1 Nov. 2000, p. 72.
[363] Exhibit 1D9, 3352bis; CD 44, K198100.
[364] Exhibit 1D9, 3347bis; CD 44, K198106.
[365] T. 22 May 2002, pp. 192-194.

PURL: https://www.legal-tools.org/doc/45b8b6/

hate the *Inkotanyi*?" The Chamber notes the sarcastic tone of the response, that the only object of misunderstanding was that the *Inkotanyi* had bombed and displaced "us", presumably a reference to the Hutu. Habimana mocked the "tall Tutsi", and his extended derision of the *Inkotanyi* as drinking large quantities of milk, in effect equating the *Inkotanyi* with the Tutsi. Moreover, the Chamber notes that Habimana expressed his own view in the course of the broadcast that one could "really feel that they want also to get to power".

356. Following the interview, in praising RTLM for giving the RPF airtime, Habimana made several references to the perception that RTLM "sets people at odds with others", that it "creates tension", and that it "heats up heads". While he was dismissive of these so-called "lies" the broadcast indicates full awareness of what was being said about RTLM at the time and the perception that he, the RTLM journalist, hated the Tutsi.

357. In an RTLM interview by Gaspard Gahigi, broadcast on 20 November 1993, Nahimana explained the origins of the term *Inyenzi* and its relation to the RPF as follows:

> There is no difference between the RPF and the *Inyenzi* because the *Inyenzi* are refugees who fled Rwanda after the mass majority Revolution of 1959, the fall of the monarchy and the establishment of a democratic Republic. Those who refused the Republic and the democracy went into self-imposed exile. Not long after, between 1962 and 1967, those refugees tried to replace the new Republic by the former monarchy. They launched attacks that killed people. However, Rwanda had then a national army, the national guard. Those sons of the nation did their best and drove those attacks out and in 1967, the *Inyenzi* stopped their attacks… You understand that the RPF that attacked us is made of those people, has its origin in those Tutsis who fled in 1959, those who attacked us until 1967. So, they got organized and named themselves RPF. At the beginning of the war in 1990, we used to say: "The *Inyenzi* have attacked us." The word "*Inyenzi*" was abandoned not long ago when we started negotiating. Kanyarengwe and his people said: "We do not want to be called *Inyenzi*… Both the *Inyenzi* and the *Inkotanyi* are people who attack and kill."[366]

358. In a number of RTLM broadcasts, the terms *Inyenzi* and *Inkotanyi* were explicitly associated or equated with the Tutsi population, and the struggle for power was characterized in ethnic terms. In an RTLM broadcast on 30 November 1993, Noël Hitimana reported:

> Earlier you heard an *Inkotanyi* woman who telephoned to insult me. You heard how she warned me, but I cannot stand the atrocities committed by the *Inkotanyi.* They are people like everyone else. We know that most of them are Tutsi and that not all Tutsis are bad. And yet, the latter rather than help us condemn them, support them. But I believe that in the end, they will be discovered and they will be punished accordingly.[367]

[366] Exhibit C7, CD 64, RTLM, Index 0099, K0146481-82.
[367] Exhibit C7, CD 104, K0166082.

PURL: https://www.legal-tools.org/doc/45b8b6/

359. In an RTLM broadcast on 1 December 1993, Gaspard Gahigi commented, "*Inkotanyi* is an organization of refugees who left in 1959 and others even following that. But it is mainly an ethnic organization."[368]

360. Some RTLM broadcasts do not even mention the *Inkotanyi* or the *Inyenzi*, referring only to "the Tutsi" in political terms. In an RTLM broadcast on 4 December 1993, Kantano Habimana said:

> So the Americans with their Tutsi and Belgian friends started threatening to pull their dollars elsewhere if Rwanda refused to give power to the Tutsis. Leave them alone and we will see what happens. Let the Tutsis go in peace and we will solve our problems ourselves.[369]

361. In a broadcast by Kantano Habimana and Noël Hitimana, on 23 March 1994, the RTLM journalists warned listeners of a long-term plan being executed by the RPF, and their undertaking "to fight anything related to 'Power,' that is, to fight any Hutu, any Hutu who says: 'Rwanda is mine, I am part of the majority. I decide first, not you.'" The broadcast concluded as follows:

> All this is part of an existing plan, as Kagame himself said, even if the armies are merged, the *Inkotanyi* still have the single objective: to take back the power that the Hutus seized from them the Tutsis in 1959; take back power and keep it for as long as they want. They tell you that the transitional period should serve as a lesson to us.[370]

362. Chrétien notes with regard to this broadcast the emphasis on the fear to be felt by Hutu who have been subjugated by Tutsi.[371] The Hutu seized power from the Tutsi in 1959, and the Tutsi were going to take it back. The historical political context was described entirely in ethnic terms, and the terms "Hutu" and "Tutsi" were used for political groups of people struggling for power. In one RTLM broadcast, on 1 February 1994, Kantano Habimana equated not only the RPF but also the PL, a political party, with the Tutsi saying, "you cannot depend on PL party Lando. PL Lando are Tutsis and Tutsis and the RPF are the same."[372]

363. RTLM broadcasts engaged in ethnic stereotyping in economic terms as well as political terms. In an RTLM broadcast on 25 October 1993, Noël Hitimana discussed the disproportionate Tutsi ownership of taxis:

> This man told me that the problem that exists is a known problem that many people neglect: it is the Hutu-Tutsi problem. Why can the Hutu and Tutsi not agree so that each one knows who he is. I am going to tell you a mere nothing which worries people. Someone telephoned me this morning, by the way it was a woman. She asked me not to say to our radio RTLM that the Tutsi who own

[368] Exhibit C7, CD 104, C5/K 95, Index 0142, K0166083.
[369] Exhibit C7, CD 4, RTLM 4, Index 0004 at K0163179-80.
[370] P36/73B.
[371] T. 1 July 2002, p. 117.
[372] T. 11 Apr. 2001, p. 79; P36/44C.

PURL: https://www.legal-tools.org/doc/45b8b6/

> taxis are 70% of all who own taxis in this country… I responded to her that no one can prevent these statistics from being known where they exist in the world. The richest in the world are written of in books and the world knows them while one mentions the poorest of the world and calls them tramps. This can be found in Paris or in Kigali. So I don't see the problem if we say that the people own such riches.[373]

364. In an RTLM broadcast in December 1993, Kantano Habimana talked about the wealth of the Tutsi, saying:

> This reminds me of Shamukiga. When he heard that over one hundred people had met in Meridien Umubano Hotel to launch Radio RTLM and reportedly raised two million [Rwandan francs], he said: "This is amazing! Hutus are really amazing! As you will see, the day we decide to launch a Tutsis' radio station, I will bring five Tutsis together and raise one hundred million." Hein! Do you hear that! (clapping his tongue against the upper gum). Well, this is true. Although they were complaining that they have been treated unfairly, they are the ones who have all the money. People who glanced at the debtors of the Savings Bank found that most of them were simply Tutsis. Yes! Or Tutsi women! As for the Hutus…, the sons of the Farmers' Father are really scatterbrains.[374]

365. In her testimony, Des Forges explained the reference in this broadcast to Charles Shamukiga, a Tutsi businessman in Kigali who was involved in human rights activities. Des Forges said that while there were a small number of Tutsi, mostly in business, who were wealthy, the great majority of Tutsi lived at the same level of poverty as their Hutu neighbours. She noted that RTLM frequently made the assertion that Tutsi were wealthy, as did *Kangura* and Barayagwiza, she thought, in his book. This assertion was sometimes associated with the figure of 70% as the percentage of the wealthy people of Rwanda who were Tutsi. On cross-examination Des Forges described as an inappropriate distortion of factual evidence that Tutsi represented 70% of the wealth in the country. She stated her view that this attempt to portray the Tutsi as unjustifiably wealthy in a country of enormous poverty contributed to hostility against the Tutsi. Des Forges noted that the accusation that Jews had an unjustifiable share of the wealth in Germany was frequently made at the time of the Holocaust.[375]

366. Prosecution Witness François Xavier Nsanzuwera, former Prosecutor of Kigali, was asked whether it was true that the Tutsi were the ones with all the wealth in Rwanda. He replied that he had not researched the issue, but in his personal opinion the majority of businessmen who were very rich were Hutu, while the number of rich Tutsi businessmen could be counted on one hand. Nsanzuwera testified that Charles Shamukiga called him after this broadcast and told him that he felt threatened by it. Shamukiga had been mentioned often on RTLM in the first few months of 1994 because he was a Tutsi businessman known to be a friend of President Habyarimana. On 7 April 1994, Shamukiga called Nsanzuwera to find out whether it was true that the President had been assassinated. While they were on the telephone, soldiers from the Presidential Guard

[373] Exhibit C7, CD 61, K0146471, translation from French.
[374] Exhibit P36/14C.
[375] T. 22 May 2002, pp. 197-200; T. 27 May 2002, p. 35.

PURL: https://www.legal-tools.org/doc/45b8b6/

broke down the door of Shamukiga's house. He told Nsanzuwera "This is it. I am going to die," and he was killed.[376]

367. When questioned about this broadcast in cross-examination, Nahimana initially omitted reference to the phrase "they are the ones who have all the money", and challenged first the translation when this omission was brought to his attention and then the meaning of the phrase in context. When pressed on his own views regarding the broadcast, he said finally that he would not have used such language but would have expressed the same reality in a different way. Nahimana hedged his answers regarding the truth of the statement, and when it was put to him that the statement was false and was broadcast with the intent of creating a scapegoat and ethnic discord, he said he did not know the intent behind the words of the journalist. When asked whether it would be acceptable for a journalist in Nazi Germany to say that Jews were the ones who had all the money, Nahimana said he did not have enough information to answer the question.[377]

368. RTLM broadcasts also engaged in ethnic stereotyping in reference to physical characteristics. In an RTLM broadcast on 9 December 1993, Kantano Habimana discussed accusations that RTLM hated the Tutsi:

> Not all Tutsis are wicked; some of them are wicked. Not all Hutus are good, some of them are wicked. Of the ethnic groups, there are some wicked Twas… This shows that human nature remains the same among all the ethnic groups in Rwanda, among all the men in Rwanda. But what type of person got it into his head that the RTLM hates the Tutsis? What have the Tutsis done to incur our hatred? A Tutsi, (he smiles) who…and which way are the Tutsis hated? The mere fact of seeing a Tutsi strolling about forces you to say he has a beautiful nose, that he is tall and slim, and what not. And you grudge him for that? If he has a beautiful, aquiline nose, you also have your own nose that is fat and which allows you to breathe enough air to ventilate your lungs.
>
> Radio RTLM does not hate the Tutsis. It has no conflict with them. It does not feed them and they are not under its charge. Who in the RTLM therefore hates the Tutsis? None of them gave me bed and board. Is there any of them I may have fed?…more especially as we go our separate ways! When I go about the shopping district in the Mateus neighbourhood, they surround me and do whatever it is they do, etc. … (he smiles). Do I say things that they do not like? Possibly so. (*Incomprehensible)*. That is their business. But I cannot remain quiet in the face of the atrocities committed by the *Inkotanyi* for fear of squabbles with the Tutsis. That is impossible! I cannot hide the atrocities committed by the Hutus for fear of provoking disputes with them. We must disapprove of all bad people. If the world were made up of only bad people, then Rwandans would be bad irrespective of their ethnic origin.[378]

369. The Chamber notes, despite Habimana's effort to express even-handedness, the hostility towards and resentment of Tutsi that is conveyed in this broadcast, as well as the

[376] T. 23 Apr. 2001, pp. 117-120; T. 24 Apr. 2001, pp. 28-37.
[377] T. 16 Oct. 2002, pp. 6-18.
[378] Exhibit C7, CD 108 K0166623-24.

PURL: https://www.legal-tools.org/doc/45b8b6/

acknowledgement that some thought that RTLM hated the Tutsi. The denial is unconvincing. In another RTLM broadcast, on 1 January 1994, Kantano Habimana again mentioned the concern expressed by others that RTLM was promoting ethnic hatred:

> Very small children, Tutsi small children came and said: "Good morning Kantano. We like you but do not heat up our heads." I split my sides with laughter and said: "You kids, how do I heat up your heads?" They said: "You see, we are few and when you talk of Tutsis, we feel afraid. We see that CDR people are going to pounce on us. Leave that and do not heat up our heads." (Laughter.) You are really very young… That is not what I mean. However, in this war, in this hard turn that Hutus and Tutsis are turning together, some colliding on others, some cheating others in order to make them fall fighting… I have to explain and say: "This and that...The cheaters are so-and-so…" You understand… If Tutsis want to seize back the power by tricks… Everybody has to say: "Mass, be vigilant… Your property is being taken away. What you fought for in '59 is being taken away."… So kids, do not condemn me. I have nothing against Tutsis, or Twas, or Hutus. I am a Hutu but I have nothing against Tutsis. But in this political situation I have to explain: "Beware, Tutsis want to take things from Hutus by force or tricks." So, there is not any connection in saying that and hating the Tutsis. When a situation prevails, it is talked of.[379]

370. Again in this broadcast, there was no reference to *Inkotanyi* or *Inyenzi*. The opposing forces were presented as Hutu and Tutsi. The Tutsi were said to want to seize power back through force or trickery, and Habimana said, again unconvincingly, "I have nothing against Tutsis", which was belied by everything else he said. The Chamber notes that Habimana himself recounted splitting his sides with laughter at the fear RTLM broadcasting had created among very small Tutsi children. The broadcast clearly indicates the impact RTLM had on the public: "heating up heads." It is also evidence of the fact that this concern was brought to the attention of the radio and dismissed out of hand as laughable.

371. That RTLM broadcasts intended to "heat up heads" is evidenced by broadcasts calling the public to arms. In an RTLM broadcast on 16 March 1994, Valerie Bemeriki conveyed the call to "rise up":

> We know the wisdom of our armed forces. They are careful. They are prudent. What we can do is to help them whole-heartedly. A short while ago, some listeners called to confirm it to me saying: 'We shall be behind our army and, if need be, we shall take up any weapon, spears, bows. …Traditionally, every man has one at home, however, we shall also rise up. Our thinking is that the *Inkotanyi* must know that whatever they do, destruction of infrastructure, killing of innocent people, they will not be able to seize power in Rwanda. Let them know that it is impossible. They should know, however, that they are doing harm to their children and grand-children because they might one day have to account for those actions.[380]

[379] Exhibit P36/38, pp. 12-13.
[380] P36/60B.

PURL: https://www.legal-tools.org/doc/45b8b6/

372. Chrétien stated in his discussion of this broadcast that one must understand the reference to *Inkotanyi* in this passage as a reference to the Tutsi.[381] The Chamber notes that there is no text in the broadcast to support this interpretation. In the context of other broadcasts, however, many of which implicitly or explicitly equate the *Inkotanyi* with the Tutsi, this reference to the *Inkotanyi* may well have been generally understood as a reference to the Tutsi population as a whole.

373. In a broadcast on 20 March 1993, Kantano Habimana recounted the following incident:

> Among those who have just telephoned…Because RTLM radio is always communicating with you. We just said that somebody wearing a cap looking like an UN troops' cap was seen passing near the ministries in Kacyiru and then, got on a bus. I have just learned who it was. His name is Nkusi Felicien. He came to see me wearing that very cap. It is actually a blue cap, bearing the writing "Securik." He told me: "I heard your radio station talking about me. I do not want anybody to throw stones at me. My name is Nkusi Felicien." He produced his work certificate and said: "I work with a security company named "Securik," Its staff members wear a blue and white cap." Perhaps to avoid confusion, they should change their caps and add something to the blue colour. That is not difficult. Yet it should not look like that UN people' cap to avoid any confusion. In any case, Nkusi Felicien, nobody will throw stones at you. However, if your boss is listening to me, tell him: "Modify these caps because they look like the UN's." In any case, it is easier to ask your security company to change caps than to request the same thing from the UN. If we told the UN people to change, we would get in trouble. So, your company should change those clothes that look like the UN's.[382]

374. On cross-examination, it was put to Nahimana that this broadcast, which immediately followed the conclusion of an interview of him by Gaspard Gahigi, demonstrated the power of RTLM, that simply mentioning a person and the cap he was wearing might result in stones being thrown at him. Nahimana stated that his interview had been pre-recorded, and he was not aware of the broadcast. He said if he had been he would have spoken about it to the Steering Committee, or Comité d'Initiative, as he had done with regard to another broadcast. This kind of mistake was not acceptable, he said, and should be punishable.[383] The Chamber notes that there is no indication of concern in the broadcast that RTLM would have provoked the stoning of a UN representative, which is implicitly considered acceptable, the goal of the broadcast being only to prevent other innocent look-alikes from undergoing this treatment. In fact, this broadcast illlustrates that RTLM was aware that the naming of an individual could have harmful effects on the individual named.

375. Many of the RTLM broadcasts reviewed by the Chamber publicly named individuals as RPF accomplices and called on listeners to be vigilant to the security risk

[381] T. 1 July 2002, p. 78.
[382] Exhibit 1D50D, p. 13.
[383] T. 27 Sept. 2002, pp. 83-84.

PURL: https://www.legal-tools.org/doc/45b8b6/

posed by these individuals. In an RTLM broadcast on 15 March 1994, Noël Hitimana reported:

> But in Bilyogo I carried out an investigation, there are some people allied with the *Inkotanyi*, the last time, we caught Lt Eric there, I say to him that if he wants, that he comes to see where his beret is because there is even his registration, we caught him at Nyiranuma's house in Kinyambo. There are others who have become *Inkotanyi*, Marc Zuberi, good day Marc Zuberi (he laughs ironically), Marc Zuberi was a banana hauler in Kibungo. With money from the *Inkotanyi* he has just built himself a huge house there, therefore he will not be able to pretend, only several times he lies that he is *Interahamwe*; to lie that you are *Interahamwe* and when the people come to check you, they discover that you are *Inkotanyi*. This is a problem, it will be like at Ruhengeri when they (*Inkotanyi*) came down the volcanoes taking the names of the CDR as their own, the population welcomed them with joy believing that it was the CDR who had come down and they exterminated them. He also lies that he is *Interahamwe* and yet he is *Inkotanyi*, it's well-known. How does he manage when we catch his colleague *Nkotanyi* Tutsi? Let him express his grief.
>
> Let's go to Gitega, I salute the council, let them continue to keep watch over the people because at Gitega there are many people and even *Inkotanyi*. There is even an old man who often goes to the CND, he lives very close to the people from MDR, near Mustafa, not one day passes without him going to the CND, he wears a robe, he has an eye nearly out of its socket, I do not want to say his name but the people of Gitega know him. He goes there everyday and when he comes from there he brings news to Bilyogo to his colleague's house, shall I name them? Gatarayiha Seleman's house, at the house of the man who limps "Ndayitabi".[384]

376. The Chamber notes that the people named in this broadcast were clearly civilians. The grounds on the basis of which RTLM cast public suspicion on them were cited in the broadcast. They are vague, highly speculative, and have no apparent connection with military activity or armed insurrection.

377. In an RTLM broadcast on 14 March 1994, Gaspard Gahigi named an *Inkotanyi* and listed at the end of the broadcast the names of all his family members:

> At RTLM, we have decided to remain vigilant. I urge you, people of Biryogo, who are listening to us, to remain vigilant. Be advised that a weevil has crept into your midst. Be advised that you have been infiltrated, that you must be extra vigilant in order to defend and protect yourself. You may say: "Gahigi, aren't you trying to scare us?" This is not meant to scare you. I say that people must be told the truth. That is useful, a lot better than lying to them. I would like to tell you, inhabitants of Biryogo, that one of your neighbors, named Manzi Sudi Fadi, alias Bucumi, is no longer among you. He now works as a technician for Radio Muhabura. We have seized a letter he wrote to Ismael Hitimana, alias Safari,. . . heads a brigade of *Inkotanyi* there the [sic] in Biryogo area, a brigade called

[384] Exhibit C7, CD 126, K0146968-69. Translation from French.

PURL: https://www.legal-tools.org/doc/45b8b6/

> *Abatiganda*. He is their coordinator. It's a brigade composed of *Inkotanyi* over there in Biryogo.
>
> Our investigations indicate that brigades like this one exist in other parts of Kigali. Those living in the other areas of Kigali must also be vigilant. But, for those who may be inclined to think that this is not true - normally, I'm not supposed to read this letter on RTLM airwaves, because we respect the confidentiality of those documents – but let me tell you that in his letter - I'll read you a few excerpts just to prove that the letter is not something I made up – Manzi Sudi Fadi, alias Bicumi Higo, wrote: "The young people within *Abatiganda* brigade, I, once again, salute you, … you the young people who aspire for change in our country, and who have come together in the *Inkotanyi* RPF family, I say to you: 'Love one another, be ambitious and courageous.'" He asks: "How are you doing in Biryogo?"… Such is the greeting of Manzi Sudi Fadi, alias Bicumbi to the young members of the brigade in Biryogo. As you can see, the brigade does exist in the Biryogo area. You must know that the man Manzi Sudi is no longer among you, that the brigade is headed by a man named Hitimana Ismaël, co-ordinator of the *Abatiganda* brigade in Biryogo. The Manzi Sud also wrote: "Be strong. I think of you a great deal. Keep your faith in the war of liberation, even though there is not much time left. Greetings to Juma, and Papa Juma. Greetings also to Espérance, Clarisse, Cintré and her younger sister, … Umutoni."[385]

378. Chrétien noted that this broadcast was an accusation of someone by name as being an RPF accomplice and the reading of a private letter, including the names of the family members. He testified that an ICTR investigator had been able to find Manzi Sudi Fahdi in Kigali and learned that his whole family, including the children Espérance, Clarisse, Cintré and others, were killed during the genocide.[386]

379. When asked to comment on this broadcast, and in particular the reading of the sisters' names at the end of the letter, Nahimana said that the letter proved the existence of the RPF brigades. He asked why the RPF was forming brigades and recruiting people at a time when the Arusha Accords were to be implemented. He said these brigades had killed civilians and entire families and that the letter should be used to track down its members. Asked again whether the RTLM broadcast would not put the sisters mentioned at risk, Nahimana said he could not accept that the Prosecutor would say nothing about the crimes committed by the RPF. That was the point of the letter to be emphasized, he said. When asked again by the Chamber about his views on the broadcast of the sisters' names, he said he never liked the practice of airing people's names, especially when it might bring about their death.[387] While recognizing that the letter does constitute evidence of the existence of RPF brigades, nevertheless, the Chamber finds it significant that only in the third round of questioning did Nahimana take a clear stand against this practice.

[385] P36/54B.
[386] T. 1 July 2002, pp. 165-66.
[387] T. 27 Sept. 2002, pp. 79-82.

PURL: https://www.legal-tools.org/doc/45b8b6/

380. In an RTLM broadcast dated sometime between the 1 and 3 April 1994, Noël Hitimana listed in passing a series of names of people he said were *Inkotanyi* accomplices:

> There are the people that we see collaborating with the *Inkotanyi*, we have made a note of them, here are the people that we see collaborating with the *Inkotanyi*: Sebucinganda from Butete in Kidaho, Laurence the woman from Gakenyeri, the named Kura from Butete. The councillor from Butete also collaborates with the *Inkotanyis*, and Haguma an *Inkotanyi* who has an inn in the Kidaho commune in the house of the woman from Gakenyeri and she who speaks English with the people from UNAMIR to disconcert the population, it's Haguma who speaks English. And the young people of Gitare sector, known as Rusizi, and the young people of Burambi, it seems that they know each other.[388]

381. Hitimana provided no evidence in support of his contention that these people were *Inkotanyi* accomplices. In an RTLM broadcast on 1 April 1994, Noël Hitimana narrated a series of events, speculating on the role of several doctors in the recent killing of a Hutu:

> Let us now talk about the death of Katumba, which has sparked off a lot of concern… It is being reported that yesterday, Kigali town came to a stand-still because of his death… Apart from misleading public opinion, was it only Katumba who died in this town Kigali? Or wasn't it, on the other hand, because of the death of a Tutsi called Maurice? Surely, was it the death of Katumba, a Hutu, which caused the stoppage of all activities in Kigali? Can't such a situation be brought about by the death of a Tutsi? Let them not deceive anybody. Are Katumba's assassins not the same people who killed Maurice to cause confusion, that is to say, in order to give the impression that a Tutsi and a Hutu lost their lives in the same circumstances? We are not stupid. Let them not spread confusion, because from the rumours I have just received, Dr. André Nyirabanyiginya, a radiologist at King Fayçal Hospital, the most modern hospital in the country, …he also works at the CHK on part-time basis,…huh…people are saying: "From what we know about him, ha!, he has never stopped saying,… even when he was still in Brussels, that he would support the *Inkotanyi*. Let us assume that those are rumours, but if it is true, let his neighbours telephone us again and tell us that the doctor and his family are no longer in his house.
>
> Huh…Dr. Pierre Iyamuremye is a native of Cyangugu… huh…his mother is a Hutu and the father is a Tutsi, not so? But then (laughter)… he works at the ENT (Ear, Nose & Throat) Department of CHK (laughter)... As a result, the flight of people who were in the habit of talking about Katumba, could serve as a clue in the investigation to find the real assassin. The same inquiry could help reveal whether the doctors, in case some people can confirm that Katumba used to disturb the doctors in their duties – for Katumba was a driver…huh… in the Ministry of Health. If it is revealed that the doctors used to talk of him saying: "this CDR bastard who is disturbing us." Therefore, if they indeed ran away because of Katumba's death, then they are the ones who know the cause of the man's death and who did it, huh…(laughter).

[388] Exhibit C7, CD 91, K0198752, translation from French.

PURL: https://www.legal-tools.org/doc/45b8b6/

> So, my dear André, if you are within the CND[389] and are listening to RTLM, you should know that you are to be held responsible for Katumba's death, because you were not on good terms with each other and everyone at your work place is aware of that. If, as a result of that, you fled,…but if at all you are at home, ring us or come here and ask us to allow you use our radio to clear your name by saying that you and Katumba were on good terms and declare personally that you, Doctor André Iyamuremye, are physically present.
>
> I meant Dr. Ngirabanyiginya. As for Iyamuremye, his first name is Pierre. Huh! Both of them had personal problems with Katumba and it seems they are both on the run. Therefore, if they have left, then they have automatically betrayed themselves. They have betrayed themselves and as a result, the circumstances surrounding Katumba's death seem to be getting clearer.[390]

382. Des Forges testified that at the end of March 1994, Alphonse Ngabire, a CDR leader known by the nickname Katumba, was killed, a killing RTLM attributed to the RPF. She acknowledged that reporting apparent indications of guilt on the part of certain persons was common broadcasting practice but maintained that RTLM broadcasts were not couched in careful language and that these indications were stated as definite conclusions. She stated that such killings were generally linked by RTLM to a larger killing campaign against the Hutu as a group, stressing ethnicity and intended to heighten fear. Des Forges noted that no proof was cited that the doctors named in the broadcast were responsible for the killing of Katumba.[391]

383. The Chamber notes the reference in this broadcast to Dr. Iyamuremye as the son of a Hutu mother and Tutsi father, thereby being considered a Tutsi, which was presented as incriminating. The broadcast clearly indicates that Hitimana had no information about those responsible for the killing of Katumba. He suggested that Dr. Ngirabanyiginya was responsible because they had not been on good terms. By their absence, the doctors had "automatically betrayed themselves", Hitimana said, with apparent spontaneity adding Dr. Iyamuremye at the end as also responsible for the killing. The Chamber notes the request that if rumours of Dr. Ngirabanyiginya's support for the *Inkotanyi* were true, "let his neighbours telephone us again and tell us that the doctor and his family are no longer in his house", a request, in the Chamber's view, that action be taken against the doctor and his family.

384. In an RTLM broadcast on 3 April 1994, Kantano Habimana highlighted a meeting of Tutsi in Cyangugu:

> Habimana: There is a small group in Cyangugu, a small group of Tutsis who came from all over, some came from Bujumbura. Yesterday, 2 April 1994, beginning at 10:00 a.m., at the Izuba hotel, I said Izuba. I meant the Ituze hotel, an important meeting took place at the Ituze hotel, it was the venue of an important meeting of Tutsis – some of whom had come from Bujumbura – under the chairmanship of the Medical Director of the Cyangugu regional health

[389] The military barracks in Kigali where RPF troops were lawfully housed.
[390] Exhibit P103/189, K0165913-14.
[391] T. 23 May 2002, pp. 56-59, 68-70.

PURL: https://www.legal-tools.org/doc/45b8b6/

> district. He was the one who chaired the meeting, something he does not deny… in the company of Emilien, hmm, yes, he was with Emilien, Emilien came secretly from Bujumbura. . . He should deny that he was not with Venuste, Kongo, Kongo, son of Kamuzinzi, and some people claim that he is a Hutu. He should come out and say that he was not with them. These people were gathered to lend their support to the RPF's objective, hmm. They were with other people, many of them, and I can name them: Karangwa, the financial comptrollers and tax inspectors. Hmm! These natives of Cyangugu tell me, "Tell those people not to tarnish our region. They continue to tarnish our region by organizing meetings. They should look for another venue for their meetings, they should go to Bujumbura or elsewhere, but not Cyangugu…" If I name the people who informed me about that, there is a danger of setting Cyangugu ablaze. That's not good, it's not good but the people are vigilant.[392]

385. In his testimony, Chrétien provided additional information about the Medical Director of Cyangugu and other individuals who were denounced in this broadcast as RPF accomplices. He cited a book by Wolfgang Blam, a German doctor in Kibuye at the time, who wrote that he knew the honesty of this Medical Director and that the accusations made against him were "totally absurd". Blam reported that three days following the broadcast, the Medical Director was burnt alive in front of his house, and in his book he linked the killing with the radio broadcast.[393]

386. When asked about this broadcast on cross-examination, Nahimana noted that RPF brigades existed. He noted that Prosecution Witness DM testified that Modeste Tabaro represented the RPF in Gisenyi and held meetings. He said he did not know where the journalist got the information but that these lists might have been furnished by the authorities. Acknowledging that it was speculation, Nahimana suggested that such a meeting was possible and that the intelligence services might have been aware of such a meeting through infiltration and passed the information to a journalist. Such things were not unique to Rwanda, he said. When it was put to him that the broadcast made reference to a "small group of Tutsis" and not the RPF, he said in the context it could have been an RPF brigade. Nevertheless, if he had been the RTLM Editor-in-Chief, Nahimana said he would not have allowed the piece to be aired because the atmosphere at the time was tense and listeners might have thought these people were preparing an attack, which would not have been right.[394]

387. The Chamber notes the ethnic reference in this broadcast to a "meeting of Tutsis," and to the Medical Director, who was said to have chaired the meeting, as someone who was claimed by some to be Hutu. In the broadcast he was urged several times to deny the accusations and to denounce the other people named. Other than the ethnic references, no indication is given in the broadcast as to the basis for concluding that the meeting was an RPF meeting.

388. In a broadcast on 3 April 1994, Noël Hitimana forecast an imminent RPF attack:

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[392] Exhibit P103/192D.
[393] T. 1 July 2002, pp. 139-141, 174, 176-177.
[394] T. 27 Sept. 2002, pp. 74-78.

PURL: https://www.legal-tools.org/doc/45b8b6/

> They want to carry out a little something during the Easter period. In fact, they're saying: "We have the dates hammered out." They have the dates, we know them too. They should be careful, we have accomplices among the RPF. . . who provide us with information. They tell us, "On the 3rd, the 4th and the 5th, something will happen in Kigali city." As from today, Easter Sunday, tomorrow, the day after tomorrow, a little something is expected to happen in Kigali city; in fact also on the 7th and 8th. You will therefore hear gunshots or grenade explosions. Nonetheless, I hope that the Rwandan armed forces are vigilant. There are *Inzirabwoba* [fearless], yes, they are divided into several units! The *Inkotanyi* who were confronted with them know who they are... As concerns the protection of Kigali, yes, indeed, we know, we know, on the 3rd, the 4th and the 5th, a little something was supposed to happen in Kigali. And in fact, they were expected to once again take a rest on the 6th in order to carry out a little something on the 7th and the 8th … with bullets and grenades. However, they had planned a major grenade attack and were thinking: "After wrecking havoc in the city, we shall launch a large-scale attack, then…"[395]

389. Chrétien suggested that this broadcast gave credibility to the "reign of rumour," on the basis of the fear shared by all at the time owing to the nullification of the Arusha Accords.[396]

4.1.2 After 6 April 1994

390. In the days just after 6 April 1994, Noël Hitimana broadcast that Kanyarengwe and Pastor Bizimungu had died, suggesting that they, having desired and provoked misfortune, had been struck by it and asking what had prompted them, both Hutu, to sign a blood pact with those who would exterminate "us", apparently from the context a reference to the Hutu.[397] The broadcast then asked listeners to look for *Inyenzi*:

> You the people living in Rugunga, those living over there in Kanogo, those living in Kanogo, in fact, those living in Mburabuturo, look in the woods of Mburabuturo, look carefully, see whether there are no *Inyenzis* inside. Look carefully, check, see whether there are no *Inyenzis* inside…[398]

391. When confronted on cross-examination with the fact that this was a false report of the death of Kanyarengwe and Bizimungu, Nahimana stated that Kanyarengwe was head of the RPF and Bizimungu its spokesperson. He said he could understand that the military might ask journalists to demoralize the opponents. "When there is war, there is war, and propaganda is part of it," he said. With regard to looking for people in the forest, Nahimana expressed the view that if the people were civilians who had gone to the forest in fear, he would not accept these words. On the other hand, if military intelligence had concluded that they were armed infiltrators of the RPF, he could understand an announcement such as the one in the broadcast.[399]

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[395] P103/192B
[396] T. 1 July 2002, pp. 139-141.
[397] P103/122B
[398] *Ibid.*
[399] T. 27 Sept. 2002, pp. 63- 66; French Transcript of same date for clarification, pp. 120-121.

PURL: https://www.legal-tools.org/doc/45b8b6/

392. RTLM broadcasts continued after 6 April to define the enemy as the Tutsi, at times explicitly. In a broadcast on 15 May 1994, for example, the RTLM Editor-in-Chief Gaspard Gahigi said:

> The war we are waging, especially since its early days in 1990, was said to concern people who wanted to institute "democracy"… We have said time and again that it was a lie. …these days, they trumpet, they say the Tutsi are being exterminated, they are being decimated by the Hutu, and other things. I would like to tell you, dear listeners of RTLM, that the war we are waging is actually between these two ethnic groups, the Hutu and the Tutsi.[400]

393. Similarly, in an RTLM broadcast on 29 May 1994 of an exchange between residents and soldiers, a resident said:

> [O]ne who does not have papers should remain there or even leave his (her) head there. However, in reality, I think that the check should be necessary because everybody should have his (her) papers with him (her) certifying that he (she) is really Rwandan and is really a son of "Sebahinzi" that he is not an enemy, or an accomplice or an *Inkotanyi*. I think that all those who remain in this country, we know each other, we are all sons of the "same man".[401]

394. Using the term "Son of Sebahinzi", a reference to the Hutu[402] as the real Rwandans, the broadcast in effect equated "an enemy, or an accomplice or an *Inkotanyi*" with anyone who was not a Hutu.

395. In an RTLM broadcast on 30 May 1994, Kantano Habimana[403] equated *Inkotanyi* with Tutsi, referring to the enemy several times first as *Inkotanyi* and then as Tutsi:

> If everybody, if all the 90% of Rwandans, rise like one man and turn on the same thing called *Inkotanyi*, only on the thing called *Inkotanyi*, they will chase it away until it disappears and it will never dream of returning to Rwanda. If they continue killing themselves like this, they will disappear. Look, the day all these young people receive guns, in all the *communes*, everyone wants a gun, all of them are Hutu, how will the Tutsi, who make up 10% of the population, find enough young people, even if they called on the refugees, to match those who form 90% of the population.
>
> How are the *Inkotanyi* going to carry this war through? If all the Hutu children were to stand up like one man and say we do not want any more descendents of Gatutsi in this country, what would they do? I hope they understand the advice that even foreigners are giving them.[404]

[400] Exhibit P163B, 26782 (translation of P103/213).
[401] P103/14B at K0143702.
[402] T. 1 July 2002, p. 81 (Testimony of Chrétien).
[403] *Ibid*. Chrétien identifies the broadcaster as Kantano Habimana, not Gaspard Gahigi as shown in the transcript.
[404] Exhibit P103/16B; T. 1 July 2002, pp. 91-92.

PURL: https://www.legal-tools.org/doc/45b8b6/

396. In an RTLM broadcast on 4 June 1994 Kantano Habimana more graphically equated *Inkotanyi* with Tutsi, describing the physical characteristics of the ethnic group as a guide to selecting targets of violence. He said:

> One hundred thousand young men must be recruited rapidly. They should all stand up so that we kill the Inkotanyi and exterminate them, all the easier that … [Tr.] the reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small nose and then break it. Then we will go on to Kibungo, Rusumo, Ruhengeri, Byumba, everywhere. We will rest after liberating our country.[405]

397. The call for extermination of the *Inkotanyi* was explicitly equated with extermination of the Tutsi in an RTLM broadcast on 13 May 1994 by Kantano Habimana:

> I suspect that among those people, those *Inkotanyi*, there hides a "devil of a bull-calf that will exterminate the herd of cattle with which it was born" [*akamasa kabi kazaca inka kazivukamo*]…. Someone must have signed the contract to exterminate the *Inkotanyi*…to make them disappear for good (*burundu*)…to wipe them from human memory…to exterminate the Tutsi from the surface of the earth (*akamarisha abatutsi kwi'isi*)…to make them disappear for good…[406]

398. In other broadcasts, the terms *Inkotanyi* and *Inyenzi* were used for the enemy. In a broadcast of 14 May 1994, Kantano Habimana talked of the relationship between *Inkotanyi* and Tutsi, saying:

> In Kinyarwanda – although, unfortunately, the *Inkotanyi* do not understand this language; indeed, they have bad advisors. Yes, the *Inkotanyi* [are] obstinate. So anyhow, as the Kinyarwanda saying goes, 'a small family fights behind termite nest, where it can retreat in case things get out of hand.' I believe this saying is quite clear. Which is the numerically weak family in Rwanda? It is the *Inkotanyi* family, because for it is a groupuscule [sic.] which stems from those known as Tutsis. The Tutsis are very few in number. They were initially estimated at 10%, but the war must[407] have reduced that figure to 8%. Will they really continue to commit suicide by locking horns with people who are by far numerically superior to them?[408]

399. Chrétien suggested in his testimony on this broadcast that the journalist was referring to the *Inkotanyi* as "the numerically weak family in Rwanda" and used the word *gateko* for small group (translated above as "groupuscule"), which he said was a word used often for Tutsi.[409] Following the juxtaposition of these words, Habimana said explicitly that the *Inkotanyi* family "stems from" the Tutsi. His citing of statistics clearly refers to the Tutsi group as a whole having been reduced from 10% to 8%, and in asking

[405] Exhibit P95H, T. 1 July 2002, pp. 109-110.
[406] Exhibit P163A, 26775.
[407] Nahimana objected to the translation of "must" suggesting that it should be "might". T. 1 July 2002, p. 96.
[408] P103/268B.
[409] T. 1 July 2002, p. 97.

PURL: https://www.legal-tools.org/doc/45b8b6/

whether "they" will continue to lock horns with people numerically superior, the reference was clearly to the Tutsi group as a whole, in this way identifying the Tutsi group as a whole with the *Inkotanyi*.

400. In a similar RTLM broadcast on the next day, 15 May 1994, by an unidentified speaker, the same statistics were cited, and the equation of *Inkotanyi* with Tutsi was explicit:

> We shall fight them and we will defeat them, that is a truth. If they do not pay attention they will all be decimated. I have remarked it, they are in the minority. The *Inkotanyi* form a minority group in Rwanda. Tutsi are very few. Even if we used to say that they are 10% may be the war has taken away 2%. They are now 8%. Will they go on committing suicide? Won't they be exterminated? As I can see, I think that one person among *Inkotanyi* is responsible for their extermination. I do not know if it is Kagame alias Kagome, I do not know if it is Rutarema or Mazimpaka or Kanyarengwe, Kanyamurengwe. Anyway there must be a person who has contracted to exterminate the *Inkotanyi*, to exterminate Tutsi all over the world – and in that case people will forget the Tutsi once for all – we do not know him, let him go on, I think that he will see the consequences himself and it will be late.[410]

401. Some RTLM broadcasts talked about *Inkotanyi* and/or *Inyenzi* without explicit reference to the Tutsi population as a whole, or even the Tutsi composition of the RPF. In an RTLM broadcast on 1 July 1994, for example, Kantano Habimana said the following:

> If we fight and finally defeat the *Inkotanyi*, nobody will try us, because we will be considered as triumphant warriors. But if we are defeated, it goes without saying that even if you hide in the bottom of Lake Kivu, they will do everything possible to fish you out and try you and hang you. … I don't know where they will hang you, but when you're a loser, everybody will take swipes at you. … as the saying goes, when the cow is down, every other cow tries out its horns! We have no other way of defeating these people who want to discourage us by threatening to bring us before the International Tribunal, or whatever … We have to fight all these people who are trying to demoralize us … so as to pursue our set objective. … The objective we have set ourselves is to fight the *Inyenzi-Inkotanyi* who want to reintroduce the feudal/monarchical system banished more than thirty years ago by our ancestors. … We must fight these obstinate people who want to restore the monarchy to oppress us, crush us, weaken us and hurt us."[411]

402. There is no mention of Tutsi ethnicity in this broadcast. The enemy was defined in political terms, as those who wanted to restore the monarchy. In other broadcasts, the term "Tutsi" was used to describe a political grouping. For example, in an RTLM broadcast of 13 April 1994, Kantano Habimana said:

> This never happened anywhere in the world, that a few individuals, a clique of individuals (*agatsiko k'abantu*) who want power…who want power…who are lying that they are defending the interests of a few people…who, thirsty for

[410] CD 46, K0146211.
[411] Exhibit P103/214B; T. 1 July 2002, pp. 200-201.

PURL: https://www.legal-tools.org/doc/45b8b6/

> power…. they should be exterminated. Such things have never been seen anywhere in the world…. But it has happened in Burundi. The Tutsi minority (*bake*) in Bujumbura wanted to take power and the result was that a good number of Tutsi were exterminated in the countryside. The *Inkotanyi* band have attracted exactly the same fate to befall the Tutsi of this country.[412]

403. In an RTLM broadcast of 2 July 1994, Kantano Habimana exulted in the extermination of the *Inkotanyi*:

> So, where did all the *Inkotanyi* who used to telephone me go, eh? They must have been exterminated. … Let us sing: "Come, let us rejoice: the *Inkotanyi* have been exterminated! Come dear friends, let us rejoice, the Good Lord is just." The Good Lord is really just, these evildoers, these terrorists, these people with suicidal tendencies will end up being exterminated. When I remember the number of corpses that I saw lying around in Nyamirambo yesterday alone; they had come to defend their Major who had just been killed. Some *Inkotanyi* also went to lock themselves up in the house of Mathias. They stayed there and could not find a way to get out, and now they are dying of hunger and some have been burnt. However, the *Inkotanyi* are so wicked that even after one of them has been burnt and looks like a charred body, he will still try to take position behind his gun and shoot in all directions and afterwards he will treat himself, I don't know with what medicine. Many of them had been burnt, but they still managed to pull on the trigger with their feet and shoot. I do not know how they are created. I do not know. When you look at them, you wonder what kind of people they are. In any case, let us simply stand firm and exterminate them, so that our children and grandchildren do not hear that word "*Inkotanyi*" ever again.[413]

404. In his testimony, Chrétien suggested that when Kantano Habimana talked about *Inkotanyi* it was a way of talking about the Tutsi.[414] The Chamber notes that the Tutsi were not specifically mentioned and that there was no reference in the broadcast to any association with ethnicity. In fact, the *Inkotanyi* were described as dying with their guns at hand, pulling the trigger even after they had been burned and looked like charred bodies. These references are evocative of combatants, not civilians. For this reason they might suggest an association with the RPF rather than with the Tutsi population as a whole, although the word "extermination" is one generally associated with civilians rather than military operations.

405. Some broadcasts made the association between the RPF and its largely Tutsi composition, without stating that all Tutsi were members of the RPF but rather that all members of the RPF were Tutsi. In an RTLM broadcast of 5 June 1994, for example, Ananie Nkurunziza said:

> Our country, the Tutsi clique has plunged it into mourning; however, I think we are fast approaching what I would call dawn… dawn, because--for the young people who may not know--dawn is when the day breaks. Thus when day breaks, when that day comes, we will be heading for a brighter future, for the day when we will be able to say "There isn't a single *Inyenzi* left in the country". The term

[412] Exhibit P163B, 26774 (translation of P103/64).
[413] Exhibit P103/40D.
[414] T. 1 July 2002, pp. 143-144.

PURL: https://www.legal-tools.org/doc/45b8b6/

> *Inyenzi* will then be forever forgotten, and disappear for good…that will only be possible if we continue exterminating them at the same pace. As we have told you time and again, it would be unimaginable for this clique, which does not make up 1%, to drive us out of the country and rule it.[415]

406. Chrétien testified that the juxtaposition of phrases relating to the "*Inyenzi*" and the "Tutsi clique" leads to the conclusion that in this context "*Inyenzi*" means Tutsi civilians and the "clique" means the RPF.[416] The Chamber does not find in the text of the broadcast clear support for Chrétien's interpretation of it. The reference to 1% would not be a reference to the Tutsi population as a whole, which was generally estimated as 10% and was referred to as 10% in other broadcasts. The Tutsi clique, less than 1%, was said to be trying to take over rule of the country. The term *Inyenzi* could have been a reference to the Tutsi population as a whole, but it could also have been a reference to the RPF, or the "Tutsi clique" as it was called in the broadcast.

407. The Chamber considers that in reference to the context of what was happening at the time, the number of Tutsi civilians who had actually been killed by then, the *Inyenzi* who it was said could be forever forgotten "if we continue exterminating them at the same pace" could well have been understood as a reference to the Tutsi population as a whole. This understanding would be based, however, not on any language intrinsic to the text but rather a juxtaposition of the phrase referencing the extermination of the *Inyenzi* to the external context, the fact that the Tutsi population was being exterminated, as well as the fact that other broadcasts equated the term *Inyenzi* with Tutsi.

408. Some RTLM broadcasts linked the war to what were perceived and portrayed as inherent ethnic traits of the Tutsi. In a broadcast on 31 May 1994, for example, Kantano Habimana said:

> The contempt, the arrogance, the feeling of being unsurpassable have always been the hallmark of the Tutsis. They have always considered themselves more intelligent and sharper compared to the Hutus. It's this arrogance and contempt which have caused so much suffering to the *Inyenzi-Inkotanyi* and their fellow Tutsis, who have been decimated. And now the *Inyenzi-Inkotanyi* are also being decimated, so much so that it's difficult to understand how those crazy people reason.[417]

409. In an interview of a Simbomana by Gaspard Gahigi, broadcast on RTLM on 20 June 1994, the cunning, predatory nature of the Tutsi and the innocent, vulnerable nature of the Hutu were discussed:

> Simbomana: Thus therefore the trickery, you have known for a long time that the Tutsi are very cunning, they are a people who always smile, who always wink. It is a smile which delights us, the members of our family, he smiles at you but is thinking of other things. The Hutus, we are innocent people who think that everything is good and that no one will do us any harm. As for the Tutsi, if he

[415] Exhibit P103/249B.
[416] T. 1 July 2002, pp. 103-106.
[417] Exhibit P103/17D (0017e bis).

PURL: https://www.legal-tools.org/doc/45b8b6/

> smiles at you or winks at you it is to achieve a goal. And it is why, their trickery made the Hutu unable to see further and to know that behind this trickery there was something else that the Tutsi wanted…. The first thing to do, from today, and even when we will triumph, is that we know, from today, every Tutsi trickery.
>
> Gahigi: "I would remind our listeners that at present you say that it is the wickedness and the trickery of the Tutsi that has complicated this war. Therefore for us to deal with this problem, this trickery and this wickedness must be released so that people know it, and that it is this trickery which puts the population into confusion. And then that these Tutsi extremists forming the *Inyenzi* front have lied to the population. There are therefore three points, or in fact two, that you just said: the wickedness, the trickery and this trickery affected the population. I would therefore like that we continue and you pass to the third point, you can say what complicated this war and what would allow it to come to an end.[418]

410. RTLM broadcasts repeatedly warned listeners to be vigilant and to beware the deceit of the enemy. In an RTLM broadcast on 20 May 1994, Valerie Bemeriki named the enemy as being several priests she described as involved in armed conflict, warning the Hutu as follows:

> Father Ngoga is not alone. And Father Muvaro: Linda and the small meetings that took place at her place, does that mean nothing of him? Because normally, we know that in God's Place, there is a place where the body of Christ is kept, which is known as the tabernacle. So? Could Father Ntagara explain to the Rwandan people the reason why Eucharist have been replaced by ammunition? And the sacristy? Isn't it there that good priests – the ones we swamp with praise – keep their sacred vestments when they go to say mass, and also keep them consecrated items? Therefore, since when have these items been intermingled with guns? You, Father Modeste Mungwarareba, I have seen you ever since you were rector of Karubanda Minor Seminary. God looked at you and said: "No. What belongs to me cannot be mixed up all these instruments, which are used for shedding blood!" Can you therefore tell us a little bit about the small secrets in the sacristy? So all of us Hutus must remain vigilant. You have just heard what happened with the priests, what the religious people are doing, certain priests … and in fact, I recently heard that the bishops met. In their communiqué, they say that certain priests are feared dead, were allegedly murdered, certain nuns too. However, I would like to ask them to conduct inquiries first, as there are things happening at the lower level, things that are not known in the higher spheres. For example, we did not know that those Tutsis got together and burned down a Tutsi's house, then fled, saying that they were attacked by Presidential Guard soldiers and *Interahamwe*. You can see that they have the same discourse as a well-known radio station, it's the *Inyenzi* discourse. When they begin talking like that, the others, without thinking, take to their heels. But when they reach another hill, the Tutsis stand aside and are joined by the ones they found on the hill. And suddenly, the Hutus are cut off. When they realise that their number have increased, the Tutsis, who usually carry a few effects with them often containing weapons, immediately grab their weapons and attack the Hutus and Hutu homes.

[418] Exhibit C7, CD 4, RTLM 4, Index 0004 at K0114062; 69-70, 79-80, translation from French.

PURL: https://www.legal-tools.org/doc/45b8b6/

> In the end, the Hutus understood. … We could not imagine that a priest would ever dare take up a gun, begin to shoot or even distribute guns to people taking refuge in the church, the latter then begin launching sporadic attacks in order to eliminate the Hutus, and then retreat into the church … daring to desecrate God's house.[419]

411. Chrétien testified that such broadcasts targeted Tutsi who were frightened and taking refuge in churches as accomplices. He noted the massacres that took place in May in the Kibayho church and recalled that Father Ngoga and Father Ntaraga were subsequently killed. Father Ngoga initially managed to flee but was killed in Butare eleven days after the broadcast. He had been arrested following his denouncement, then released, and he was killed just at the exit of the prison.[420] Nahimana testified that he knew Father Muvaro, who had been his student, and that he had included the man's work in a book he published. He knew Father Muvaro died because he was a Tutsi, which saddened him, but he said it would be audacious on his part to say that he died following the RTLM broadcast.[421]

412. In the broadcast Bemeriki suggested that the alleged murder of some priests and nuns should be investigated, implying that the allegations were not true. By way of example she attributed the burning of a Tutsi's house to other Tutsi, who then blamed the attack on Presidential Guard soldiers and the *Interahamwe*. Throughout the broadcast Bemeriki talked of Hutu and Tutsi, calling on Hutu to remain vigilant and describing how the Tutsi "immediately grab their weapons and attack the Hutus and Hutu homes."

413. In an RTLM broadcast on 5 June 1994, Kantano Habimana described an encounter with an *Inkotanyi* child:

> Some moments ago, I was late due to a small *Inkotanyi* captured in Kimisagara. It is a minor *Inkotanyi* aged 14. I don't know whether he is not less than that. So *Inkotanyi* who may be in Gatsata or Gisozi were using this small dirty *Inkotanyi* with big ears who would come with a jerrican pretending to go to fetch water but he was observing the guns of our soldiers, where roadblocks are set and people on roadblocks and signal this after. It is clear therefore, we have been saying this for a long time, that this *Inkotanyi's* tactic to use a child who doesn't know their objective making him understand that they will pay him studies; that they will buy him a car and make him do for their war activities, carry ammunitions on the head for them. And give him a machine to shoot on the road any passenger while they have gone to dig out potatoes. Truly speaking it is unprecedented wickedness to use children during the war, because you know that a child doesn't know anything.[422]

414. This broadcast linked a small child to espionage without citing any evidence that the child was doing anything other than fetching water and looking around. The subsequent association with weapons would leave listeners with the impression that any

[419] Exhibit P103/132D.
[420] T. 1 July 2002, pp. 132-34, 180-82.
[421] T. 27 Sept. 2002, pp. 56-57.
[422] Exhibit C7, CD 96, K0113834.

PURL: https://www.legal-tools.org/doc/45b8b6/

boy fetching water could be a suspect, covertly aiding the enemy. RTLM promoted the idea that accomplices were everywhere. In an RTLM broadcast on 14 June 1994, an unidentified speaker said:

> But are the accomplices only found amongst the population? That is the question which I have always spoken about. Are the accomplices really only found amongst the population? Is it true that there are no accomplices amongst the Rwandan Armed Forces? The question is so serious because these are the accomplices who are in the middle of the army. It is those who allow the *Inyenzi* to advance on Gitarama, that they are in the process of fighting in Budhanda.[423]

415. Many RTLM broadcasts used the word "extermination"; others acknowledged, as several broadcasts cited above, that the reality of extermination was underway. On 9 June 1994 in an RTLM broadcast, Kantano Habimana said:

> I will also tell you about Kivugiza, where I went yesterday and where [I] saw *Inkotanyi* in the Khadafi mosque; over one hundred of them had been killed. However, others arrived. When they reached the place, I went there to take a look and saw that they looked like cattle for the slaughter. I don't know whether they have already been slaughtered today or whether they will be slaughtered tonight. But in fact, whoever cast a spell on these Rwandan children (or foreigners if that is the case) went all out …They are braving the shots fired by the children of Rwanda in a suicidal manner. I feel they are going to perish if they are not careful.[424]

416. The Chamber notes the striking indifference to these massacres evident in the broadcast, and the dehumanization of the victims. Although the text makes no reference to ethnicity, in light of the context in which Tutsi were fleeing and taking refuge in places of worship, as well as other broadcasts in which the terms *Inkotanyi* and Tutsi were equated, listeners might well have understood the reference to *Inkotanyi* as a reference to Tutsi civilians. Habimana's suggestion that a newly arrived group had already been slaughtered or was about to be slaughtered accepted, condoned and publicly presented the killing of hundreds of people in a mosque as normal.

417. In an RTLM broadcast on 31 May 1994 an unidentified speaker described the clubbing of a Tutsi child:

> They have deceived the Tutsi children, promising them unattainable things. Last night, I saw a Tutsi child who had been wounded and thrown into a hole 15 meters deep. He managed to get out of the hole, after which he was finished with a club. Before he died he was interrogated. He answered that the *Inkotanyi* had promised to pay for his studies up to university. However, that may be done without risking his life and without devastating the country. We do not understand the *Inkotanyi's* attitude. They do not have more light or heavy

[423] Exhibit C7, CD 73, K0146599. Translation from French.
[424] Exhibit P103/28f; T. 1 July 2002, pp. 148-149.

PURL: https://www.legal-tools.org/doc/45b8b6/

> weapons than us. We are more numerous than them. I believe they will be wiped out if they don't withdraw. [425]

418. The Chamber finds no indication in this broadcast that the Tutsi child was armed or dangerous. His brutal death was described dispassionately, the point of the broadcast being that the *Inkotanyi* did not seem to understand that they would be annihilated.

419. Several RTLM broadcasts noted the sensitivity of the international community to evidence of massacres and warned the public accordingly. In an RTLM broadcast on 25 June 1994, for example, Gaspard Gahigi said:

> What I wanted to ask Rwandans, in order to show the French that we back their action and that we support peace, is that this business of looking at your neighbour and killing him because of the way he looks or behaves, such things must stop. That's how, I believe, we can help the French. Spending the day running, plundering, all that is over … That must stop. In my view, that's how we can help the French, and aspire for peace. In my view, if the French come to help the country to restore peace, peace must come from among us. In order for peace to be restored – as Mr. Jean Kambanda once said, and rightly so – you must know our adversaries, the Inkotanyi. Your neighbour is not our adversary, simply because he is this or that other way. You know our adversaries. No one should be victimized on account of his appearance, no one should be victimized because of his height, people should be judged based only for their acts. If anyone misbehaves, he should be punished for it and not for his ethnic or regional origins. In my view, if misfortune has befallen this country, we should strive to extricate ourselves from it. If the French come to help us, we must make our contribution. The killings must stop everywhere. As for us, we must ensure that no one is victimized because of his appearance or regional origin, but rather for his acts. That's an idea that I support. And the French arrive, we must show them our support, we must show that we want peace. All those who are flying flags should keep them, the inscriptions at the roadblocks should remain, but everything must be translated into real acts. We must show the French that they are welcome, but we must not let them know that there are criminals, even though crimes have been committed, I personally think it's unfortunate. Where there is war, there are also killings; that's how it goes.[426]

420. Chrétien suggested that these calls for change in behaviour represented "politically correct" language, cynically used for the benefit of the French, who were going to send troops. The Chamber agrees, noting that this underlying intent was fairly explicit. Gahigi mentioned the French seven times in this short broadcast, saying that killing people because of the way they look must stop "in order to show the French that we back their action". Later he said, "If the French come to help us, we must make our contribution. The killings must stop everywhere," suggesting that stopping the killings was a contribution that would be made only if, or on the condition that, the French came to help. The broadcast recognized and acknowledged the reality of what was happening at the time, described as "this business of looking at your neighbour and killing him".

[425] Exhibit C7, CD 17, K0143727, translation from French.
[426] P103/302B, T. 1 July 2002, pp. 197-98.

PURL: https://www.legal-tools.org/doc/45b8b6/

421. In an RTLM broadcast on 18 May 1994, Kantano Habimana raised the same concern, putting the point more bluntly. He said:

> Here is good news, good news for the Rwandan people. We have started receiving good news, really good news. After the decision by the United Nations to send 5,500 soldiers from African countries, France also agreed to send troops. Once more, France provided an amount as assistance, and promised to increase it. However, in order for us to continue receiving this kind of good news, they are asking that no corpses be seen by the roadside and that no one is killed while onlookers laugh, instead of handing him over to the authorities.[427]

422. The Chamber notes that Habimana asked listeners to ensure that no corpses were seen by the roadside, and attributed this to a request from the French, virtually as a condition of sending troops. Starting with the good news of French assistance, which was its main focus, the broadcast only mentioned the killing in this context. In the RTLM broadcast, Habimana did not condemn the killings, although the broadcast indicates that he was aware of the fact that there were corpses lying by the roadside. The point was the visibility of the killings, not their occurrence.

423. Not all such RTLM broadcasts cited the concern of the international community as a reason to stop indiscriminate killing based on ethnicity. In an RTLM broadcast on 15 May 1994, an unidentified speaker said:

> The enemy who attacked Rwanda is known; he is the RPF-*Inkotanyi*. Here, I want to explain that the RPF is our enemy, no one will say that it is our brother while it will be fighting. This must be understood like that… Whenever the RPF fights us, we consider him as our enemy, the enemy of all Rwandans, whenever it attacks us and fights us we consider him as such and we fight him like that. The reason why I say that the enemy is the RPF is to distinguish it with another who they call an enemy although he is not really an enemy. You are asked to train and explain to the population to avoid whatever can lead them to fight each other because of their ethnic groups. Some people think that a person of different ethnic groups is your enemy. To be an enemy he must belong to RPF…. A Tutsi, a Hutu, a Twa who is not a RPF soldier is not our enemy we cannot say that the one who is from a different ethnic group is our enemy, the one from another region is our enemy. RPF often uses these elements in order to seek a way to infiltrate.[428]

424. According to Des Forges, this broadcast was intended to avert international criticism. The Chamber notes that other broadcasts such as the one cited above might support this interpretation, although the international community was not mentioned in this particular broadcast. There was an acknowledgement that "some people think that a person of different ethnic groups is your enemy", but the broadcast went on to state, "To be an enemy he must belong to RPF", and "we cannot say that one who is from a different ethnic group is our enemy…" The Chamber finds that the last line, "RPF often

[427] P103/9B.
[428] Exhibit C7, CD 46, K0146218-19.

PURL: https://www.legal-tools.org/doc/45b8b6/

uses these elements in order to seek a way to infiltrate", to some extent undercut the apparent message of the broadcast, perhaps intentionally, by suggesting that RPF was infiltrating along ethnic lines. The insinuation is subtle, though, and the broadcast, in isolation as an excerpt, does not indicate lack of sincerity on the basis of the text itself, with the possible exception of this last line. It is only when read in the context of other contemporaneous broadcasts that a cynical purpose might be inferred.

425. In contrast, some broadcasts explicitly called for killing of civilians. In an RTLM broadcast on 23 May 1994, Kantano Habimana said:

> Let me congratulate thousands and thousands of young men I've seen this morning on the road in Kigali doing their military training to fight the *Inkotanyi*… At all costs, all *Inkotanyi* have to be exterminated, in all areas of our country. Whether they reach at the airport or somewhere else, but they should leave their lives on the spot. That's the way things should be…Some (passengers) may pretext that they are refugees, others act like patients and other like sick-nurses. Watch them closely, because *Inkotanyi's* tricks are so many... Does it mean that we have to go in refugee camps to look for people whose children joined the RPA and kill them? I think we should do it like that. We should also go in refugee camps in the neighbouring countries and kill those who sent their children within the RPA. I think it's not possible to do that. However, if the *Inkotanyi* keep on acting like that, we will ask for those whose children joined the RPA among those who will have come from exile and kill them. Because if we have to follow the principle of an eye for an eye, we'll react. It can't be otherwise.[429]

426. The Chamber notes the call for extermination in this broadcast, and although there is some differentiation in the use of the term *Inkotanyi* from the Tutsi population, nevertheless the broadcast called for killing of those who were not *Inkotanyi*, the killing of those in refugee camps whose children joined the RPA. The broadcast also warned listeners to be vigilant at the roadblocks and to beware passengers using the "pretext" that they were refugees, in effect calling on the population to attack refugees.

427. In an RTLM broadcast on 28 May 1994, Kantano Habimana made it clear that even Hutu whose mothers were Tutsi should be killed:

> Another man called Aloys, *Interahamwe* of Cyahafi, went to the market disguised in military uniform and a gun and arrested a young man called Yirirwahandi Eustache in the market… In his Identity Card it is written that he is a Hutu though he acknowledges that his mother is a Tutsi… Aloys and other *Interahmawe* of Cyahafi took Eustache aside and made him sign a paper of 150000 Frw… He is now telling me that they are going to kill him and he is going to borrow this amount of money. He is afraid of being killed by these men. If you are an *Inyenzi*[430] you must be killed, you cannot change anything. If you are *Inkotanyi*, you cannot change anything. No one can say that he has captured an *Inyenzi* and the latter gave him money, as a price for his life. This cannot be

[429] Exhibit C7, CD 93, K0146700-02.
[430] The translation uses the word "cockroach" for all references in the original to "*Inyenzi*".

PURL: https://www.legal-tools.org/doc/45b8b6/

> accepted. If someone has a false identity card, if he is *Inkotanyi*, a known accomplice of RPF, don't accept anything in exchange. He must be killed.[431]

428. From this broadcast it is clear that Yirirwahandi Eustache was perceived to be an *Inyenzi* and *Inkotanyi* because he acknowledged that his mother was a Tutsi. The chilling message of the broadcast was that any accomplice of the RPF, implicitly defined to be anyone with Tutsi blood, cannot buy his life. He must be killed.

429. Many RTLM broadcasts named and denounced individuals, identifying them as accomplices or threats to security. In an RTLM broadcast on 2 June 1994, Valerie Bemeriki said:

> And yet, there will certainly be criticism regarding what must be in this commune, but I'm not saying … There are not many of them; only one person named … a woman named Jeanne. Jeanne is a sixth-form teacher at Mamba, Mamba in Muyaga commune. Jean is not doing good things in this school. Indeed, it has been noted that she's the cause of the bad atmosphere in the classes she teaches. She had a husband named Gaston, a Tutsi, who took refuge in Burundi. He left, but when he reached the other side, he started to plot against the Hutus of his commune; he arranged their murder through this woman, his wife, Jeanne. He is doing everything possible to launch attacks in Muyaga commune, through this woman named Jeanne, who is a teacher at Mamba, in Muyaga commune. She did not stop at that, she teaches that to her students; she urges them to hate the Hutus. These children spend the entire day at that, and, indeed, the people of Muyaga, who are well known for their courage, should warn her. You therefore realize that she is a security threat for the commune.[432]

430. According to Chrétien, Jeanne's husband, a Tutsi, had to go into hiding. Following the RTLM broadcast Jeanne, a Hutu, complained to the bourgmestre that she was getting threats. He told her to stay calm, but she did not trust this advice and went into hiding herself.[433] Asked specifically about this broadcast on cross-examination, Nahimana said he disapproved of it.[434]

431. RTLM also broadcast lists of names of individuals. In an RTLM broadcast on 31 March 1994, for example, Mbilizi announced among the news headlines "13 students of Nyanza who form a brigade that is called Inziraguteba ["persons who are never late"] will soon be enrolled by the RPF." Shortly thereafter Mbilizi started his report of this news by saying that 13 students of Nyanza had just been enrolled by the RPF. He named five schools and then read a list of thirteen names of the people he said were in the Brigade Inziraguteba. Together with each name was broadcast the young man's post in the Brigade, his age, the name of his school, and what his RPF code name would be. The ages given ranged from 13 to 18 years old. After reading the list of names, Mbilizi said:

[431] Exhibit C7, CD 11, K0143676.
[432] Exhibit P103/20B.
[433] T. 1 July 2002, pp. 184-86.
[434] T. 27 Sept. 2002, p. 58.

PURL: https://www.legal-tools.org/doc/45b8b6/

> So, dear listeners, you have noticed that these students are very young and that can be very dangerous. We have to say that this confirms sufficiently the information that was diffused on RTLM saying that the RPF has infiltrated schools.[435]

432. Chrétien testified that RTLM broadcasts also attacked UNAMIR, and particularly the Belgians and General Dallaire.[436] On 31 May 1994, for example, Kantano Habimana accused Dallaire of favoring the Tutsi:

> I spoke with General Romeo Dallaire on this situation, when I bumped into him at Nyabugugo. I was given to understand Dallaire (smile) believes he is one and the same as UNAMIR. II; [sic] he thinks that if he were fired, UNAMIR would not have its place in Rwanda. He is a pretentious fellow. Simply, I told him that his favorite ethnic group, known as the *Inyenzi-Inkotanyi*, Tutsis,[437] will disappear from the face of the earth in the end. We then had a discussion and a Senegalese soldier who was there separated us, but I told them in no uncertain terms that a minority ethnic group, which commits suicide by declaring war on the majority ethnic group will end up by disappearing once and for all, because it's committing mass suicide. I don't know whether Dallaire will tell his friends about it, but it's inevitable.[438]

433. A number of broadcasts are addressed to those manning the roadblocks, in support of their activities. In a broadcast between 26 and 28 May, Kantano Habimana directly encouraged those guarding the trenches against the *Inyenzi* to take drugs:

> I would like at this time to salute those young people near the slaughterhouse, the one near Kimisagara… Yesterday I found them dancing zouk. They had even killed a small pig. I would like to tell you that… Oh no! The thing you gave me to smoke… it had a bad effect on me. I took three puffs. It is strong, very strong, but it appears to make you quite courageous. So guard the trench well so to prevent any cockroach [*Inyenzi*] passing there tomorrow. Smoke that little thing, and give them hell.[439]

Witness Evidence of RTLM Programming

434. In reviewing RTLM broadcasts, the Chamber has relied primarily on broadcasts highlighted by the Prosecution and the Defence. However, not all RTLM broadcasts are available. In determining the extent to which the broadcasts submitted to the Chamber are representative of RTLM programming as a whole, the Chamber considers the testimony of witnesses who listened to RTLM regularly, or followed RTLM at the time, a critical complement to the evidence of the broadcasts themselves.

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[435] Exhibit C7, CD 148, C.54/K 95, K0113774, 77-78.
[436] T. 1 July 2002, pp. 105-106.
[437] Nahimana objected to this translation, maintaining that Tutsi was in adjective form and the translation should be "Tutsi *Inyenzi-Inkotanyi*." T. 1 July 2001, p. 102.
[438] Exhibit P103/17D (0017e ter).
[439] Exhibit P103/239B.

PURL: https://www.legal-tools.org/doc/45b8b6/

435. Prosecution Witness GO, a civil servant in the Ministry of Information whose job it was to monitor RTLM before 6 April 1994, described the early programming of RTLM as follows:

> RTLM started by endearing itself to the people by attracting them with music, music which is referred to as "hot" and it was mainly Congolese music… And little by little the programmes broadcast - the broadcasts changed and events that took - based on events that took place in Burundi in October RTLM started presenting to the people an issue - i.e., that the Tutsis constituted danger to the Hutu majority. But the manner of presentation was diluted so as it does not - so that it is not seen as a mistake by the authorities, and to get them to sanction the RTLM. And when the Arusha peace accords were adopted, RTLM was much clearer in its statements by addressing itself to what it referred to as the "masses", that henceforth power has been taken from their hands and that they were going to - that they were going to be - they were going to be put into a situation of servitude. From January, the date on which the extended transitional government was to be established, this was - this whole message was addressed to the people, those they referred to as the "masses". And, indeed, the people followed the message like dogs that had been taught to bite, and everywhere there were demonstrations of *Interahamwe* and *Impuzamugambi.* There was a lot of insecurity. These groups were chanting, "Let us exterminate them, let us exterminate them". There was a climate of fear among the people, and it was apparent that the entire population had listened to the teachings of RTLM.[440]

436. Witness GO described the gradual build-up of effect over time noting, "I monitored the RTLM virtually from the day of its creation to the end of the genocide, and, as a witness of facts, I observed that the operation of the genocide was not the work done within a day."[441] He described the impact of RTLM as follows:

> [W]hat RTLM did was almost to pour petrol – to spread petrol throughout the country little by little, so that one day it would be able to set fire to the whole country.[442]

437. The witness gave the following summary of what he heard listening from his home after 6 April, where he stayed after many others from the Ministry of Information were killed:

> RTLM was constantly asking people to kill other people, to look for those who were in hiding, and to describe the hiding places of those who were described as being accomplices. I also remember RTLM programmes in which it was obvious that the people who were speaking were happy to say that there had been massive killings of *Inyenzi*, and they made no difference between *Inyenzis* and Tutsis. And they said that they should continue to search for those people and kill them so that the future generations would have to actually ask what *Inyenzis* looked like, or, ultimately, what Tutsis looked like.[443]

[440] T. 10 Apr. 2001, pp. 49-50.
[441] *Ibid.*, p. 45.
[442] T. 4 June 2001, p. 33.
[443] T. 10 Apr. 2001, p. 58.

PURL: https://www.legal-tools.org/doc/45b8b6/

438. During this time, Witness GO also heard a broadcast on RTLM of the Ten Commandments of the Hutu, which he thought he remembered as having been mentioned by Valerie Bemeriki and Kantano Habimana. Witness FW also testified that he heard an RTLM broadcast commenting on the Ten Commandments.[444] Witness GO described the impact of the broadcast as follows:

> The goal of mentioning the ten Hutu commandments was to ensure that the population understood that all the Hutus must become united. And they must have a single fighting goal that they should aim for. And that they should have no link or no relationship between Hutus and Tutsis. And it's for that reason that some men started killing their wives who were Tutsis. In other cases, children who, with the result of a mixed marriage, whether they had a Tutsi mother or a Hutu father, but thought that they were more Hutu than Tutsi, killed their own mothers. Just that it was explained to Hutu widows, i.e. Hutu women who had been married to Tutsi men, and whose husbands had been killed and whose children had been killed, that in fact, it was not a problem. That they had just gotten rid of enemies. And that the only persons who had any link with these people were those women. And that is indeed how things happened.[445]

439. Witness AGX, a Tutsi man from Gisenyi, testified that he listened to RTLM in 1993. Generally speaking, he said the journalists would give news about the war and about the ethnic groups. He said Kantano Habimana would often mention ethnicity and say that the Tutsi were the enemy of the Hutu, that the Tutsi were a minority representing 15% of the population and were only seeking to obtain power, and that the Tutsi should be avoided. According to Witness AGX, his teachings to the people were to raise discord between the Hutu and the Tutsi.[446] Witness ABE, a Tutsi man from Kigali, testified that unlike newspapers that used the term RPF-*Inkotanyi*, RTLM always used the term *Inyenzi-Inkotanyi* and it was a term used to mean that the RPF were enemies and they were the Tutsi.[447] Witness ABC, a Hutu man from Kigali, testified that he was in Rugunga when RTLM radio announced at around 8.00 p.m. that President Habyarimana's plane had been shot at. After the announcement, the witness heard gunfire and grenade explosions which continued all night. The next morning, RTLM stated that some people who were opposed to the regime had been killed, namely, Kavaruganda, Agathe Uwilingiyimana and Frederic Nzamurambaho. At 5.00 a.m. that morning, RTLM said that no one should leave their homes and that the Tutsi had to be sought as they had perpetrated the attack on the plane.[448]

440. A number of Prosecution witnesses, including Witness BI and Nsanzuwera, mentioned the music of Simon Bikindi, a Hutu whose song "*Nanga Ba-Hutu*" or "I Hate the Hutu", was repeatedly broadcast on RTLM. By all accounts, the tune of this song was extremely popular. In the view of Nsanzuwera, the lyrics "broadcast ethnic hatred" and became a "hymn" for the massacres.[449] In his testimony Nsanzuwera recalled the

[444] T. 1 Mar. 2001, p. 123.
[445] T. 11 Apr. 2001, pp. 47-48.
[446] T. 11 June 2001, pp. 53-54.
[447] T. 28 Feb. 2001, p. 37.
[448] T. 28 Aug. 2001, pp. 12-14.
[449] T. 23 Apr. 2003 p. 95.

PURL: https://www.legal-tools.org/doc/45b8b6/

song describing the Hutus as imbeciles that have huge stomachs and attacking Hutu accomplices as "the Hutus that one buys in order to kill".[450] The Chamber noted in the RTLM broadcast transcripts numerous references to songs of Bikindi being played on the air. A number of witnesses testified that the music played on RTLM was very popular, and that particularly in the beginning, it was one reason people listened to RTLM.

441. Prosecution Witness BI, a Hutu human rights activist, testified that within a short time after RTLM first came on the air, she became concerned. The language of the broadcasters changed, and they began a campaign to promote the idea that all Tutsi were *Inkotanyi* and enemies of the nation, and that all Hutus married to Tutsi were naïve and enemy accomplices.[451] The conclusion that all Tutsi were *Inkotanyi* was mentioned again and again on RTLM programs, by Noël Hitimana, Kantano Habimana and Valerie Bemeriki, among others.[452] Witness BI said she listened to RTLM in her capacity as a human rights activist, to learn what was being planned by the *Impuzamugambi* and the *Interahamwe*. RTLM would mention neighbourhoods and individuals by name, and a few hours later those neighbourhoods would be ransacked by the militia and those individuals would be the victims of attack. She recalled mention of the neighbourhood Gatega, where it was said that the Tutsi women thought themselves to be invincible and were making the Hutu men lose their heads. She said the next morning, a young woman called Kate was killed in her house by a grenade.

442. Witness BI said she herself was mentioned on RTLM in December 1993, as a pest who had decided to work for the enemy. Other persons she was said to have brought in her wake were also named in the broadcast. When the witness got home, the night watchman showed her a large stone that had been thrown into her compound by young militiamen in uniform. Attached to the stone was a message that they would catch up with her and that they were going to kill her by crucifying her, removing her skin, and leaving her to be eaten by birds, hoping that before she died she would understand that she was a traitor. Witness BI said she was mentioned on RTLM several times. The one broadcast she heard herself was in January or February 1994 by Valerie Bemeriki, who said that it was not surprising to see Witness BI working for the *Inkotanyi* because her mother was a Tutsi who had married a Hutu man to make him lose his head. After this broadcast another stone was thrown into her compound with a sketch of a calabash encircled by a snake. The message was that as she listened to her mother, her children would listen to her and suffer the same fate. She was told the stone had been thrown by two men wearing CDR berets and a man who was an *Interahamwe*. In March, she recalled that Kantano Habimana spoke of her on RTLM, saying he did not understand why such a little woman as her could create chaos, and he asked whether there were not a sufficient number of men to take care of her. Subsequently in her testimony she clarified that Habmina suggested she could not be sexually satisfied except by Tutsi men.[453] Immediately after this broadcast she was chased by three men, who said, "It's her." When they reached her, one of the men removed his penis from his trousers and asked

[450] T. 24 Apr. p. 178.
[451] T. 8 May 2001, pp. 63-64.
[452] T. 14 May 2001, pp. 126-127.
[453] T. 15 May 2001, p. 68; T. 8 May 2001, pp. 93-94.

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her whether that was not sufficient to shut her up. Two days later she was attacked in the street and her vehicle was stoned and damaged.[454]

443. Witness BI said that in March 1994, *Interahamwe* and *Impuzamugambi* youth in their uniforms with the radio to their ear were omnipresent, singing songs very loudly, songs of Bikindi and others saying "We shall exterminate the enemies of the country". On the morning of 7 April, the witness saw soldiers from the Presidential Guard, with a list, killing people. At mid-day they came to her house. She was on the telephone with Alison Des Forges when the soldiers started shooting and kicked her door open. She managed to escape and hid in the bushes, and subsequently in the ceiling of her house, from where she did not move for five days. Thereafter she fled, leaving the country on 12 April 1994.[455]

444. A number of Prosecution witnesses testified that individuals referred to in RTLM broadcasts were subsequently killed as a result of those broadcasts. Nsanzuwera, the Kigali Prosecutor at the time, characterized being named on RTLM as "a death sentence" even before 7 April.[456] He stated that there were a number of killings that followed RTLM broadcasts, and cited several incidents involving people he knew personally, in addition to Charles Shamukiga, mentioned above. One such incident, which took place on 7 or 8 April, was the killing of Desire Nshunguyinka, a friend of President Habyarimana, who was killed with his wife, his sister and his brother-in-law after RTLM broadcast the license plate of the car they were traveling in. The RTLM broadcast alerted the roadblocks in Nyamirambo and said they should be vigilant as a car with that identification would be passing through, with *Inkotanyi*. When the car arrived at the roadblock almost immediately after the broadcast, these four people were killed by those manning the roadblock. Nsanzuwera said that RTLM broadcasting addressed itself to those at the roadblock and that the message was very clear: to keep the radio nearby as RTLM would provide information on the movements of the enemy. Many listened to RTLM out of fear because its messages incited ethnic hatred and violence, and Nsanzuwera said the station was called "Radio Rutswitsi" by some, which means "to burn", referring to ethnic violence. After 6 April it was even called "Radio Machete" by some.[457]

445. Prosecution Witness FS, a businessman from Gisenyi, testified that he heard his brother's name, among others, mentioned on RTLM on 7 April 1994, and that shortly thereafter his brother was killed, together with his wife and seven children. He testified that his brother was not the only one, but that several people were killed following radio broadcasts.[458]

446. Prosecution Witness FY, a man from Kigali, testified that he started listening to RTLM at the end of 1993, beginning of 1994. He was in Goma from February to mid-

[454] T. 8 May 2001, pp. 94-95.
[455] *Ibid.*, pp. 88-97, 106-110.
[456] T. 24 Apr. 2003, pp. 94-96.
[457] T. 23 Apr. 2003, pp. 50-55, 84-89; T. 24 Apr. 2003, pp. 42-43.
[458] T. 7 Feb. 2001, pp. 66-68.

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March, during which time he did not listen to RTLM. Beginning in mid-March 1994, RTLM started to name and accuse individuals of being *Inkotanyi* or financing the *Inkotanyi*. Amongst these names he heard Noël Hitimana broadcast the name of Daniel Kabaka, the owner of the house he was renting, who was accused of making financial contributions to the RPF and holding meetings at his house. Kabaka had been named in a state security list and arrested in 1990 together with others, mainly Tutsi, who were said to be *Inkotanyi* accomplices. He was detained for six months and came out of prison disabled, having been shot in the leg. According to the witness, Kabaka, a Tutsi, did not belong to any political party.[459]

447. Witness FY testified that Kabaka was not hiding anyone in the house. After this information had been broadcast on the radio, the place was targeted and afterwards people would think twice before coming to visit. He said he considered moving because he was afraid that an attack would follow the broadcast. In the week following 7 April 1994, Witness FY heard Kabaka's name again on RTLM, and on the night of 7 or 8 April, his residence was attacked with a grenade. The ceiling was destroyed, and Kabaka, who was already handicapped, broke his leg and was unable to flee. While the rest of the family fled, his 12 year-old daughter Chine remained with him, saying that she wanted to die with her father. The witness said that within a few days members of a crisis committee that had been set up to monitor the situation came to the house. Thirty minutes later eight gendarmes arrived and entered the house. They found Kabaka lying down and tried to shoot him, but his daughter helped him move out into the courtyard. He was shot three times in the chest and died immediately. His daughter was also shot twice, but she did not die immediately. She was taken to the Red Cross and died there a week later. Witness FY, a Tutsi, was in a crowd of people who witnessed these events and went into hiding afterwards in neighbours' houses.[460]

448. Witness FY recalled the names of other neighbours who had been mentioned on RTLM including a builder, a physician, and a woman who worked at the Belgian embassy. He said he heard these names in March and April 1994, and that in all cases the same language was used, accusing the persons of being accomplices and hiding *Inkotanyi.* He said that most of the persons mentioned on RTLM were Tutsi, or they were people who did not support the government at that time. Those he knew, the builder and the doctor, for example, were elderly and not people he thought were in any way interested in politics or involved in political activities. Witness FY testified that RTLM programming had two phases. In the first phase, popular music was played, and in the second phase the programmes were seeking to divide Rwandans and, as he described it, "the Hutu was showing the Rwandans who the enemy was". In response to questioning from the Chamber, Witness FY testified that there were killings of Tutsi other than Kabaka at that time, and that when the crisis committee went from house to house they checked identity cards for the purpose of selective killing. He said they had a list of names, but he was not close enough to be able to read the names on the list.[461]

[459] T. 9 July 2001, pp. 9-16.
[460] T. 9 July 2001, pp. 30-35.
[461] T. 9 July 2001, pp. 20-28; T. 10 July 2001, pp. 7-9.

PURL: https://www.legal-tools.org/doc/45b8b6/

449. Prosecution witnesses also described RTLM broadcasts apparently designed to manipulate the movement of Tutsis so as to facilitate their killing. An incident recounted by Nsanzuwera involved Professor Charles Kalinjabo, who was killed at a roadblock in May 1994 after RTLM broadcast an appeal to all Tutsis who were not *Inkotanyi* but rather patriots to join their Hutu comrades at the roadblocks. Charles Kalinjabo was among those who consequently left his hiding place and went to a roadblock, where he was killed after RTLM then broadcast a message telling listeners not to go and search for the enemies in their houses because they were there at the roadblocks.[462] Witness FW testified that on 11 April 1994, he heard an RTLM broadcast telling all Tutsis who had fled their homes that they should return because a search for guns was to be conducted, and that the houses of all those who were not home would be destroyed in this search. The witness FW said that some people returned home on hearing this broadcast and named among them Rubayiza Abdallar and another person called Sultan, both Tutsi neighbours of his who were killed when they returned home on the same day, 11 April. Witness FW stated that most of those who returned home following this broadcast were killed. He did not go home but looked for a hiding place because he did not trust RTLM.[463]

450. Witness FW also testified about an incident that took place at the Islamic Cultural Centre on 13 April 1994. The witness estimated that there were 300 men, 175 women and many children, all Tutsis taking refuge there. He described dire conditions and said that some Hutu youth were entering the compound and bringing food to those inside. On 12 April, he saw the RTLM broadcaster Noël Hitimana there, and heard him asking these youth why they were bringing food to the *Inyenzi* in the Islamic Cultural Centre. Witness FW testified that he told Hitimana that these people he was calling *Inyenzi* were his neighbours and asked him why he was calling them *Inyenzi*. Approximately one hour later, Witness FW said he heard Kantano Habimana on RTLM saying that in the Islamic Cultural Centre there were armed *Inyenzi* and that the Rwandan Armed Forces must be made aware of this fact. According to the witness, none of the refugees in the compound was armed; they were all defenceless. The next morning, on 13 April, the compound was attacked by soldiers and *Interahamwe*, who encircled and killed the refugees. From his place of hiding, Witness FW was able to see what was happening. He described the reluctance of some *Interahamwe* to kill people in a mosque, which led them to order everyone to come out, including elderly women and children. They were then taken to nearby houses, and almost everyone was subsequently killed. The next morning the witness found six survivors, three of whom were severely wounded and died subsequently. They told him that once the refugees had been put into the houses, grenades were thrown into the houses, and that they were the only survivors of the attack. Among those killed was Witness FW's cousin, a seven year-old girl.[464]

451. Witness FW testified that in May he heard an RTLM broadcast, which he described as one of the "inflammatory programs". Gahigi was interviewing Justin Mugenzi who was saying that in 1959 they had sent the Tutsi away but that this time

[462] T. 23 Apr. 2003, pp. 53-55, 75-82.
[463] T. 1 Mar. 2001, pp. 51-53, 122-23.
[464] *Ibid.,* pp. 61-83, 89-90.

PURL: https://www.legal-tools.org/doc/45b8b6/

around they were not going to send them away, they were going to kill them, that the Hutu should kill all the Tutsi – the children, women and men – and if they had come back it is because they were not killed last time. The same mistake should not be made again, they should kill all the Tutsi. Witness FW said this statement made them very scared because they realised that their chances of survival were very slim and that if they were alive it would not be for too long.[465]

452. Prosecution Witness Thomas Kamilindi, a Rwandan journalist, recalled in his testimony that he was threatened by an RTLM broadcast, following an interview he did at the Hotel des Mille Collines. During the interview, he asserted that militiamen, with help from some part of the army, were responsible for the killings, and that the RAF was losing ground to the RPF. The next day RTLM mentioned Thomas Kamilindi being at this hotel, which was a sanctuary for *Inyenzi*. Kantano Habimana said on air, "Thomas, listen, come back home. Come and work with us. What you're doing is not good. You've gone the wrong way." He said he understood from this that the militia were being told to come and find him. He was told by other refugees that Valerie Bemeriki had said on air, "Kamilindi you can say anything you want. You can sell the country as you want, but know that the Hotel des Mille Collines is not a bunker." Mr. Kamlindi was told subsequently by the hotel manager that the army had decided to bombard the hotel, and he was informed by a captain from UNAMIR that General Dallaire was in contact with General Bizimungu in an effort to save the hotel. Three hours after Bemeriki's broadcast, a shell was fired into the hotel, which was subsequently declared a UN site to which armoured vehicles were sent for protection. When Mr. Kamilindi, among forty refugees, was evacuated by UNAMIR, they were stopped at a roadblock and almost killed by *Interahamwe* militia and soldiers. While negotiations regarding the convoy were going on, Kamilindi said the *Interahamwe* were shouting his name, saying "Kamilindi, come down; we are going to kill you. The others will be saved." [466]

453. Prosecution Witness X, a member of the *Interahamwe*, testified that he listened regularly to RTLM from the time of its creation. In the time prior to 6 April 1994, he said he heard information broadcast on RTLM that was false. As an example, he cited a report that grenades were thrown, attributing the grenades to the RPF when in fact they were thrown by the MRND. He also mentioned a list that RTLM publicized as a list, created by the RPF, of people it was going to kill, which was false. Witness X said he saw this list two days before it came out in January 1994. He was told by a mutual friend of his and Nahimana's that the list was going to be published. It was produced by a group of people, which included Nahimana as well as Bagosora.[467] In cross-examination, Counsel for Nahimana noted that Witness X had signed a communique in February 1994 condemning RPF lists for extermination, indicating that the lists were thought to be genuine. Witness X maintained that the list was not authentic.[468] Counsel for Barayagwiza noted that several of the people on the list, including Gatabazi and Bucyana, were in fact killed, suggesting that the information was not false. Witness X insisted that

[465] *Ibid.*, pp. 84-85.
[466] T. 21 May 2001, pp. 89-101.
[467] T. 18 Feb. 2002, pp. 110-21; Exhibit P88.
[468] T. 21 Feb. 2002, pp. 82-85.

PURL: https://www.legal-tools.org/doc/45b8b6/

there was no link between the list and these killings.[469] He cited as another example of false information an RTLM broadcast in April 1994 naming people as *ibyitso,* including someone called Bomboko, whom RTLM said was masquerading as an *Interahamwe* but actually worked for the RPF. An RTLM official who was with Witness X heard this broadcast and went to the studio to demand that a correction be made, to say that Bomboko was one of them and not *ibyitso*.[470]

454. Prosecution Witness Colette Braeckman, a Belgian journalist, testified that after the death of President Ndadaye in Burundi, she started to hear about RTLM broadcasts. Journalists and members of the diplomatic corps were saying that RTLM was throwing oil on the fire.[471] Following the funeral of Ndadaye, in December 1993 she went to Kigali, where she met Prime Minister Agathe Uwilingiyimana, who had contacted Braeckman to share her concern about RTLM. She said the radio was mounting a campaign of ethnic hatred and that death threats were being proferred, especially against herself. UN Belgian troops were being denigrated, as were the Arusha Accords and members of the opposition. This interview, published in the Belgian newspaper *Le Soir*, quoted the Prime Minister as saying, "Radio Mille Collines, which belongs to the head of state, stated that the president and myself were condemned to die. The chairman of my party and myself were condemned to die." In cross-examination, Counsel for Barayagwiza suggested that RTLM only said they were condemned to die, which did not constitute a threat.[472]

455. Other government opposition members attacked by RTLM included Alphonse Nkubito, the Prosecutor General, who according to Nsanzuwera was mentioned many times on RTLM. Nkubito was accused in March 1994 of plotting to kill the President, in an RTLM broadcast against which he initiated legal action. Nsanzuwera testified that on 3 May 1994, when he was stopped at a roadblock, he was asked "Is it Nkubito or is it Nsanzuwera?" He said they always said the same thing and that he and Nkubito were not killed because the UN was protecting them. RTLM had said that Nkubito and Nsanzuwera were amongst those still living, and the *Interahamwe* would always ask whether it was Nsanzuwera or Nkubito because they had listened to the RTLM broadcast in which Nkubito was mentioned as plotting the assassination of the President.[473] Witness GO testified that Faustin Rucogoza, the Minister of Information, was often mentioned on RTLM and criticized for his efforts to stop RTLM from broadcasting messages of ethnic division. On 7 April 1994, the Minister was killed at his residence, together with his wife and eight of their children. Witness GO heard the RTLM broadcast of this news, reporting that Rucogoza had been killed with other accomplices.[474]

456. At a seminar on the media convened in Rwanda in March 1994 by the Belgian embassy, Prosecution Witness Colette Braeckman said there was a lively debate about the role of the media and the difference between an activist and an objective approach.

[469] *Ibid*., p. 69.
[470] T. 18 Feb. 2002, pp. 114-15.
[471] T. 29 Nov. 2001, p. 22.
[472] *Ibid*., p. 54.
[473] T. 23 Apr. 2001, pp. 44-46, 88-89.
[474] T. 10 Apr. 2001, pp. 4-19.

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She said concern was expressed that the media at that time might promote violence and recalled one Rwandan journalist, François Byabyibwanzi, as saying that a certain type of press sharpened hatred and could get Rwandans to take up grenades and machetes and to kill. He particularly mentioned RTLM, as did a number of other journalists at the meeting. In the debate, Nahimana and Gahigi supported the right of opinion press to exist, but others challenged this position saying it was not only opinion but incitement to ethnic hatred and violence. Nahimana defended opinion press, saying it does not necessarily lead to violence and is protected by freedom of expression. Radio Muhabura was similarly criticized as broadcasting information that could incite Rwandans to hatred. Radio Muhabura representatives took the floor and defended opinion press but differentiated themselves from RTLM and incitement to ethnic hatred. In cross-examination, Counsel for Nahimana cited a report of the seminar in the publication *Dialogue*, which did not mention the debate to which Braeckman testified. She said this publication printed the written presentations and did not capture the more informal discussions at the meeting, which were the most heated and accusatory.[475]

457. Prosecution Witness Philippe Dahinden, a Swiss journalist who followed RTLM from its beginnings, delivered a statement to the United Nations Human Rights Commission on 25 May 1994, calling for the condemnation of the role played by RTLM since the beginning of the massacres and asking that the UN demand the closing down of the radio. In his statement he noted, "Even prior to the bloody events of April 1994, RTLM was calling for hatred and violence against the Tutsis and the Hutu opponents. Belgian nationals and peacekeepers were also among the targets and victims of the '*radio que tue'* [the killer radio station]." Calling RTLM "the crucial propangada tool" for the Hutu extremists and the militia in the launching and perpetuating of the massacres, Dadinden said that beginning on 6 April 1994, RTLM had "constantly stirred up hatred and incited violence against the Tutsis and Hutu in the opposition, in other words, against those who supported the Arusha Peace Accords of August 1993".[476]

458. Expert Witness Des Forges testified that the message she was getting from the vast majority of people she talked to at the time of the killings was "stop RTLM". She noted that potential victims listened to RTLM as much as they could, from fear, and took it seriously, as did assailants who listened to it at the barriers, on the streets, in bars, and even at the direction of authorities. She recounted one report that a *bourgmestre* had said, "Listen to the radio, and take what it says as if it was coming from me". Her conclusion on the basis of the information she gathered was that RTLM had an enormous impact on the situation, encouraging the killing of Tutsis and of those who protected Tutsis.[477]

459. When asked generally what he thought of RTLM programming from July to December 1993, Nahimana testified that he was happy with the debates and discussions, that ethnicity, power-sharing and the Arusha Accords were being discussed and that no subject was considered taboo. He said the objectives of RTLM highlighted at the first shareholders' meeting were political discussion of topical issues, commercialization of

[475] T. 29 Nov. 2001, pp. 122-127; Exhibit P76.
[476] Exhibit P2B.
[477] T. 23 May 2002, pp. 267-268.

PURL: https://www.legal-tools.org/doc/45b8b6/

the radio, and the need to talk about problems resulting from the war. There was talk at the meeting about the need to counter Radio Muhabura, and he noted as unfortunate that anything said against the RPF was taken to constitute mobilization of the Hutu. Counsel for Nahimana introduced several broadcasts, cited above, to challenge the assertion that RTLM was not open to all political parties. Nahimana said that following the assassination of Burundian President Ndadaye in October 1993, there was a downturn and this event was a catalyst for in-depth discussion of the ethnic issue. RTLM was seen as an extremist radio station belonging to Hutu Power because it broadcast information about killings by the RPF. Nahimana mentioned hearing one broadcast naming an individual as an *Inkotanyi* and said the matter was taken up by the Steering Committee, indicating his disapproval of such broadcasts.[478]

460. With regard to broadcasts after 6 April 1994, Nahimana testified that he was revolted by those which left listeners with the impression that Tutsis generally were to be killed. He distanced himself from these activities, which he characterized as "unacceptable", stating that RTLM had been taken over by extremists. He stated that RTLM did incite the population to seek out the enemy. While saying that he did not believe that RTLM "systematically called for people to be murdered", he said he was shocked to learn in detention that broadcasters were highlighting the physical features of Tutsis, whom he acknowledged might well be killed as a consequence at a roadblock. Nahimana hypothesized that had he tried to stop RTLM from broadcasting details about individuals named as *Inkotanyi*, he might have been himself made the subject of an RTLM broadcast endangering his life. On cross-examination, he specifically condemned several broadcasts he was questioned about, and he requested that his condemnation be taken as a global one for all such broadcasts. He condemned all broadcasts that gave the impression that people should be killed, that rape should be committed, that looting should be done, or any violence perpetrated. When asked why he had not denounced these broadcasts earlier, he replied that he had only had a chance to study them since his detention when he received the recordings and that this was his first opportunity to do so.[479]

461. In response to questioning from the Chamber regarding the RTLM journalists, noting that the same journalists were broadcasting before and after 6 April 1994, Nahimana attributed their changed conduct to a breakdown in management, which allowed a number of radicals to control RTLM. He said during his time in detention he had become more familiar with the programming of RTLM after 6 April, and again he denounced it, particularly the broadcasts of Kantano Habimana, who he said often took drugs, after which he would broadcast unacceptable material. He noted that Habimana had lost his leg in the bombing of RTLM in April, and he said some of the anger in his programming could be understood, though not justified, by the fact that his entire family was killed by RPF forces. Kantano was a trained and good journalist, Nahimana said, recalling that he only learned in detention that the journalists were taking drugs, which had not happened before 6 April.[480]

[478] T. 23 Sept. 2002, pp. 91-94, 105-108.
[479] T. 24 Sept. 2002, pp. 45-50; T. 27 Sept. 2002, pp. 49-53, 58-60.
[480] T. 18 Oct. 2002, pp. 38-40.

PURL: https://www.legal-tools.org/doc/45b8b6/

462. Nahimana firmly rejected the proposition that the difference between RTLM broadcasts before and after 6 April 1994 was merely a matter of degree. He said the kind of debates aired before were not possible after 6 April. He praised Gaspard Gahigi as "the cream of the cream of the cream of the print media", noting that he had trained journalists in the Great Lakes region. He agreed that mistakes were made but said mistakes happen anywhere and he deplored such mistakes, recalling that he had said that the person slighted should be given a right of reply. After 6 April, he said some journalists were like madmen, either because of drugs or because they were upset about what happened to their colleagues. He stated that he never saw any journalist on drugs and mentioned Kantano Habimana as having joined "the camp of criminals".[481]

463. In his book, Rwanda : *Le Sang Hutu est-il rouge? Vérités cachées sur les massacres* [*Rwanda: Is Hutu blood red? Hidden truths about the massacres*], Barayagwiza said the following about the role of RTLM: "It is more than probable that the RTLM called or appealed to the population to resistance (sic) against the RPF and to the struggle against infiltrators and traitors, which in and of itself constitutes legitimate defence".[482]

Credibility of Witnesses

464. The Chamber has found the testimony of Prosecution Witnesses François-Xavier Nsanzuwera, Thomas Kamilindi, Philippe Dahinden and Colette Braeckman, as well as Witnesses GO, X, and ABC credible, as set forth in paragraphs 545, 683, 546, 546, 608, 547 and 331 respectively.

465. **Witness BI** was extensively cross-examined on the physical circumstances of her residence, on her involvement in the investigation of events in Bugesera, on her first several encounters with Nahimana, and on her travel schedule in 1993 and 1994. She was also questioned on a statement she signed in December 1995, which she said was prepared on the basis of an interview that took place in a hotel hallway under conditions that she described as unprofessional. In her statement, she said that Bemeriki had spoken of her on RTLM in August 1993 and February 1994. She said she thought this had happened in December 1993 rather than August, and she did not recall saying it had happened in August. She noted that February 1994 was mentioned in her statement, which was the broadcast she herself heard, and she cited the difficult conditions of her interview to explain the error. Witness BI's statement indicated that she had listened to RTLM "several times", whereas she testified that she listened regularly to RTLM, a claim that Counsel for Nahimana suggested was exaggerated. Witness BI maintained that "several" meant more than two, and could mean anything from three to a million as she understood the word. She noted that French was not her mother tongue, and while acknowledging that she was out of the country often for weeks at a time, she maintained that when she was in Rwanda she listened to RTLM. On cross-examination, Witness BI acknowledged having visited RPF controlled territory but said she was not a member of

[481] T. 27 Sept. 2002, pp. 84-87.
[482] T. 22 May 2002, pp. 60-62.

PURL: https://www.legal-tools.org/doc/45b8b6/

the RPF, noting that even the RTLM broadcast had stated she was a tool of rather than a member of the RPF. When asked why she did not mention the death threats she received and the stones thrown into her compound, either in interviews she did at the time or in her statement, she said that the messages did not have her name on them and that she did not want to put her children, who had been referenced, at risk. Witness BI acknowledged that she had been criticized by several organizations including African Rights, particularly with regard to statements she had made about her family as having been unreliable. These statements were reportedly contested by her father, but Witness BI said that African Rights had not talked to her father.[483] The Chamber found the testimony of Witness BI to be clear and consistent and accepts her responses to the questions raised. For these reasons, the Chamber finds her testimony to be credible.

466. On cross-examination, **Witness FW** was questioned about his November 1995 statement, in which the RTLM broadcast he heard was recorded as having been addressed to all people who had fled their homes, not to all Tutsi. Witness FW said that what he heard on the radio was addressed to Tutsi, and that he had asked that his statement be corrected. He did not know why it had not been corrected. He had also asked for a correction of the assertion in the statement that RTLM had not talked about ethnicity until June, which was incorrect. In fact RTLM had been talking about ethnicity since he started listening to it in 1993. On the statement by this sentence was a handwritten question mark, which Witness FW said was made in his presence by a Canadian ICTR investigator, who said the correction would be made.[484] The Chamber accepts these explanations and finds the testimony of Witness FW to be credible.

467. **Witness FY** was cross-examined on the dates and the sequence of events relating to the attack on Daniel Kabaka's house. He was not certain of the precise dates of this attack, the broadcasting of his name on RTLM, and his execution. The witness clarified in response to questioning that he heard the name broadcast after the initial attack on the house and prior to the killing. He reaffirmed that he heard Kabaka's name on the radio prior to 6 April 1994, and that he heard it on RTLM rather than another radio station. Questioned as to why Kabaka had been suspected of supporting the RPF and was on the state security list in 1990, Witness FY suggested it was because he was a Tutsi of influence in society, unlike himself, and said that Tutsi of social and economic standing, influential persons, were put on that list of suspects. He acknowledged that some influential Tutsi were not arrested but suggested that they benefited from special protection. Counsel for Ngeze suggested that because Kabaka had been on this list and previously arrested, he was killed by police who knew him for that reason. Witness FY affirmed that Kabaka was killed by police, or gendarmes. He acknowledged that at the time of the killing RTLM was not mentioned. Witness FY testified that he was never a member of any political party. He said he supported the RPF and any party that worked for unity.[485] The Chamber notes that cross-examination of Witness FY did not establish any questions going to the credibility of the witness. For this reason, the Chamber finds the testimony of Witness FY to be credible.

[483] T. 14 May 2001, pp. 113-125; T. 15 May 2001, pp. 25-37, 53-57.
[484] T. 1 Mar. 2001, pp. 103-10, 124-125.
[485] T. 9 July 2001, pp. 31-37, 45-47, 52, 70-75, 90.

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Discussion of Evidence

468. The Chamber notes that in the RTLM broadcasts highlighted above, there is a complex interplay between ethnic and political dynamics. This interplay was not created by RTLM. It is to some degree a reflection of the history of Rwanda. The Chamber considers the broadcast by Barayagwiza on 12 December 1993, to be a classic example of an effort to raise consciousness regarding a history of discrimination against the Hutu majority by the privileged Tutsi minority.[486] The discrimination detailed relates to the inequitable distribution of power in Rwanda, historically. As this distribution of power followed lines of ethnicity, it necessarily has an ethnic component. Barayagwiza's presentation was a personal one clearly designed to convey a political message: that the Hutu had historically been treated as second-class citizens. The Chamber notes the underlying concern running through all the RTLM broadcasts that the armed insurgency of the RPF was a threat to the progress made in Rwanda following 1959 to remedy this historical inequity. In light of the history of Rwanda, the Chamber accepts that this was a valid concern about which a need for public discussion was perceived.

469. The RPF was widely seen as representing Tutsi interests, and the legacy of a political movement started by Tutsi refugees who left the country beginning in 1959. In the RTLM broadcast of 20 November 1993, Nahimana equated the RPF or *Inkotanyi* with the *Inyenzi* movement of the preceding generation.[487] This analysis incorporated the idea that the *Inkotanyi* and the *Inyenzi* had an ethnic as well as a political character. The Chamber notes that this historical reality is reflected often in language used to describe the history of Rwanda. As noted elsewhere, the first sentence of the Indictments against the Accused in this case begins "The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and the Tutsi in Rwanda…" RTLM broadcasts demonstrate that this shorthand can be dangerous and even deadly, but the Chamber considers that references to the "Hutu" and the "Tutsi" in this political sense can be seen as a reflection of historical reality and do not inherently constitute the promotion of ethnic division. In some cases, such as the broadcasts by Barayagwiza and Nahimana, they can be seen to promote public education on the ethnic dimension of the social and political context of the time. In other broadcasts, such as the one cited above referring to the power that Hutu seized from the Tutsi in 1959, the terms were used simply to describe political movements by their ethnic make-up, a description that corresponded to reality.

470. In this light, the Chamber has considered the broadcasts that mention the disproportionate wealth of the Tutsi population in Rwanda. Some evidence has been put forward by the Prosecution to suggest that this assertion was untrue. However, the Chamber is not in a position to make a finding on the distribution of wealth in Rwanda and cannot determine, for example, based on the evidence before it, whether 70% of all taxi owners in Rwanda were Tutsi.[488] If true, the broadcast might be considered an effort

[486] Paragraph 345.
[487] Paragraph 357.
[488] Paragraph 363.

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to disseminate information to the public on inequities of social concern. If untrue, the broadcast might be considered an attempt to manipulate public opinion and generate unfounded hostility towards and resentment of the Tutsi population. The Chamber notes that in considering the purpose of these broadcasts, the language used is indicative. For example, even if it were true that Tutsi in Rwanda held a disproportionate share of the wealth because of their historical privilege, to say as Kantano Habimana did in an RTLM broadcast in December 1993 that "they are the ones who have all the money" could be considered inflammatory, i.e. presented for the purpose of promoting ethnic hatred. The manner in which this broadcast mentioned Shamukiga, a Tutsi businessman, and talked about the Tutsi as a group, claiming that they have "all" the money, conveys something beyond information.[489] It is not surprising that Shamukiga felt threatened by this broadcast.

471. In the Chamber's view, another example of inflammatory language would be the broadcast by Kantano Habimana on 5 January 1994 in connection with his interview of RPF leader Tito Rutaremara.[490] After mentioning six times within eleven consecutive sentences the assertion that he "hates" the Tutsi or *Inkotanyi*, Habimana commented sarcastically that the only reason for the "misunderstanding" was the fact that they had engaged in bombings and evictions. The clear intent conveyed by this language was to mobilize anger against the Tutsi, the same anger expressed in the broadcast. His subsequent ridiculing of the *Inkotanyi* as drinking milk in huge quantity denigrated the Tutsi people as a whole. Similarly, in the 9 December 1993 broadcast discussing whether RTLM hated the Tutsi, Habimana sarcastically described the tall and slim Tutsi, "strolling about" with his "beautiful nose". There is no element of political comment in these types of descriptions of the Tutsi people. Rather they reflect pure ethnic prejudice, which was effectively conveyed despite what were clearly disingenuous protestations to the contrary. The Chamber notes that many of the broadcasts cited above indicate a patent awareness among the broadcasters that RTLM was perceived as hating the Tutsi.

472. A few RTLM broadcasts have been highlighted and presented by the Defence as representing open debate on RTLM with differing points of view expressed. The interview of Landouald Ndasingwa of the PL party is one such broadcast. The debate moderated by Gaspard Gahigi on 12 December 1993 is another. The interview of RPF leader Tito Rutaremara is arguably a third example, although as noted above, the interview was surrounded by such denigrating anti-Tutsi comments that the extent to which it represents openness to opposing views was severely undermined. The Chamber notes that even in praising RTLM for allowing the *Inkotanyi* to speak, in this broadcast Kantano Habimana suggested that Rutaremara thought his ideas could not be transmitted on RTLM and commented, "So, those who think that our radio station sets people at odds with others will be amazed", recognizing that the broadcast would be surprising and thereby indicating how unusual it was. Prosecution Expert Witness Alison Des Forges acknowledged several of these types of RTLM broadcasts but stated that they were very exceptional. The Chamber accepts that this was the case, both on the basis of witness testimony and on the basis of the sampling of broadcasts it has reviewed, which indicate

[489] Paragraph 364.
[490] Paragraph 351.

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that RTLM had a well-defined perspective for which it was widely known. RTLM was not considered, and was not in fact, an open forum for the expression of divergent points of view.

473. Many RTLM broadcasts explicitly identified the enemy as Tutsi, or equated the *Inkotanyi* and the *Inyenzi* with the Tutsi people as a whole. Some others implied this identification. Although some of the broadcasts referred to the *Inkotanyi* or *Inyenzi* as distinct from the Tutsi, the repeated identification of the enemy as being the Tutsi was effectively conveyed to listeners, as is evidenced by the testimony of witnesses. Against this backdrop, calls to the public to take up arms against the *Inkotanyi* or *Inyenzi* were interpreted as calls to take up arms against the Tutsi. Even before 6 April 1994, such calls were made on the air, not only in general terms, such as the broadcast by Valerie Bemeriki on 16 March 1994, saying "we shall take up any weapon, spears, bows", but also in terms of named individuals. These individuals were said to be RPF *Inkotanyi*.

474. The Chamber notes that in his testimony Nahimana suggested repeatedly that whether these individuals were in fact members of the RPF, or were legitimately thought to be members of the RPF, was a critical factor in judging the broadcasts. The Chamber recognizes that in time of war, the media is often used to warn the population of enemy movements, and that it might even be used to solicit civil participation in national defense. However, a review of the RTLM broadcasts and other evidence indicates that the individuals named were not in fact members of the RPF, or that RTLM had no basis to conclude that they were, but rather targeted them solely on the basis of their ethnicity. The broadcast by Noël Hitimana on 15 March 1994, for example, targeted a banana hauler named Marc Zuberi as an *Inkotanyi*. Although he was said in the broadcast to have "lied" that he was an *Interahamwe*, Hitimana stated that because of the huge house he had built he could not get away with this pretense, suggesting that Zuberi's house was the basis for RTLM's conclusion that he was an *Inkotanyi*. Similarly, Hitimana's broadcast of 1 April 1994 named several doctors as having killed the CDR leader Katumba, apparently on the basis that they knew him from the hospital and made some offhand comments about him. By their absence, if they were even absent, it was said they had "automatically betrayed themselves". Moreover, the Chamber notes the reference in the broadcast to the ethnicity of one of the doctors.

475. The witness evidence confirms that RTLM wrongly named innocent civilians as *Inkotanyi*. Witness BI testified that she was was falsely accused in a broadcast by Valerie Bemeriki, in February or March 1994, of working for the *Inkotanyi*, which led to threats and attacks on her person. Witness FY testified that several of his neighbours were named on RTLM as *Inkotanyi* accomplices in March and April 1994, including a builder and a physician, both of whom he knew to be elderly people not interested in politics or involved in political activities. He said most of the people named were Tutsi, or they were people who did not support the government. Witness X testified that he was with an RTLM official in April when an RTLM broadcast accused a man called Bomboko of being an RPF accomplice masquerading as an *Interahamwe,* prompting the official to go to the studio to demand that a retraction be made. Nahimana himself recounted in his

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testimony an incident in which RTLM broadcast false information that a man was carrying *Inkotanyi* in his vehicle.

476. The evidence includes examples in which violent action, including killing, followed RTLM broadcasts. Witness BI recounted a sexual reference to her broadcast on RTLM, after which a man exposed himself to her and made a threatening comment clearly linked to what was said in the broadcast. The witness also recalled a broadcast denigrating Tutsi women in Gatega, and the next morning a woman in Gatega was killed by a grenade thrown into her house. In his testimony Chrétien provided information from a German doctor that the Medical Director of Cyangugu, named in a broadcast on 3 April 1994 as having convened a meeting of a small group of Tutsi, was burned to death outside his house a few days later. Nahimana suggested in his comments on the broadcast that it was possible that this meeting was an RPF brigade meeting, an allegation that the German doctor, who knew this Medical Director, dismissed as "totally absurd". Nahimana acknowledged that his suggestion was purely speculative.

477. Nahimana insisted, with regard to the broadcast on 14 March 1994, by Gaspard Gahigi, reading a letter written by an *Inkotanyi,* that the letter proved the existence of RPF brigades. If authentic, it is true that the letter was written by a self-identified member of the RPF, but RTLM broadcast the names of his children, who, according to Chrétien, were subsequently killed. Even Nahimana acknowledged finally in his testimony with regard to this broadcast that he did not like the practice of airing peoples' names, especially when it might bring about their death. The Chamber recognizes the frustration expressed by Nahimana over the lack of attention, or even bare acknowledgement, that the letter was written by an RPF member, proving the existence of RPF brigades. However, many Prosecution witnesses acknowledged in their testimony that these brigades existed, and the Chamber notes that several Prosecution witnesses such as Witness AEN and WD testified that they were themselves members of the RPF inside Rwanda at the time. In this case, the issue was not whether the author of the letter was a member of the RPF but that his children were mentioned by name in an RTLM broadcast. Nahimana conceded in his testimony that this was bad practice.

478. Among the Tutsi individuals mentioned specifically by name in RTLM broadcasts prior to 6 April 1994 are a number that were subsequently killed. These individuals include Charles Shamukiga, a Tutsi businessman killed on 7 April 1994, who had been mentioned frequently on air according to Nsanzuwera, with whom he had shared his concern about these broadcasts. Witness FY testified as to the killing of his Tutsi landlord, Daniel Kabaka, after hearing his name broadcast twice on RTLM in late March and April 1994. The Defence questions the establishment of causation between the RTLM broadcasts and these acts of violence. The Chamber has considered this question in light of the evidence. Among the Hutu political opposition targeted by RTLM and subsequently killed were Prime Minister Agathe Uwilingiyimana, who shared her concern with Belgian journalist Colette Braeckman over death threats by RTLM, Minister of Information Faustin Rucogoza, who took a series of steps to stop RTLM from broadcasting messages of ethnic hatred, and Prosecutor General Alphonse Nkubito, who initiated legal action against RTLM for accusing him of plotting to kill the President.

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Although he escaped, after 6 April 1994 Nkubito was actively sought by *Interahamwe,* according to Nsanzuwera, who attributed this effort to the RTLM broadcasts. Minister Rucogoza was killed on 7 April 1994, as was Prime Minister Agathe Uwilingiyimana.

479. With regard to Prime Minister Agathe Uwilingiyimana and Minister Faustin Rucogoza, public and political figures, the Chamber considers that the evidence does not sustain the establishment of a clear causal link between the broadcasts and the killings. While the broadcasts may well have been a factor, the Chamber is unable to determine their significance among the many other intervening factors that led to their assassination. With regard to lesser known individuals, the role of RTLM in provoking violence targeted against them would inevitably be greater, publicizing their names and whereabouts and other information about these people that would not otherwise have been publicly available. Daniel Kabaka had been arrested in 1990, but there is no evidence that since that time, having been released without trial, he was subject to suspicion or targeted by anyone prior to the broadcast. The experience of Witness BI, accosted on the street following an RTLM broadcast by a person who specifically referred to the content of the broadcast, clearly establishes that the broadcasts motivated listeners to take action.

480. The threat perceived by the individuals named in RTLM broadcasts is another indicator of this causal connection. In the 20 March 1993 broadcast regarding Nkusi Felicien, a man wearing a blue cap described in the broadcast as similar to a UN cap, fear of being stoned as a result of the broadcast led the man to go personally to the station in an effort to clear his name. In the broadcast itself, Kantano Habimana accepted that listeners might throw stones at Nkusi Felicien as a result of the broadcast, advising him to change the color of his cap to prevent this from happening. Even Nahimana in his testimony acknowledged the causation of violent acts by RTLM broadcasting, saying that if he had tried to stop RTLM from broadcasting details about individuals named as *Inkotanyi* he might have himself been made the subject of an RTLM broadcast putting his life at risk.

481. After 6 April 1994, the fury and intensity of RTLM broadcasting increased, particularly with regard to calls on the population to take action against the enemy. RTLM continued to define the *Inkotanyi* and the *Inyenzi* as the Tutsi in the same manner as prior to 6 April. This does not mean that all RTLM broadcasts made this equation but many did and the overall impression conveyed to listeners was clearly, as evidenced by witness testimony, that the definition of the enemy encompassed the Tutsi civilian population. Nahimana again asserted in the context of a particular broadcast just after 6 April that the question of whether the enemy whom listeners were told to seek out was in fact the RPF was a critical factor in judging the broadcasts. The Chamber notes that this particular broadcast called on the public to look carefully for *Inyenzi* in the woods of Mburabuturo. In the context of other broadcasts that explicitly equated the *Inyenzi* with the Tutsi population, and without any reference in this broadcast to the *Inyenzi* carrying arms or in some way being clearly identified as combatants, the Chamber finds that a call such as this might well have been taken by listeners as a call to seek out Tutsi refugees who had fled to the forest. The 23 May 1994 RTLM broadcast by Kantano Habimana

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suggested that *Inkotanyi* were pretending to be refugees, directing listeners that even if these people reached the airport, presumably to flee, "they should leave their lives on the spot". Habimana's 5 June 1994 RTLM broadcast called attention to a young boy fetching water as an enemy suspect, without any indication as to why he would have been suspect. In the 15 May 1994 broadcast, Gaspard Gahigi, the RTLM Editor-in-Chief, told his audience "the war we are waging is actually between these two ethnic groups, the Hutu and the Tutsi." In the 29 May 1994 RTLM broadcast, a resident described checking identity papers to differentiate between the Hutu and the *Inkotanyi* accomplices, and in the 4 June 1994 RTLM broadcast, Kantano Habimana advised listeners to identify the enemy by his height and physical appearance. "Just look at his small nose and then break it", he said on air.

482. Many of the individuals specifically named in RTLM broadcasts after 6 April 1994 were subsequently killed. In the 20 May 1994 RTLM broadcast, Valerie Bemeriki named several priests including Father Ngoga, Father Ntagara, and Father Muvaro, all of whom were subsequently killed. Nahimana acknowledged in his testimony that Father Muvaro, whom he knew, had died because he was a Tutsi. Nsanzuwera testified that Desire Nshunguyinka was killed with his wife, sister and brother-in-law at a roadblock after RTLM broadcast the license plate of his car. Witness FS testified that his brother's name was mentioned on RTLM on 7 April 1994 and shortly thereafter his brother was killed together with his wife and seven children. He testified that several people were killed following such radio broadcasts. On a larger scale, several RTLM broadcasts were apparently designed to manipulate the movement and thereby facilitate the killing of Tutsi in numbers. Nsanzuwera testified that Charles Kalinjabo was killed at a roadblock after he left his hiding place on account of an RTLM broadcast calling on Tutsi patriots to join their Hutu comrades at the roadblocks. Subsequently RTLM broadcast a call to its listeners to look for the enemy at the roadblocks. Similarly, Witness FW testified that after an RTLM broadcast directing Tutsi who had fled to return home to prevent the destruction of their houses, most of the Tutsi who returned home because of this broadcast, including several of his neighbours, were killed on the same day. While the extent of causation by RTLM broadcasts in these killings may have varied somewhat, depending on the circumstances of these killings, the Chamber finds that a causal connection has been established by the evidence, noting the widespread perception of this link among witnesses, best represented by all the urgent telephone calls Des Forges received at the time from people in Rwanda, desperately seeking to "stop that radio".

483. Many of the RTLM broadcasts explicitly called for extermination. In the 13 May 1994 RTLM broadcast, Kantano Habimana spoke of exterminating the *Inkotanyi* so as "to wipe them from human memory", and exterminating the Tutsi "from the surface of the earth… to make them disappear for good". In the 4 June 1994 RTLM broadcast, Habimana again talked of exterminating the *Inkotanyi,* adding "the reason we will exterminate them is that they belong to one ethnic group". In the 5 June 1994 RTLM broadcast, Ananie Nkurunziza acknowledged that this extermination was underway and expressed the hope that "we continue exterminating them at the same pace". On the basis of all the programming he listened to after 6 April 1994, Witness GO testified that RTLM was constantly asking people to kill other people, that no distinction was made between

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the *Inyenzi* and the Tutsi, and that listeners were encouraged to continue killing them so that future generations would have to ask what *Inyenzi* or Tutsi looked like.

484. The Chamber has considered the extent to which RTLM broadcasts calling on listeners to take action against the Tutsi enemy represented a pattern of programming. While a few of the broadcasts highlighted asked listeners not to kill indiscriminately and made an apparent effort to differentiate the enemy from all Tutsi people, most of these broadcasts were made in the context of concern about the perception of the international community and the consequent need to conceal evidence of killing, which is explicitly referred to in almost all of them. The extensive witness testimony on RTLM programming confirms the sense conveyed by the totality of RTLM broadcasts available to the Chamber, that these few broadcasts represented isolated deviations from a well-established pattern in which RTLM actively promoted the killing of the enemy, explicitly or implicitly defined to be the Tutsi population.

485. The Chamber has also considered the progression of RTLM programming over time – the amplification of ethnic hostility and the acceleration of calls for violence against the Tutsi population. In light of the evidence discussed above, the Chamber finds this progression to be a continuum that began with the creation of RTLM radio to discuss issues of ethnicity and gradually turned into a seemingly non-stop call for the extermination of the Tutsi. Certain events, such as the assassination of President Ndadaye in Burundi in October 1993, had an impact by all accounts on the programming of RTLM, and there is no question that the events of 6 April 1994 marked a sharp and immediate impact on RTLM programming. These were not turning points, however. Rather they were moments of intensification, broadcast by the same journalists and following the same patterns of programming previously established but dramatically raising the level of danger and destruction.

Factual Findings

486. The Chamber finds that RTLM broadcasts engaged in ethnic stereotyping in a manner that promoted contempt and hatred for the Tutsi population. RTLM broadcasts called on listeners to seek out and take up arms against the enemy. The enemy was identified as the RPF, the Inkotanyi, the Inyenzi, and their accomplices, all of whom were effectively equated with the Tutsi ethnic group by the broadcasts. After 6 April 1994, the virulence and the intensity of RTLM broadcasts propagating ethnic hatred and calling for violence increased. These broadcasts called explicitly for the extermination of the Tutsi ethnic group.

487. Both before and after 6 April 1994, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents. In some cases, these people were subsequently killed, and the Chamber finds that to varying degrees their deaths were causally linked to the broadcast of their names. RTLM also broadcast messages encouraging Tutsi civilians to come out of hiding and to return home or to go to the roadblocks, where they were subsequently killed in accordance with the direction of subsequent RTLM broadcasts tracking their movement.

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488. Radio was the medium of mass communication with the broadest reach in Rwanda. Many people owned radios and listened to RTLM – at home, in bars, on the streets, and at the roadblocks. The Chamber finds that RTLM broadcasts exploited the history of Tutsi privilege and Hutu disadvantage, and the fear of armed insurrection, to mobilize the population, whipping them into a frenzy of hatred and violence that was directed largely against the Tutsi ethnic group. The *Interahamwe* and other militia listened to RTLM and acted on the information that was broadcast by RTLM. RLTM actively encouraged them to kill, relentlessly sending the message that the Tutsi were the enemy and had to be eliminated once and for all.

4.2 Ownership and Control of RTLM

Before 6 April 1994

489. A number of Prosecution witnesses testified as to the creation, ownership and management of RTLM, and the role of two of the Accused, Nahimana and Barayagwiza, in RTLM. Nahimana himself also testified extensively as to the corporate structure of RTLM and his own role in the company RTLM S.A. and its first venture, the radio station RTLM. The Chamber begins its consideration of these issues with the evidence of the Accused, as it is extremely detailed and comprehensive.

490. Nahimana testified that the idea for RTLM was first communicated to him in September or October of 1992 by two former colleagues who became his friends, Joseph Serugendo and Vénuste Nshimiyimana. They wanted to create a radio station to counter Radio Muhabura, which was broadcasting propaganda for the RPF. Nahimana found the idea interesting. He said that at that time Radio Rwanda was in the hands of the MDR and listeners, including himself, felt that government opposition was not getting coverage on the national radio. Nahimana was interested in ensuring that the voice of his party, the MRND, was heard, but he said the primary reason for the creation of RTLM was Radio Muhabura.[491]

491. Serugendo and Nshimiyimana told Nahimana that they had come to him because of his history with ORINFOR and his extensive contacts. They needed funding and were hoping that Nahimana would approach people he knew in the MRND, as he was in the préfectural committee of MRND and committed to the party. That same evening, in their presence, Nahimana called Félicien Kabuga, a businessman he knew. The next day they met with Kabuga and asked him to contact his friends and colleagues. They started to meet regularly, on Friday evenings. By the second Friday meeting, there were already fifteen people, and they set up a small structure, the *Comité d'initiative* or Steering Committee, which remained operational until 6 April 1994. Kabuga was appointed as Chair and Ignace Temahagari as Secretary. Responsibilities were assigned to prepare for the establishment of a company. Nahimana and Serugendo formed the committee to handle technical and programming aspects, which was chaired by Nahimana. Nahimana

[491] T. 23 Sept. 2002, pp. 54, 59-60.

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said he was chosen to do this because of his previous role as Director of ORINFOR. Barayagwiza chaired the legal committee appointed to draw up articles of association.[492]

492. According to Nahimana, the Steering Committee was comprised of six people. Both Nahimana and Barayagwiza were members of the Steering Committee, which met at least once every fortnight on Friday afternoons until the establishment of the company in April 1993. In describing his own role during this period, Nahimana said that he had decided that the priority for the company was the creation of the radio station, and that once this priority was discussed and adopted by the Steering Committee, the next step was the selection of technical equipment. He contacted suppliers in Germany and Belgium and was ready by 8 April 1993 with the technical file, as Barayagwiza was with the legal documents. By that time a list of potential shareholders had also been compiled.[493]

493. The constituent assembly of RTLM was held on 8 April 1993, at the Urugwigo Hotel. Journalists from the private media and from ORINFOR were invited, and the assembly was chaired by Kabuga, Chairman of the Steering Committee. There were about fifty founding members in attendance who signed the articles of incorporation for the company, RTLM S.A. or RTLM Limited. The meeting also approved the structures that had been established, specifically the Steering Committee, which was charged with preparation of the first general assembly of RTLM shareholders.[494]

494. When asked to describe these fifty founding members of RTLM, Nahimana went through the list and counted thirty-nine MRND members, two CDR members, and nine others whose party affiliation he was not able to identify. He also identified six of the founders as leaders of the *Interahamwe*, including Georges Rutaganda and Joseph Serugendo, explaining their interest in RTLM as members of the MRND like himself. Nahimana acknowledged as "undeniable" that although the company was not an MRND company, from its inception it was in the hands of members of the MRND at the political level. He clarified, however, that these people contributed as individuals and that the RTLM never considered itself as an MRND company.[495] He could recall two founding members who did not belong to the MRND. With respect to Barayagwiza, who was a member of the CDR, Nahimana said he was given the chairmanship of the Legal Committee because he was a well-known jurist in Rwanda. He was also known by the government and had many contacts, which could be helpful in bringing in shareholders for the company.[496] The other person on the list whom Nahimana named as not being from the MRND was Stanislas Simbizi, a founding member of CDR. The Chamber notes that Stanislas Simbizi was identified in an RTLM broadcast in January 1994 as a member of the CDR central committee. He was identified by Witness X as a national level CDR official.[497]

[492] *Ibid.*, pp. 54-58.
[493] *Ibid.*, pp. 66-68.
[494] *Ibid.*, pp. 68-76.
[495] *Ibid.*, pp. 68-75.
[496] *Ibid.*, pp. 58-63.
[497] T. 25 Feb. 2002, p. 120; RTLM Broadcast, 26 Jan. 1994, Exhibit 1D53D, p. 14.

PURL: https://www.legal-tools.org/doc/45b8b6/

495. Nahimana testified that between 8 April and 11 July 1993, the Steering Committee rented a building and did everything to procure and install the equipment for the radio station, as well as creating an administrative and financial infrastructure, including the recruitment of an accountant and support staff. The Steering Committee delegated authority to three of its members - Kabuga, Barayagwiza and Nahimana - to sign cheques on behalf of the company. This delegation of authority was documented by an extract of minutes from a committee meeting on 21 May 1993.[498] The Steering Committee also employed Gaspard Gahigi, who became Editor-in-Chief of RTLM, to prepare the programming of the future radio station. Nahimana testified that Gahigi proposed to the Steering Committee the recruitment of Kantano Habimana and Noël Hitimana, his former colleagues at Radio Rwanda, to assist him. Gahigi came to the meeting, at which Nahimana was present, to defend this proposal, which the committee endorsed. Kabuga in his capacity as Chairman authorized this recruitment.[499]

496. The RTLM articles of association provide for the appointment of a Director General to whom the Board of Directors would delegate general powers of management. Nahimana explained that the appointment of the Director General was the prerogative of the Board of Directors, who were to be elected by the General Assembly of shareholders. Although no General Assembly of shareholders had taken place and no Board of Directors had been elected, Nahimana testified that as the company needed a person capable of managing it, the Steering Committee, in particular Kabuga, initiated contacts with people who were known to have managed big companies and at a committee meeting shortly before the end of June, Kabuga proposed Phocas Habimana.[500]

497. Nahimana testified that he himself was very active during the period between April and July 1993. His Technical and Programme Committee had to show compliance with the requirements of the government regarding specifications of the programme grid and the equipment. The Defence produced a letter sent to the Minister of Information on 17 June 1993, together with an annex entitled "Program and equipment of RTLM". The annex includes an elaboration of the kinds of programmes envisioned for the radio station, which Nahimana described in his testimony as direction for the Editor-in-Chief and his colleagues, so that they would know that the company wanted the broadcasting to reflect. The list of programmes included news, debates, interviews, music, and educational broadcasts. Subjects listed in the annex included politics, democracy, cultural heritage, human rights and development.[501] Nahimana said that he also signed several cheques, particularly for the payment of the equipment and all that was required to establish the company infrastructure.[502]

498. Nahimana stated that at the time of the first General Assembly, held on 11 July 1993, RTLM Limited had more than one hundred shareholders. Among the largest shareholders were President Habyarimana and Joseph Nzirorera. The meeting took place

[498] Exhibit P107-1, p. 9.
[499] T. 23 Sept. 2002, pp. 77-83.
[500] *Ibid.*
[501] Exhibit 1D-7, p. 4.
[502] T. 23 Sept. 2002, pp. 83-86.

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at the Amahoro Hotel in Kigali, chaired by Kabuga. On the agenda was the establishment of the statutory organs of the company, but according to Nahimana a debate arose at the meeting over whether each shareholder should have one vote, or whether voting should be weighted by the number of shares held. The legal documents did not provide for the mode of election, instead making reference to the by-laws as governing such matters, but the by-laws had not yet been drawn. For this reason, no election took place for the Board of Directors. The terms of reference of the Steering Committee were extended, on the condition that by December 1993 they would have prepared by-laws to address the legal questions left open by the articles of association. According to Nahimana, Kabuga mentioned Phocas Habimana, who was present at the meeting as a shareholder, and asked the General Assembly whether he could play a role as provisional director of the company. Habimana took the floor and stated that he was ready to manage the company. The General Assembly agreed to this for day-to-day management but maintained that the Steering Committee had to continue with all that had been previously assigned to it.[503]

499. Following the meeting on 11 July 1993, Nahimana testified that a new Finance Committee was set up under the Steering Committee, chaired by a Silas Mucunkinko. According to Nahimana, the day-to-day management had under its authority administration and finance, as well as broadcasting. As the company was increasingly faced with a shortage of manpower, the Steering Committee, which he referred to as the "provisional board of directors", in the last few weeks of 1993 gave the company manager a green light to proceed with recruitment. Nahimana said he attended all the meetings of the Steering Committee, which met once or twice a month, and he chaired the meetings of the technical and program committee. He also continued to exercise the delegation of authority to sign cheques on behalf of the company. While Phocas Habimana during this period dealt with the day to day running of the company as any manager would, authority to sign cheques was not transferred to Habimana because he was provisional in his capacity as director. Nahimana said this issue was discussed at one of the meetings, and Ephrem Nkezabera, a banker appointed to the Steering Committee on 21 May 1993, said that a bank could not accept a delegation of authority to someone in a temporary position. Nahimana testified that Phocas Habimana regularly attended committee meetings and prepared financial information for Kabuga, such as the salary requirements for employees, based on which cash was drawn or cheques prepared.[504]

500. Nahimana testified that Gahigi, as Editor-in-Chief, organized the work of the journalists during this time. The first level of disciplinary control over personnel was the head of section, and the next level was the Editor-in-Chief. Above the Editor-in-Chief was Phocas Habimana, who served as the Director from July 1993. In relation to editorial policy Nahimana said he had no influence over the Editor-in-Chief or the journalists, or even Phocas Habimana, and that he never intervened to influence the editorial policy of RTLM. Nahimana listened to RTLM with great interest but that he was busy with his

[503] *Ibid.*, pp. 86-91.
[504] *Ibid.*, pp. 94-102.

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duties as a full-time lecturer at the National University of Rwanda. For this reason, he mostly listened to RTLM programs on Sundays or in the evenings.[505]

501. In his testimony, Nahimana recounted one incident where the Steering Committee took action following a broadcast in February or March 1994 reporting that a man who had left Kigali for Cyangugu had *Inkotanyi* in his vehicle. This broadcast was heard by at least three members of the Steering Committee, and Kabuga insisted that Kantano Habimana and Noël Hitimana, as well as Gaspard Gahigi and Phocas Habmimana, be present to discuss this matter at a Committee meeting. Nahimana said the Committee mandated that this kind of broadcast, especially during a time of political instability and the possibility of an attack, should not be accepted. He said that the Steering Committee directed Habimana and Gahigi to ensure that the person mentioned in that broadcast be found. He learned later that a written complaint had been made about the broadcast and that the man in question had been given the right of reply.[506] A number of concerns related to RTLM programming were raised by the Ministry of Information during this time, and as detailed below in section 4.3, Nahimana and Barayagwiza represented RTLM in meetings convened by the Ministry to discuss these concerns.

502. On cross-examination, it was suggested to Nahimana that the broadcasting incident he described in his testimony was an example of control over programming exercised by the Steering Committee. He explained that he had recounted the incident as an example to show the position taken by the Committee, which he again referred to as a "board". He said it showed that the board did not intervene directly at the level of the journalists, as Kabuga had called Gaspard Gahigi and Phocas Habimana and told them that it was not acceptable to label people as RPF accomplices and that the program must be rectified by giving a right of reply to those people. Nahimana was asked to give other examples of disciplinary measures taken by him and the others responsible for RTLM. He answered that there were several examples but again stated that such measures would have been the responsibility of Gahigi as Editor-in-Chief, and the Director, Phocas Habimana. Nahimana knew of some sanctions that were taken, notably against Hitimana because he was absent from work, or for other mistakes, but that he would not really know because he was not in charge of the day-to-day running of the radio station.[507]

503. Nahimana testified that an assembly of shareholders was intended to take place in the last week of December 1993 but that the security situation, particularly in Kigali, was such that the Steering Committee was unable to call the meeting. They had decided to wait until after the institutions envisioned by the Arusha Accords were established, hoping that this would provide the calm necessary to allow an assembly of more than one thousand people to be held in Kigali.[508] In his testimony, Nahimana pointedly used the corporate name RTLM, S.A. or RTLM Company Limited, drawing a distinction between the company and the radio.[509] He stated repeatedly in his testimony that his mandate to

[505] *Ibid.*, pp. 103-106.
[506] *Ibid.*, p. 109.
[507] T. 26 Sept. 2002, pp.11-14.
[508] T. 23 Sept. 2002, pp. 102-103.
[509] *Ibid.*, p. 66.

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sign cheques on behalf of RTLM was very limited and for management purposes only. He maintained that he was not dealing with the management of the radio but with RTLM Limited and said that the two should be kept separate.[510]

504. On cross-examination, Nahimana was asked to comment on a video broadcast recorded when he was serving as director of ORINFOR, in which he said the following:

> It is not acceptable even outside the national radio, even for anyone who will set up his own radio because the owner of the radio, whether an individual or a corporation, may acquire their own radio or their own newspapers, and when these are set up, the owners should never allow them to publish something which goes against the line defined by them, the owners.[511]

505. Nahimana acknowledged having made this statement but recalled again that RTLM radio was owned by the company RTLM Limited and that the members of the Board did not determine the exact programming. He maintained that the scheduling and editorial policy of any press organ is determined by the Editor-in-Chief. Nahimana accepted that the owner of any press organ must ensure that programming does not go against the established policy, and said that at the level of the Steering Committee, they ensured that this did not occur. They had agreed with the Minister of Information about certain complaints made, he recalled, and these complaints were forwarded to the management with a request that measures be taken. Nahimana said that other mistakes that had been made by journalists did not contradict what he was saying or his thoughts on the matter. He further clarified that while the Director and Editor-in-Chief are the ones responsible, the owner must also intervene to ensure that the goals of the company are respected and said it was at that level that he saw the responsibility of the board. When questioned by the Chamber as to whether the programming of RTLM did not violate the principles of broadcasting, Nahimana said that not all RTLM broadcasts violated those principles, that some did, and that when the Board became aware of this, they stood up against it and spoke directly to the management.[512]

506. The Prosecution tendered in evidence a number of documents to substantiate the role played by Nahimana and Barayagwiza in RTLM. These documents include bank deposit forms signed by Barayagwiza in April, May, June, July, and November 1993 and deposit receipts for RTLM shares signed in June, July and October 1993,[513] as well as bank deposit forms and deposit receipts for RLTM shares signed by Nahimana in May, June, July and December 1993.[514] There are several RTLM payment orders and several large deposit receipts for RTLM shares signed jointly by Nahimana and Barayagwiza in July 1993, and RTLM cheques signed jointly by them in December 1993, January and February 1994.[515] A letter dated 11 May 1993, addressed "To whom it may concern" and authorizing two Belgian RTLM representatives to manage an RTLM account in Brussels,

[510] T. 15 Oct. 2002, p. 10.
[511] *Ibid*, p. 15.
[512] *Ibid*, pp. 29-34.
[513] Exhibit P107/5, K0035784-86, 793, 797, 803; Exhibit P107/4, pp. 14, 25, 67, 78, 86; Exhibit P104/4, p. 86.
[514] Exhibit P107/4, pp. 36, 50, 89, 111; Exhibit P107/5, K0035791-2.
[515] Exhibit P107/6; Exhibit P107/4, pp. 128-29; Exhibit 107/1 pp. 20-21.

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has the typed name of Félicien Kabuga as signatory on behalf of the Steering Committee, but the letter is in fact signed by Barayagwiza, who handwrote his own name next to his signature, under Kabuga's name.[516] A letter dated 5 August 1993 to Bacar bank authorizing an accountant access to information to follow the account is signed jointly by Nahimana and Barayagwiza, as is a similar letter dated 7 February 1994.[517] An RTLM circular dated 15 May 1993 lists account information in Belgium and Rwanda for purchase of RTLM shares. Two individuals are listed on the circular as coordination contacts for RTLM in Belgium, and the circular names Nahimana as the person in Rwanda from whom all information regarding RTLM can be obtained.[518] A letter from the RTLM-Belgium Coordinator, dated 27 August 1993, invites RTLM shareholders to a meeting on 5 September 1993 with Barayagwiza for an update on Radio Mille Collines in particular and on the company in general. In the letter Barayagwiza is identified as a member of the Steering Committee "who set up RTLM SA and continues to preside over its destiny".[519]

507. A document entitled "Organization and Structure of the Broader Initiative [Steering] Committee" was introduced into evidence, which states in a preamble that pending the General Assembly scheduled for December 1993 to set up the organs of the company, the General Assembly had requested the Steering Committee to proceed and to broaden its membership. The membership of the existing Steering Committee is listed with eight names, Kabuga heading the list as Chairman and Nahimana and Barayagwiza following second and third, respectively. Twenty-two names are listed as persons invited to join the Steering Committee, including Stanislas Simbizi.[520] The document also lists four committees including the committee responsible for the preparation of the general assembly, headed by Barayagwiza, and the committee responsible for technical matters and programs, headed by Nahimana. The duties of each committee are described, with seven functions ascribed to the technical and program committee. Among these functions are included "review and possibly improve RTLM program policy", "design the grid for pilot programming from 1 August to 31 December 1993", and "design a proposed grid for radio and TV programming to be submitted to the official organs of the general assembly". Below this list of functions it is noted that the Editor-in-Chief of RTLM participates in the activities of this committee.[521]

508. Two lists of RTLM shareholders were introduced into evidence, one a handwritten list of 218 shareholders, which Prosecution Witness Francois Xavier Nsanzuwera testified he compiled in 1994, and the other a typewritten series of lists of shareholders from various Rwandan banks, obtained from a Belgian investigation and totaling 1,177 in number. Virtually all of the names on Nsanzuwera's list are on the bank lists, and in both of the lists the address for a number of shareholders is in care of Nahimana. The more extensive bank lists begin with Nahimana, who is listed as holding 10 shares in the amount of 50,000 francs. The lists indicate the largest shareholder as

[516] Exhibit P107/15.
[517] Exhibit P107/1, pp. 6-7.
[518] Exhibit P107/16.
[519] Exhibit P107/17, translation from French.
[520] Exhibit P53, p. 1.
[521] Exhibit P53, p. 4. Translation from French.

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Juvenal Habyarimana (President), with 200 shares (1,000,000 francs). Among the other large shareholders listed are Félicien Kabuga with 100 shares (500,000 francs), Joseph Nzirorera with 100 shares (500,000 francs), and Colonel Théoneste Bagosora with 50 shares (250,000 francs). Barayagwiza/Serugendo are listed together for 15 shares (75,000 francs). Kangura is listed as holding one share (5,000 francs).[522]

509. Witness X, an RTLM shareholder and one of its fifty founding members, testified that he first met Nahimana when he was Director of ORINFOR and that they used to meet occasionally for a drink after work. He said that in the end of 1992 or in 1993, Nahimana asked him to participate in RTLM as a shareholder. Nahimana told him that RTLM was going to enable the MRND, which had lost its radio station, to continue to transmit messages, and that it was going to be a commercial station with advertising. Witness X purchased shares and received a payment receipt signed by Barayagwiza.[523] He said of the people he knew among the RTLM founding members, none was Tutsi. He identified two, Barayagwiza and Stanislas Simbizi, as being CDR members.[524] Witness X said he knew that the person responsible for establishing the radio station was Nahimana from the General Assembly of shareholders that took place at the Amahoro Hotel in the first quarter of 1993. Approximately one thousand people attended the meeting, which was presided over by a group seated at a podium in front including Nahimana and Barayagwiza, as well as Ephrem Nkezabera, Joseph Serugendo, Phocas Habimana and Félicien Kabuga. Witness X said the meeting was opened by Kabuga, who was the largest shareholder. Kabuga thanked Nahimana for having thought to set up RTLM and said that Nahimana was an experienced person, and that he had been the Director of ORINFOR. Witness X said Nahimana took the floor and talked about the functioning of the radio station, its objectives and future prospects. Phocas Habimana, whom Witness X described as the coordinator of the radio station, also took the floor and introduced the other members at the podium. Habimana described Nahimana as the "leader of the promoters of the RTLM radio station" and introduced Barayagwiza as the person responsible for public relations.[525] Kabuga asked the meeting to allow the committee on the podium to continue the management of the radio station, and the General Assembly accepted this proposal. Witness X said that another meeting of shareholders was scheduled for April 1994 but did not take place. He testified that the staff of RTLM were recruited by Nahimana, that Serugendo was in charge of technical matters and ordered the equipment, which Nahimana was involved in receiving, and he recalled that Serugendo and Nahimana had traveled to Germany in connection with the equipment.[526] On cross-examination Witness X confirmed that Nahimana had not been introduced with a title at the meeting of shareholders, and in describing his visit to RTLM in April 1994, he referred to Phocas Habimana as the RTLM Director.[527]

510. Prosecution Witness Thomas Kamilindi, a Rwandan journalist who worked from 1984 to 1994 for Radio Rwanda, testified that he considered buying two shares of RTLM

[522] Exhibit P39, Exhibit P107/2; T. 23 Apr. 2001, pp. 101-103, T. 13 Mar. 2002, pp. 73-79.
[523] T. 18 Feb. 2002, p. 36, pp. 78-79.
[524] T. 19 Feb. 2002, p. 51 (closed session).
[525] T. 18 Feb. 2002, p. 102.
[526] *Ibid.*, pp. 98-107.
[527] T. 25 Feb. 2002, p. 32 (closed session).

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when it started because he liked the idea of commercial broadcasting and breaking the state monopoly on media. He went to see Gaspard Gahigi, whom he described as a good journalist and one who had trained him in journalism, to find out more about the founders. Gahigi told him that Nahimana was the "main brain" behind the project, or its "leader", assisted by Gahigi on editorial matters and by Serugendo on technical matters. Gahigi also mentioned Kabuga as having purchased the most shares, and he mentioned Barayagwiza and Stanislas Simbizi. Kamilindi decided not to buy shares because he considered these people to be Hutu extremists. He said he spoke to Gahigi about RTLM three times – the first time because he was interested in buying shares and wanted to learn more, and the second and third time because Gahigi was trying to recruit him to work for RTLM. On cross-examination, Kamilindi acknowledged saying, when he was interviewed in October 1995, that Nahimana had no official function at RTLM but recalled that he did at that time characterize Nahimana as the "brain behind the operation". Kamilindi had described Barayagwiza as an adviser, Phocas Habimana as Director-General, and Kabuga as the principal shareholder, all of which he reaffirmed, stating again that Habimana was Director and that although they did not have official positions in the company, Nahimana and Barayagwiza were both considered "the real ideologists behind RTLM". On re-direct examination, Kamilindi mentioned that there had been no general assembly to establish the statutory organs and said it was therefore true that Nahimana, in particular, had no official position in the provisional structure. Kamilindi repeated that Nahimana was the real ideologue and the brains behind the project, saying this "made him the boss who gave orders, orders that could not be countered".[528]

511. Prosecution Witness Philippe Dahinden, a Swiss journalist, testified that he visited RTLM just a few weeks after it started broadcasting, in August 1993. He looked for Nahimana, whom he had met before, but did not find him immediately. He saw Gaspard Gahigi, the Editor-in-Chief, and spoke with him. He asked Gahigi who had taken the initiative to start the radio. Gahigi told him that it was Nahimana, together with his friends Barayagwiza and Kabuga. When he asked about funding, Gahigi referred him to Nahimana and organized an appointment for him with Nahimana. When they met, Nahimana told him that he was behind the whole organisation in terms of promoting and establishing the radio, which was private and commercial. Dahinden asked Nahimana whether it had a political affiliation, and he said no but that among the shareholders were people who belonged to MRND and CDR, which was corroborated by Gahigi.[529] A video recording made by Dahinden of his discussions with Gahigi and Nahimana was introduced in evidence. In it Gahigi refers to Nahimana as "the top man" and to Barayagwiza as "number two".[530] Gahigi also says that while the founders came mainly from two parties, the MRND and CDR, it would be difficult for RTLM to reflect any given policy as it is a commercial venture, and that if a party wanted to broadcast a statement it would be broadcast and signed by the person making the statement.[531]

[528] T. 22 May 2001, pp. 53-63, 123-125; T. 23 May 2001, pp. 27, 58-59.
[529] T. 24 Oct. 2000, pp. 69-70.
[530] T. 31 Oct. 2000, p. 144, Exhibit P3.
[531] *Ibid.,* pp. 153-156.

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512. Prosecution Witness Colette Braeckman, a Belgian journalist, testified that she saw Nahimana at a seminar on the media organized by the Belgian embassy in Rwanda, in March 1994. Nahimana was introduced as the Director of RTLM and spoke at the meeting. Much attention was paid to what he said, and he was treated with respect. Braeckman testified that the people in the hall knew him as the Director of RTLM and as a person of great authority.[532] On cross-examination regarding the certainty of her memory, Braeckman said she could not be 100 percent sure that Nahimana identified himself as Director of RTLM but that she was sure that everyone knew him as such, either because the moderator introduced him that way or he introduced himself that way. She said there was no doubt in the hall that he was speaking in that capacity.[533] In his testimony, Nahimana affirmed his attendance at this seminar, but as a spectator and not an invited guest. He did not remember how he was introduced but said that in Rwanda nobody called him the Director of RTLM. He maintained that he was not introduced or referred to as such on that occasion.[534]

513. Witness GO, the civil servant in the Ministry of Information tasked with monitoring RTLM broadcasts, testified that it was commonly understood that Nahimana was responsible for RTLM, stating:

> Let me repeat that from the onset we knew that Nahimana was the director of RTLM. And in the discussions that took place within the ministry, reference was made to the responsibility of Ferdinand Nahimana as the person in charge of the daily administration of RTLM station.[535]

514. As described in more detail below, Witness GO said that at the two meetings he attended between RTLM and the Ministry of Information, Nahimana was introduced as the Director of RTLM.[536]

515. In a written report prepared by the Belgian Intelligence Service on the state of security in Rwanda, dated 2 February 1994 and tendered in evidence by the Prosecution, Nahimana is identified as the Director of RTLM.[537] In his book published in 1994, Helmut Strizek, an expert witness for the Nahimana defence, referred to Nahimana as "Rwandan historian, 1993, ideologist-in-chief of RTLM." The expert witness noted in his testimony that this characterization in his book was in quotation marks, indicating that it was how Nahimana was characterized by other people. He said he did not know whether Nahimana was the chief ideologist of RTLM.[538]

516. Prosecution Witness François-Xavier Nsanzuwera, a Rwandan prosecutor from 1990 to 1994, testified that in an RTLM broadcast in March 1994, Kantano Habimana named Alphonse Nkubito, the General Prosecutor, as being part of a plot to kill the

[532] T. 29 Nov. 2001, pp. 19, 111-112.
[533] T. 30 Nov. 2001, pp. 113-114.
[534] T. 27 Sept. 2002, pp. 7-8.
[535] T. 10 Apr. 2001, p. 149.
[536] *Ibid.*, pp. 146-148.
[537] Exhibit P153, p. 13.
[538] T. 6 May 2003, p. 77; T. 7 May 2003, p. 3.

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President, for which he would receive a large financial sum. Nkubito asked Nsanzuwera to summon Kantano Habimana. A decision had been made by the Prosecutor's office to take the media to court only if complaints were filed. Although RTLM was broadcasting messages of ethnic hatred and violence, Nsanzuwera said people were afraid to file complaints. When Nkubito filed this first and only complaint, Nsanzuwera took the opportunity to summon Noël Hitimana, as well as Kantano Habimana, to ask questions about other broadcasts in which RTLM was calling on Hutu to massacre Tutsi. Nsanzuwera testified that the broadcast naming Nkubito in a plot to kill the President could have been charged as defamation but that he was also interested in Article 166 of the Criminal Code, which prohibited the incitement of citizens against each other.[539]

517. When Nsanzuwera called Kantano Habimana to inform him of the summons, initially he refused to come, but when Nsanzuwera told him he would then have to send gendarmes to get him, Kantano Habimana agreed to come. The summons for both Kantano Habimana and Noël Hitimana was sent, and Nsanzuwera testified that they both came on the same day. Kantano Habimana told him that all he had done was to read a telegram given to him by his supervisor, Ferdinand Nahimana. He told Nsanzuwera that RTLM journalists were "small fish" and that with regard to some editorials, Nahimana was the one to write them and the journalists only read them. Nsanzuwera reported this conversation to Nkubito, who told him that if Nahimana was behind it that meant the Akazu was behind RTLM and that Nsanzuwera should just drop it, otherwise they would get themselves killed.[540]

518. On cross-examination, Nsanzuwera affirmed his testimony that Kantano Habimana and Noël Hitimana had come on the same day the summons was issued. He said they were interrogated by a deputy prosecutor and that the only one he spoke to in his office was Kantano Habimana. On the air, Kantano Habimana informed his listeners that he had been summoned to the Office of the Prosecutor and said they should "remain vigilant". In a subsequent broadcast, Kantano told listeners that the meeting had not been serious, describing the discussion as "women's gossip".[541] Counsel for Nahimana challenged Nsanzuwera's recollection that Habimana and Hitimana had come to the Prosecutor's office on the same day, introducing into evidence an RTLM broadcast of 30 March 1994, which starts with Noël Hitimana saying "I am back" in reference to the visit he had just made to the Prosecutor's office.[542] In the broadcast, Hitimana describes his interview with a deputy prosecutor whom he quotes as having said that both Noël and Kantano should have reported together on the fifteenth, when Kantano reported.[543]

519. In the 30 March RTLM broadcast, Noël Hitimana and Kantano Habimana discuss Hitimana's interview with the deputy prosecutor and Hitimana reports having told the prosecutor to write down that he works for RTLM but that he is not RTLM, that he is an employee who has an assigned job and that "Whoever feels wronged should write to the

[539] T. 23 Apr. 2001, pp. 43-49.
[540] *Ibid.*
[541] T. 25 Apr. 2001, pp. 66-70.
[542] *Ibid.*, p. 85; Exhibit 1D40B.
[543] Exhibit 1D40B, K0180800-803.

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RTLM Director", that they should take him to court. Hitimana says that if they want to complain about him they should write to the management which has authority over him. Kantano Habimana agrees with Hitimana, saying "Concerning the mistakes made at the level of the press, we in fact work for RTLM; we have leaders and authorities. The RTLM, rather than the individuals, should be held accountable".[544]

520. Prosecution witness Georges Ruggiu, a Belgian national, worked for RTLM in 1994. On 15 May 2000, facing criminal charges before the Tribunal of direct and public incitement to commit genocide and crime against humanity (persecution), Ruggiu changed his plea of not guilty to guilty. He entered a plea agreement, admitting *inter alia* that "RTLM broadcasters, including himself, together with RTLM managerial and editorial staff incur full responsibility for the 1994 massacre of Tutsis and Rwandan Hutu opposition party members".[545] On 1 June 2000, Ruggiu was convicted and sentenced to twelve years' imprisonment, which he is currently serving.[546] Ruggiu testified that he decided to change his plea because he realized the scope and extent of what he had got involved in, that what he had participated in was not spontaneous killing but a planned genocide. He said pleading guilty was the only way he could try to make up for the faults and crimes he committed.[547]

521. Ruggiu testified that he was hired by Nahimana in December 1993 through the intervention of President Habyarimana, who called Nahimana and secured a job for him at RTLM. He was employed on 31 December 1993 and started working on 6 January 1994. He received a letter of employment from Nahimana, who had signed the letter as Director, and after a probationary period provided for in the letter, in late January he received another letter of employment signed by Phocas Habimana as Director General of RTLM. Ruggiu said that he lost the letter signed by Nahimana during his evacuation from Kigali. The letter signed by Habimana, dated 6 January 1994, is in evidence. It makes reference neither to probation, nor to an earlier letter. According to Ruggiu, all those employed by RTLM around that same time, including Nkomati, Rucogoza and Bemeriki, were employed by Nahimana although their letters of employment were signed by Habimana.[548]

522. On cross-examination, Ruggiu said that whether he first met Nahimana at RTLM on the same day that he saw the President, as he testified, or whether his meeting with the President was rather followed by a conversation with Jean Hategekimana, as his 1997 interview indicates, or whether he was summoned by Nahimana to RTLM the day after he met the President, as his plea agreement indicates, was all a question of detail.[549] He said these inconsistencies were not intentional lies or wilful omissions but simply errors that he did not catch. He was also asked to explain a number of inconsistencies in his accounts of the letter of employment from Nahimana. In a statement made in August 1999, Ruggiu said the date of Nahimana's letter was 6 January, which is the date of

[544] Ibid.
[545] Paragraph 212 of the Plea Agreement, cited in T. 28 February 2002, p. 135.
[546] *Prosecutor v. Ruggiu*, Case No. ICTR-97-32-I, Judgement, 1 June 2000.
[547] T. 28 Feb. 2002, pp. 133-136.
[548] Exhibit 1D39.
[549] T. 27 Feb. 2002, pp. 9-17.

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Habimana's letter, rather than 31 December. He said in his testimony that he did not have any particular answer for this. In an August 1999 statement, Ruggiu said that Nahimana signed the letter as a member of the Steering Committee, and in a statement made in November 1999, he said that Nahimana signed the letter as an official of RTLM. When asked about the inconsistency of these statements with his testimony that Nahimana signed as RTLM Director, Ruggiu acknowledged that he had given three versions of Nahimana's title but maintained that his testimony was accurate. Several other variations among the statements and testimony on the letters of employment from Nahimana and Habimana were raised in cross-examination, including Ruggiu's statement of 26 April 1999 to an Italian magistrate of a *Commission Rogatoire* that Nahimana was not the Director of RTLM, which was why he needed a second letter from Habimana, who was the Director.[550] Similarly, multiple inconsistencies between Ruggiu's testimony and various other accounts of his regarding the RTLM interview and recruitment process were enumerated on cross-examination.

523. Ruggiu testified that the person at the top of RTLM management was Félicien Kabuga, below whom was the Steering Committee that had established RTLM, below which was a *de facto* management board consisting of Nahimana, Barayagwiza and Serugendo. Below this board was Phocas Habimana, the managing director.[551] According to Ruggiu, Phocas Habimana became Managing Director as of January 1994 but he thought Nahimana was still director after that time as he did not resign or leave. He said Nahimana told him in January 1994 that as a named minister to the future government, he had been asked to be less visible at RTLM. Even when Habimana was there, Ruggiu said journalists went to Nahimina, mainly on questions of salary, and that if Nahimana was not there, they would go to Barayagwiza. Nahimana came more frequently and regularly than Barayagwiza to RTLM, estimating that Barayagwiza came approximately fifteen times between January and April 1994. He said there was a weekly meeting to discuss editorial policy between Gahigi and Habimana, joined by Nahimana and Barayagwiza whenever they were present, and that there was a daily morning meeting of Gahigi with the journalists, to give them instructions.[552]

524. Ruggiu testified that he had made incriminating statements to the Prosecution against Phocas Habimana and Gaspard Gahigi because as far as he knew, they were no longer alive and so he could "lay blame on the dead". Counsel for Nahimana suggested that Ruggiu changed his plea two years after entering it only because he knew the Prosecution was planning to amend the indictment, adding four counts including genocide, which had not previously been charged, and that he agreed to testify in the media trial in exchange for the Prosecution dropping the amendments. Ruggiu denied that any such agreement had been made or that the possible amendment of the indictment had played any role in his decision. He said the decision to plead guilty came after two years of in-depth reflection.[553]

[550] T. 4 Mar. 2002, pp. 56-83.
[551] T. 27 Feb. 2002, pp. 25-27.
[552] *Ibid.*, pp. 51-55, 63-69.
[553] T. 28 Feb. 2002, p. 131; 1 Mar. 2002, pp. 17-26; 4 Mar. 2002, p. 37.

PURL: https://www.legal-tools.org/doc/45b8b6/

525. Defence Witness Valerie Bemeriki, a detainee in Rwanda facing criminal charges of incitement to killing through broadcasts on RTLM, testified that she was hired as a journalist at RTLM in January 1994. She applied for a vacancy advertised on RTLM and took a test at the radio station, together with twelve to fifteen other candidates. Among those who took the test with her and passed she named Ruggiu. The test examiners were Gaspard Gahigi, Kantano Habimana and Noël Hitimana, under the auspices of Phocas Habimana, the Director. Bemeriki could not specify the date but said that it was at the very beginning of January. They received the results of the test on the same day from Phocas Habimana by telephone, and they were hired that same week. Bemeriki testified that she and the others were given a letter of appointment and an employment contract for a trial period, signed by Phocas Habimana, as Director, and given to her by him in his office.[554]

526. In her testimony, Bemeriki listed those working on the premises of RTLM, including Phocas Habimana as Director. He had a separate office, as did Gaspard Gahigi, the Editor-in-Chief, and Kantano Habimana, the Deputy Editor-in-Chief. She described the hierarchical structure of the radio beginning with Phocas Habimana as Director and said he supervised all the employees, evaluated their work and paid their salaries. He was the one who gave the orders but if he needed any particular information with regard to the work of the journalists he had to go to the Editor-in-Chief. She said Habimana was responsible for discipline and described him as an authoritative person, very severe and stern but at the same time gentle and fair. As Editor-in-Chief, Gahigi drew up the schedule on the basis of weekly meetings with all the journalists. Bemeriki testified that the work was assigned to journalists by Phocas Habimana, in collaboration with Gahigi. There were weekly meetings of all the journalists with Gahigi and Habimana, and daily meetings of the journalists with Gahigi.[555]

527. Bemeriki testified that no outside persons attended the staff meetings. She had never heard of Nahimana attending meetings with Gahigi and Habimana. The salaries were paid to journalists by Habimana in cash. Bemeriki said that from the time she was hired in January to 6 April 1994, she only saw Nahimana at RTLM on two occasions. She could not say what they were because even if he did come, he usually went to the office of the Director, Phocas Habimana. She was not aware of any telephone calls between Nahimana and the radio station, or any occasion on which Nahimana spoke on the air. She said she never interviewed him. All she knew was that Nahimana was a founding member of the radio station and a member of the Steering Committee. She had met four members of this Committee, naming Kabuga, Nahimana, Habimana and Barayagwiza, at a meeting between RTLM and the Ministry of Information on 10 February 1994.[556]

528. On cross-examination, Bemeriki was asked about her interviews in 1999 with the Office of the Prosecutor and with the Rwandan government prosecutor's office, and her interview in 2000 with Counsel for Nahimana, and other interviews with journalists. She

[554] T. 8 Apr. 2003, pp. 74-78.
[555] *Ibid.*, pp. 79-82.
[556] *Ibid.*, pp. 82-83.

PURL: https://www.legal-tools.org/doc/45b8b6/

said she did not tell the whole truth in 1999, that what she told the Office of the Prosecutor at that time was part truth and part lies. She testified that what she had told counsel for Nahimana in 2000 was the truth. While she told some lies in 1999, from January 2000 to the present she had told only the truth to anyone who interviewed her. She repeatedly testified that she had told lies in 1999 to save herself, that she was under arrest, and that she had tailored her answers to satisfy the ICTR investigators who were questioning her.[557] In a statement she made to the ICTR investigators in September 1999, purporting to be a decision at that time to tell the truth in full, Bemeriki said: "When I spoke to the Rwandans I didn't tell them everything, but what I want you to know is, now I am forthcoming, now I am telling you everything." On cross-examination when presented with this statement, Bemeriki replied that she made the statement she did in 1999 thinking it was to her advantage to do so and said "but then when I noticed that these were lies, I decided to tell the truth".[558]

529. On cross-examination, Bemeriki was confronted with a number of statements she made to the Prosecution in 1999 and asked to clarify which of these statements were false. With regard to the CDR, a party that she had said in her statement was founded on ethnicism and executed the orders of the MRND, Bemeriki said her statement was false and needed to be rectified. She testified that the CDR and MRND were two different parties having nothing to do with each other, that she was not a member of the CDR or familiar with the party, and that she did not know whether it was founded on ethnicism.[559] Bemeriki testified that she did not consider *Kangura* to be an extremist publication. When confronted with her 1999 statement that *Kangura* was the most extremist newspaper she knew, Bemeriki said this was a false statement that she recalled very well because she gave the answer investigators were looking for. Subsequently, she testified that she did not recall making the statement.[560] Although she had in her statement admitted that there was a genocide of Tutsi, that RTLM had been used as a weapon in the massacre of Tutsi, and that people were encouraged to kill Tutsis at roadblocks, Bemeriki testified that she did not remember making these statements, that if she did they were false, and that she could not discuss them because of the charges pending against her in her own case. Bemeriki was asked whether she had not said that RTLM called for the extermination of Tutsis hiding in churches, suggesting they were RPF accomplices. She initially denied having said so and then said she did not know and would have to see the statement. When presented with her statement, Bemeriki said it was false and that she could not respond because of the charges pending against her.[561]

530. Bemeriki answered the vast majority of questions on cross-examination in this manner, often mechanically repeating in answer to a series of questions that she did not know or she did not remember. Presented with the bank lists of RTLM shareholders, she was asked to identify any names she recognized from the military and seven names were read out to her: Bagasora, Renzaho, Murenzi, Sagatwa, Habyarimana, Mugengararo, and

[557] T. 9 Apr. 2003, pp. 8-14, 33.
[558] T. 10 Apr. 2003, p. 25 – cassette No. 6, K0117731, p. 35.
[559] T. 9 Apr. 2003, pp. 31-33.
[560] T. 9 Apr. 2003, pp. 53, 57; 10 Apr. 2003, p. 53.
[561] T. 9 Apr. 2003, pp. 38-46; 10 Apr. 2003, pp. 54-60.

PURL: https://www.legal-tools.org/doc/45b8b6/

Hategekimana. She said she did not know they were shareholders and whether they were in the military except for Bagosora, who was named on the list as a colonel. When asked individually about some of these names, Bemeriki testified that she knew two men named Tharcisse Renzaho, one of whom was in the military and one of whom was not. She said she knew many people called Juvenal Habyarimana and many called Elie Sagatwa.[562] Presented with the RTLM Statute, Bemeriki was asked about some of the fifty signatories including Déogratias Nsabimana, who was identified by Witness X as a colonel in the armed forces who was on the plane and died with President Habyarimana when the plane was shot down on 6 April 1994.[563] She said she knew many people with that name and could not say which one was the most well-known.[564] When asked whether it was true that RTLM taught people how to behave and awakened all Rwandans, even the armed forces, she said it was not true. When she was confronted with her own broadcast of these words on RTLM in March 1994, she said there was nothing improper about this message, and that it concerned the security needs of the population.

After 6 April 1994

531. Ruggiu testified that following 6 April 1994, the management board of RTLM continued to exercise control over the editorial policy of RTLM. During this period, he personally had four contacts with Nahimana. He said that Nahimana came to RTLM from the French embassy on 8 or 9 April, that Nahimana sent him a letter from Cyangugu in the end of April or beginning of May, that he met Nahimana in Gitarama at the end of May, and that Nahimana came to RTLM in early June 1994 and met with Phocas Habimana. Ruggiu testified that the letter he received from Nahimana encouraged those at RTLM to continue and that Nahimana told him when they met in Gitarama that he was happy with the work RTLM was doing. Ruggiu testified that the letter from Nahimana got lost and that he had not shared it with anyone.[565]

532. On cross-examination, Counsel for Nahimana confronted Ruggiu with a statement he made in July 1997 that after the death of Habyarimana, Nahimana only came once to Kigali for half a day and did not even visit RTLM. He said in this statement that there were no calls, telegrams or messages from Nahimana during that time and that RTLM was run by two people, Phocas Habimana and Gaspard Gahigi. Ruggiu testified that he had been lying to the Prosecution in this interview.[566] He said, "I could see what they were looking for, so I didn't give them the truth."[567] At that time, he did not know whether he was going to plead guilty or not and did not want to incriminate himself or Nahimana.[568] Ruggiu testified on cross-examination that after 6 April 1994, Phocas Habimana took over more at RTLM. He said Gahigi was not there as much but

[562] T. 9 Apr. 2003, pp. 58-64.
[563] T. 21 Feb. 2002, p. 52.
[564] *Ibid.*, pp. 70-71.
[565] T. 27 Feb. 2002, pp. 55-59.
[566] T. 5 Mar. 2002, p. 43.
[567] T. 28 Feb. 2002, p. 169.
[568] *Ibid.*, pp. 156, 169-171.

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continued as Editor-in-Chief until their evacuation in July. He testified that one journalist, Nkomati, was dismissed in May 1994 by Phocas Habimana.[569]

533. Ruggiu testified that after 6 April 1994, there was a daily morning briefing of the media at the Ministry of Defence. He said they would be given information as well as instructions on broadcasts, and "search notices" from the military, which named people who should be stopped and gave information about them such as where they had been seen, with whom, vehicle license numbers and colors. He said this information was broadcast on RTLM. Ruggiu testified that RTLM also received "search notices" from the *Interahamwe* and information about their activities. Ruggiu said RTLM did not verify information received from the *Interahamwe* before broadcasting it. They did not have the means as there was inadequate security. In any event, he said, they were not bound to verify information; they were bound to air information favourable to the cause of the government.[570] Ruggiu stated that from April to July 1994, the interim government paid the salaries of RTLM journalists and provided access to a generator at the neighbouring Ministry of Tourism when RTLM was bombed in April 1994. The army placed a vehicle, petrol, an escort, and a room at the Hotel Diplomat at his disposal. He said several other journalists, including Gahigi and Habimana, received similar support. Firearms were requested for all RTLM journalists, but this request was not granted, although he requested and was given a firearm. Gahigi carried an Uzi machine gun and participated in combat, as did several of the journalists.[571]

534. Bemeriki testified that she worked for RTLM through 14 July 1994. Between 6 April and 14 July, the Director Phocas Habimana was still there. He was the one giving instructions and the journalists were answerable to him. Bemeriki said he exercised disciplinary powers, and cited as examples that he dismissed Nkomati and that he deducted ten thousand Rwandan francs from her salary, following a programme he did not like, in which she had erred. He did not explain to her why he did not like the programme. Bemeriki testified that Habimana continued to pay salaries and that, according to him, the money came from the army staff.[572]

535. Bemeriki learned about the attack of the President's plane on the evening of 6 April. She called Phocas Habimana, who came to RTLM and spent the entire night drawing up communiqués, which Bemeriki aired on RTLM. She said they stayed there from 6 to 9 April. On 8 April, Bemeriki went to investigate at the residence of Prime Minister Agathe Uwiringimana, and on 9 April she went to cover the swearing in of the Kambanda Government. She did not see Nahimana there. Bemeriki testified that she did not see Nahimana between 7 April and 4 July 1994 and she did not know of any contact between him and any member of the radio team during that time.[573] On cross-examination, she said that she saw Barayagwiza in Kigali one time after 6 April but could not recall the date, even approximately. She was coming back from Phocas

[569] T. 4 Mar. 2002, pp. 129, 132.
[570] T. 27 Feb. 2002, pp. 71-83.
[571] *Ibid.*, pp. 96-97, 100-101.
[572] T. 8 Apr. 2003, pp. 93-94.
[573] T. 8 Apr. 2002, pp. 94-96.

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Habyarimana's house when she saw Barayagwiza's younger brother, who stopped them on the road and said that Barayagwiza wanted to see them. She said they went to his house, which only took a few minutes, and returned immediately.[574]

536. According to Bemeriki, the RTLM journalists were armed during the period from 4 April to 14 July 1994. The weapons came from the army. RTLM was provided with a vehicle by the army, as was Phocas Habimana, and that the army provided fuel as well, free of charge. She said that during this time some of the journalists, including Ruggiu, stayed at the Hotel Diplomat, which was where the Kambanda government was staying. Gahigi and Habimana had contact with the Rwandan Armed Forces, Bemeriki said. From 7 April 1994 there were daily morning meetings with the military staff, in which Gahigi had to participate. Bemeriki said she had received all this information from Phocas Habimana.[575]

537. Bemeriki testified that on 3 July 1994, RTLM suspended broadcasting, and preparations were made for evacuation from Kigali to Gisenyi. The decision to move to Gisenyi had been made by Director Phocas Habimana, together with those in charge of the Rwandan Armed Forces. She said from 3 to 14 July, the team of journalists as well as Gahigi and Habimana continued to work, and Habimana, who was in charge of the team, continued to pay salaries, the money for which came, she thought, from RAF headquarters. Programming resumed on or just after 8 July, in accordance with a decision made by Phocas Habimana together with the military chiefs. The programmes terminated on 14 July 1994 because they were getting ready to cross the border to Zaire. The army took this decision and conveyed it to Habimana. Bemeriki testified that she saw Nahimana on 8 July 1994, in Gisenyi, by chance, at the Hotel Palm Beach and greeted him. She did not see him again after that date. From 4 to 14 July 1994, Bemeriki never received any instructions to end programmes critical of UNAMIR.[576]

538. Nahimana testified that after 6 April through the end of July, the Steering Committee no longer existed and there was a "total dysfunctioning". He said he was no longer in contact with the company and did not know of any member of the Steering Committee who was.[577] On 8 April 1994, he went to RTLM and saw Phocas Habimana there and some journalists, including Ruggiu. He was there for fifteen to twenty minutes and he said that he went because he wanted to know what was happening at the radio station, recalling that he was a member of the Steering Committee. Nahimana gave no instructions while he was there. When he left he told them to have courage. He said he did not return to RTLM after this visit.[578] Nahimana testified that RTLM was taken over by the army, that it was kidnapped by people who did not have the same objectives as those who founded the radio and that they transformed it into a "tool for killing."[579]

[574] T. 9 Apr. 2003, pp. 89-91.
[575] T. 8 Apr. 2003, pp. 98-100.
[576] T. 9 Apr. 2003, pp. 5-7.
[577] T. 15 Oct. 2003, p. 46.
[578] T. 24 Sept. 2002, pp. 17-19.
[579] *Ibid*., pp. 50, 79.

PURL: https://www.legal-tools.org/doc/45b8b6/

539. On 25 April 1994, Nahimana was interviewed in Cyangugu on Radio Rwanda. He referred to himself as "one of the founders of RTLM" and described an exchange he had had with the former Burundian Ambassador to Kigali. The Ambassador greeted him and said, "I hope you have not taken along with your damned RTLM radio – I regret having pronounced even the word RTLM. I hope you have not brought RTLM with you". Nahimana replied by asking him why he seemed to be afraid of RTLM, and the Ambassador said, "If it were brought to Burundi, I feel that Burundi would disappear the following day". Nahimana then told him, "I am very happy because I have understood that RTLM is instrumental in awakening the majority people." Nahimana made reference in the broadcast to the fact that "today's wars are not fought using bullets only, it is also a war of media, words, newspapers and radio stations". Nahimana said that in Bujumbura they could not listen to RTLM, but in Bukavu they could listen to both Radio Rwanda and RTLM. In the 25 April interview he stated, "We were satisfied with both radio stations because they informed us on how the population from all corners of the country had stood up and worked together with our armed forces, the armed forces of our country with a view to halting the enemy."[580]

540. Nahimana testified that he was called to meet with President Sindikubwabo on 25 or 26 May 1994 in Gitarama. The President asked Nahimana to accompany him to the OAU summit in Tunis in June, which he did.[581] According to Prosecution Expert Witness Alison Des Forges, Nahimana was appointed Political Advisor or "Conseiller", to President Sindikubwabo, which Nahimana denied. At a hotel in Tunis, Nahimana signed an Associated Press reporter's book as "conseiller advisor" to the President, and when questioned on cross-examination about this evidence, Nahimana testified that he only used that title in order to get an audience with French government officials, maintaining that he was not really holding the position in the administrative sense.[582] Barayagwiza also accompanied President Sindikubwabo to the OAU summit meeting in Tunis.[583] According to Des Forges, Barayagwiza had responsibility for answering the one telephone that linked the Rwandan government to the international community after 6 April 1994. During this time he traveled to France, the United States and elsewhere to defend the Rwandan Government, even accompanying Foreign Minister Bicamumpaka to a meeting of the United Nations Security Council on Rwanda.[584]

541. Dahinden testified that around 11 April 1994, he got a call from someone who introduced himself as the Manager or Director of RTLM. He did not recognize the voice and the caller did not give his name, but Dahinden said he believed it was Phocas Habimana. He said he had the impression that the caller had taken the initiative to call him because he wanted to get a message out, abroad, on behalf of RTLM. Dahinden went to Rwanda from 1-13 May 1994, and he learned that Nahimana had taken refuge at the French embassy and been evacuated by French troops to Bujumbura.[585] Dahinden returned from his trip to Rwanda deeply concerned about the role of RTLM in the

[580] Exhibit P105/2 B (K0149117-19).
[581] T. 24 Sept. 2002, pp. 34, 45, 52-56.
[582] T. 17 Oct. 2002, p. 46.
[583] T. 24 Oct. 2000, pp. 136-147; 1 Nov. 2000, p. 89, Exhibit P158A, p. 52 (28162).
[584] Exhibit P158A, p. 56 (28158).
[585] T. 24 Oct. 2000, pp. 82-84; T. 1 Nov. 2000, pp. 85-86.

PURL: https://www.legal-tools.org/doc/45b8b6/

killings, and on 25 May 1994 he made a statement to the United Nations Human Rights Commission entirely focused on RTLM. In this statement, Dahinden named Barayagwiza, whom he described as "an official of the extremist CDR party" as among the initial sponsors of RTLM, and he described Nahimana as "the spiritual leader and kingpin of RTLM", and the "main ideologue behind Hutu extremism". He called for the prosecution of all RTLM announcers and promoters mentioning as "notably" among these Nahimana, Kabuga, Gahigi and others, not including Barayagwiza.[586]

542. Dahinden testified that he saw Nahimana twice, on 9 and 15 June, in Geneva. He had asked for a meeting with the President of the Interim Government and was told that was not possible but that he would be received by Nahimana. They met on 9 June at the Noga Hotel and he asked Nahimana whether he knew about the statement Dahinden had made, mentioning him, to the UN Human Rights Commission. Nahimana said he knew about it and that he was not in charge of RTLM. They did not speak further about the issue. At the second meeting, in the same hotel on 15 June, Nahimana was with Barayagwiza. Dahinden had asked for an interview with the President. Nahimana told him the President was tired and unwell and proposed that they could discuss the situation in Rwanda. They spoke for about two hours, during which Dahinden asked whether RTLM was still operating. Nahimana and Barayagwiza told him that RTLM was about to be transferred from Kigali to Gisenyi. Barayagwiza said, in a jovial manner, that if Dahinden set up a radio station in the region, which he was hoping to do, that it would compete with RTLM.[587]

543. According to the report of Prosecution Expert Witness Des Forges, in early May 1994 Nahimana was seen entering the Ministry of Defence in the company of Phocas Habimana.[588] Her report also states that in late June a French diplomat, Ambassador Yannick Gérard, told Nahimana that the RTLM broadcasts were deplorable and must stop, particularly those threatening General Dallaire and UNAMIR. Nahimana promised to intervene with the journalists and Gérard reported subsequently that the RTLM attacks on General Dallaire and UNAMIR halted promptly thereafter. The source cited for this information is a telephone interview on 28 February 2000 with Jean-Christophe Belliard of the French Foreign Ministry, based on a French diplomatic telegram that he was reading from. Des Forges testified that Belliard was with Gérard when he met with Nahimana.[589] In his testimony, Nahimana denied that French officials spoke to him about RTLM. He acknowledged meeting with them but said they only talked about Operation Turquoise. He insisted that he did not speak to anybody about RTLM. He also denied going to the Ministry of Defence with Phocas Habimana, testifying that he did not see Habimana between April and July 1994 and then correcting himself with mention of one meeting that took place between the 8 and 10 July in Gisenyi. He said they met at the bank and spoke for a while. Habimana told him about the problems he was having

[586] Exhibit P2B, pp.2-3.
[587] T. 24 Oct. 2000, pp. 136-45.
[588] Exhibit P158A, p. 52 (28162).
[589] *Ibid*., p. 53 (28161); T. 23 May 2002, pp. 211-213.

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producing programmes, and Nahimana asked him how he could do that. They then parted ways.[590]

544. In hearings of the French National Assembly on Rwanda, extracts of which were introduced in evidence, Operation Turquoise was discussed and Belliard's meeting with Nahimana was mentioned. In the report of the hearings, Nahimana was referred to three times as the Director of RTLM.[591]

Credibility of Witnesses

545. In the cross-examination of **Nsanzuwera**, Counsel for Nahimana reviewed the course of his career in Rwanda, and the Chamber notes Nsanzuwera's testimony that he was transferred from Gisenyi to Kigali because he refused to comply with a request from the Ministry to drop certain cases involving relatives of the President, although it was established that Nsanzuwera was a supporter and admirer of the President. He said he asked for the transfer because if he acted in the manner requested, he would lose authority in Gisenyi. Nsanzuwera testified that he never wanted a political career and was not interested in any particular party. He was a founding and active member of several human rights associations founded in 1990, which denounced government abuses, particularly the encroachment by the government on judicial independence. Under cross-examination by Counsel for Barayagwiza, Nsanzuwera explained his decision to leave Rwanda in March 1995, noting interference by the RPF in judicial operations and describing the difficulties of having thousands of people crowded in jail, many without having been identified and many dying from the extreme conditions of detention. By Nsanzuwera's estimate, 20% of the detainees were innocent. His concern over the fate of these detainees is indicative of Nsanzuwera's impartial commitment to justice.[592] The Chamber finds François-Xavier Nsanzuwera to be a credible witness.

546. The Chamber accepts the testimony of **Philippe Dahinden** as credible. The extensive questioning of the witness on cross-examination regarding the logistics of his movements and his positioning with respect to the bodies he witnessed flowing down the river did not effectively challenge his testimony in any way. Similarly, the questioning of the witness on his views regarding relations between Rwandans and Belgians, or his views on the meaning of various Kinyarwandan words did not go to the credibility of his testimony. A foreign and non-partisan journalist, Dahinden was present in Rwanda and had direct access to key individuals at critical moments in time. The Chamber also accepts the testimony of **Colette Braeckman** as credible. As a foreign and non-partisan journalist who had extensive experience in Central Africa, Braeckman evidenced great familiarity with the culture and political history of Rwanda in her testimony. She was challenged on cross examination with a written record published in the journal *Dialogue* of the March 1994 seminar about which she testified. Defence suggested that the remarks made at the conference by Gaspard Gahigi as reflected in this publication

[590] T. 24 Sept. 2002, pp. 51, 65.
[591] T. 23 May 2002, pp. 212-220; Exhibit P154, pp. 283-284, 288.
[592] T. 25 Apr. 2001, pp. 77, 98, 110, 134; T. 2 May 2001, pp. 7-10.

PURL: https://www.legal-tools.org/doc/45b8b6/

differed from her report of these remarks and made no reference to the remarks made by Nahimana at the seminar. Braeckman's explanation, that the publication reflected only the formal presentation and not the informal dialogue, in which Nahimana participated and in which the discussion was more heated, is a reasonable one. The Defence did not effectively challenge her evidence through reference to this publication or otherwise. The Chamber also finds Witness GO and Thomas Kamilindi credible, as set forth in paragraphs 608 and 683, respectively.

547. With regard to **Witness X**, the Chamber notes that the witness testified on condition that he receive a letter effectively guaranteeing him immunity from prosecution, which he did shortly before his testimony. He maintained that this letter was important for his credibility. The Chamber finds it more likely that it was a *quid pro quo* for his testimony. However, his evidence does not lack credibility for this reason. Defence counsel suggested that he was paid for his testimony, but the evidence produced indicates that he was paid only for his expenses over the course of many years, and that he was granted witness protection services. Witness X, whose mother is Tutsi, testified repeatedly on cross-examination that while he was a member of the *Interahamwe* and his friends were members of the *Interahamwe*, he did not participate in killing. He conceded that his friends confessed their participation in killing, and he conceded that he accepted a looted crate of beer, but he steadfastly maintained a certain ambivalence about his *Interahamwe* friends and repeatedly insisted that he could not simply break with them because that would have been dangerous for him, and possibly even a risk to his life at that time. On cross-examination Witness X was confronted with several inconsistencies between his testimony and his prior statements. He was able to explain some of these inconsistencies, many of which are relatively minor. The Chamber was satisfied with his explanations and finds Witness X to be generally credible.

548. With regard to **Georges Ruggiu**, the Chamber notes that Counsel for Defence highlighted a striking number of inconsistencies between pre-trial statements and Ruggiu's testimony. These inconsistencies are notable both for their magnitude and for the failure of the witness to explain them. In several cases, there are many more than two versions of the same incident. The variations are not insignificant, and they are not, in the Chamber's view, typical of details that vary in one's memory over time. The Chamber notes, for example, that in April 1999, Ruggiu stated that he first met Colonel Bagosora in detention at the UNDF and that he had never seen him before. Yet just six months later, in a November 1999 statement, Ruggiu spoke of meeting Bagosora several times between April and July 1994 at the Hotel Diplomat, to get his help in obtaining a room, and he recalled meetings that took place between Bagosora, Dallaire and *Interahamwe* officials, at which he was present. On cross-examination, Ruggiu insisted that his April 1999 statement was not a lie but rather an unintentional error, noting that Bagosora was not someone he had seen frequently.[593] The nature of the contact described, with such a prominent individual as Colonel Bagosora, leads the Chamber to question the veracity of Ruggiu's testimony that his April 1999 statement was made in good faith.

[593] T. 1 Mar. 2002, pp. 45-53; T. 4 Mar. 2002, pp. 32-39

PURL: https://www.legal-tools.org/doc/45b8b6/

549. The Chamber notes additionally that in his testimony Ruggiu acknowledged having lied several times in his pre-trial statements and that he has changed his recollection of events dramatically and in fundamental ways. In such circumstances, the Chamber cannot determine from Ruggiu's testimony where the truth lies - whether he is speaking the truth now when he says he was lying earlier or whether he was earlier speaking the truth and is lying now. In his testimony, Ruggiu was not forthright in his responses and did not make much effort to explain or reconcile the many inconsistencies he was confronted with on cross-examination. The Chamber notes that both the Defence and the Prosecution cite various parts of Ruggiu's evidence to support their case. The Chamber is not prepared to rely on his evidence selectively in this manner. As Ruggiu was an accomplice to the crimes for which the Accused are charged, the Chamber must consider his evidence with further caution, in light of the possible motives he had to lie, as set forth by the Defence in connection with the plea agreement signed by Ruggiu and the Prosecution. For these reasons, the Chamber rejects Ruggiu's evidence in its entirety.

550. With regard to **Valerie Bemeriki**, the Chamber has considered her own admission that many statements made by her to ICTR investigators in 1999 were false. The Chamber has also considered the statement she made in 1999 to these investigators that while many of the statements she had made previously to Rwandan government investigators were false, she was telling the whole truth to the ICTR at that time. Clearly this was a lie, and it resembles what Bemeriki said in her testimony before the Chamber, that she is now telling the truth in full. The lies in question concern issues of fundamental importance to this case. They are not only about particular details but go to whether or not Tutsis were deliberately targeted for extermination and if so, what role was played by RTLM. Compared to her previous statements, her current testimony is a volte-face that accommodates the defence of Nahimana. In light of the fact that she lied to ICTR investigators explicitly about her intent to tell the truth, telling them in 1999, when she now says she was lying, that she was telling them the whole truth, the Chamber considers that whatever Bemeriki says about telling the truth is inherently unreliable.

551. The Chamber recognizes that the criminal charges pending against Bemeriki, which carry the death penalty, limit the extent to which she can answer questions. Her answers to questions on cross-examination, however, were marked by more than this limitation. She testified repeatedly in response to specific questions that she did not know the answer when the answer was clearly of a nature that she would know. Her claim, for example, that there are many named Juvenal Habyarimana in Rwanda, without acknowledging that one such person was the President of the Republic, does not manifest a desire to tell the truth in full. In contrast, Bemeriki mixed her responses, often in answer to the same question, saying for example that she remembered well her statement that *Kangura* was an extremist publication and shortly thereafter saying she did not remember making the statement. Bemeriki in her testimony demonstrated the belief that the acknowledgement of falsehood in her prior statements would automatically redeem her credibility. In her testimony, she lied repeatedly, denying that she made many statements, including her own broadcast, until confronted with them. Evasive to the point of squirming, her voice often reaching the feverish pitch of her broadcasts, which have

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been played in the courtroom, this witness made a deplorable impression on the Chamber. For these reasons, the Chamber rejects Bemeriki's testimony in its entirety.

Discussion of Evidence on Control of RTLM Before 6 April 1994

552. The Chamber notes that the evidence presented with regard to the establishment of RTLM, its first meetings, its shareholders, and its corporate and management structure is largely consistent and accords with the documentary evidence presented. It accords with much of Nahimana's own evidence on these matters. It is not disputed that Nahimana and Barayagwiza were members of the Steering Committee that was established to create RTLM, that this structure was approved by the constituent assembly of RTLM to continue its work, and that it was subsequently delegated by the first General Assembly of shareholders with a responsibility equivalent to a board of directors. Nahimana himself refers to the committee as a provisional board of directors. It is also undisputed that three members of the Steering Committee – Kabuga, Nahimana and Barayagwiza – were authorized to sign cheques on behalf of the company, that Nahimana chaired the Technical and Program Committee and that Baraygwiza chaired the Legal Committee, these being two of the four committees established by the Steering Committee to move the initiative forward.

553. What is in dispute, for the period prior to 6 April 1994, is the extent of the authority and responsibility arising out of the structures created. Also in dispute is the precise role of Nahimana, specifically whether or not he was the Director of RTLM. Phocas Habimana clearly played some management role at RTLM, by all accounts. The testimony of Prosecution Witness X and Prosecution Witness Kamilindi corroborate Nahimana's account of Phocas Habimana. Witness X described him as the coordinator of the radio station, having spoken and played a role related to management at the first General Assembly of shareholders at the Amahoro Hotel. In subsequent testimony Witness X referred to Phocas Habimana as the Director of RTLM. Kamilindi several times in his testimony referred to Phocas Habimana as the Director of RTLM. Yet despite the presence of Phocas Habimana, a number of Prosecution witnesses including Witness GO, François-Xavier Nsanzuwera, Philippe Dahinden and Colette Braeckman, testified variously that Nahimana was the Director of RTLM, that he was referred to as the Director of RTLM, and that he referred to himself as the Director of RTLM. The Belgian Intelligence Service and the French National Assembly also identified him in this way.

554. In light of the fact that there was no formal appointment of a Director-General for RTLM as provided by its constituent documents, which provided for the delegation of general powers of management, the Chamber considers the question of title to be somewhat artificial. Nahimana and Barayagwiza emerge from the evidence as the two most active members of the Steering Committee. It is Nahimana's name listed in a May 1993 circular as the sole contact in Rwanda for more information on RTLM. It is Barayagwiza, identified as having set up RTLM and continuing to preside over its destiny, who met with shareholders in Belgium in September 1993 to update them on RTLM. In his interview with Dahinden, Gaspard Gahigi referred to Nahimana as "the top man" and Barayagwiza as "number two". Kamilindi characterized both Nahimana

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and Barayagwiza as the "real ideologists behind RTLM", repeatedly referred to Nahimana as the "brain behind the operation" and said this made him "the boss who gave orders". Even Strizek, Nahimana's own expert witness, identified Nahimana in his book as the "ideologist-in-chief of RTLM". As members of the Board of Directors, both Nahimana and Barayagwiza were managers of RTLM and, as is often the case with founding board members in the early stages of incorporation, they both played a very active role in the management of RTLM, performing oversight and administrative functions generally played by a chief executive officer.

555. Although he testified that the idea for RTLM was brought to him by two former colleagues, Nahimana accepts that he was the founder of RTLM and even identifies himself as such, for example, in the Radio Rwanda broadcast of 25 April 1994. By Nahimana's own account, he was the one who decided that the first priority for the RTLM company was the creation of the radio station and he brought this priority to the Steering Committee, which endorsed it. By his own account, the Steering Committee approved recruitment, not only of Gaspard Gahigi and Phocas Habimana but also of Kantano Habimana and Noël Hitimana. And by his own account, even after the recruitment of Phocas Habimana, Nahimana and Barayagwiza continued to sign cheques, make deposits and conduct other financial transactions on behalf of the company.

556. Nahimana testified that he did not have any role in the programming of RTLM and that even as Chair of the Technical and Program Committee, his work was administrative rather than programmatic. Yet the Chamber notes that the document in evidence describing the various Committees and their respective roles includes among the responsibilities of the Technical and Program Committee the review and improvement of RTLM program policy, and states that the Editor-in-Chief shall participate in the work of the Committee. No other of the four committees working under the Steering Committee have responsibilities relating to RTLM programming. The Chamber finds it reasonable under these circumstances to infer that this committee, chaired by Nahimana, had delegated authority from the board of directors, or its structural equivalent, to oversee the programming of RTLM.

557. The Chamber notes the testimony of Prosecution Witness Nsanzuwera that Kantano Habimana told him that Nahimana had given him a telegram to read, which accused Nkubito of plotting against the President, and that Nahimana wrote editorials read by RTLM journalists. Based on this conversation, Nsanzuwera reported to Nkubito that Nahimana was behind RTLM, which prompted Nkubito to abandon the complaint he had made, in fear of Nahimana's power. Although it does not mention Nahimana by name, the 30 March 1994 RTLM broadcast by Kantano Habimana and Noël Hitimana confirms in substance what Nsanzuwera says he was told, that he should go after the Director of RTLM rather than its journalists. The inability of the witness to recollect accurately that Hitimana came to the Office of the Prosecutor on a later date rather than together with Habimana is understandable in light of the fact that Nsanzuwera spoke only with Habimana in his office, after he thought they had both been interviewed by a deputy prosecutor.

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558. Nahimana testified that he never intervened to influence the editorial policy of RTLM. Yet by his own testimony, the Steering Committee called in Kantano Habimana and Noël Hitimana, as well as Gaspard Gahigi and Phocas Habimana, to discuss an RTLM broadcast that caused them concern. Nahimana clearly stated in his testimony that the Steering Committee prohibited this kind of broadcast and directed Habimana and Gahigi to take corrective action. In meetings with the Ministry of Information, Nahimana and Baraygwiza played a similar role, defending RTLM programming and undertaking to correct mistakes that journalists had made. Nahimana referred to this undertaking in his cross-examination, when it was suggested to him that these incidents demonstrated control over programming. His response, that the Steering Committee had not intervened directly with the journalists but rather through the management of RTLM, does not negate the existence of control. It simply channels the expression of it through the organizational hierarchy. Structurally, the Steering Committee had ultimate responsibility for the company and, as demonstrated by these examples, exercised ultimate control over its activities, including programming.

559. The Chamber finds no significance in the distinction drawn by Nahimana between the company, RTLM S.A. and the radio station RTLM. The radio was fully owned and controlled by the company as a matter of corporate structure. When confronted with the public comment he made in 1992 on the responsibility of a media owner for the policy expressed through that media, Nahimana did not deny this responsibility. He testified that when the RTLM board became aware of programming that violated accepted principles of broadcasting, they stood up and raised these concerns with management.

560. With regard to the shareholders, Nahimana acknowledges that the great majority were MRND members and that RTLM was established in part to give voice to MRND ideology. The Chamber notes that while only a few of the founding shareholders were from the CDR, they were high-level CDR officials and played a powerful role in RTLM. Barayagwiza, "number two" in RTLM, had a similar position in the CDR. Stanislas Simbizi, identified as a member of the CDR central committee, was added to the RTLM Steering Committee when it expanded following the first shareholders' General Assembly.

Discussion of Evidence on Control of RTLM After 6 April 1994

561. The Chamber notes that the corporate and management structure of RTLM did not change after 6 April 1994. It is not disputed that RTLM continued to operate with the same on-site personnel, including Phocas Habimana. In testifying, Nahimana himself mentioned in connection with his visit to RTLM on 8 April that he was a member of the Steering Committee, indicating his own sense of responsibility for RTLM. Although there is no evidence that the Steering Committee met, nor is there evidence that it was disbanded. In the view of the Chamber, as RTLM continued to operate, the Steering Committee as a corporate entity continued to have *de jure* governing authority over these operations.

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562. No evidence has been introduced relating to the fate or whereabouts of Félicien Kabuga after 6 April 1994. As President of RTLM and Chairman of its Steering Committee, he presumably had principle authority to convene the Steering Committee. Neither the shareholders nor the Steering Committee appears to have adopted by-laws that would define and govern the role of individual members of the board or Steering Committee. As the most active members of this governing body, however, Nahimana and Barayagwiza, whom Gahigi called "the top man" and "number two," could have within the scope of their legal authority taken action on behalf of the Steering Committee, in the view of the Chamber. As Chairman of the board committee responsible for programming, Nahimana had a particular responsibility to take action, as did Barayagwiza in his capacity as Chairman of the legal committee.

563. There is no evidence that Barayagwiza made any effort to take action with regard to RTLM broadcasting after 6 April 1994. There is evidence that Nahimana, at the request of French government officials, did take action with regard to RTLM broadcasting in late June or early July and that his intervention stopped RTLM attacks on General Dallaire and UNAMIR. In early May, according to the report of Prosecution Expert Witness Des Forges, Nahimana was seen entering the Ministry of Defence together with Phocas Habimana. The Chamber notes that the evidence of Des Forges is not first-hand. As no source is cited and it is therefore unknown who saw Nahimana and Habimana and how that information was conveyed to Des Forges, the Chamber will disregard this evidence in light of Nahimana's denial. In contrast, Des Forges specifies in detail that her source of information about Nahimana's interaction with the French government is a diplomat who was himself present in meetings between Nahimana and French Ambassador Yannick Gérard, who had a documentary record of the interaction in the form of a diplomatic telegram. The Chamber considers this information reliable.

564. Nahimana testified that when he met Phocas Habimana in July in Gisenyi, he asked him how he could do what he was doing at RTLM. According to Nahimana's testimony, RTLM was hijacked and turned into a "tool for killing". This testimony stands in sharp contrast to the other evidence of what Nahimana said at the time. Not a single witness other than Nahimana himself testified that Nahimana had concerns about RTLM broadcasting between April and July 1994, or expressed such concerns. On 25 April 1994, in a public broadcast on Radio Rwanda, Nahimana associated himself with RTLM as one of its founders and said he was happy that RTLM had been instrumental in raising awareness. He indicated that he had been listening to the radio. He was clearly aware of the concern others had, as he quoted the former Burundian Ambassador as having expressed this concern. The Chamber notes that RTLM broadcasts were particularly vehement in the weeks immediately following 6 April and that Nahimana made reference in the broadcast to information on the radio about the population having "worked" with the armed forces, "work" being a code word that was used by the radio to refer to killing. In June when he first met Dahinden in Geneva, Nahimana indicated that he was aware of the statement Dahinden had made to the United Nations, mentioning him. He said that he was not in control of RTLM. He did not indicate to Dahinden that he had tried to stop the broadcasts. In fact, he did not even condemn them. At the second meeting, Nahimana and Barayagwiza told Dahinden that RTLM was about to be transferred to Gisenyi,

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indicating that they were in contact with RTLM and familiar with its future plans. Again no concern was reportedly expressed, and in fact Dahinden recalled that Barayagwiza jovially suggested that the radio station Dahinden wanted to set up would compete with RTLM. This comment suggests Barayagwiza's identification with, rather than separation from, RTLM.

565. Nahimana suggests in his testimony that he was helpless and fearful of the danger posed by RTLM. This suggestion stands in sharp contrast with the evidence of the role Nahimana played at this time in Rwanda. He was Political Adviser to the President. In a manner reminiscent of his challenge to the title of RTLM Director, Nahimana challenged this title as being less than real. Nahimana clearly used the title, and he was clearly playing an important role in the government, as was Barayagwiza. They both travelled to Tunis with the President for a meeting of the OAU. The Chamber notes that both Nahimana and Barayagwiza were in powerful positions. They had *de jure* authority over RTLM, but there is no evidence that they took any initiative to exercise this authority. Nahimana claims RTLM was hijacked and that he did not have *de facto* authority to stop the broadcasts. Yet the one occasion on which he did intervene, he effectively stopped RTLM from broadcasting attacks on Dallaire and UNAMIR. This evidence suggests that Nahimana had *de facto* authority to stop transmission, but he did not exercise it other than once. Barayagwiza was in a similar position, but there is no evidence that he ever intervened in an effort to stop RTLM.

Factual Findings

566. The Chamber finds that RTLM was owned largely by members of the MRND party, with Juvenal Habyarimana, President of the Republic, as the largest shareholder and with a number of significant shareholders from the Rwandan Armed Forces. CDR leadership was represented in the top management of RTLM through Barayagwiza as a founding member of the Steering Committee and Stanislas Simbizi, who was subsequently added to the Steering Committee of RTLM.

567. The Chamber finds that Nahimana and Barayagwiza, through their respective roles on the Steering Committee of RTLM, which functioned as a board of directors, effectively controlled the management of RTLM from the time of its creation through 6 April 1994. Nahimana was, and was seen as, the founder and director of the company, and Barayagwiza was, and was seen as, his second in command. Nahimana and Barayagwiza represented RTLM externally in an official capacity. Internally, they controlled the financial operations of the company and held supervisory responsibility for all activities of RTLM, taking remedial action when they considered it necessary to do so. Nahimana also played an active role in determining the content of RTLM broadcasts, writing editorials and giving journalists texts to read.

568. The Chamber finds that after 6 April 1994, Nahimana and Barayagwiza continued to have *de jure* authority over RTLM. They expressed no concern regarding RTLM broadcasts, although they were aware that such concern existed and was expressed by others. Nahimana intervened in late June or early July 1994 to stop the broadcasting of

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attacks on General Dallaire and UNAMIR. The success of his intervention is an indicator of the *de facto* control he had but failed to exercise after 6 April 1994.

4.3 Notice of Violations

Agreement between RTLM and the Ministry of Information

569. On 30 September 1993, an Agreement for Establishment and Use of Radio and T.V. between the Government of Rwanda and RTLM was signed by Faustin Rucogoza, the Minister of Information, and Felicien Kabuga, President of RTLM. The agreement includes an undertaking in Section 5, paragraph 2 by RTLM that it "shall not broadcast any programs of a nature to incite hatred, violence or any form of division".[594] Section 6 of the agreement provides, "The broadcaster must refrain from telling lies or giving out information that may mislead the public, especially those people that do not have an analytical mind."[595]

570. Prosecution Witness GO was a civil servant, a Hutu, who worked at the Ministry of Information in 1993 and 1994. His job was to monitor the independent media, both newspapers and radio. The only private radio at that time was RTLM, and Witness GO's responsibilities included ensuring compliance with the agreement that had been concluded between the Rwandan Government and RTLM. To this end, he reported regularly to the Minister of Information on RTLM broadcasts. He said it was also part of his job to ensure that nothing was said in the media against the Arusha Accords, as these had been signed and integrated into the Rwandan Constitution. At a certain stage, the situation deteriorated and RTLM was seen as inciting Rwandans, which led the Minister to order the witness to focus all his efforts on RTLM and to listen to its broadcasts every day. Witness GO said he also recorded the broadcasts as evidence that RTLM was in violation of the agreement.[596]

Letter of 25 October 1993

571. On 25 October 1993, the Minister of Information, Faustin Rucogoza, sent a letter addressed to the President of the *Comité d'Initiative* of RTLM, noting that RTLM had taken advantage of the *coup d'état* in Burundi on 21 October "to broadcast statements and programmes encouraging violence and undermining the path to national unity and reconciliation advocated by the Arusha Peace Agreements". The letter stated that this conduct violated the operating agreement between RTLM and the Rwandan Government, specifically Article 5, paragraph 2. The letter concluded as follows:

> As a result, the present letter constitutes an injunction because you cannot ignore that even if the right to information is widely recognized by the national legislation in the field of information, an organ of the press has the duty to be

[594] Exhibit P30B, Translation from French. English (P30C): "will not broadcast any information that can cause divisions in the community or provoke hate or dissent".
[595] Exhibit P30C, p. 2.
[596] T. 5 Apr. 2001, pp. 78-82.

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> guided by the deontological principles of responsibility, honesty, objectivity, integrity and truth.
>
> One should therefore keep in mind that the active and concrete acceptance of the right to information is accompanied with limitations dictated by general interest, in this case the limitations of state secret, national unity and public order.
>
> You have therefore to assess the possible consequences of the programmes broadcast by your station.[597]

572. Witness GO testified that he was working in the Ministry of Information when this letter was sent. The Minister informed him that he had sent the letter, which was stamped "confidential". Witness GO said that at that time RTLM had widely commented on events in Burundi, as well as killings in Kirambo and Ruhengeri prefecture, in a manner that showed clearly that the radio was seeking to promote ethnic division. He recalled hearing Noël Hitimana say on RTLM that the RPF had killed people in Kirambo and Ruhengeri, suggesting that what was happening in Burundi was going to happen in Rwanda and calling on Hutus to be vigilant. Witness GO testified that every day there were RTLM programs on Burundi, drawing these parallels. He said it was reported that a Tutsi from Burundi had killed the Hutu President and subsequently mutilated his body, calling the killer Barayambwa, which translated literally means "eater of dog".[598]

Meeting of 26 November 1993

573. On 26 November 1993, the Minister of Information held a meeting with RTLM. Witness GO said he was informed of the meeting the day before and told that the President and Directors of RTLM would be coming to explain why they had continued to disregard their agreement with the Rwandan Government. Witness GO attended the meeting. He said Félicien Kabuga, Ferdinand Nahimana and Jean-Bosco Barayagwiza represented RTLM at the meeting and that Kabuga introduced Nahimana as Director of RTLM and Barayagwiza as a founding member. The Ministry was represented by Minister Faustin Rucogoza, the Office Director Eugène Ndahayo, the Director-General Pie Nzeyimana, the Director of Private Media Jean-Pierre Kagubari, and Jenette Mukasafari, a Political Adviser to the Minister, as well as Witness GO. The Minister spoke first at the meeting, which went from 9 a.m. until the afternoon. He said that RTLM was sowing division through its programs and asked them to stop provoking the RPF as that could cause the resumption of war. Kabuga replied that RTLM was only telling the truth and describing the situation as it was, and that it would continue to do so. With regard to a comment made by the Minister that RTLM was focusing too much on ethnicity, which should not be presented as the only problem in the country, Kabuga replied that the problem existed and had to be mentioned. He said they would not be quiet when people were using ethnicity to look down on others. The Minister said that the consequences had to be considered, and Kabuga said that some journalists might have made mistakes, in which case they would change their behaviour. During the course of the meeting Witness GO was asked to retrieve recordings of RTLM broadcasts, which

[597] Exhibit P27, K0013950, see T. 5 Apr. 2001, p. 92 in which translation is corrected.
[598] T. 5 Apr. 2001, pp. 84-111.

PURL: https://www.legal-tools.org/doc/45b8b6/

were then played. He said they supported the Minister's position and that the RTLM officials then acknowledged that RTLM journalists were at fault.[599]

574. According to Witness GO, Nahimana spoke at the meeting, also saying that issues of ethnicity existed and should be spoken of. He charged the Ministry with using their agreements to control the independent press and said he had the impression that the Ministry had fallen into the enemy's trap, warning that Tutsis were very clever and Hutus needed to be vigilant. Witness GO said that the message conveyed was that Hutus should not oppose those who were defending the interests of the majority although Nahimana did acknowledge that some journalists might have made mistakes, and he said he would tell them to modify their behaviour. The witness said that Barayagwiza also spoke at the meeting, and made similar remarks but that unlike Nahimana, who lectured them as though they were students, Barayagwiza was surprised that there was a difference in views and acted as though the Ministry had strayed from the right path and needed to be put back on it to defend the majority of the population, which was understood to be the Hutu. Witness GO recalled that Pie Nzeyimana from the Ministry gave the example of reporting that a child's father had died, differentiating that from reporting that a child's father would die tomorrow, which he said would raise questions if it then happened. Witness GO said this was intended to be a reference to a broadcast of the RPF attacking and Tutsis then being exterminated. Witness GO testified that the meeting ended with consensus and a decision to have regular meetings to discuss and resolve problems that might arise. He described the mood as "positive" and said his impression was that RTLM was going to change.[600]

575. Witness GO served as the secretary for this meeting and was told by the Minister to take notes. After the meeting he wrote a report for the Minister, having been instructed to leave out of the report offensive language that was used at the meeting, for example the fact that representatives of the Ministry had been referred to as accomplices, so as to be constructive and find a way to help RTLM change its conduct, without reference to confrontation. Witness GO identified a handwritten report, dated 26 November 1993, as his first draft of this report, a typewritten document with the same title and handwritten addition as his second draft, and a typewritten document with the same date and title, without handwriting, as his final report.[601] The witness noted Nahimana's request, which is also mentioned in the report, that both parties agree on the content of the report. Accordingly, when the Minister read the typewritten draft he requested the addition of signature lines for himself and for an RTLM representative. Witness GO testified that the final report was sent to RTLM for signature. The typewritten draft and final report both refer in the text to Nahimana as "the Director of RTLM" and to Barayagwiza as "one of the founding members of RTLM". The two Accused are also identified that way on a last, unnumbered page of the typewritten draft report. The report is signed by Witness GO but not by the Minister of Information or the President of RTLM. The witness explained that it was unsigned because it first had to be approved by RTLM.[602]

[599] *Ibid*., pp. 112-128.
[600] *Ibid*,, pp. 128-136.
[601] Exhibit P28 A-F.
[602] *Ibid*., pp. 136-157.

PURL: https://www.legal-tools.org/doc/45b8b6/

576. The report of the meeting drafted by Witness GO recounts the opening statement of the Minister, who mentioned the letter he had written to RTLM and his concern that RTLM was violating Article 5, paragraph 2 of its agreement with the Government. Kabuga is reported as the next speaker, acknowledging that some mistakes had been made by journalists but stating that no disrespect to the agreement was intended. He denied that RTLM programming encouraged division but said, according to the report, that "people do not catch things the same way like people do not love in the same manner", and that "RTLM may please one ethnic group and not the other, therefore it may not be able to please all Rwandese".[603]

577. The report indicates that Nahimana took the floor and defended freedom of the press, suggesting that the Government was imposing censorship. According to the report, "he advocated that any available news has to be broadcasted, and the one who feels persecuted can come to make a denial". Regarding "the issues of Hutu versus Tutsi or R.P.F. versus the government", Nahimana said that "the ethnic issue must be dealt with the way it is, if a Hutu does a Tutsi wrong or a Tutsi acts the same toward a Hutus, it has to be told and this would solve the matter".[604] The government officials reportedly affirmed the right to information but recalled the principles of journalism and the need to filter news to avoid misunderstanding and misinformation.[605]

578. Barayagwiza also spoke at the meeting, according to the report, and suggested that the government was pursuing RTLM because they did not share its views. He repeatedly stated that the government should not tell them what to do. Barayagwiza also said, on the ethnic issue, that it had to be discussed and dealt with in order to be solved. Nothing should be hidden except secrets and lies. He also acknowledged that journalists made mistakes but said there was a right to reply.[606]

579. The report records that a request was made by Kabuga for evidence that RTLM was jeopardizing the peace accords and that examples from recent broadcasts were provided. Conclusions of the meeting, as recorded, included an undertaking that RTLM programming should avoid triggering war and promoting hatred among Rwandan people, that news should be filtered and verified by journalists, and that RTLM programming should avoid jeopardizing the implementation of the peace accords.[607]

580. On cross-examination, Witness GO stated that all the participants in the meeting of 26 November 1993 spoke at the meeting, except for himself. He said that he was not sure but did not think that his immediate supervisor, Theoneste Rutayisire, was present. Confronted with his written statements of 22 November 2000, in which he named Rutayisire as having been present, the witness said it was possible that he had referred to him as a participant although he was not present at the meeting. He said he worked

[603] Exhibit P28F, pp. 1-2.
[604] Exhibit P28F, pp. 2-3.
[605] *Ibid*., p. 3.
[606] *Ibid*., p. 4.
[607] *Ibid*., pp. 5-6.

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closely with Rutayisire and was in meetings often with him and for this reason might have given his name. Witness GO was also confronted with an unsigned, undated statement, which the Prosecution had listed as being of 22 November 1996, in which he named Phocas Habimana as having been present at the meeting, together with Nahimana and Kabuga. The witness said he recalled the statement and thought it was from 1996 but he said it might have had mistakes because he was not given an opportunity to correct it. He affirmed his testimony that Habimana was not present at the meeting of 26 November 1993 and said that he must have been wrong because he remembered Habimana from another meeting on another date. In a signed statement of 4 September 1996, Witness GO listed Kabuga, Nahimana, Barayagwiza and Habimana as having been present at the meeting on 26 November 1993 and said subsequently in the statement that the same delegation attended the later meeting on 10 February 1994. The statement of 22 November 2000 also says that Phocas Habimana attended the meetings.[608]

581. On cross-examination, Witness GO confirmed that he himself had numbered the pages of his handwritten draft, and it was noted that the last page was not numbered, and that the third page was also without a number. He maintained that the list of RTLM participants on the last page was a continuation of the preceding page, which listed the Ministry of Information participants. Counsel for Nahimana pointed out to Witness GO that the identification of Nahimana as Director of RTLM and the identification of Barayagwiza as a founding member of RTLM in the typewritten reports did not appear in the handwritten first draft of the report. The witness said he had added these in when he corrected the draft so that their titles would appear in the report.[609]

582. Nahimana testified that he attended the meeting with the Ministry of Information on 26 November 2003. Kabuga had received an invitation and called the *Comité d'Initiative*. He wanted Barayagwiza to attend the meeting because he thought there might be discussion of the agreement with the Ministry. Nahimana attended the meeting because he was familiar with the workings of the Ministry of Information. He testified that Phocas Habimana was also present at the meeting, in the event that matters pertaining to the broadcasts came up so that he would be able to respond and assist the *Comité d'Initiative* represented by Kabuga, Nahimana and Barayagwiza. Nahimana denied having been introduced as the Director of RTLM, saying that at that time RTLM had already had its own director, Phocas Habimana, for four or five months. Nahimana said he was unaware of the report of the meeting until his detention by the ICTR, but he said that generally speaking the contents of the report were faithful to what he had said at the meeting and described it as "a good summary". He denied calling members of the Ministry accomplices, or saying that they had fallen into the trap of the *Inkotanyi*. He said that such words could not have come from his mouth, particularly in front of a Minister.[610]

583. Nahimana confirmed that Witness GO was at the meeting on 26 November 2003, subsequently clarifying that he did not recognize the witness when he testified but that he

[608] T. 28 May 2001, pp. 19-42.
[609] *Ibid*., pp. 42-83.
[610] T. 23 Sept. 2002, pp. 110-112.

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did recall a secretary from the Ministry who was responsible for the minutes having attended the meeting. He confirmed that Kabuga attended the meeting as President but insisted that Barayagwiza did not attend the meeting as a founding member of RTLM, but rather as the Chairman of the Legal Committee. He said he did not attend the meeting as or hold himself out as Director, and that he never was the Director of RTLM. He said he was never referred to as Director in the meeting. Nahimana also noted that the list of participants set forth on an unnumbered last page of the draft report was not in the final report and suggested that this page was added subsequently. He confirmed several other names and titles in the report, but stated that it omitted reference to Phocas Habimana, who he said spoke several times during the meeting.[611]

Meeting of 10 February 1994

584. Witness GO testified that following the meeting of 26 November 1993, he continued to monitor RTLM and report on a daily basis to the Minister. He said it was clear that RTLM continued to sow division and incite the Rwandan people. The witness said he took every opportunity to express his concern to his supervisors and tell them what he was hearing on the radio. RTLM was saying that there were people who intended to take power by force and that once again people would be subjected to servitude. They were alleging that certain authorities were holding RPF meetings in their sectors, and meanwhile, Interahamwe and Impuzamugambi were singing "Let us exterminate them, let us exterminate them". Witness GO said people were afraid and demoralized, especially those Tutsi and Hutu who were being accused of being accomplices. He recounted the broadcast of Kantano Habimana, describing his encounter with Tutsi children in Nyamirambo and several other examples of broadcasts that caused concern.[612]

585. Witness GO testified that on 10 February 1994, another meeting was called by the Minister of Information with RTLM officials. In addition to Minister Rucogoza, he said Eugène Ndahayo, Pie Nzeyimana and Jean-Pierre Kagubari were present from the Ministry, as well as himself. He said RTLM was represented by Kabuga, Nahimana, Barayagwiza and Phocas Habimana. RTLM journalist Valerie Bemeriki was also there, but Witness GO said that she left the meeting before it began. She did not leave of her own accord but as a result of a discussion in which the Minister said she had not been invited, and that the meeting was for RTLM officials. The RTLM delegation initially insisted that Bemeriki remain and had wanted her to take notes, but the Minister insisted that she leave. Witness GO said there was also a concern that an RTLM journalist would broadcast a report of what was said in the meeting in an effort to arouse people against the Ministry.[613] On cross-examination Counsel for Nahimana put to Witness GO that the reason Valerie Bemeriki was at the meeting was because of the concern over the RTLM broadcast on Gishushu, and she and Georges Ruggiu had been the two field reporters who covered that story for RTLM. Witness GO said that she was introduced as a journalist and it was not explained at the meeting why she was there, but he reiterated

[611] T. 14 Oct. 2002, pp. 57-82.
[612] T. 9 Apr. 2001, pp. 14-34.
[613] *Ibid.*, pp. 36-60.

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that she was asked to leave.[614] He subsequently reaffirmed that the Gishushu incident was only one of the items on the meeting agenda.[615]

586. After Bemeriki left, Witness GO said that the meeting began with introductions and that Nahimana was introduced as the Director of RTLM and Barayagwiza as one of its founding members. Phocas Habimana was also introduced as one of the founding members of the radio. The witness said that all the participants spoke at the meeting, which was very tense between the two delegations, and which began with a speech that had been prepared and was delivered by the Minister.

587. A videotape of an ORINFOR broadcast introduced by the Prosecution documents the opening of the meeting on 10 February. The footage begins with the reporting journalist summarizing the conflict between RTLM and the Minister of Information as follows:

> The situation is very hot, but for some, it even heats up the heads. Radio RTLM is loved, but it is also in trouble during these days. While some still want its programs to reach them, others are complaining about it, accusing it of fostering division, especially between Hutus and Tutsis. In a recent meeting that the Minister of Information held with the RTLM bosses, he expressed his views about this radio. He said: Your radio misleads the population and its programs can cause ethnic division. He added: It should cease persuading Rwandans that the Tutsis are at the root of the problems that Rwanda is experiencing since this is not true. It should stop slandering and harassing people. If it is not careful, severe measures may be taken against it.[616]

588. The tape then includes the opening remarks made at the meeting by the Minister of Information, Faustin Rucogoza, who harshly criticized RTLM, saying there was no place in Rwanda for press that sets one ethnic group or one region against another. The Minister laid out the following four principles for a journalist:

1. He should avoid slander.
2. He should avoid pointing an accusing finger without evidence.
3. He should report unaltered facts.
4. He should avoid reporting lies.

589. The Minister then said:

> Visibly, RLTM journalists have not adhered to these principles, and this is the topic that we are going to discuss during this meeting. During our last meeting we had agreed that the RTLM programs would be neutral vis-à-vis political parties and ethnic groups. Unfortunately, RTLM continues to show that it is a political party, that it serves the MRND and the CDR and that it is a Hutus' mouthpiece.[617]

[614] T. 29 May 2001, p. 27.
[615] T. 4 June 2001, pp. 93-98.
[616] Exhibit P177B, p.1.
[617] *Ibid*, pp. 1-2.

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590. The Minister noted that this was in violation of the agreement between RTLM and the Government and said that if the matters were not redressed action would be taken under the agreement. The broadcast then turns to the response made by Félicien Kabuga to the Minister's comments, defending RTLM as reporting incidents that have actually happened, so as to enlighten the population. He mentions the Gishushu incident, though not by name, as an example of reporting the facts.[618]

591. Witness GO testified that Nahimana said at the meeting that he did not want to hear anyone say that RTLM was dividing Rwandans or that the Arusha Accords were a peace accord. He stated unambiguously that he would continue giving the opportunity to anyone on RTLM to testify about the Tutsi trick and Hutu accomplices and added that the Arusha Accords were a trap intended to neutralise the achievements of 1959. He said the Ministry still did not understand that they had fallen into that trap. Witness GO testified that Barayagwiza also spoke during this meeting, in the same vein as Nahimana, but with much anger and emphasis. The Minister said that he was saddened by RTLM's attitude, which did not show any intention to change its course. He told them that RTLM should stop opposing the Arusha Accords because they were good for the country and the majority of people believed in them. The Minister appealed to them to stop broadcasting bad programs and to stop playing songs that contained hate messages. He said it was impossible to build peace while you are preaching hatred. He said the Ministry had not taken any positions and was guided only by the law, which should be respected by the RTLM journalists.[619]

592. Witness GO testified that prior to the 10 February 1994 meeting, he prepared a working document, which included the subjects for discussion during the meeting. The document, introduced into evidence, begins with reference to the meeting of 26 November 1993, reciting the conclusions of that meeting. It indicates that the report of that meeting is not finished, which the witness explained was because RTLM had not responded to the report that had been sent by the Ministry of Information within a few weeks following that meeting. At the 10 February 1994 meeting, according to Witness GO, the RTLM officials said they had not had time to review the document but would do so and respond.[620]

593. The Working Document includes a number of examples of RTLM broadcasts that undermined the Arusha Accords. Witness GO mentioned one, the broadcast about massacres in Gishushu, which RTLM said were perpetrated by the *Inkotanyi*. According to Witness GO, the truth came out later that there was one person killed, not by *Inkotanyi* but by people demonstrating. He said this false description of facts was typical and created bad feelings. The two other examples, which he said were given for the same reason, were a broadcast on 3 February 1994 in which RTLM stated that there had been mutinies among RPF soldiers in Nkumba, and a broadcast on 31 January 1994 in which

[618] *Ibid*., p. 2.
[619] T. 29 May 2001, pp. 60-65.
[620] T. 9 Apr. 2001, pp. 65-69.

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RTLM claimed that two Hutus were killed by UNAMIR and then furtively retracted the report a few moments later.[621]

594. The Working Document sets forth examples of violation of the law on the press, including a press release by Hutu members of RPF, read on RTLM on 22 November 1993, saying that the RPF planned, after putting in place the transitional institutions and merging the armed forces of the RPF and the government, to assassinate the President and replace him by a Tutsi. It says that the RPF shared this conspiracy with accomplices who are members of various parties, the majority of them being Tutsi, and that meetings were held to prepare these events. Witness GO testified that the content of the broadcasts in these examples was not true, and that they were a way of diverting RTLM listeners and imparting divisive ideas to them.[622] The Working Document also sets forth as a violation of the agreement between the government and RTLM that in its politically oriented programs, RTLM tends:

- To assimilate all the members of the RPF to the iniquitous Tutsis.
- To assimilate the inside political opposition to the RPF.
- To reduce the political problems of Rwanda to the ethnic hatred between Hutu and Tutsi.
- To assimilate the Tutsi from the inside to *Inkotanyi.*
- To explain [to] the population that all the evil the country suffers from is caused by the Tutsi.[623]

595. The Working Document gives as an example the RTLM broadcast on events in Gishushu, which it says was followed that night by an attack on a Tutsi family in Kichiro, in which a group of people killed the head of the family and wounded his wife and child.[624]

596. Witness GO said that the issues mentioned in the Working Document were discussed at the meeting of 10 February 1994, as were the other points mentioned by the Minister in the speech he gave at the beginning of the meeting. According to Witness GO, the Minister had sent copies of the Working Document to RTLM with a covering letter, to give them a chance to become familiar with it prior to the meeting. He said that Nahimana and Kabuga had copies of the document during the meeting, as well as a Supplement to the Working Document that he had prepared for the meeting, which contained some further examples of RTLM broadcasts said to be insults, slander, or violation of the press law. Witness GO testified that the RTLM delegation was angry at the meeting and denied the facts put to them. Each member made such a denial. As in the previous meeting, Witness GO played back some of the RTLM broadcasts to provide evidence of the violations. Unlike the first meeting, Witness GO said that at the second meeting undertakings made by RTLM were not made sincerely. When the Ministry was

[621] *Ibid*., pp. 69-74, Exhibit P29B, p. 1.
[622] Exhibit P29B/C, T. 9 Apr. 2001, pp. 102-103.
[623] Exhibit P29B, p. 2.
[624] *Ibid*.

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critical of RTLM during the meeting, RTLM started making threats and challenging them, saying "If you think you are sufficiently strong, then close down the station".[625]

597. Following the meeting, the Minister asked Witness GO to prepare a report, without omitting anything, and to continue his monitoring of the RTLM broadcasts and gathering evidence. He said that appropriate measures had to be taken, and that they could not tolerate the situation indefinitely. After he prepared his report, Witness GO's supervisors directed him to meet with Barayagwiza, who was also preparing a report, so that they could come up with an agreed text for a single report of the meeting. Witness GO went to see Barayagwiza in his office a week after the meeting. Barayagwiza took his report and read it, then threw it in Witness GO's face, threatening him and wanting to attack him. He said he no longer wanted to see an *Inkotanyi* in his office and if they continued to proceed in that manner they would see what would happen. Frightened by these threats, Witness GO went to see the Minister, who told him he should continue with his work.

598. According to Witness GO, Minister Rucogoza was often mentioned on RTLM, before and after the meeting of 26 November 1993, and that his letter to RTLM was also mentioned. The Minister was criticized, and it was said he did not have the power to shut down RTLM and had been unable to do so.[626] A tape of one such broadcast on 18 March 1994, recorded by Witness GO, is in evidence. In the broadcast, Kantano Habimana talks about the Minister as follows:

> We met and he said the following: Kantano, why do you speak of me? Huh. Tell me why you speak of me. Hum. I believe that, in fact, people have told me that he has become wise. The problem that we used to have was that he wanted to close down the people's radio, RTLM. Ha, Ha. Now I think that he has understood that this would not be an easy task. He has understood that it would be like having to bear a cross. And so he has decided to leave it. He has decided to leave it. And now he no longer speaks of this. It is true that he is only repeating what his supervisors -- or his bosses, rather, ask him to. But he has acknowledged that the idea of closing down RTLM could cause him problems, many problems. And that is why he has decided to forsake this, or abandon this. And so I told him, If you leave us alone, then we will leave you alone. There will be nothing between us. We will leave you alone. That was our bone of contention and there would be no other problems between us. There is no hatred between us. But we cannot put up with people looking down on us or irritating us. That's it. We have no problems with anyone. Now that Rucogoza has wizened up, that he has calmed down, if he leaves us alone, then there is nothing for us to do but to leave him alone as well.[627]

599. Witness GO testified that in the first week of April, Minister Rucogoza was putting together a case on RTLM to present to the Council of Ministers for appropriate action. On 7 April 1994, he was killed at his residence, together with his wife and eight of

[625] T. 9 Apr. 2001, pp. 111-142.
[626] *Ibid*., pp. 138-142.
[627] Exhibit P36/65C, T. 11 Apr. 2001, p. 65.

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their children. Witness GO heard the news on an RTLM broadcast, that Rucogoza had been killed with other accomplices.[628]

600. Nahimana testified that he attended the meeting of 10 February 1994, together with Kabuga, Barayagwiza, Habimana and Bemeriki. When he arrived at the Ministry they were told that one of the agenda items was the report on events in Gishushu. A number of journalists had been invited as the government wanted to give its official position, and Gahigi had been asked to send an RTLM journalist. Bemeriki was there as a journalist. According to Nahimana, they were going to leave but the Minister asked them to stay and said the journalists would only be present for the beginning of the meeting, and called back at the end. The meeting opened in public, with the Minister's speech and Kabuga's response. After that, the journalists were asked to leave. Nahimana said they asked the Minister if Bemeriki could stay to take notes, as there had been problems with the November meeting. Phocas Habimana said if there was a concern about Gishushu, he and the others would not be in a position to say anything and Bemeriki, as she had been there, should stay as a resource. For these reasons, he said she stayed, and Gishushu was discussed at the meeting. Bemeriki gave a minute-by-minute account of what happened, and afterwards the Minister said the report he had been given was incorrect and that he would contact UNAMIR for an explanation. Nahimana testified that the only issue discussed at the meeting of 10 February 1994 was what had happened in Gishushu. He said he did not speak at all in the course of the meeting.[629]

601. Valerie Bemeriki testified that she was assigned by Phocas Habimana, the Director of RTLM, to cover the proceedings of the meeting at the Ministry of Information on 10 February 1994. She was informed of the meeting on that day, at eight o'clock in the morning. With Habimana, she went to the Ministry where she saw Kabuga, Nahimana and Barayagwiza. Bemeriki also saw journalists from Radio Rwanda but they were only present for the opening statements and were then asked to withdraw. Bemeriki testified that she was present as a journalist for the opening statements and that she stayed for the closed portion of the meeting, acting as a secretary thereto on behalf of RTLM.[630] In the videotape report of the meeting, she is not present at the meeting table with the others.

602. Bemeriki testified that the Minister in his opening statement mentioned the excesses of RTLM programming and dwelt on the conflict thereby created over ethnic differences. According to Bemeriki, he said this was the first time that these problems had been brought to their knowledge and that the meeting had been convened as a result of the events that occurred in Gishushu. On cross-examination, she was confronted with the Minister's statement referring to the prior meeting of November 1993. She said she was not aware of any prior meetings.[631] She said the Minister did not mention RTLM by name but was clearly referring to RTLM and said that if it just broadcast the fact that people had been injured by the RPF, it would be considered to have caused the injury.

[628] T. 10 Apr. 2002, pp. 4-19.
[629] T. 23 Sept. 2002, pp. 121-126.
[630] T. 8 Apr. 2003, pp. 83-84.
[631] T. 9 Apr. 2003, pp. 21-23.

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603. Bemeriki reviewed the Minister's videotaped statement and confirmed that it corresponded to what she had heard at the meeting. She said that the events in Gishusu were the main subject of discussion in the closed meeting. As she described these events, there were demonstrations by people in Gishushu. Armed elements of the RPF came out of the CND building and orchestrated an atmosphere of insecurity that night in the cellule, leading to injuries and deaths. Inhabitants involved in night patrols were fighting with the RPF elements and the next day inhabitants of this cellule were attacked. One was killed and buried that night. The next day cellule inhabitants demonstrated again, blocking the road between CND and UNAMIR headquarters. Bemeriki said an RPF soldier opened fire from a vehicle that had come out of the CND and one of the demonstrators was hit in the elbow and taken to the hospital. Bemeriki had arrived before the shooting started and interviewed the demonstrators. She went back to the studio and was reporting, when she got a call with this update. Bemeriki returned and saw blood stains. She was told the injured person had been taken to the hospital and went there but he was in the operating theatre. Bemeriki went back and broadcast this news, but there was a mistake about his name, and she mistakenly broadcast the name of the person who had been killed as this one who had been injured. After getting calls from listeners that the name she mentioned was of someone who had been killed, she went back to Gishushu and got from the demonstrators there the name of the person who had been injured. Bemeriki went to the hospital and saw that the name she had been given was different from the name on his bed, so she went back to the station, corrected her mistake and gave the real name of the person who had been injured. At that point, she maintained, they could say that the UNAMIR communiqué was wrong because they had the name, bed number, physician and hospital of the person who was wounded. Bemeriki said the Minister said then that UNAMIR had given them information that this had not taken place, and that the RPF elements had shot in the air. Bemeriki then explained to him what had happened, and she said the Minister was very surprised, accepted what she said and apologized to the RTLM officials and to her, thanking them for the clarification provided.[632]

604. According to Bemeriki, no RTLM broadcasts were played at the meeting and the Ministry of Information was not at any time characterized as *Inyenzi* by the RTLM delegation, nor were the Arusha Accords characterized as a trap or the Minister challenged to close down RTLM. She never heard the Minister say that the meeting was a final warning before appropriate action would be taken. Bemeriki said the meeting ended positively. After the meeting she was to draw up a communiqué for release together with the Ministry Secretary and they worked on it together at the Ministry, but it was never signed or published. The Ministry delegation asked for changes that she was not authorized to make. She told Phocas Habimana and he did not agree to the changes, so the whole thing was dropped.

605. On cross-examination, the Prosecution presented Bemeriki with her taped interview of 1999 with the Office of the Prosecutor, in which she mentioned the meeting at the Ministry of Information but failed to mention that Nahimana was present, listing

[632] *Ibid.*, pp. 84-88.

PURL: https://www.legal-tools.org/doc/45b8b6/

only Kabuga, Barayagwiza and Habimana as having been there. Bemeriki maintained that she had always mentioned Nahimana as having been at the meeting and suggested that it may not have been written down. After reviewing the transcript of the tape, Bemeriki said if she did not mention his name it was not deliberate, that she did not even know who he was at that time and that she simply forgot it.[633] On re-direct examination, this same 1999 interview was recalled to confirm Bemerki's testimony that the meeting of 10 February concerned the events in Gishushu. In the interview she stated that the Minister of Information had convened the meeting and criticized RTLM in its reporting of that event, giving the explanations he had received from UNAMIR. Bemeriki said that she told him what had really happened, and he apologized. She said that the RTLM Steering Committee was present, naming Kabuga, Barayagwiza and Habimana. She also said in her interview what she said in her testimony about staying on after other journalists left to act as secretary to the meeting.[634]

606. Prosecution witness François-Xavier Nsanzuwera, prosecutor of Kigali at the time, testified that he was summoned to a meeting at the Ministry of Information sometime in the first two weeks of February 1994. He could not remember all the names of those present but said that Nahimana was there, together with André Kameya, the director of the Cabinet of Ministers, the Minister himself and maybe two other people. He said the Minister had called the meeting because he believed RTLM broadcasts and articles in newspapers were inciting ethnic hatred and violence. Andre Kameya introduced himself as the Editor-in-Chief of Rwanda Rushya, and Nahimana introduced himself as the Director of RTLM. The witness said he did not remember the meeting well but recalled that the Minster said he could not remain indifferent to this kind of media. He had called the meeting in hope of getting reassurance that these broadcasts and articles would come to an end. According to Nsanzuwera, there was an altercation between Nahimana and Kameya at the meeting. Kameya said that while his newspaper was criticizing the regime it was not inciting ethnic hatred, whereas RTLM was broadcasting hate messages and he considered RTLM journalists to be criminals. Nahimana became angry and replied that Rwanda Rushya was no different from RTLM insofar as it was producing RPF propaganda and that Kameya was behaving like an agent of the RPF. Nsanzuwera said the Minister asked him for the position of the Prosecutor's Office and he replied that it was not necessary to have a policy of media censorship. Nahimana interrupted him to say that he hoped the Prosecutor would not continue to arrest journalists. Nsanzuwera said they were reviewing the press law and considering the possibility of fining journalists rather than arresting them. The Minister said he did not want to close down the media, but that he wanted adherence to certain ethics and he wanted them to stop promoting ethnic hatred and violence. Nsanzuwera said the meeting ended with each one promising to respect the commitments they had made, although he said that no one accepted that the media were wrong, insisting that they were professionals. On cross-examination, Nsanzuwera could not recall how long the meeting was but said it was more than two hours, as there was much heated exchange. He could not remember whether it took place in the morning or the afternoon. He did not recall seeing a secretary taking notes of the meeting but said he assumed one must have been

[633] T. 10 Apr. 2003, pp. 1-3.
[634] *Ibid*, pp. 77-79.

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there. He did not receive minutes of the meeting. Nsanzuwera was presented with a written statement he made in 1995, in which he said that Higiro was at the meeting. He was unable to confirm that Higiro was at the meeting but affirmed that if he had said so it would have been his recollection at the time, when his memory was fresher. He was unable to say whether representatives of private media other than RTLM and Rwanda Rushya were at the meeting. He remembered Kameya's name because he quarreled with Nahimana during the meeting.[635]

607. Nsanzuwera testified that the Minister had called him before the meeting to ask him what he thought of the RTLM broadcasts, and that they spoke after the meeting as well because RTLM did not stop its broadcasts inciting ethnic hatred and violence. In fact the tone rose, he said, as though the meeting had no meaning. At one point, Nsanzuwera said he spoke to the Minister and told him it was time to shut down RTLM, and the Minister said that if they closed down the radion station, they would be killed. [636]

Discussion of Evidence

608. The Chamber has considered the testimony and documentary evidence relating to the meetings between RTLM and the Minister of Information. **Witness GO** is a key witness to these events, and the Chamber finds him to be credible. His testimony was clear, coherent, and consistent throughout cross-examination, and it is supported by documentary evidence. The Chamber notes that the cross-examination of Witness GO by several Defence Counsel was marked by extended discussion with the witness over matters of political opinion that do not go to issues of credibility and do not establish bias. Witness GO, while characterizing himself as an MDR sympathiser, was not a member of any political party. He was a civil servant, whose functions in the Ministry of Information from September 1993 led him to systematically gather evidence on RTLM that is exceptionally relevant to the charges against the Accused.

609. With regard to the meeting of 26 November 1993, Witnesss GO maintains that Phocas Habimana was not at that meeting. This testimony is confirmed by the various draft reports of the meeting, produced at the time, none of which mention Phocas Habimana. Nahimana testified that Habimana was present at the meeting, and he suggests that the reports have been altered subsequently by the addition of a last, unnumbered page setting forth the list of participants. The Chamber notes that Nahimana and Barayagwiza are mentioned in the text of both typewritten versions of the report, with their titles on a numbered page. The Chamber accepts the testimony of Witness GO that the titles were added to the handwritten draft, considering that it is not unusual to omit titles from a first handwritten draft and add them in later.

610. With regard to Phocas Habimana, the Chamber observes that the only evidence of his presence at the meeting of 26 November 1993, other than the testimony of Nahimana, are the written statements of Witness GO, one of which is unsigned and undated and does not mention the presence of Barayagwiza, who clearly attended the meeting. The

[635] T. 25 Apr. 2001, pp. 32-36, 44-45.
[636] T. 23 Apr. 2001, pp. 33-40.

PURL: https://www.legal-tools.org/doc/45b8b6/

Chamber notes the uncertainty of Witness GO regarding his statements, not only on Habimana but also on the presence of Rutayisira, who was mentioned in a statement as having been at the meeting but by all other accounts was not present. The Chamber has also taken into account the potential confusion mentioned by the witness between this and another meeting at which Habimana was present. The testimony of Witness GO is confirmed by the report of the meeting, which Nahimana spoke of as "a good summary", only noting in subsequent testimony the absence of any mention in the report of Phocas Habimana, whom he claims was not only present but spoke at the meeting. The Chamber accepts the testimony of Witness GO that Phocas Habimana was not present at the meeting of 26 November 1993.

611. With regard to what was said at the meeting of 26 November 1993, the Chamber notes Nahimana's concurrence that Witness GO's report is a faithful record. The heightened level of tension and hostility, described by Witness GO in his testimony as having been omitted from the report, does not significantly affect much more than the tone of the meeting. It is clear from the report that the concerns of the Minister of Information were raised with the RTLM officials present, including Nahimana and Barayagwiza, and that these concerns related to Article 5, paragraph 2 of the agreement between RTLM and the Rwandan Government. Coming after the letter sent previously to RTLM by the Minister, the meeting of 26 November clearly indicates a growing concern on the part of the Ministry, which was communicated to RTLM: that its programming was promoting ethnic division in violation of the agreement between RTLM and the government. The report of the meeting notably confirms Witness GO's testimony that Nahimana and Barayagwiza acknowledged in the meeting that mistakes had been made by RTLM journalists, and that when the question of ethnicity was raised, while Kabuga denied that RTLM was encouraging division, he did say that RTLM might please one ethnic group and not the other, and that it might not be able to please all Rwandans. Both Nahimana and Barayagwiza insisted in the meeting that the ethnic issue had to be addressed.

612. With regard to the meeting on 10 February 1994, accounts of what happened differ. One version of the meeting focuses on the events at Gishushu. Bemeriki and Nahimana state that a review of that incident was the sole purpose of the meeting. They maintain that during the course of the meeting, events in Gishushu were clarified and the Minister apologized. Witness GO's version of this meeting is a broader one, addressing the programming of RTLM as a whole and using incidents such as the report on Gishushu as examples. The documentary evidence, both the Working Document produced by Witness GO and the ORINFOR broadcast of the opening of the meeting, both include reference to the Gishushu incident but support the testimony of Witness GO that the meeting was broader in scope than this one incident and that it marked a further initiative by the Ministry of Information to address concerns that RTLM broadcasts were promoting ethnic division in violation of the agreement between RTLM and the government.

613. While accepting that the incident of Gishusu was discussed in the meeting of 10 February, the Chamber cannot find, in light of all the evidence before it, that it was the

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only item of discussion and that the meeting ended with reconciliation and an apology from the Minister. The tone of the Minister's concern, and the breadth of his concern, as evidenced by the tape of his opening statement, is compatible with Witness GO's description of the closed meeting that followed, which delved more deeply into the issues previewed publicly. The facts that Valerie Bemeriki was unable to recall any knowledge of the prior meeting between RTLM and the Ministry, although it was mentioned in the Minister's opening statement, that her presence as a participant in the meeting is not documented by the video broadcast, and that she appears to have concealed in her past statements the presence of Nahimana at the meeting, all undermine her credibility as a witness to this meeting. Similarly, Nahimana's account of the meeting is inconsistent with the evidence on videotape of the meeting itself. The outline of the meeting, presented not only by the Minister but also by the response of Kabuga, also on tape, clearly frames the meeting as a follow up to the discussion of 26 November. There is little dispute over the content of that earlier meeting, and the evidence of the videotape, corroborating the testimony of Witness GO, clearly indicates both the increasing concern expressed by the Minister of Information and the increasing defiance of RTLM senior management.

614. The Chamber notes that the RTLM broadcast of Kantano Habimana on 18 March 1994 corroborates the hostile and threatening tone of the meeting as reported by Witness GO. Habimana clearly indicates his own view that the Minister of Information backed down from his effort to close RTLM because he understood that this would be too difficult and could cause him many problems. There is no suggestion that differences were resolved amicably and that the Minister apologized for a misunderstanding that was clarified by RTLM at the meeting.

615. The evidence of Prosecution Witness Nsanzuwera suggests that the meeting he attended in early February 1994 was not the meeting of 10 February but rather another meeting of a similar nature but with different participants. Nsanzuwera does not report the presence of RTLM representatives other than Nahimana at the meeting, and none of the witnesses who testified about the 10 February meeting mention Nsanzuwera as having been present. Nevertheless, the testimony of Nsanzuwera, whom the Chamber considers a credible witness, is further evidence of the concern of the Ministry of Information over media promotion of ethnic division, communication of that concern to RTLM, and Nahimana's central role in the management of RTLM. According to Nsanzuwera, he was introduced at the meeting as the Director of RTLM and was the radio's sole representative at the meeting.

616. The Defence suggests that the initiative undertaken by the Ministry of Information was politically motivated by Minister Rucogoza, a member of the MDR. This contention is not supported by evidence. In fact the evidence clearly sets forth a dialogue between RTLM and the Ministry, focused on the written agreement between RTLM and the government and specifically Section 5, paragraph 2 of that agreement prohibiting incitement of hatred or violence. RTLM was confronted by the Ministry with violations of the agreement, and while the evidence indicates some defiance on the part of RTLM, it does not establish that the allegations against RTLM were without

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foundation. Consequently, the Chamber finds no indication of improper political motivation in the activities of the Ministry of Information to ensure that RTLM broadcasting was in compliance with the agreement between RTLM and the government.

Factual Findings

617. Concern over RTLM broadcasting was first formally expressed in a letter of 25 October 1993 from the Minister of Information to RTLM. This concern grew, leading to a meeting on 26 November 1993, convened by the Minister and attended by Nahimana and Barayagwiza, together with Félicien Kabuga. At this meeting, Nahimana and Barayagwiza were put on notice of a growing concern, expressed previously in a letter to RTLM from the Minister, that RTLM was violating Article 5, paragraph 2 of its agreement with the government, that it was promoting ethnic division and opposition to the Arusha Accords and that it was reporting news in a manner that did not meet the standards of journalism. Nahimana and Barayagwiza both acknowledged that mistakes had been made by RTLM journalists. Various undertakings were made at the meeting, relating to the program broadcasts of RTLM. Nahimana was referred to as "the Director" of RTLM, and Barayagwiza was referred to as "a founding member" of RTLM. They were both part of a management team representing RTLM at the meeting, together with Felicien Kabuga, and they both actively participated in the meeting, indicating their own understanding, as well as the perception conveyed to the Ministry, that they were effectively in control of and responsible for RTLM programming.

618. A second meeting was held on 10 February 1994, in which reference was made to the undertakings of the prior meeting, and concern was expressed by the Minister that RTLM programming continued to promote ethnic division, in violation of the agreement between RTLM and the government. The speech made publicly and televised is strong and clear, and the response from RTLM, delivered by Kabuga, is equally strong and clear in indicating that RTLM would maintain course and defend its programming, in defiance of the Ministry of Information. RTLM broadcasting, in which the Minister was mentioned, as was his letter to RTLM, publicly derided his efforts to raise these concerns and his inability to stop RTLM. By Witness GO's account, Barayagwiza threatened the Ministry. By Nsanzuwera's account, the Minister was well aware of such threats. Nevertheless, he told Witness GO to continue his work, and the Minister pressed forward with a case against RTLM he was preparing for the Council of Ministers shortly before he and his family were killed on 7 April 1994.

619. It is evident from the letter of 26 October 1993, the meeting of 26 November 1993 and the meeting of 10 February 1994, that concerns over RTLM broadcasting of ethnic hatred and false propaganda were clearly and repeatedly communicated to RTLM, that RTLM was represented in discussions with the government over these concerns by its senior management. Nahimana and Barayagwiza participated in both meetings. Each acknowledged mistakes that had been made by journalists and undertook to correct them, and each also defended the programming of RTLM without any suggestion that they were not entirely responsible for the programming of RTLM.

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5. Ferdinand Nahimana

620. A number of Prosecution witnesses testified to discriminatory practices engaged in by Ferdinand Nahimana as a student against fellow Tutsi students, as a professor against his Tutsi students, in university admissions and faculty appointments, and as Director of ORINFOR against Tutsi employees. The Defence led a number of witnesses to counter these allegations, which in some cases date back to the 1970s. The Chamber considers that these allegations are too remote to the criminal charges against Nahimana. For this reason, the Chamber will not make factual findings with regard to these allegations. The Chamber has considered the allegations regarding Nahimana's role as Director of ORINFOR in connection with the killings that took place in Bugesera in 1992. Although these events fall outside the temporal jurisdiction of the Tribunal, the Chamber considers the conduct of the Accused in this capacity with regard to these events relevant to the charges against him and has therefore made factual findings with regard to them.

5.1 Meetings of 29 March and 12 April 1994

621. The Prosecution alleges that between January and July 1994, Ferdinand Nahimana organized meetings with the *Interahamwe* in Ruhengeri Prefecture. Two such meetings are more specifically alleged, one on 29 March 1994 in Busengo sub-prefecture at which Nahimnana is said to have given orders for the *Interahamwe* to kill Tutsis from Nyarutovu commune, and one on 12 April 1994 at the communal office in Gatonde, after which the killing of Tutsis is said to have started immediately. The Prosecution has introduced only one witness to provide evidence in support of these allegations, Witness AEN. The Chamber will therefore consider these two meetings together.

622. Witness AEN, a Hutu farmer from Gatonde, testified that he first saw Ferdinand Nahimana at Nahimana's brother's house in 1985. On cross-examination, the witness clarified that he did not meet Nahimana there but rather saw him enter the house, and that he was 13 or 14 years old at the time. Witness AEN said he saw Nahimana again on 29 March 1994 at a party meeting in the sub-prefecture of Busengo, attended by members of the MRND, the *Interahamwe,* the CDR and the *Impuzagambi*. Witness AEN testified that Nahimana spoke at the meeting and identified the common enemies as Tutsi and *Inkotanyi*. He emphasized hatred for the Tutsi and asked the *Interahamwe* in the Nyarutovu commune to kill all the Tutsi and those who did not belong to the *Interahamwe*.[637]

623. Witness AEN said there were other speeches along the same lines, calling for attacks on the Tutsi, and that Nahimana was present during those speeches as well. He said that the *Interahamwe* sang party songs at the meeting, with the lyrics "Let us exterminate them", and he stated that it was the Tutsi who were to be exterminated. Nahimana was present and also sang, the witness stated. He acknowledged on cross-examination that the word "Tutsi" was not in the song, but he said that the reference was clearly to the Tutsi, and that this was said in the meetings. The witness said the meeting

[637] T. 7 Nov. 2000, pp. 132-133; T. 8 Nov. 2000, pp. 63-65.

PURL: https://www.legal-tools.org/doc/45b8b6/

lasted two and one-half to three hours and was attended by more than one thousand people. Witness AEN stated that Nahimana was the most important speaker at the meeting, and the most influential person in Gatonde from 1990 to 1994. He testified that subsequently Tutsi were killed in Nyarutovu, between 8 and 10 April.

624. Witness AEN next saw Nahimana in Gatonde on 12 April 1994, at the communal office. He was holding a meeting and talking about the need to eliminate the Tutsi. CDR and MRND leaders were at the meeting, which lasted an hour, and the *Interahamwe* and *Impuzamugambi* were outside, each in their distinctive party dress. The witness said that after the meeting, killings started in Gatonde, on the next day. In cross-examination, Witness AEN clarified that he was not inside but rather outside the room of this meeting, about thirteen meters away, and that he was unable to hear what was being said at the meeting. He said that he had inferred what had been said from the killing of Tutsi and Hutu opponents that had immediately followed. The witness was unable to give the number of participants at the meeting but said there were about 200 young people outside the hall who seemed to be waiting for orders, and that he heard two men beside him saying they would be happy to receive instructions to kill the Tutsi.

625. Witness AEN testified that Sebastian Kazigirwa, the *secteur* party leader of the MRND, was present at both meetings. He said that Kazigirwa conducted military training of the *Interahamwe* to implement the plan to eliminate Tutsi and other opponents of the party. Witness AEN testified that on 6 July 1994, Kazigirwa, carrying a weapon, incited the *Interahamwe* to kill accomplices because the Tutsi had already been eliminated. He asked Witness AEN to get up and called for him to be killed, naming him as an accomplice. The witness testified that he denied being a member of the RPF, although he was a member, because he was afraid he would otherwise be killed. He was not killed because the others believed him.

626. By his own admission, Witness AEN joined the RPF in May 1993 after hearing a broadcast of Radio Muhabura. He had previously been a member of the MDR but left that party to join the RPF. His task was to disseminate the ideology of the party, to recruit new members, and to report to the RPF on the activities of political parties, specificially the MRND. Within eleven months, Witness AEN said he had recruited sixty members for the RPF in Gatonde. RPF members in Rwanda would meet in groups, secretly, and that there were 180 RPF members in Gatonde, all unarmed civilians and all of whom, except for him, were killed.

627. Ferdinand Nahimana testified that on 29 March 1994 he was at his home in Kigali, sick and bedridden. He said he had been taking treatment for malaria and stomach problems since the day before and continued to do so until 7 April, when he fled to the French embassy. He said that on 29 March he saw his doctor, who had been there the night before. The doctor came at around 11.00 a.m. and returned in the evening. He said he was home all day, that his wife went to work in the morning and returned home at 12.00 p.m., leaving again at 2.00 p.m. for work. He said his children were in the house, on Easter school holidays. When the testimony of Witness AEN was put to him, Nahimana stated that there were no MRND rallies in Gatonde commune or Ruhengeri

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prefecture following the RPF offensive on 8 February 1994. He stated that he had been sick on 29 March and could not have gone to Gatonde, and that he had not gone to the Busengo sub-prefecture at any point in time between 23 March and 7 April 1994.[638]

628. Defence Witness Laurence Nyirabagenzi, Nahimana's wife, testified that on 29 March Nahimana was at home, sick with malaria and gastritis. The doctor had come to the house the evening of 28 March, and he returned on 29 March. At that point Nahimana could not swallow medication tablets, and so the doctor put him on an intravenous drip. The witness was working that day and taking the children to school. She was using the car, the only car that they had. Between January and March, Nahimana did not travel to Gatonde or Ruhengeri because of security concerns. He had been named Minister, there were many roadblocks, and part of the road was controlled by the RPF. She also testified that the return trip from Kigali took at least five hours and that from 27 March to 7 April, Nahimana was never away from home for five hours. From 7 to 12 April, she was at the French embassy with her husband and children. On 12 April, early in the morning, they were evacuated by the French to Bujumbura.[639]

629. Defence Witness B3, Nahimana's doctor, testified that on 27 March he went to Nahimana's house on a social visit and found him ill with malaria and a gastritis crisis. He prescribed some tablets and returned to check on him in the evening of 28 March, finding him to be worse. He prescribed an intravenous drip as Nahimana was unable to take the medication orally, but when he returned on 29 March, Nahimana had not taken the drip and was still worse, with a high fever, gastritis crisis, and vomiting. The witness said he arrived between 7.30 and 8.00 on the morning of 29 March. He put Nahimana on the drip, and when he came back the morning of 30 March he recommended another drip, as Nahimana was still not well. When he returned the morning of 31 March, Nahimana's condition had improved, and he removed the drip and put him on the tablets. When he next came back, on 4 April, Nahimana was convalescing and the doctor felt the treatment had been successful. He saw Nahimana again briefly on 5 April, and his condition was improving. The witness testified that the drip treatment, which was a two-part treatment, took four hours and required the patient to be in bed for six to eight hours. He said it was impossible that Nahimana could have gotten out of bed and driven anywhere.[640]

630. Defence Exhibit 1D151, an excerpt from the book "L'Afrique de Grands Lacs en crise" by Professor André Guichaoua, contains a list of persons evacuated by the French Embassy on 12 April 1994 to Bujumbura, and Nahimana's name is included in that list. Witness F3 testified that he went to the airport in Bujumbura on 12 April 1994 to meet Déogratias Nsabimana's widow, who had been evacuated by plane from Kigali. At the airport, he saw Nahimana and his family. He had known Nahimana and his wife for a very long time and Nahimana recognized the witness and told him where Nsabimana's wife was.[641]

[638] T. 20 Sept. 2002, pp. 11-12.
[639] T. 30 Oct. 2002, pp. 15-24.
[640] T. 3 Dec. 2002, pp. 20-24; T. 4 Dec. 2002, pp. 12-16.
[641] T. 2 Dec. 2002, pp. 8-15.

PURL: https://www.legal-tools.org/doc/45b8b6/

Credibility of Witness

631. In cross-examination, **Witness AEN** clarified that he was not inside but rather outside the room in the Gatonde communal office where the meeting of 12 April took place. He did not hear Nahimana speak. In his testimony, he had stated on direct examination:

> I saw him inside the communal office, he was holding a meeting. He was talking about the objective of eliminating the Tutsis and he was emphasising the fact that they needed to attend [sic] this objective-- this objective which was declared on 29th March l994.[642]

632. The clear implication of this testimony was that Witness AEN heard Nahimana speak. Defence Counsel for Nahimana filed a motion requesting an investigation of the matter for purposes of an indictment for false testimony, which the Chamber denied because the witness did not actually say that he heard Nahimana speak. The witness explained that his testimony was the result of an inference that he drew based on the killings subsequent to the meeting and the statements that he had heard Nahimana make at the meeting of 29 March. This inference and the manner in which it was conveyed to the Chamber by Witness AEN in his direct testimony, while not giving rise to an action for perjury, nevertheless render the evidence of the witness unreliable. For this reason the Chamber finds the testimony of Witness AEN not credible.

Discussion of Evidence

633. The Prosecution relies entirely on the evidence of Witness AEN to support its allegations concerning the presence and participation of Nahimana at a meeting on 29 March 1994 in Busengo sub-prefecture and at a meeting on 12 April 1994 at the communal office in Gatonde. As the Chamber has not found Witness AEN to be credible, the Prosecution has not met its burden of proof with regard to these allegations.

5.2 Rwanda: Current Problems and Solutions

634. In February 1993, Nahimana published an essay entitled *Rwanda: Current Problems and Solutions*, which he re-circulated on 28 March 1994, with the following cover letter, addressed "Dear Friends":

> I finished writing these thoughts in February 1993. Some people have read them. One year after it was written, this paper still appears to be topical, so much so that those who have read it have requested me to disseminate it once more.
>
> I am taking it upon myself to send it to you. I would be grateful if you could send me your comments and, in particular, if you could use the paper as an inspiration to help Rwanda find a definitive solution to its current problems.[643]

[642] T. 7 Nov. 2000, p. 142.
[643] Exhibit P25B, K0244036.

PURL: https://www.legal-tools.org/doc/45b8b6/

635. The first and longest part of the essay was a discussion of the history of Rwanda from 1959, in which Nahimana described the emergence of i) regionalism, the divide between people from the South, known as *Nduga*, and people from the North, known as *Kiga*; ii) "*collinisme*", a cantonal regionalism consisting of favoritism or preference based on a person's hill of origin; and iii) ethnicism, which he presented as having been cultivated throughout the history of Rwanda. There was a long discussion on ethnicism, which is largely historical and political. Nahimana stated in the essay that ethnicism was always "at the centre of the internecine conflicts culminating in the 1959 revolution", and that supporters of the monarchy, "the majority of whom were Tutsis", saw the 1959 revolution as having been "led mostly by Hutus". These supporters, he said, decided to fight to regain their traditional supremacy, both in terms of political power and in terms of economic and social power.[644]

636. In his discussion of ethnicism, Nahimana identified several phases of this struggle to regain power after the 1959 revolution. The first phase, from 1960-1967, took the form of armed attack, carried out by refugees who called themselves *Inyenzi*. Each attack provoked a reaction from the population inside the country, which was translated into the torching of houses and killing of Tutsis considered accomplices of the aggressors. Nahimana described the consequences as follows:

> In Rwanda, mutual resentment developed, preventing the existence of a unity of vision for the future of the country. One side saw the future as an opportunity to regain power and to seek revenge on those people who carried out the revolution, whereas the other side saw the future as a time to consolidate power in a republic led mainly by Hutus. This vision of the future became a real preparation for inter-ethnic clashes and the very destruction of the republic because one side was preparing for revenge while the other was preparing for perpetual domination. In short, what was being prepared by all sides was the institution of radical exclusion.[645]

637. The second phase, from 1968 to 1990, Nahimana described as one which was characterized by the undermining of the existing government, a period of organizing both inside Rwanda and abroad to expand the circle by "recruiting followers, essentially from the Tutsi ethnic group", and by lobbying foreign governments and international organizations for assistance in removing the government of Rwanda. In this context, the essay first mentioned "a Tutsi league", describing its formation as follows:

> Both inside the country and abroad, many Tutsis were led to believe that they had been excluded from political, administrative, economic and socio-cultural power and that the time had come to conquer and to take power, even by force, from those who were supposedly holding power exclusively – the Hutus! Since then, there has been some sort of a Tutsi league against Hutus.[646]

[644] *Ibid*., K0244037-39.
[645] Exhibit P25B, K0244040.
[646] *Ibid*.

PURL: https://www.legal-tools.org/doc/45b8b6/

638. As a matter of strategy, unable to confront all Hutu at the same time, the essay suggested that "that league" opted to divide and conquer. At this time, a new form of ethnicism was born, whereby sensitivity was created around the ethnic identification of Tutsi. Nahimana said in the essay that a Hutu calling a Tutsi a Tutsi would be accused of ethnicism, and that through this technique, "the Tutsis were intimidating the Hutus and, perceptibly or imperceptibly, the Tutsis succeeded in convincing everyone (falsely, however) that they were victims because they belonged to an ethnic minority…"[647] Outside Rwanda, the Hutu came in this way to be perceived as perpetually oppressing Tutsi and the perception was that "everything had to change in order to save the oppressed ethnic group, the Tutsis".[648]

639. Part of this strategy, Nahimana contended in the essay, was to exploit regionalism and *collinisme*, and he maintained that as early as 1968-1970, "well-elaborated plans" to overthrow the republic using these divisions "began circulating among members of the Tutsi league". He said that "members of the Tutsi league were the first to call for the departure of President Grégoire Kayibanda, accusing him of refusing to allow Tutsi refugees to return to Rwanda and of having placed power in the hands of natives of Gitarama…"[649] In this context, "the united front of the popular majority, who had fought for the republic, was shattered and replaced by division", the division among Hutus between the *Nduga* and the *Kiga*. The *coup d'état* on 5 July 1973, which was seen as a takeover by the *Kiga* to the detriment of the *Nduga*, completed this division and was welcomed by the Tutsi. He stated that this coup "was the springboard from which the Tutsi league managed to dangerously weaken the Rwandan government".[650]

640. Nahimana suggested in the essay that "members of the Tutsi league" worked to foster the division between *Nduga* and *Kiga*, befriending both sides while "sowing division and exacerbating tensions". He suggested that there was an implicit alliance "between Tutsis and *Nduga* Hutus against those from the North", and that "members of the Tutsi league linked ethnicism with regionalism whenever regionalism meant hatred by the *Kiga* of the *Nduga* but not vice versa", using these divisions to isolate the *Kiga* Hutu from the North. Nahimana lamented these divisions, saying:

> [T]he republic could not rely on its erstwhile strength, the unity of the popular majority, to survive and hold firm against attacks carried out against it by the Tutsi league whose members had paralysed the united action of the republic. In fact, the republic was almost swept away… by the avenging waves of former monarchists, their descendants and follower who have now come together under what they call the Rwandan Patriotic Front (RPF) *Inkotanyi*.[651]

641. This exposition, which comprised more than half of the essay, concluded with the proposition that the divisions created by regionalism, *collinisme* and ethnicism were conveyed to the new parties created following the introduction of multipartism, and that

[647] *Ibid*.
[648] *Ibid*., K0244041
[649] *Ibid*.
[650] *Ibid*.
[651] Exhibit P25B, K0244042.

PURL: https://www.legal-tools.org/doc/45b8b6/

the RPF was benefiting from this lack of national cohesion. Nahimana suggested that any consideration of the RPF as "the bearer of democracy" in Rwanda was an illusion, that the "RPF, which is made up mostly of members of the Tutsi league and some recently recruited Hutus, uses and even manipulates the parties of people who have chosen to work with it by bogging them down in hatred and division against parties which do not have any relationship with it and by hiding its real political intentions".[652] Its real intentions, according to the essay, were to seize power by force.

642. Nahimana introduced the concept of civil defence in the latter part of the essay, following this historical overview, first explaining what he saw as the importance of the history:

> A bitter overview? Yes.
>
> However, these views should make even those people most tied to their position think. Rwanda which has suffered through two years of war must get out of this situation. It has to overcome the current situation through the revival of awareness on the part of all its sons and daughters. In order to do this, there has to be a new impetus which would bring Rwanda's popular majority and, preferably, all Rwandans, to crystallize their attention on a common concern: the defence of the country's territorial integrity and its people.[653]

643. The essay stated that defence of the country "requires every Rwandan" to take part of the responsibility, and subsequently elaborated: "The defence of the country's territorial integrity and its people requires the contribution of physical, moral and intellectual forces of all Rwandans or, at least of the majority of the population." To achieve this, attitudes must change and the strength of the people must be recognized. Nahimana said, "the Rwandan population, especially the youth" had to be used to defend Rwanda. He particularly mentioned the youth in areas that had been affected by the RPF war and knew the tactics of RPF fighters, and stated that "everyone should do something so that those youth are given appropriate military training in counter-insurgency and adequate weapons". The role of these youth would be to "support regular soldiers by providing security to people displaced by the war or in areas liberated by the Rwandan armed forces".[654]

644. Calling this "civil defence", Nahimana wrote the following in the essay about the need for unity:

> In order for it to succeed, this operation should benefit from the conviction of the entire society which has to stand up as one man against all forms of threat or collective aggression. This awareness then automatically repudiates hatred and division based on ethnicity and regions of origin…[655]

[652] *Ibid*., K0244043.
[653] *Ibid*., K0244044
[654] Exhibit P25B, K0244044/45.
[655] *Ibid*., K0244045.

PURL: https://www.legal-tools.org/doc/45b8b6/

645. The need to organize quickly was noted, as was a need for "giving advice to authorities in the Ministry of Home Affairs and the Ministry of Defence, particularly on the modalities of the recruitment and organization of the youth who are to be integrated in the civil defence".[656]

646. In the essay, Nahimana called on leaders of political parties to unite and "without distinction of political parties" to work for success of the armed forces against "the enemy of the country". He named the RPF as "Rwanda's and democracy's enemy number one"[657] and mentioned the RPF several times again as "the enemy". The essay also called on church and religious leaders to organize meetings for unity of action and to support the resettlement of people displaced by the war, and it called on the Rwandan elite to undo its patterns of exclusion and to come together and "use its talents, knowledge, contacts and friendship to show the world who the real aggressor in Rwanda is". In the essay, Nahimana asked "What is RPF-*Inkotanyi*? Is it an armed movement of guerrillas or is it a political movement of refugees?" He tasked the elite to engage in intensive diplomacy to "put back RPF in its right place and to get rid of the confusion that RPF is fostering", and "to make RPF change itself, apologise for its crimes and let Rwandan refugees go back to their country (Rwanda) in peace", adding "It is up to the elite to prepare Rwandans inside the country to agree to the return of refugees and to ask those refugees to live in peace with their neighbours."[658]

647. The essay concluded:

> These efforts will support the work of the Rwandan armed forces and accompany them to their final victory against Museveni and his RPF-*Inkotanyi* 'boys.'
>
> - United, we will win.
> - Together we will prepare our future.
> - In the national community with peace and prosperity, we will live and practice genuine democracy.[659]

648. Nahimana testified that when he wrote *Rwanda: Current Problems and Solutions*, it was in the context of the re-launching of war by the RPF on 8 February 1993, in violation of the ceasefire agreement. He said he felt the nation was in danger and that democracy could not survive if an armed group was coming to take over power. He called upon all actors to fight the enemy. He insisted that the Tutsi league existed, saying it was not a group but was made of a number of groups. He described it in ideological terms, mentioning several specific groups, publications and individuals coming from the Tutsi community and committed to the overthrow of the government. He stated as a firm position of his that not all Tutsi were members of the RPF and that all Tutsi could in no way be considered enemies of the country.[660]

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[656] *Ibid*.
[657] *Ibid*., K0244046.
[658] Exhibit P25B, K0244047.
[659] *Ibid*., K024048.
[660] T. 19 Sept. 2002, pp. 74-78.

PURL: https://www.legal-tools.org/doc/45b8b6/

649. With regard to his proposal for civil defence, Nahimana maintained that his intention was to propose something that would be directed, not something wild and out of control. He noted that many countries, such as Switzerland, had civil defence units and said it was necessary to arm the civil defence so that it could be useful in fighting the enemy. He said he was not the father of civil defence in Rwanda, that civil defence had been in place since the war began in 1990, with roadblocks, and that that was part of what he was talking about. He said his ideas had been misinterpreted, that he was not thinking of the *Interahamwe* in his essay because civil defence should be in the domain of public authority, whereas the *Interahamwe* and other such militias were in the domain of political parties. He said that he still supported the central ideas in the essay.[661]

650. On cross-examination, Nahimana was questioned on RTLM and the absence of any mention of the media in his essay. He said he was not thinking of RTLM at the time. When he wrote the essay in February 1993, RTLM had not yet been created, although he acknowledged that it had been in planning since November 1992. He said that while the media was not mentioned in the essay's call for all segments of society including the youth, religious leaders, and political leaders to join together in civil defence, he did not think there was anything wrong with integrating the media into the activities of the population. His main point was that civil defence can only succeed if all Rwandans are involved, without distinction. He said that the essay was inspired by the war. The problem of concern to him was the progressive penetration of the RPF in Rwanda, and the solutions he proposed were designed to stop this penetration.[662]

651. With regard to the term "Tutsi league", on cross-examination Nahimana repeated that the Tutsi league was a broad-based coalition that brought in small groups formed abroad and was made up of Tutsi. However, he said, the league was not synonymous with the Tutsi community outside Rwanda. In 1993, he said the leaders of this group tried to recruit people in Rwanda who would support the idea of overthrowing the regime. These recruits inside Rwanda were also members of the Tutsi league. It was put to him that the essay claimed that many Tutsi were led to believe that they had been excluded from social, economic and political power and that in fact Nahimana was talking not just about those in the Tutsi league but the situation for all Tutsi. Nahimana maintained that just taking the phrase in isolation lost the meaning of what he said in its historical context. He said he was not talking about a community but rather an attitude. He said the Tutsi league existed and was made up of various groups, and that he was only describing the reality when he wrote of it.[663]

652. Asked to comment on Nahimana's essay, Prosecution Expert Witness Alison Des Forges noted in her testimony the references through the essay to the "Tutsi league", which she viewed as critical in indicating whom the author regarded as the enemy. She suggested that within the essay there was a movement back and forth between the call for an end to divisions in the population and the need for unity, on the one hand, and the qualification on the other that if not all Rwandans, at least "the majority of the

[661] *Ibid*. pp. 79-84.
[662] T. 26 Sept. 2002, pp. 41-43.
[663] *Ibid.*, pp. 99-107.

PURL: https://www.legal-tools.org/doc/45b8b6/

population" must contribute to the defence of the country, suggesting that perhaps not all Rwandans were part of this effort. She suggested it was also significant that in the essay, the use of the civil defence force proposed was not envisioned simply for the frontier but also in zones far from combat to ensure internal peace.

653. Des Forges drew a distinction in her testimony between the circumstances prevailing in Rwanda when the essay was first written in February 1993, and the circumstances prevailing when Nahimana re-circulated the essay in March 1994. She said that in the first instance, the essay was published in the weeks after a major RPF advance, which had caused great damage in the northern part of Rwanda and resulted in the movement of RPF troops towards Kigali, an advance that was aborted only at the last minute under international pressure, particularly from the French government. There was great shock throughout the country, and many including the CDR, *Kangura*, and President Habyarimana, as well as Nahimana, called at the time for the formation of a self-defence initiative. In March 1994, however, there was no such immediate past experience of rapid military advance and the shock that it caused. Rather, the Arusha Accords had been signed and progress was supposedly being made towards their implementation. The context was therefore dramatically different, which led Des Forges to question why there should be an effort at that point in time to enlist support. She said that while it was possible to interpret the initial writing of the essay in February 1993 as a reaction to a direct and immediate military threat, there would be no such reason to call for self-defence in March 1994 unless it was to support the effort, then being organized within certain civilian and military circles, to prepare a large-scale mobilization of the civilian population to attack Tutsi and members of the Hutu political opposition.[664]

654. On cross-examination, Des Forges was asked about the call in the essay addressed to church authorities, which names the enemy of the people as the RPF, as well as the passage stating that the republic was endangered by the former monarchists, who were equated with the RPF, and the passage at the end of the essay calling on the powers in support of democracy to bring pressure to bear on Museveni and Uganda to stop supplying weapons and personnel to the RPF *Inkotanyi*, stating that this was the real cause of Rwanda's troubles. She was also questioned about the passage indicating that civil defence activities would support the work of the Rwandan Armed Forces and bring them to victory over Museveni and the RPF *Inkotanyi*. Asked to confirm that the enemy was clearly identified in this text as being the RPF, Des Forges noted that there were also many references in the essay to "the Tutsi league" and suggested that if the enemy had been clearly identified as the RPF it would be difficult to understand why the term "Tutsi league" was used with such frequency in the essay.[665] While again acknowledging that the call in the essay for a civil defence force needed to be understood as resulting partly from the sense of military threat at the time of its composition, Des Forges expressed the view that the text of the essay did not support a definition of the enemy exclusively as the RPF backed by Museveni because of the references in it to "the Tutsi league". Following discussion on the meaning of the word "league", she expressed the view that the word could encompass all or some part of a group, depending on the context.

[664] T. 21 May 2002, pp. 240-251.
[665] T. 30 May 2002, pp. 203-205.

PURL: https://www.legal-tools.org/doc/45b8b6/

655. Des Forges affirmed that the essay contained a strong condemnation of ethnicism, but suggested that a careful reading of it was essential to understanding exactly what was meant by the term. Despite the initial impression, which could be that any ethnic sentiment is condemned, she said a careful reading laid responsibility for the cause of ethnic division on one side and not the other, holding the Tutsi responsible for the ethnic problem. When the passage was put to her that begins, "In Rwanda, mutual resentment developed, preventing the existence of a unity of vision for the future of the country",[666] as an indication that Nahimana had described shared responsibility for inter-ethnic tension, Des Forges agreed but cited the preceding paragraphs, which identified the *Inyenzi* as the initiators of the process. She noted that it was complex when there were two different kinds of statements in one document but that it was characteristic of many publications and broadcasts during that period, making it difficult to sort out the underlying intention.

656. In cross-examination, Des Forges acknowledged a passage in the essay that mentioned repudiation of hatred and division based on ethnicity as being clear but noted that there were other passages indicating a different view and cited the passage of the essay defining "the Tutsi league" and the paragraphs following, in which it was clear that this Tutsi league was said to be responsible for ethnic division, as well as for regionalism and *collinisme* because it had set about dividing the people of Rwanda. Des Forges agreed that the RPF emerged from this Tutsi league, according to the essay, but expressed concern over the generalization of the link Counsel for Nahimana suggested by naming the Tutsi diaspora as the common source of two historically distinct movements. She said the RPF was distinct in its program and intention from the group that attacked Rwanda in the 1960's, that they were two different organizations operating in two different historical periods, but she agreed that both groups were constituted by or drew support from essentially the same population, refugees outside the country.[667]

Discussion of Evidence

657. The Chamber has carefully considered the text of the essay *Rwanda: Current Problems and Solutions* in full. At the core of the essay is a political analysis of the history of Rwanda. This analysis was not impartial or objective. It took a clear, reasoned position on the issues of contention. Its stated intent was to make people think and to make people understand the history and the contemporary political context of Rwanda in the same way as the author did.

658. In describing ethnicism in Rwanda in the essay, the Chamber notes that initially Nahimana identified the forces behind the 1959 revolution as being seen by supporters of the monarchy, "the majority of whom were Tutsis" as "an opposition that was led mostly by Hutus". He again shortly thereafter referred to "a republic led mainly by Hutus" and the recruitment of followers by the opposition "essentially from the Tutsi ethnic group". These references, all on the fourth page of the essay, evidence a certain care to identify

[666] Exhibit P25B, K0244040.
[667] T. 30 May 2002, pp. 9-15.

PURL: https://www.legal-tools.org/doc/45b8b6/

the people concerned with reference to ethnicity but not to define them by their ethnicity. This care was fleeting, though, as the essay moves forward and adjectives such as "many" disappear. From the bottom of the fourth page, the words "Hutu" and "Tutsi" were used both to describe ethnicity and political affiliation. "If a Hutu called a Tutsi a Tutsi", for example, is a reference to ethnicity, while in the next sentence, "the Tutsis succeeded in convincing everyone (falsely, however) that they were victims because they belonged to an ethnic minority…" presumably does not refer to all Tutsi but rather those who, the essay maintains, were manipulating ethnicity for political ends. Ostensibly Nahimana decried ethnicism, but he himself cast his analysis in, and perpetuated, the characterizations of Hutu and Tutsi as a fixed point of political reference. Moreover, as Des Forges pointed out in her review of the essay, Nahimana blamed the Tutsi for the problems facing Rwanda, portraying the Tutsi as aggressors and the Hutu as victims.

659. The Prosecution has emphasized the repeated reference in this essay to "a Tutsi league", and the Chamber has cited above all references to this league. The explanation of its formation, that many Tutsi were led to believe that the Hutu had excluded them from power, which needed to be reclaimed by force, indicates that a very loose grouping was meant by this term – "Since then, there has been some sort of a Tutsi league against Hutus" suggests through the vague language "some sort of" that the Tutsi league was not a formal or specifically identified group but an all-encompassing group identified by ethnicity. The essay subsequently referred to plans to exploit regionalism and *collinisme* as having begun "circulating among members of the Tutsi league". It was said that "members of the Tutsi league" were the first to call for the departure of Kayibanda, that "members of the league" worked to convince public opinion that Tutsis and Nduga Hutus were excluded from power, and that "members of the Tutsi league" linked ethnicism with regionalism only when it meant hatred by the *Kiga* of the *Nduga* and not the other way around. There was also a reference to attacks carried out against the "popular majority" by "the Tutsi league whose members had paralysed the united action of the republic". Finally, there was a reference to the RPF "which is made up mostly of members of the Tutsi league and some recently recruited Hutus…"

660. It is clear that the "members of the Tutsi league" referred to in Nahimana's essay had a particular political orientation and acted accordingly. It was not explicitly stated that this was a reference to all Tutsi, but the implication was that all Tutsi shared this orientation and participated in these acts. There was effectively no differentiation made between "the Tutsi league" and the Tutsi population as a whole. The Chamber notes that the danger lies in this zone of gray meaning, which allowed room for and even encouraged readers to conclude that all Tutsi, because they were Tutsi, shared these political views and were members of this ill-defined league. The Chamber notes the same reasoning would apply to the many references in the text to "the popular majority", which could be understood to refer to the Hutu. In discussing the need for full participation in civil defence, Nahimana several times referred to "Rwanda's popular majority and, preferably, all Rwandans", or the forces of "all Rwandans or, at least, of the majority of the population". Having so clearly defined the historical contours as relating to Tutsi domination and Hutu subordination, which started to shift in 1959, it is difficult

PURL: https://www.legal-tools.org/doc/45b8b6/

to imagine that these undefined references to "the popular majority" would not have been understood to be references to the Hutu people of Rwanda.

661. This conflation of ethnic and political identification is not surprising in light of the history of Rwanda. Because political power had historically been defined by ethnicity in Rwanda, the political interests of different ethnic groups differed in a manner that was related, at least in part, to ethnicity. The Chamber considers that references to political groups in ethnic terms, when there was in fact a real correlation between political interest and ethnic identity, are to be expected. The RPF was in fact made up mostly of Tutsis.

662. However, in light of the context, it was particularly important to be clear and avoid the dangers of equating ethnicity with political affiliation. While the essay clearly and repeatedly defined "the enemy" as the RPF, as pointed out by the Defence, at the same time it clearly and repeatedly referred to "the Tutsi league", a reference to a loose group of Tutsi that was so vaguely defined it could have been taken, and intended, to mean the entire Tutsi population. Yet it was said to be a group with a particular political orientation, defined as supportive of and a pool of recruitment for the RPF. The Chamber notes that Nahimana himself described in the historical part of his essay the pattern of retaliatory attacks – the torching of houses and killing of Tutsi – carried out by the population in response to the armed attacks by the *Inyenzi*. Clearly he knew the danger inherent in defining "some sort of a Tutsi league against Hutus".

663. The Prosecution alleges that the essay and its introductory letter of March 1994 incited the youth to organize self defence groups to fight against the RPF. The Chamber notes that neither the introductory letter nor the essay was particularly addressed to young people. The introductory letter did not make any reference to youth in its text, and there is no evidence that it was distributed to young people. In the essay, Nahimana proposed the introduction of civil defence, but the essay did not call directly on the youth to organize self defence groups. Rather, it advocated their creation by established structures. In this regard, the Chamber notes the reference to advising authorities in the Ministry of Home Affairs and Ministry of Defence "on the modalities of the recruitment and organization of the youth who are to be integrated in the civil defence" and the statement in the essay that these youth would support the Rwandan Armed Forces. Nahimana testified that he was not calling in his essay for the organization of armed youth by political parties but rather by the government itself, as an extension of its military capability in facing the armed insurgency of the RPF.

664. The Chamber considers that this assertion must be evaluated in light of the context at the time the article was distributed. Expert Witness Des Forges acknowledged that there may well have been a perceived need for civil defence to oppose the advance of RPF forces in February 1993, when the essay was first written by Nahimana but says there was no such apparent need in March 1994. The Chamber notes, however, that the Arusha Accords brought about dissension and unrest in early 1994, and a growing and visible presence of the *Interahamwe* and other youth organized by Hutu Power political paties MDR, MRND and CDR. These youth were increasingly armed and positioned as a

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force against the RPF and its accomplices. In this context, the re-circulation of Nahimana's essay in March 1994 could have been seen, and intended, to support this initiative. There is no indication in Nahimana's March 1994 letter that he opposed the organization of armed youth by political parties. In his essay, though, Nahimana called for unity among the political parties and positioned his proposal for civil defence as an initiative to be coordinated by the government and the army. In these circumstances, even if Nahimana had an ulterior motive to support the organization of armed youth that was taking place around him in March 1994, the absence of any indication to this effect in his text and the presence of language suggesting an alternative vision preclude a finding by the Chamber that his reference to armed organization of youth in the essay was intended and understood to support the armed organization of youth as it was actually taking place in Rwanda at that time.

665. The Prosecution also alleges that the introductory letter of March 1994 written by Nahimana addressed and called on the population to find a "final solution" to the problem of Rwanda. The Chamber notes that the reference in the text of the introductory letter is to a "definitive solution" and not a "final solution". While this language could be intended as a veiled reference to the language of the holocaust, in the same manner as "the Tutsi league" was intended to be a veiled reference to the entire Tutsi population, the Chamber cannot make a finding of this interpretation. The meaning of the language "definitive solution" is different from "final solution" in that it does not obviously carry the meaning of extermination or genocide. The solution proposed in the essay is the defeat of the enemy, militarily and definitively. The enemy is explicitly defined to be the RPF and implicitly defined to be the Tutsi population as a whole, by reference to the "Tutsi league". However, the essay itself does not make explicit reference to extermination or genocide.

666. The Chamber in its effort to determine the actual meaning intended must review both the text and the circumstance in which it was written with caution. The double messaging highlighted by Expert Witness Des Forges is one indicator of actual meaning. The context in which the essay was written and circulated is another. The Chamber recognizes that the real meaning and intent of the essay may be implicit. Nevertheless, it cannot simply ignore the explicit meaning and expressed intent of the language used by Nahimana.

Factual Findings

667. *Rwanda: Current Problems and Solutions* was written by Nahimana in February 1993 and called for the organization of civil defence, consisting of armed youth, to fight "the enemy", who were defined explicitly as the RPF and implicitly as "the Tutsi league", a veiled reference to the Tutsi population. In March 1994, Nahimana re-circulated this essay amidst the ongoing initiative at that time to engage armed youth organizations such as the *Interahamwe* in attacks against the Tutsi population as part of an effort to defeat the RPF. However, the essay stated that such initiative should be coordinated by government officials and the army. The introductory letter to the essay, circulated in March 1994, was not specifically addressed to the youth population. While it did call on

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readers to help the country find a "definitive solution" to its problems, this call – as reflected in the essay - was directed to various sectors of the population, asking them to take various initiatives, which were largely non-violent. While the essay called for defeat of "the enemy", it was not a direct call for violence other than a civil defence initiative to be coordinated by the Rwandan army.

5.3 Events in Bugesera

668. Prosecution Witness Thomas Kamilindi worked as a journalist at Radio Rwanda in 1992, when Nahimana was Director of ORINFOR. He testified that in March 1992, at one editorial meeting, the editor in chief Jean-Baptiste Bamwanga brought a fax from Nairobi and said they had to decide whether or not to put it on the air. The fax said that the enemy *Inyenzi* were preparing to assassinate a certain number of Hutu leaders. The plan was to be implemented by the internal branch of the RPF, or the enemy *Inyenzi*, which was the PL or Liberal Party. He said from 1990, the term "*Inyenzi*" started to be used to mean Tutsi and also opposition, regardless of their ethnic group. A day or two earlier the PL had organized a meeting in Bugesera, in the town of Nyamata, and denounced the actions of the then *bourgmestre*, who was from the MRND, the party in power at the time. The fax was discussed at length and those at the meeting found that its authenticity could not be certified. The organization that had sent the fax was not known, nor was the signatory. The editorial section therefore decided not to disseminate the fax. A while later, when the editorial section had already started preparing the mid-day news, the editor in chief came with a tape, which he himself had recorded, of an introduction to precede the broadcasting of the same fax. The taped introduction said that as public press it was their duty to bring this vital information to the public. Kamilindi said there were instructions according to which the Director of ORINFOR had ordered the rebroadcast of the message that evening and the next morning. They were instructed to play the entire tape without any deletion. He said the tape was played at least four times on Radio Rwanda, as part of the mid-day news, the evening news, the next morning and mid-day the next day. Immediately afterwards, there were massacres in the Bugesera region, targeting Tutsi.[668]

669. Kamilindi testified that in March 1993, a code of ethics for journalists was adopted in Rwanda by the national association of journalists and the Ministry of Information. Among the provisions of the code, he cited the following:

> Article 7: To commit themselves to respect the private lives of people, their moral integrity, their honour and their dignity, to ensure, to the extent that this principle is compatible with public interests, to avoid anonymous accusations, avoid defamation, accusations, injuries, offensive language, insinuations and, finally, to respect the discretion and decency of standards.
>
> Article 14: To refrain from taking a partisan, political or social position that could compromise their capacity to report events with fairness and impartiality.

[668] T. 22 May 2001, pp. 16-43.

PURL: https://www.legal-tools.org/doc/45b8b6/

> Article 16: To rigorously refrain from all acts, attitudes or graphic reproduction, filmed or spoken, which are of such a nature as to incite ethnic, racial, religious or antagonistic incitement and to xenophobia, and all forms of exclusion.[669]

670. Although this code was formalized only in 1993, Kamilindi said the spirit of these three articles was discussed constantly during the course of his career at the national radio station. In the editorial discussion over the fax from Nairobi, he said there was concern that its dissemination would contribute to ethnic division. Following this incident Nahimana left ORINFOR, and Kamilindi was told that he had been dismissed as a result of public pressure, especially from human rights organizations, which said he was the instigator of this fax that had triggered the Bugesera massacres. Kamilindi acknowledged that there had been several acts of terrorism involving land mines in the region and that there had been a PL meeting in Nyamata at the beginning of March, at which Justin Mugenzi said the *bourgmestre* should be dismissed. He also acknowledged that the broadcast did not mention Bugesera but pointed out that it talked of the PL as an internal branch of the RPF.[670]

671. François-Xavier Nsanzuwera, the former Prosecutor of Kigali, testified that Radio Rwanda broadcast a communiqué on 3 March 1992, which was read by the journalist Bamwanga. The communiqué claimed that a fax had arrived from Nairobi, from an African Commission of Non-Violence, saying that the RPF was preparing terrorists acts against Rwandans. The communiqué mentioned politicians and businessmen throughout the country who were going to be killed by the RPF and specified that the RPF was going to use its internal branch, in other words the PL, or Liberal Party. On the night of 4 March, the massacre of Tutsi in Bugesera started, and lasted more than a week. Nsanzuwera who investigated this massacre, said that at least 300 Tutsi were killed by official count. They were not able to count all the victims because some of the bodies had been thrown into septic tanks or pit latrines, and others had been thrown into holes. At least 513 people were arrested for the killings by the Prosecutor's office, but there was a great deal of difficulty. When Nsanzuwera arrived in Bugesera on 6 March, houses were still burning. The killings continued until a reinforcement of gendarmes was sent from Kigali. Most of those who participated in the killings were not arrested because the *bourgmestre* of the commune decided to send home all the seasonal migrant workers who came from outside the region, many of whom had participated in the attacks. Consequently, those arrested were mainly from the region itself except a few who had been arrested before the *bourgmestre* made this decision. Nsanzuwera said that sanctions were imposed on the sub-prefet of Nyamata and the first attorney of the sub-prefectural prosecutor's office.[671]

672. When asked what role the media played in the Bugesera massacre, Nsanzuwera replied that if Radio Rwanda had not disseminated the communiqué five times and if there had not been wide distribution of the cover of Kangura #26 in the region, the numbers of people killed would not have been significant. He remembered talking to the

[669] T. 22 May 2001, pp. 34-3 [check date]; Exhibit P51.
[670] T. 22 May 2002, pp. 34-78, 98.
[671] T. 23 Apr. 2001, pp. 139-150.

PURL: https://www.legal-tools.org/doc/45b8b6/

elderly who had stayed at home and did not participate in the massacres. He was accompanied by gendarmes and they thought he was coming to help them, and said it was good that he had come in time because the Tutsi were going to kill them. The witness said the radio broadcast of the communiqué created a kind of psychosis among the Hutu. People thought they were defending themselves because they were told that they were going to be massacred. There were no Tutsi killings of Hutu civilians in Bugesera during this time but the Hutu who were arrested for their participation in the massacre of Tutsi were saying that they did so to avoid being killed. That was the message they had been given both by the authorities and by the communiqué that was broadcast. He described the state created as one of "intoxication". Human rights organizations and opposition parties asked that sanctions be imposed on Nahimana, who was the Director of ORINFOR at the time.[672]

673. In cross-examination, Nsanzuwera was asked why he did not mention the role of Radio Rwanda in these events in the book he wrote in 1993, *The Rwandan Magistrate and the Grips of the Executive Power?* In this book, he cited as the two principal causes of the Bugesera massacre the distribution of the cover of *Kangura* several weeks before and the manipulation of the seasonal workers from outside the region. It was also put to him that in his testimony in the Rutaganda trial, he cited as the causes of the Bugesera massacres the speeches by local *conseillers* to get the population to attack Tutsi, the PL meeting, and attacks. He said this was not meant to be an exhaustive list but acknowledged that he was speaking of the role of Radio Rwanda in these massacres for the first time. He acknowledged that the broadcast did not mention the Tutsi specifically and explained that it was said the RPF had an internal base, which was the Liberal Party, and that the communiqué followed the PL meeting that took place in Nyamata on 1 March. He noted that it was said that the Liberal Party was the Tutsi party.[673]

674. Prosecution Witness Philippe Dahinden, a Swiss journalist, went to Rwanda in January 1993 as a member of the International Committee for Investigations that had been set up collectively by four human rights organizations, including the International Federation of Human Rights and Human Rights Watch. The International Committee went to Bugesera and interviewed many victims and witnesses of events there. Dahinden testified that some of those whom he met, who had fled Bugesera and taken refuge in Kigali, told him that in the course of one day there were five broadcasts on Radio Rwanda of an editorial referring to acts of violence committed by people who had infiltrated the PL party, which was considered by many in Rwanda at that time as being a party made up of Tutsi majority. Dahinden described the communiqué, which he said was broadcast between 3 and 4 March, as from an organization called the Committee for Non-Violence in Rwanda with the Great Lakes Region. The communiqué warned Rwandans about an attempt to destabilize the country and terrorist acts that were to be committed by people that had infiltrated from abroad and were going to attack the Hutu. It included lists of about 21 public figures to be killed in the near future in an effort to destabilize the country. Also broadcast on the radio, according to Dahinden, was an editorial of ORINFOR signed by Nahimana that repeated the communiqué to warn the

[672] *Ibid.*
[673] T. 24 Apr. 2001, pp. 121-143.

PURL: https://www.legal-tools.org/doc/45b8b6/

population about the danger and mentioned the PL as a possible accomplice to this transaction.[674]

675. Dahinden's investigation indicated that the communiqué came from an organization that did not exist. The investigation was able to establish that the same typewriter was used for the fax allegedly sent from Nairobi and the communiqué sent from the Rwandan committee referred to by Dahinden as "the fictitious recipient" in Kigali. Dahinden said he did not know who had written the communiqué. He criticized Radio Rwanda and its Director for having broadcast a false communiqué that incited people to violence. During the course of the investigation mission, Dahinden did not meet Nahimana, but he returned to Rwanda in August 1993 and at that time interviewed him on the broadcast of this communiqué, as well as the establishment of RTLM. He wanted Nahimana to explain why he authorised and even ordered the broadcast of this editorial. Nahimana replied that many leaflets were going around at that time and said he had asked his journalists to make a commentary on the text. Nahimana told him that he had requested an evaluation of the documents, but that as the information had come to him within the framework of ORINFOR, as a journalist he had broadcast it. Dahinden asked Nahimana if he did not see a link between the dissemination of the communication and the events that took place subsequently. Nahimana replied that he rather saw the link to the speech made by the leader of the PL party. He said the broadcast should not have triggered the events that took place a few days later. When Dahinden asked Nahimana whether he thought this broadcast was helpful to the public, as it had triggered massacres and persecutions, displaced 15,000 people, and burned houses, Nahimana replied that it was precisely the role of public service to warn people and that apart from the PL, who were responsible for what happened, everyone in Rwanda understood that this was the role of the radio. He said that in time of war, the radio should be used to warn people where there was danger, in order to save them.[675]

676. In cross-examination, Dahinden explained the political backdrop to events in Bugesera. He said that the *bourgmestre* of Kanzenze had in October 1991 ordered a series of arrests of young Tutsi in the commune, who were accused of crossing over to join the RPF. On 11 November 1991 at the Nyamata market in Bugesera, this same *bourgmestre* denounced the Tutsi PL representative, Gahima, as an RPF recruiter. In the following weeks several mines were exploded in the area. On 1 March 1992, at a political meeting held in the Gizensi commune of Bugesera, Gahima criticized this *bourgmestre*, who then violently counter-attacked him, distributing tracts saying he must not escape. The communiqué then arrived and was aired on Radio Rwanda five times on 3 and 4 March 1992. An RTLM broadcast of 31 October 1993 was introduced by the Defence, in which Landouald Ndasingwa, the PL party Vice-Chair, commented on statements made about him at a press conference by, among others, Justin Mugenzi, the President of the PL party.[676] In the interview, Ndasingwa stated that the political rally organized by Mugenzi in Bugesera triggered the massacres there. Responding to this

[674] T. 24 Oct. 2000, pp. 36-65.
[675] T. 24 Oct. 2000, pp. 36-65; T. 30 Oct. 2000, pp. 121-126; Exhibit P3.
[676] Exhibit 1D4B.

PURL: https://www.legal-tools.org/doc/45b8b6/

interview, Dahinden noted that the PL had split into factions, the power movement of Mugenzi and a moderate wing.[677]

677. Dahinden testified that following these events in Bugesera there was an outcry in Rwanda and in the international community. Many embassies sent emissaries to the government in March 1992, and in April when a new government was set up, Nahimana left his post. According to Dahinden there was a Presidential Decree that terminated his functions. Nahimana told Dahinden that he had talked to the Prime Minister, who blamed him and said the radio had been the catalyst that triggered these events. Nahimana told Dahinden that the Prime Minister was responsible for law and order and he was the one who should have done something. Nahimana maintained that the radio had done its duty by broadcasting the communiqué.[678]

678. Prosecution Expert Witness Alison Des Forges testified that she was the Co-Chair of the international delegation that went to Rwanda in 1992 to investigate the killings in Bugesera. She described the attack as the first incident in which the radio was used as part of a propaganda effort to incite people to violence. In the days immediately before the attack, Radio Rwanda broadcast a communiqué later acknowledged to have been false. The communiqué alerted listeners to a supposed RPF plot to carry out a series of assassinations of Hutu political leaders as well as other forms of terrorism in Rwanda, and linked these particularly to the Liberal Party. The communiqué was broadcast several times - five times, she thought - during the day, even as the violence was taking place. Each broadcast was preceded by a Radio Rwanda commentary, saying that the radio had an obligation to be active when it learned of such things. Des Forges said there was no reference made to Bugesera in the communiqué but that the references to the PL would have been clear, and there was a contest between PL and MRND at that time. PL was presented as the internal framework of the RPF.[679]

679. Des Forges said that she understood, based on documentation and consultation with government and human rights sources at the time, that Nahimana was forced to resign from Radio Rwanda because he was held personally responsible for the use of the radio to incite violence in the Bugesera massacres. She said this incident also led Germany to refuse to accept Nahimana as Ambassador from Rwanda. Des Forges indicated that there were five human rights organizations in Rwanda, organizations that she considered to be serious and reliable, that did a collective report on the Bugesera massacres. In their report, these organisations particularly deplored the role of the false communiqué and other tracts, which they held "co-responsible" for the loss of human life in Bugesera.[680]

680. According to Ferdinand Nahimana, the population in Bugesera was called upon to rise up against François Gahima, a Tutsi who was Chairman of the PL. During a rally on 1 March 1992, led by Justin Mugenzi, who was Chairman of the PL, Gahima was

[677] T. 1 Nov. 2000, pp. 12, 18-21, 45-52.
[678] T. 24 Oct. 2000, pp. 36-67; 31 Oct. 2000, pp. 165, 170-71.
[679] T. 20 May 2002, p. 240.
[680] T. 20 May 2001, p. 242.

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proclaimed *bourgmestre* by the PL for Kanzenze commune. Rwambuka, the lawfully appointed *bourgmestre* was present.[681] In cross-examination, Nahimana was asked whether the editorial that was read out five times on Radio Rwanda in the following days would not add to the tensions and encourage people to attack the most visible PL stronghold in Bugesera. Nahimana said it was already known by March 1992 that the PL was in collaboration with the RPF, which was concretised two months later. He said there were acts of sabotage and civil disobedience on a regular basis in these communes and the PL party was mentioned in this context. As Radio Rwanda was trying to denounce the destabilization manoeuvres of the enemy and the information showed that the PL was conniving with the enemy, they said so. He maintained that even though the PL was a registered party in Rwanda it was clear that the party or at least some members of it were participating in the destabilization of the country.[682]

681. When asked whether he had checked or asked any journalist to check whether there was an Inter-African Commission for Non-Violence, or to check on the name of the individual who signed the fax from the organization, he replied that they did not attach that level of importance to the document. It was forwarded by someone who was known in Kigali so he did not have to bother himself to find out whether the signatory existed. He said it was not the essential document to them. They got information from interviews and fieldwork of their journalists. In many communes the *bourgmestre* or other authorities intervened as a result of the work of journalists, so the document was not that important. In many places, including Bugesera, there were acts of destabilization. When asked how he could say the document was unimportant when he ran the editorial five times, Nahimana explained that it was the document that was unimportant, not the editorial. He recalled that names were never mentioned on the air and said there was no intention to cause massacres anywhere with this editorial. He said if massacres occurred in Bugesera, there were other underlying reasons. Nsanzuwera had investigated and the international commission and their report said that the reason for the massacres was a misunderstanding between the local authorities, in particular Rwambuka and Gahima.[683]

682. When asked about Kamilindi's testimony that there was opposition to doing anything with the communiqué and that all the journalists felt as they did not know the origins of the document they should not use it, he said the discussion was not whether the letter was true or false, it was to know whether it should be used, to be read or not. Nahimana said the document was not used; it was not read. In response to questioning from the Chamber, Nahimana acknowledged that everybody asked questions about the document. He said some thought it was genuine and others thought it was not. He again noted that the document was not read on air, only the editorial. Nahimana said repeatedly that the document itself was not that important and that the editorial was the result of many documents. He said the editorial did not incite the people of Bugesera, noting that Bugesera was not mentioned once, and nor were the Tutsi mentioned. When the massacres broke out in the region, the PL party, knowing that its representative Gahima was in conflict with Rwambuka and that Rwambuka got the population to rise against

[681] T. 23 Sept. 2002, pp. 9-13.
[682] T. 26 Sept. 2002, pp. 83-85.
[683] *Ibid.*, pp. 83-90.

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Gahima and his supporters, in particular the Tutsi, hurried to be the first to issue a communiqué saying that Bugesera was being burned down because Radio Rwanda had aired reports.[684]

Credibility of Witnesses

683. **Thomas Kamilindi**, an experienced journalist, gave his evidence with great care, in the Chamber's view. He made clear, for example, that he was told that Nahimana was dismissed as a result of public opinion and that it was not something he knew himself. He was careful to say what he knew and did not know. He was unable to specify the exact date of the fax from Nairobi, but was able to place it in time in reference to other events. The Chamber notes that Gaspard Gahigi attempted to recruit Kamilindi for RTLM. Kamilindi showed no personal animosity against Nahimana, and no significant challenge to his credibility arose as a result of cross-examination. For these reasons, the Chamber finds the testimony of Kamilindi to be credible.

684. The Chamber has found the testimony of Prosecution Witnesses François-Xavier Nsanzuwera and Philippe Dahinden to be credible in paragraphs 545 and 546. The testimony of Ferdinand Nahimana is discussed in section 5.4.

Discussion of Evidence

685. The evidence indicates that a series of political events in Bugesera, culminating in a PL meeting on 1 March 1992, sparked a killing spree over the course of the following days that took the lives of hundreds of Tutsi civilians. The Chamber has considered the role of Radio Rwanda in the events that transpired, and more specifically the role of Ferdinand Nahimana, as the Director of ORINFOR, the state information agency of which Radio Rwanda was a part. Approximately five broadcasts were made by Radio Rwanda during the course of 3 and 4 March of a communiqué and/or an editorial about a communiqué that was received from a domestic Rwandan human rights organization, based on a fax sent to this organization from an organization in Nairobi. The communiqué stated that the PL, which it described as the internal branch of the RPF, would be implementing a plan to assassinate a number of Hutu leaders, who were named. The communiqué did not mention Bugesera. The fax from Nairobi, on which the communiqué was based, was subsequently established through forensic means, to have been a forgery. Neither the organization from which it purportedly was sent nor the signatory of the fax could be located.

686. The Chamber has reviewed a document reprinted in the book *Les crises politiques au Burundi et au Rwanda*, by André Guichaoua, introduced into evidence by Counsel for Nahimana.[685] Several Prosecution witnesses stated in their testimony that they recognized some part of the broadcast in this exhibit. The text is not itself a communiqué but it refers to the organization in Rwanda having acted upon the information it received from the organization in Nairobi, and it summarizes the content thereof. The Chamber accepts

[684] *Ibid.*
[685] Exhibit 1D37.

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Nahimana's evidence that Radio Rwanda did not broadcast the communiqué itself, noting that it did nevertheless broadcast the contents of the communiqué as well as its specific source.

687. The testimony of Thomas Kamilindi is particularly important, in the Chamber's view, as he was present in the internal discussions of Radio Rwanda regarding the broadcast. His testimony that there was opposition in the editorial meeting to using the fax or communiqué was grudgingly affirmed by Nahimana, who in response to questioning from the Chamber acknowledged that some thought it was not genuine and noted that it was not read on the air. Nahimana did not in his testimony defend the authenticity of the document. Rather he tried to minimize its importance. His suggestion that the journalists had other sources of information for the broadcast is not supported by the evidence of the broadcast itself, which cites these sources exclusively, or by the evidence of Kamilindi. According to Kamilindi, a decision was made based on the unreliability of these sources not to broadcast the information. This decision was reversed at the direction of Nahimana and a pre-recorded tape was broadcast at least four times.

688. The impact of the Radio Rwanda broadcasts was tangible, as evidenced by the witness testimonies. Nsanzuwera's recollection of his own encounter with elderly people in the region, staying at home afraid of a Tutsi attack, and his description of the frenzied "intoxication" of those Hutu who thought they had to defend themselves or they would be massacred by the Tutsi, are telling of the fear that was generated by the radio. The Chamber notes the evidence that the international investigation did not focus on the radio, and that Nsanzuwera, despite these dramatic descriptions, in his own book did not mention the role of Radio Rwanda in the massacres. In the Chamber's view this does not mean the radio did not play a role in spreading fear and escalating violence. Nahimana denies any causal relationship of these events with the media, stating that the political events of 1 March 1992 were responsible for what transpired, and government officials were responsible for not stepping in to stop the violence. The Chamber accepts that these were both causes of what happened but notes that they do not preclude the radio as an additional factor in the causation of the killings. Nsanzuwera testified that the number of killings would not have been significant but for the effect of the media. This impact was recognized at the time in the report on the killings done by five Rwandan human rights organizations, which held the dissemination of false information "co-responsible". The fact that Bugesera was not mentioned in the fax does not negate the fact that its target was the PL, which was engaged in a political stand-off at the time in Bugesera. In these circumstances, the Chamber considers that the impact of the broadcast was not lessened by the absence of an explicit association with Bugesera. The implication is evident.

689. With regard to Nahimana's role in what happened at Radio Rwanda, the Chamber notes that his own testimony indicates that he was actively involved in the process. His defence is not that he had nothing to do with what happened. To this day, he maintains that there was nothing wrong with what happened. He affirmed the role of the radio in bringing to public attention the threat faced by the country posed by the RPF, and he noted the subsequent affiliation between the RPF and the PL. The broadcast itself described the role of the radio as such and called on the population to be vigilant.

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Nahimana told Dahinden in a subsequent interview that the radio had done its duty to warn people by broadcasting the communiqué. As Director of ORINFOR, Nahimana was responsible for this decision, which was made against editorial advice and is incompatible with the ethical standards of journalism subsequently adopted in Rwanda. When asked he said he did not check the information and added that he did not think it was important to do so. His comment that the editorial discussion was not about whether the document was true or false but whether or not to use it is another indicator that to Nahimana the truth was of secondary importance. His testimony suggests that he would make the same decision again.

690. The Prosecution maintains and has introduced evidence to support their contention that Nahimana was dismissed as Director of ORINFOR as a consequence of his decision to broadcast the contents of the communiqué from Nairobi and the harm that ensued from this decision. Nahimana contests that this was the reason for his departure from ORINFOR. The Chamber does not find it necessary to make a factual determination on this matter.

Factual Findings

691. The Chamber finds that Ferdinand Nahimana, as Director of ORINFOR, ordered the broadcast on Radio Rwanda of the contents of a communiqué based on a fax from Nairobi, a false document stating that the PL was the internal arm of the RPF and was planning to assassinate Hutu leaders. This broadcast took place within a few days of a PL meeting in Bugesera on 1 March 1992, resulting in the killing of hundreds of Tutsi civilians. It was repeated four or five times over the course of 3 and 4 March 1992. As Director of ORINFOR, Nahimana reversed a decision of the editorial team not to broadcast the communiqué because of their inability to confirm its authenticity. Nahimana did not make an effort to ascertain the accuracy of the Radio Rwanda broadcast, which spread fear and provoked violence against the Tutsi population by Hutu who were falsely led to believe that they faced imminent attack.

5.4 Evaluation of Nahimana's Testimony

692. The Chamber has considered Nahimana's testimony and finds a number of patterns in his response to questioning. Nahimana is a man of words, and he manipulates words to suit the circumstances. When discussing various RTLM broadcasts of concern that were put to him in cross-examination, Nahimana often prevaricated, first looking for some textual response or defence and if that was not convincing then partially acknowledging the concern while leaving room for further manoeuvre. When asked about the broadcast of December 1993, for example, in which Kantano Habimana said about the Tutsi that "they are the ones who have all the money", initially Nahimana omitted any reference to the phrase. Then he challenged the translation when this omission was brought to his attention, and then he challenged the meaning of the phrase in context. Finally, he said that that he would not have used such language but that he would have expressed the same reality in a different way. Similarly, when asked about the RTLM broadcast on 3 April 1994 charging the Medical Director of Cyangugu with having

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organized an RPF meeting, Nahimana first noted that RPF brigades existed. He suggested that it was possible the doctor organized this meeting, but acknowledged that it was speculation. When it was put to him that the broadcast made reference to a "small group of Tutsis" and not the RPF, he said he would not have allowed the piece to be aired but that in the context it could have been an RPF brigade. Nahimana's testimony is marked by purposeful ambiguity.

693. In his testimony, Nahimana distanced himself from broadcasts after 6 April 1994, saying he was revolted by those which left listeners with the impression that Tutsis generally were to be killed, although he was also careful to say that he did not believe that RTLM had systematically called for people to be murdered. He offered a global condemnation of such broadcasts and said he was shocked to learn of them in detention when he received the recordings and for the first time had a chance to review them. The Chamber does not accept that Nahimana first learned of these broadcasts in detention. In a Radio Rwanda interview on 25 April 1994, he said: "I am very happy because I have understood that RTLM is instrumental in awakening the majority people", at the height of the killing frenzy in Rwanda. Nahimana also knew of Dahinden's statement in May 1994 to the United Nations condemning RTLM broadcasts; Dahinden discussed it with him when they met in June 1994.

694. Another pattern noted by the Chamber in Nahimana's testimony was his tendency to deny that he held positions of authority despite evidence to the contrary, and then to retreat to a formalistic interpretation that minimized his own role. Nahimana denied that he was appointed "conseiller advisor" to President Sindikubwabo. When confronted with his signature in an Associated Press reporter's book as "*conseiller* advisor" to the President, he testified that he only used this title to get an audience with French government officials, maintaining that he was not really holding the position in the administrative sense. Similarly, Nahimana repeatedly stressed the distinction between RTLM S.A. or RTLM Limited, the corporation, and RTLM the radio station, a distinction the Chamber finds artificial as RTLM radio was the sole project of, as well as wholly owned and controlled by, the RTLM company. In light of the overwhelming evidence that Nahimana was often referred to publicly as a Director of RTLM, the Chamber cannot accept Nahimana's denial that this was the case.

695. With great sophistry, Nahimana often pursued many lines of argument sequentially or even simultaneously in his testimony. Asked about the ORINFOR communiqué relating to Bugesera and confronted with Kamilindi's testimony that all the journalists felt they should not use the unknown document they had received, he said the discussion was not whether the document was true or false, it was to know whether it should be used, to be read or not. Nahimana said the document was not used; it was not read. The Chamber notes that although it was not the fax itself, what was read on Nahimana's order precisely conveyed the contents of the fax. After much evasion with regard to Kamilindi's testimony that the journalists in ORINFOR were against using the document, Nahimana finally acknowledged when asked by the Chamber that everyone in the meeting asked questions about the document. He said some thought it was genuine and others thought it was not. He again noted that the document was not read on air, that

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only the editorial was read. Nahimana said repeatedly that the document itself was not that important. When asked why if it was not important it was broadcast five times, he said it was not the document that was broadcast but the editorial. Again, the Chamber notes that what was read precisely conveyed the contents of the document.

696. Nahimana was not forthcoming in his testimony. While he was not entirely untruthful, in the view of the Chamber, he was evasive and manipulative, and there were many credibility gaps in his testimony. For this reason, the Chamber has been cautious in its evaluation of Nahimana's testimony on particular matters of fact, and does not generally accept Nahimana's version of events.

6. Jean-Bosco Barayagwiza

6.1 Meetings, Demonstrations and Roadblocks

697. A number of Prosecution witnesses testified to Barayagwiza's presence and participation in CDR meetings, demonstrations and roadblock activities. As discussed above, Barayagwiza was a founding member of the CDR and one of its leaders. The killing of Tutsi was promoted by the CDR, as evidenced by the chanting of "*tubatsembatsembe*" or "let's exterminate them" by CDR members in the presence of Barayagwiza and by Barayagwiza himself.

698. Witness AGK, a Hutu man who worked in the building that housed the Ministry of Foreign Affairs, recounted in his testimony a CDR demonstration that took place in May 1993. The demonstrators, some of whom were wearing CDR caps or CDR clothing, surrounded the Ministry of Foreign Affairs, raised the CDR flag and locked the workers in the building. The demonstrators were armed with sticks, clubs and stones. They said that they were not going to release those in the building, who would spend the night at the Ministry. There were about 800 demonstrators, and they were chanting songs such as "*Tubatsembatsembe*" and dancing. The witness explained that "*Tubatsembatsembe*" meant "exterminate the Tutsis", and they meant exterminate all the Tutsi and all those who did not speak the same language as they did. The demonstrators arrived at the Ministry at 3 p.m. At 5 p.m., when it was time to go home, they prevented those inside from leaving. Barayagwiza, however, was able to leave, which he did at 5.15 p.m. Witness AGK, who saw him through the window, said he stayed with those outside and spoke to the demonstrators for 15 minutes before he left. Other Ministry officials, including the Chief of Staff and Director of General Services, were locked up by the demonstrators in the building and prevented from leaving. The demonstration lasted from 3 p.m. to 1 a.m., when UNAMIR soldiers dispersed the crowd by using teargas after the demonstrators threw grenades at the soldiers. UNAMIR rescued those in the Ministry and drove them away.[686]

699. Witness AGK testified that Barayagwiza was a member of the CDR and occupied a position of importance. He did not know what position Barayagwiza held but he knew that it was an important one because Barayagwiza gave orders, he distributed CDR

[686] T. 21 June 2001, pp. 94-101.

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berets, and many CDR members used to visit him. The witness was posted at the entrance to the building and therefore was in a position to know who was coming and where they were going. Witness AGK testified that Barayagwiza practised regional and ethnic discrimination at work, recalling an incident in May 1993 when Barayagwiza called him to his office to give him a letter to give to someone. Barayagwiza asked Witness AGK where he was from, and when he replied that he was from Kibuye, Barayagwiza told him to leave because he did not work with *Banyenduga* who worked with the *Inyenzi-Inkotanyi*. Barayagwiza then called another person to deliver that letter. The witness said that Barayagwiza used to ask people who worked at the Ministry their origin. If anyone wanted to see Barayagwiza at the Ministry, they had to go through his secretary who would ask who they were and where they came from, and what they did. If they were from a region that was unacceptable, then Barayagwiza would not receive them.[687] Witness AGK testified that he heard Barayagwiza say that they had to fight the *Inkotanyi* to keep the Tutsi from gaining power. He heard this statement when Barayagwiza was standing in front of the Ministry which was about five metres away from the entrance into the building, talking to two people, Colonel Baransaritse and Jean de Marchel Mungadanutsa.[688]

700. Witness AHI, an *Impuzamugambi* from Gisenyi, testified that he first saw Barayagwiza in 1992. He knew him from a videotape he had seen in March 1992 at Ngeze's house of the constituent assembly of CDR. Towards the end of August 1992, he saw Barayagwiza at the Gisenyi prefecture's office accompanied by Hassan Ngeze, Colonel Anatole Nsengiyumva, and others. They had gathered for an important meeting to resolve an urgent problem, which was the corpses of Tutsi who had been killed by members of the CDR and MRND in Mutura commune. The bodies were loaded into a yellow Daihatsu pick-up and taken to the prefecture, where Witness AHI saw them. He knew the driver of the Daihatsu, who told him that the Bagogwe, who were Tutsi, had been killed in Kabare by the *Impuzamugambi* of the CDR. Witness AHI explained that at that time fighting was limited to Ruhengeri prefecture. No *Inkotanyi* had attacked Gisenyi or stepped foot in any of three communes, including Mutura. The bodies from Mutura were purported to be the bodies of *Inkotanyi* who had attempted to attack Gisenyi. Witness AHI said that was not true, as they were the bodies of members of the population who had been killed. The driver of the pick-up uncovered the dead bodies. There were more than thirty. The witness saw that there were older people and younger people, civilians who had been killed with spears, clubs and machetes. There was no sign of any guns and there was no military gear. The bodies were not at the Gisenyi prefecture office for long. They were transferred to the town, but when the owner of the vehicle saw the dead bodies, he refused to take the vehicle and sent the driver to take the bodies back to the prefecture, which he did. Witness AHI and others followed him. Thereafter, Witness AHI did not know what happened and could not say how these dead bodies were finally buried.[689]

[687] *Ibid*., pp. 50-66, 128.
[688] T. 21 June 2001, pp. 66-69.
[689] T. 4 Sept. 2001, pp. 81-91.

PURL: https://www.legal-tools.org/doc/45b8b6/

701. Witness AAM, an Abagogwe Tutsi farmer from Gisenyi, testified that in 1991, after the killing of Bagogwe Tutsi and while they were still mourning the dead, Barayagwiza came, together with the *sous-prefet* at that time, Raphael Bikimibi. They summoned a meeting in Mutura commune, to which everyone went. At the meeting, Barayagwiza said that all the Hutu should stay on one side and the Tutsi on the other side. The people danced to welcome Barayagwiza and Bikimbi. Barayagwiza then requested that the Tutsi dance for him, and they did a dance called *Ikinyemera*. According to Witness AAM, Barayagwiza then said, "You are saying that you are dead – a lot of people have been killed from among you but I can see that you are many. There are many of you, whereas you are saying that a lot of people are being killed from among you. We heard that on radio, but if we hear that once again, we are going to kill you, because killing you is not a difficult task for us."[690]

702. Witness AAM testified that towards the end of 1992, demonstrations were carried out by the CDR and MRND in Gisenyi town, not far from where Witness AAM lived. He said they did a lot of bad things including blocking roads, looting Tutsi who lived nearby and beating up Hutu who did not speak the same language as they did. This lasted for two weeks, towards the end of which the witness saw Barayagwiza wearing a CDR cap and accompanied by *Impuzamugambi*. They were shouting and singing *Tuzatsembatsembe* or "let's exterminate them", meaning the Tutsi. He said the demonstrators were wearing red, yellow and black, and they were carry cudgels and terrorising people. Asked who else was present, he named a few people he recognized including Hassan Ngeze. In 1993, near the end of the year, there was a CDR rally and people were told to go to the stadium in Gisenyi for the rally. Witness AAM said that when they got there, Barayagwiza said that all those who were not members of CDR should not attend. He also said that if there was any Hutu with Tutsi blood in his veins he did not need him. The witness went home so he did not see what happened at the meeting, but some time later CDR members who were there went on a rampage against Tutsi. He particularly recalled Ruhura, the younger brother of Barayagwiza in this rampage. Witness AAM testified that he also saw Hassan Ngeze at this meeting.[691]

703. Witness AAM testified in cross-examination that before joining the CDR, Barayagwiza had Tutsi friends. He provided the names of four such people.[692] Omar Serushago testified that Barayagwiza had two wives and that his principal wife, the mother of his eldest children, was a Tutsi.[693] Witness X testified that Barayagwiza had a Tutsi mistress, with whom he had had children, and to show that the CDR had to be one hundred percent Hutu, Barayagwiza got rid of this mistress. Witness ABE testified that he knew Barayagwiza's wife, who was the mother of three children by Barayagwiza. She told him that Barayagwiza sent her away when he found out that she was Tutsi, which he had not known, telling her this was the reason she had to leave.[694]

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[690] T. 12 Feb. 2001, pp. 94-95.
[691] *Ibid*., pp. 101-105.
[692] T. 15 Feb. 2001, pp. 26-31.
[693] T. 20 Nov. 2001, pp. 64-65.
[694] T. 26 Feb. 2001, pp. 39-44, 138-141.

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704. Witness AFX, a Tutsi man from Gisenyi, testified that Barayagwiza, who was CDR President at the prefecture level, had the power to call meetings and to order the erection of roadblocks. The witness said he attended three meetings called by Barayagwiza in Ngororero, in Mutura and at Umuganda stadium. The Ngororero meeting took place in 1993, and many CDR members were present. Barayagwiza told the people at the meeting that it was high time the Hutu knew who their enemies were and knew how to behave themselves, and find ways and means of fighting the enemy. He said the people must understand that CDR represented the people in the majority. The meeting in Mutura commune took place three weeks later and was attended by CDR officials including Barayagwiza. At the meeting, Barayagwiza asked that the Bagogwe dance their traditional dance known as *Ikinyemera*. Witness AFX was standing close to Barayagwiza. After the Bagogwe had danced, he said, "It is said that the Bagogwe were killed, but where are these ones coming from, and what are they doing?" The third meeting attended by Witness AFX took place between July and August 1993 at Umuganda stadium. Barayagwiza and Hassan Ngeze were present. During the meeting it was said that it was high time that the Hutu knew in what times they were living and consequently they should fight their enemies who were the Tutsi. A few days after this meeting, roadblocks started being erected.[695]

705. Witness AAJ, a young man of Tutsi ethnicity from Gisenyi, testified that he knew Barayagwiza, his neighbour, as a very important personality who worked in Kigali, and said he was higher in rank than a national official of CDR. He first saw Barayagwiza in 1992 when Barayagwiza was holding a rally during the day at the Kabari Centre with more than 150 people present. Barayagwiza said at this meeting that no Tutsi was to be admitted to participate because they were accomplices of the *Inkotanyi*. After the meeting, the Tutsi in that region were in a difficult situation because of this statement. Witness AAJ recounted that some of the *Impuzamugambi* who were used by Barayagwiza took away a factory worker named Gafashi and a teacher named Kabogi, both Tutsi, and they never came back.[696] He said Barayagwiza supplied all the weapons that were used in the region by the *Impuzamugambi*, and Barayagwiza instructed them in everything that they did.[697] Furthermore, Barayagwiza participated in all the meetings and he was the one who was the most important person with respect to CDR propaganda in their region.[698] Witness AAJ saw Barayagwiza again at a second rally in the same place where the first rally was held. This time Tutsi were present. Barayagwiza separated the Hutu from the Tutsi and made them sit on different sides. He asked the Tutsi to dance for them, and then said: "the people say that the Tutsis are dying, but then who are these people who have just stood up and danced for me."[699] Witness AAJ saw Barayagwiza in the beginning of 1993 at his home, in the company of Ruhura, Biyigomba and Aminadabu. On that day he saw Ruhura in CDR clothing, and Aminadabu and Biyigomba had firearms that they had taken from Barayagwiza's house.[700]

[695] T. 3 May 2001, pp. 6-15.
[696] T. 21 Mar. 2001, pp. 8-15, 30-32; T. 22 Mar. 2001, pp. 7-8, 14-17, 28-30, 34-37, 44-47.
[697] T. 21 Mar. 2001, pp. 29-30.
[698] *Ibid.*, p. 30.
[699] T. 21 Mar. 2001, pp. 17, 20; T. 22 Mar. 2001, pp. 67-73.
[700] T. 21 Mar. 2001 pp. 22-23; T. 22 Mar. 2001, pp. 89-92.

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

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

[701] T. 21 Mar. 2001, pp. 24-25; T. 22 Mar. 2001, pp. 114-119.
[702] T. 21 Mar. 2001, pp. 26-27.
[703] T. 28 Aug. 2001, pp. 3, 21-22; T. 29 Aug. 2001, p. 43.
[704] T. 28 Aug. 2001, pp. 23-24.
[705] T. 28 Aug 2001, pp. 24-26.

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

Credibility of Witnesses

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

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

[706] T. 6 Mar. 2001, pp. 17-21, 31.
[707] T. 18 Feb. 2002, pp. 71-75.
[708] *Tubatsembatsembe* means "let's kill the Tutsi" and *gutsembatsemba* "kill the Tutsi" in the imperative form.
[709] T. 19 Sept. 2002, p. 108.
[710] T. 21 June 2001, pp. 130-134.
[711] T. 25 June 2001, pp. 8-11.
[712] *Ibid*., pp. 11-16.

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

711. **Witness AAM** was cross-examined as to how well he knew Barayagwiza and how many times he had seen him. He was also questioned about Ngeze and the circumstances in which he saw Ngeze at the demonstration he recounted in his testimony. The witness answered the questions put to him adequately and provided further details. It was suggested to him that he had mistakenly identified Ngeze rather than one of Ngeze's brothers. Witness AAM replied that he knew two of Ngeze's brothers, and he affirmed his testimony that it was Ngeze he saw.[714] He was questioned on his statements, in particular the fact that Ngeze is not mentioned in his statements dated 11 April 1996 and 18 November 1997. He explained that he was not asked about Ngeze on those occasions.[715] The Chamber notes that he did mention Ngeze in his two other statements. Witness AAM was questioned on political events in Rwanda both before and after 1994. He denied that he was a member of the RPF. He was questioned on his knowledge of and views regarding the RPF and its activities. The witness characterized the RPF as soldiers fighting for their rights and their own cause, and he questioned the attacks on the civilian population in retaliation for the RPF attack on 1 October 1990.[716] He affirmed his testimony that he did not know at the time that the attack on 1 October 1990 was launched by the RPF, and not Ugandan foreigners, which he was told at the time and believed.[717] Witness AAM stated that he was not biased against the Hutu, despite his experiences of killings of Tutsi by Hutu, and stated that there was intermarriage within his family.[718] The witness also affirmed that he was not testifying out of fear of his government or to please his government.[719] He acknowledged that he had an affiliation with Ibuka. Witness AAM responded adequately to the questions put to him in cross-examination, none of which effectively challenged his evidence. For these reasons, the Chamber finds the testimony of Witness AAM to be credible.

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

[713] *Ibid*., pp. 18-21.
[714] T. 12 Feb. 2001, pp. 131-149.
[715] T. 13 Feb. 2001, pp. 14-52.
[716] T. 12 Feb. 2001, pp. 155-158.
[717] T. 13 Feb. 2001, pp. 67-71; T. 15 Feb. 2001, pp. 48-52.
[718] T. 13 Feb. 2001, pp. 52-58.
[719] T. 15 Feb. 2001, pp. 53-54.

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Counsel for Barayagwiza he said that he did not hear of RPF military or political activities in 1993 and early 1994.[720] However, in cross-examination by Counsel for Nahimana, the witness acknowledged that he knew about RPF attacks from October 1990.[721] He had testified that before the genocide he was working as a secretary without pay in a civil service capacity, although his boss paid him from time to time. He denied that this payment was compensation for spying.[722] Witness AFX was questioned on his testimony that he saw weapons in Ngeze's house. He explained that Ngeze showed him the weapons because Ngeze was his relative and hid nothing from him. The witness described the layout of the house, the location of the weapons in the room, the time he saw the weapons and the light condition prevailing at that time. When asked how many rooms were in the house, he said that he was not sure of the exact number, and that he knew of four rooms because those were the rooms he had been in.[723] Witness AFX said this incident was not mentioned in his statement of 24 September 1999 because he was not asked about it at the time. It is mentioned in his statement of 20 April 2001 because the investigators on that occasion had asked him about his visits to Ngeze's house.[724] Having testified that he particularly remembered Kangura No. 35, the witness explained, when questioned about his memory of this issue and its number, that he found the content regarding Habyarimana's praise of himself interesting. He said he remembered the issue number as he had read it many times. Counsel put to the witness that he had wrongly identified the man seated in the top row on the far right of a photograph in that issue as Barayagwiza. The witness maintained his testimony. The Chamber notes that while the person identified is not Barayagwiza, the witness said several times when he made the identification that the photograph was not clear.[725] Witness AFX was asked about several discrepancies relating to his statements. He explained that in his statement of 20 April 2001, he described himself as "pensioned" although he was not drawing a pension, meaning that he had stopped working at the beginning of the killings. Asked why in this 2001 statement and another statement dated 24 September 1999 his mother was recorded as having two different names, he said he had only given one name for both statements.[726] Witness AFX testified to his association with Ibuka. The Chamber considers that Witness AFX gave reasonable responses to the questions put to him in cross-examination. In his testimony, Hassan Ngeze alleged that this witness was motivated to testify by a desire to remove Ngeze from and take over his house. This allegation, which does not directly relate to his testimony concerning Barayagwiza, was not put to the witness and for this reason will not be considered. The Chamber finds the testimony of Witness AFX to be credible.

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

[720] T. 7 May 2001, pp. 15-16, 28-31.
[721] T. 8 May 2001, pp. 10-12.
[722] T. 7 May 2001, pp. 43-45 (Closed Session).
[723] T. 7 May 2001, pp. 62-66, 71-77, 79-82 (Closed Session); T. 8 May 2001, pp. 37-42 (Closed Session).
[724] T. 7 May 2001, pp. 78-79 (Closed Session).
[725] T. 8 May 2001, pp. 16-27, 32; 50-51 (Closed Session).
[726] T. 7 May 2001, pp. 45-47 (Closed Session).

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

Discussion of Evidence

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

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

[727] T. 22 Mar. 2001, pp. 15-17, 22-23.
[728] T. 21 Mar. 2001, p. 8; T. 22 Mar. 2001, pp. 18-21.
[729] T. 22 Mar. 2001, pp. 28-34, 35-37, 85-87, 133-134.

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

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

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

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

[730] T. 4 Sept. 2001, pp. 81-93.

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

Factual Findings

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

6.2 Distribution of Weapons

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

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

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

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

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

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

[732] T. 28 Nov. 2001, pp. 11-39.
[733] T. 28 Nov. 2001, pp. 12-21, 60.
[734] T. 15 Nov. 2001, pp. 86-91.

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

Credibility of Witness

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

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

[735] T. 15 Nov. 2001, pp. 93-108.
[736] T. 28 Nov. 2001, pp. 9-30, 134-137, 154-158.
[737] T. 28 Nov. 2001, pp. 12, 41-48, 51-52, 103-104.
[738] T. 28 Nov. 2001, p. 96.
[739] T. 28 Nov. 2001, p. 58.
[740] T. 28 Nov. 2001, pp. 85-97.

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not present, but Witness AHB affirmed his testimony, insisting that he was speaking about things he saw.[741] He was also questioned on the testimony he gave regarding a CDR meeting in 1991. He affirmed that the meeting was in 1991 and that the CDR existed, at least in his region, in 1991.[742]

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

Discussion of Evidence

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

[741] T. 28 Nov. 2001, pp. 64-75.
[742] T. 27 Nov. 2001, pp. 142-149; T. 28 Nov. 2001, pp. 97-100.

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

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

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

Factual Findings

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

6.3 Killings and the Death Squad

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

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

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

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

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

[743] T. 15 Nov. 2001, pp. 140-157.
[744] T. 22 Nov. 2001, pp. 6-26, 36-40.
[745] T. 27 Nov. 2001, pp. 74-82.
[746] T. 15 Nov. 2001, pp. 117-122.
[747] T. 16 Nov. 2001, pp. 39-40, 51.
[748] *Ibid.*, pp. 46-48.
[749] T. 26 Nov. 2001, pp. 111-112.

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

Discussion of Evidence

735. Serushago was cross-examined extensively on his evidence relating to these meetings and the activities of the death squad. He said he did not hear Barayagwiza order Katumba and Mutombo to kill, but learned it from Katumba and Mutombo. He also said that he heard Baryagwiza give orders to kill at the meetings. He named three people Barayagwiza ordered to be killed at the meetings in 1993 and 1994, and when it was pointed out to him that these people had already been killed by 1994, he said the 1994 meeting had other victims.[751] He also named Colonel Rwendeye as having been present at these meetings, and when presented with an issue of Kangura from 1990 reporting the death of Rwendeye, he said that Rwendeye died in 1992, and then subsequently stated that the two meetings may have occurred in 1992 and 1993, rather than 1993 and 1994.[752] As discussed in more detail in paragraph 816, Serushago's testimony is confused and the Chamber will not rely on it except to the extent that it is corroborated. His evidence that Barayagwiza was a member of the death squad, that he ordered Katumba and Mutombo to kill people at two meetings in 1993 and 1994, that he sent a fax to the CDR and MRND youth wings ordering them to kill Tutsi, and that he ordered that the director of a school printing press be killed at a meeting in June 1994, is not corroborated. The Chamber cannot make a factual finding on these allegations based solely on the testimony of Omar Serushago.

6.4 Le Sang Hutu est-il Rouge?

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

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

[750] T. 16 Nov. 2001, pp. 40-51.
[751] T. 27 Nov. 2001, pp. 74-82.
[752] T. 16 Nov. 2001, pp. 65-68.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

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

[753] Exhibit 2D35, pp. 16-35, 59, 75.
[754] *Ibid.*, pp. 83-84, 89-90, 100, 143, 148.
[755] *Ibid.*, p. 169.
[756] *Ibid.*, p. 206.

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

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

7. Hassan Ngeze

7.1 Radio Interviews on Radio Rwanda and RTLM

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

Radio Rwanda

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

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

[757] *Ibid.*, pp. 132, 208-213, 230, 235.
[758] *Ibid.*, pp. 216-217, 220.
[759] Exhibit P104/4D.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

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

[760] Exhibit P105/4F.
[761] Exhibit P105/4I.
[762] Exhibit P105/4I.
[763] Exhibit P105/4K.
[764] Exhibit P105/4L.
[765] Exhibit P105/4M.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

[766] *Ibid.*
[767] T. 3 April 2003, pp. 83-86.
[768] *Ibid.*, pp. 86-88.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

RTLM

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

> There is another problem on the roads…it is said that all the persons… with a nice physiognomy are Tutsis. They have to chase this idea from their heads. This does not mean that all the people with a small nose are necessarily Tutsis. It happens that someone is arrested at the customs and shows his ID card with the inscription "Hutu". However, because of his small nose or light skin, he is considered as a Tutsi and is accused of complicity and assaulted.
>
> Therefore Gahigi, once in front of the microphone, please explain to the population manning roadblocks that all those having a small nose, slender, with a light skin are not necessarily Tutsis. Otherwise, you will find that we, the Hutus, are killing other Hutus mistaking them for Tutsis, for *Inyenzi*. Where would we go like this? You arrest someone and ask him his ID card. You find that he is a Hutu. If you do not understand, go and see the Conseiller and ask him, go and see the *bourgmestre* and ask him. In my view, this must be a priority and be absolutely respected on roadblocks.[772]

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

[769] *Ibid.*, pp. 88-90, 104-109.
[770] *Ibid.*, pp. 110-114.
[771] *Ibid.* pp. 114-122.
[772] Exhibit P103/257E.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

Discussion of Evidence

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

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

7.2 Killing of Modeste Tabaro

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

[773] T. 4 April 2003, pp. 1-12.
[774] T. 19 Mar. 2001, pp. 19-21.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

[775] T. 19 Mar. 2001, pp. 36-50; T. 20 Mar. 2001, pp. 28-33.
[776] T. 19 Mar. 2001, p. 47.
[777] T. 20 Mar. 2001, pp. 8-10.
[778] T. 20 Mar. 2001, p. 61.
[779] T. 4 Sept. 2001, pp. 46, 48.
[780] T. 4 Sept. 2001, pp. 62-67.
[781] T. 6 Sept. 2001, pp. 64-66.

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

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

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

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

[782] T. 4 Sept. 2001, pp. 66-69; T. 6 Sept. 2001, pp. 64, 72.
[783] T. 11 June 2001, pp. 5, 43-45.
[784] T. 6 Mar. 2001, pp. 17, 84-85.
[785] T. 11 Sept. 2001, pp. 15-16, 62-67, 70.

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

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

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

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

[786] T. 16 Jan. 2003, pp. 10-11, 16-19, 59.
[787] T. 27 Jan. 2003, pp. 56-58, 68-69.
[788] Exhibit P231.
[789] T. 28 Jan. 2003, pp. 44-46, 51-56.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

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

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

[790] T. 3 Mar. 2003, pp. 6-11, 20.
[791] T. 13 Mar. 2003, pp. 6-7, 11, 18-20.
[792] *Ibid.*, pp. 29-30, 38-39.
[793] T. 14 Mar. 2003, pp. 4-5, 8.
[794] T. 15 Mar. 2003, pp. 12-13, 19.
[795] *Ibid.*, pp. 20, 40, 44.

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

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

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

Credibility of Witnesses

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

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

[796] T. 21 Mar, 2003, pp. 5-6, 15-17.
[797] T. 24 Mar. 2003, pp. 19-20, 26-27, 36.
[798] T. 31 Mar. 2003, pp. 52, 56-59.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

Discussion of Evidence

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

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

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

[799] T. 4 Sept. 2001, p. 47; T. 6 Sept. 2001, pp. 7-11, 20-24.
[800] T. 6 Sept. 2001, pp. 24-36, 62-82, 87-98.
[801] T. 10 Sept. 2001, pp. 52-60.
[802] T. 10 Sept. 2001, pp. 5-8, 22-34.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

Factual Findings

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

PURL: https://www.legal-tools.org/doc/45b8b6/

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

783. Prosecution Witness AHA, who worked for *Kangura* and lived in Ngeze's house in Kigali, testified that between April and July 1994 there was no publication of *Kangura* and that Ngeze got involved with a militia and was moving around. He recalled seeing him in military uniform and said he was no longer a journalist at that time. In cross-examination, Witness AHA testified that Ngeze was not incarcerated at any time in 1994. In response to questioning from the Chamber, he said that he spoke to Ngeze by telephone within a few days of 6 April 1994.[803]

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

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

[803] T. 6 Nov. 2000, p. 110.
[804] *Ibid.*, pp. 34-37.
[805] T. 15 Nov. 2001, pp. 77-78.
[806] T. 16 Nov. 2001, pp. 3, 8-27.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

[807] *Ibid.*, p. 118-119.
[808] T. 16 Nov. 2001, p. 39.
[809] *Ibid.*, pp. 38, 52.
[810] *Ibid.*, pp. 53-60.
[811] T. 20 Nov. 2001, p. 13.

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

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

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

[812] *Ibid.*, pp. 29-31.
[813] T. 15 May 2001, pp. 104-108, 151; T. 16 May 2001, pp. 3-14.

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

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

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

[814] T. 16 May 2001, pp. 15- 24.
[815] T 17 May 2001, pp. 47-49.
[816] T. 4 Sept. 2001, pp. 55-62.

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

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

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

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

[817] *Ibid.*, pp. 69-74.
[818] T. 13 June 2001, p. 35; T. 11 June 2001, pp. 10-15.
[819] T. 11 June 2001, pp. 10-12, 15, 21-25; T. 12 June 2001, pp. 26-28.
[820] T. 11 June 2001, pp. 34-39.

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

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

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

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

[821] T. 11 June 2001, pp. 35-36, 39, 41-43, 49-50.
[822] T. 3 May 2001, pp. 17-26, 37.
[823] T. 12 Feb. 2001, pp. 102-105, 110-111.

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

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

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

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

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

[824] T. 26 June 2001, pp. 5-9, 32-36; T. 27 June 2001, pp. 119-120.
[825] T. 26 Feb. 2001, p. 95.
[826] T. 3 Sept. 2001, pp. 21-22.
[827] T. 6 Mar. 2001, pp. 80-83.
[828] Exhibit 3D244; T. 1 Apr. 2003, pp. 10-13.
[829] T. 7 Apr. 2003, pp. 55-60.
[830] T. 1 Apr. 2003, p. 5; T. 4 Apr. 2003, p. 22.

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

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

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

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

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

[831] T. 31 Mar. 2003, pp. 31-33, 48.
[832] Exhibit 3D245E.
[833] T. 4 Apr. 2003, p. 52.
[834] Exhibit 3D245E.
[835] Exhibit 3D244 (Structure, dated 24 Mar. 2003); T. 4 Apr. 2003, pp. 40-42; T. 7 Apr. 2003, p. 13.
[836] Exhibit 3D246.

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

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

808. A number of Defence witnesses testified to the date of Ngeze's arrest in April 1994. Witness BAZ2[841], Witness RM1[842], Witness RM5[843], Witness BAZ6[844], Witness RM19[845], Witness BAZ9[846] and Witness BAZ15[847] testified that Ngeze was arrested on 6 April 1994. Witnesses RM13[848] and Witness BAZ3[849] testified that Ngeze was arrested just after Habyarimana's death. Witness RM2 testified that Ngeze was arrested on 6-7 April 1994.[850] Witness BAZ1 testified that Ngeze was arrested the day before 6 April 1994 and was detained for three days.[851] Witness RM117 testified that Ngeze was arrested on 7 April 1994.[852] Witness RM112 testified that he found out on 7 April 1994 that Ngeze had been arrested.[853] As to the date of Ngeze's release from prison, Witness RM5[854] and Witness RM2[855] testified that Ngeze was released on 9 April 1994. Witness

[837] T. 4 Apr. 2003, pp. 40-44.
[838] T. 31 Mar. 2003, p. 32.
[839] *Ibid*., p. 68; Exhibit 3D80F.
[840] T. 31 Mar. 2003, p. 62.
[841] T. 29 Jan. 2003, p. 4.
[842] T. 14 Mar. 2003, p. 62.
[843] T. 21 Mar. 2003, p. 4.
[844] T. 15 Mar. 2003, p. 25.
[845] T. 3 Mar. 2003, p. 6.
[846] T. 28 Jan. 2003, p. 41.
[847] T. 3 Mar. 2003, pp. 23-24.
[848] T. 22 Jan. 2003, p. 4.
[849] T. 15 Mar. 2003, p. 4.
[850] T. 14 Mar. 2003, p. 72.
[851] T. 27 Jan. 2003, pp. 55-56.
[852] T. 24 Mar. 2003, p. 18.
[853] T. 13 Mar. 2003, p. 3.
[854] T. 21 Mar. 2003, p. 4.
[855] T. 14 Mar. 2003, p. 72.

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BAZ2[856], Witness RM112[857] and Witness RM1[858] testified that Ngeze was released on 10 April 1994. Witness BAZ15 testified that Ngeze was released after about six days in custody.[859] Witness BAZ9 testified that she saw Ngeze on 10 April 1994.[860] Witness BAZ31 testified that Ngeze went into hiding from 6 April 1994.[861] All of these witnesses learned of Ngeze's arrest from other people. Witness RM112[862], Witness RM19[863] and Witness BAZ15[864] testified that they heard about the arrest from Ngeze himself. The other witnesses heard about the arrest from people on the street or other Muslims, or knew of it as a matter of common knowledge.

809. Defence Witnesses RM13[865], RM10[866], BAZ31[867], BAZ1[868], BAZ4[869], BAZ9[870], BAZ2[871], BAZ33[872], BAZ10[873], RM19[874], BAZ15[875], RM5[876], RM117[877], RM112[878], RM113[879], RM114[880], RM118[881], RM115[882], RM200[883], RM1[884], RM2[885], RM300[886], BAZ3[887], BAZ5[888], BAZ6[889], BAZ8[890] and BAZ11[891] testified that Ngeze wore Muslim or civilian attire, not military uniform, and that he was not armed.

[856] T. 29 Jan. 2003, p. 5.
[857] T. 13 Mar. 2003, p. 4.
[858] T. 14 Mar. 2003, p. 62.
[859] T. 3 Mar. 2003, pp. 23-24.
[860] T. 28 Jan. 2003, p. 41.
[861] T. 27 Jan. 2003, p. 36.
[862] T. 13 Mar. 2003, p. 3.
[863] T. 3 Mar. 2003, pp. 6, 23.
[864] T. 3 Mar. 2003, pp. 23-24.
[865] T. 22 Jan. 2003, p. 2.
[866] T. 20 Jan. 2003, p. 9.
[867] T. 27 Jan. 2003, pp. 4-7.
[868] *Ibid.*, p. 60.
[869] T. 28 Jan. 2003, p. 19.
[870] *Ibid.*, pp. 41-42.
[871] T. 29 Jan. 2003, p. 5.
[872] *Ibid.*, p. 32.
[873] *Ibid.*, p. 45.
[874] T. 3 Mar. 2003, pp. 4-6.
[875] *Ibid.*, p. 23.
[876] T. 21 Mar. 2003, p. 3.
[877] T. 24 Mar. 2003, pp. 17-18.
[878] T. 13 Mar. 2003, p. 7.
[879] *Ibid.*, p. 29.
[880] *Ibid.*, p. 55.
[881] *Ibid.*, p. 73.
[882] T. 14 Mar. 2003, p. 4.
[883] *Ibid.*, p. 26.
[884] *Ibid.*, p. 62.
[885] *Ibid.*, p. 73.
[886] *Ibid.*, p. 88.
[887] T. 15 Mar. 2003, p. 3.
[888] *Ibid.*, p. 12.
[889] *Ibid.*, p. 24.
[890] *Ibid.*, p. 59.
[891] *Ibid.*, p. 75.

PURL: https://www.legal-tools.org/doc/45b8b6/

810. Defence Witnesses BAZ15[892], RM5[893], RM1[894], RM115[895] and RM117[896] said that neither Ngeze's Peugeot nor his Hilux was ever equipped with a megaphone. Witness BAZ15 said that Hassan Gitoki had an old Peugeot with a megaphone and that Gitoki used this to praise the *Interahamwe*. He said that Gahutu had a yellow Toyota Starlet and that Gahutu and Gitoki took turns with the megaphone.[897] Defence Witnesses RM5[898] and RM1[899] confirmed this and said that Hassan Sibomana had a vehicle with a megaphone which he used to call people to MRND meetings. RM1 also said that Hassan Bagoye had a microphone in his vehicle. He testified that Hassan Ngeze was neither a member of the CDR nor a member of the MRND and so he could not have had microphones and loudspeakers in his vehicle. RM1 informed the Court that Gisimba had mistaken Hassan Ngeze for Hassan Gahutu and that Gismba had never said it was Ngeze, he had just said Hassan. [900] Both Defence Witness RM200[901] and RM113[902] testified that Hassan Gitoki had a vehicle with a megaphone.

Credibility of Witnesses

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

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

[892] T. 3 Mar. 2003, p. 34.
[893] T. 21 Mar. 2003, p. 7.
[894] T. 14 Mar. 2003, p. 68, 69.
[895] *Ibid.*, p. 6.
[896] T. 13 Mar. 2003, p. 33.
[897] T. 3 Mar. 2003, pp. 33-34.
[898] T. 21 Mar. 2003, p. 6.
[899] T. 14 Mar. 2003, pp. 63-64.
[900] *Ibid.*, pp. 68-70.
[901] *Ibid.*, p. 32.
[902] T. 13 Mar. 2003, p. 33.
[903] Exhibit 3D37.
[904] T. 17 May 2001, pp. 3-4.

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

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

[905] T. 12 June 2001, pp. 30-31.
[906] T. 13 June 2001, pp. 3-7.
[907] *Ibid.*, pp. 11-28.
[908] *Ibid.*, pp. 31-33.
[909] T. 14 June 2001, pp. 20-21.
[910] T. 13 June 2001, pp. 40-72; T. 14 June 2001, pp. 1-28.
[911] T. 14 June 2001, pp. 111-113.
[912] T. 18 June 2001, pp. 4-5.
[913] *Ibid.*, p. 12.
[914] *Ibid.*, pp. 41-49, 78-80.

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

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

[915] T. 27 June 2001, pp. 4-6, 15; 28 June 2001, pp. 13-25, 35-36, 69, 78, 82.
[916] T. 6 Mar. 2001, pp. 59-62.

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

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

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

[917] *Ibid.*, pp. 69-73.
[918] *Ibid.*, pp. 95-102.
[919] T. 7 Mar. 2001, p. 38.
[920] *Ibid.*, p. 40.
[921] *Ibid.*, pp. 34-37.
[922] T. 15 Nov. 2001, p. 5.
[923] *Ibid.*, pp. 9, 12, 22; T. 22 Nov. 2001, pp. 96-97.
[924] T. 22 Nov. 2001, pp. 63-66.

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1993 rather than the end of 1993 and 1994.[925] Serushago mentioned in his testimony the names of three Tutsi who were killed in 1993 on the orders of Barayagwiza. Yet he said the names of the victims were mentioned at the 1994 meeting as well as the 1993 meeting. When he was asked how this was possible since by 1994 they had already been killed, he said they were killed in 1993 but that in the 1994 meeting other victims were named.[926] Serushago testified both that he heard Baryagwiza give his men these orders to kill, and that he did not hear Barayagwiza say this but rather learned it from the men themselves, who told him about it. These inconsistencies and others relating to Serushago's testimony on the death squads are discussed in more detail in paragraph 816.

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

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

[925] T. 21 Nov. 2001, pp. 122-126.
[926] T. 27 Nov. 2001, pp. 74-82.
[927] T. 20 Nov. 2001, pp. 71-73; T. 27 Nov 2001, pp. 67-69, 85-86.
[928] Exhibit 3D72.
[929] *Ibid.*; 20 Nov 2001, pp. 82-88; Exhibit 3D72.

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

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

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

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

[930] T. 19 Nov. 2001, pp. 116-120.
[931] T. 21 Nov 2001, pp. 96-106; T. 27 Nov 2001, pp. 25-26.
[932] T. 22 Nov. 2001, pp. 76-78, 80.
[933] *Ibid.*, pp. 66-71.

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

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

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

Discussion of Evidence

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

[934] T. 19 Nov. 2001, pp. 20-27; Exhibit 3D73.
[935] T. 19 Nov. 2001, pp. 1-2, Exhibit 3D72.

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

826. Ngeze has raised the defence of alibi for 7 April 1994. The Chamber has considered his evidence and the evidence of Defence witnesses, all of which is riddled with inconsistencies. Ngeze testified that he was arrested on the evening of 6 April and released on 9 April. The letter to Colonel Nsengiyumva, which has language suggesting it was written on 8 April, caused Ngeze to change his testimony to say that he had written it on the evening of 9 April, rather than on 10 April, as the letter states and as he initially testified. In counting the two days from 6 April, in an apparent effort to stretch to 9 April, Ngeze also mentioned 7 April as an arrest date. The Alibi Notice filed by Counsel for Ngeze states that Ngeze was incarcerated by the military on 7 April 1994.[936] Similarly, the response by Defence Counsel on Admission of Facts states that Ngeze was incarcerated on 7 April 1994, as does the Closing Brief of Counsel for Ngeze.[937] In light of the last minute and irregular introduction of this letter into evidence, and the questions it raises, the Chamber notes and shares the suspicion expressed by the Prosecution regarding the authenticity of this document.

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

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

[936] Notice of Alibi filed 20 January 2003, pursuant to Rule 67(a)ii of the Rules of Procedure and Evidence. ICTR Ref. No. 30653-30651.
[937] Rule 73*bis* response filed by Defence Counsel on Admission of Facts on 16 October 2000 (ICTR. 3786-3737), p. 36, para. 5.30; Defence Closing Brief, p. 125, para. 600.
[938] T. 4 Dec. 2002, p. 9.

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

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

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

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

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

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

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

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

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

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Factual Findings

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

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

7.4 Saving Tutsi

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

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

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

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

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

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

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

[940] T. 26 June 2001, pp. 68-69.
[941] T. 30 Aug. 2001, p. 52; T. 26 June 2001, pp. 71-81.
[942] T. 7 Nov. 2000, pp. 19-21, 119.
[943] T. 31 Mar. 2003, pp. 34-37, 40-43.

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Witness BAZ15, who was well-known, to help ensure their security.[944] Ngeze testified that he could save 20 Tutsi per day, and that in total he saved more than 400 Tutsi in Gisenyi from April to July 1994. If one included the other Tutsi people he took from their homes in Kigali to Hotel des Milles Collines or to UNAMIR, the total would be more than 1,000.[945] In cross-examination, Ngeze said he did not take money from those he saved. He used the sum of $50,000 from the US Government, which was personally delivered to him by the Cultural Affairs Officer of the American Embassy between 20 and 22 March 1994, to help him do his newspaper business.[946]

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

844. Defence Witness RM19 testified that she lent Ngeze a vehicle with which to transport Tutsi across the border. The witness named some Tutsi saved by Ngeze: Gatama's family (including a child whose name she wrote down[950]), Habib Saleem's family, Caritas and her younger sister, and Antoine Mbayiha.[951]

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

[944] *Ibid.*, p. 81.
[945] *Ibid.*, pp. 74-75.
[946] T. 4 Apr. 2003, pp. 18-20.
[947] Exhibit 3D176.
[948] Exhibit 3D178.
[949] T. 3 Mar. 2003, pp. 24-25, 29-32, 37, 44.
[950] Exhibit 3D172.
[951] T. 3 Mar. 2003, pp. 5, 14.
[952] T. 20 Jan. 2003, pp. 10, 25.
[953] T. 3 Mar. 2003, pp. 64-65.
[954] Exhibit 3D189.
[955] T. 13 Mar. 2003, pp. 27-30, 41.
[956] Exhibit 3D195; T. 13 March 2003, pp. 56-57.
[957] T. 14 Mar. 2003, pp. 25-26.

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

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

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

[958] T. 27 Jan. 2003, pp. 8-9.
[959] T. 29 Jan. 2003, pp. 5-6.
[960] T. 21 Mar. 2003, pp. 4-5.
[961] T. 28 Jan. 2003, p. 2.
[962] T. 13 Mar. 2003, pp. 3-5.
[963] *Ibid.*, p. 75.
[964] T. 14 Mar. 2003, pp. 6, 18.
[965] *Ibid.*, pp. 62-63, 68.
[966] *Ibid.*, pp. 74, 80.
[967] T. 29 Jan. 2003, pp. 50-51.
[968] *Ibid.*, pp. 35-36.
[969] T. 14 Mar. 2003, pp. 84, 86.
[970] T. 15 Mar. 2003, p. 4.
[971] *Ibid.*, p. 13.

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

Credibility of Witnesses

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

Discussion of Evidence

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

7.5 Ibuka

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

[972] *Ibid.*, p. 26.
[973] T. 15 Mar. 2003, p. 59.
[974] T. 29 Jan. 2003, pp. 36-38.

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

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

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

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

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

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

[975] T. 6 Nov. 2000, p. 71; T. 14 Nov. 2001 (Closed Session), p. 31.
[976] T. 8 Mar. 2001, pp. 45-46.
[977] T. 28 Nov. 2001, pp. 62-63.
[978] T. 16 May 2001, pp. 53-54.
[979] T. 29 Aug. 2001, pp. 20-22. The French statement reflects that his employer's name is listed as the prefecture in which the witness lives, whilst the English statement shows his employer's name as the cellule and sector in which the witness currently lives.
[980] T. 7 Feb. 2001, pp. 89-92; T. 8 Feb. 2001 (Closed Session), pp. 124-139.
[981] T. 7 Feb. 2001, pp. 101-108.
[982] T. 12 Feb. 2001, pp. 119-123.

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

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

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

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

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

[983] T. 13 Feb. 2001, pp. 95-98.
[984] T. 8 May 2001, pp. 36-37 (Closed Session).
[985] T. 7 May 2001, pp. 47-60 (Closed Session).
[986] T. 11 June 2001, pp. 8-10; T. 12 June 2001, pp. 49-53.
[987] T. 14 June 2001, pp. 100-101.
[988] T. 18 June 2001, pp. 21-22.
[989] *Ibid.*, pp. 39-41.
[990] T. 26 June 2001, p. 15.
[991] T. 27 June 2001, pp. 123-126.
[992] T. 28 June 2001, pp. 51-52.
[993] *Ibid.*, p. 68.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

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

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

[994] T. 27 Aug. 2001, pp. 17-20.
[995] T. 6 Feb. 2001, pp. 101-104.
[996] T. 11 Sept. 2001, pp. 93-96; T. 12 Sept. 2001, pp. 70-71.
[997] T. 11 Dec. 2002, pp. 60, 64.
[998] T. 21 Jan. 2003, p. 43.
[999] T. 13 Mar. 2003, pp. 60-61.

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

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

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

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

[1000] T. 20 Jan. 2003, pp. 11-24, 67.
[1001] *Ibid.*, pp. 66-67; T. 21 Jan. 2003, p. 43.
[1002] T. 13 Mar. 2003, pp. 34-35, 48, 52.
[1003] T. 14 Mar. 2003, pp. 28-30.
[1004] T. 16 Jan. 2003, pp. 4-9, 16, 23-25.

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

Credibility of Witnesses

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

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

[1005] T. 17 Jan. 2003, p. 12.
[1006] Exhibit 3D145; T. 16 Jan. 2003, p. 39.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

Discussion of Evidence

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

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

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

Factual Findings

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

7.6 Evaluation of Ngeze's Testimony

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

[1007] T. 13 Jan. 2003, p. 43.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

877. Finally, the Chamber notes that during the course of the trial, Hassan Ngeze engaged in various conduct relating to the proceedings that had an impact on his credibility. Prosecution Witness Omar Serushago produced a copy of a typed anonymous letter in Kinyarwanda, which had been given to him by the Imam at the UNDF who said that it was from Ngeze. The letter is a threatening one. It says, "I am writing to you this letter to remind you that our life on this earth is very short", subsequently making reference to his children. [1008] The letter continues, noting "during my entire life there has never been any problem between you and me and between my family and yours". The author recalled in the letter that in Nairobi he had given Serushago one of his best suits to wear and Serushago's wife $200 to live on, which Serushago testified Ngeze had done. He asked Serushago not to testify against him and mentioned the names of Kayonga, as well as Jef and Rejis. He asked whether it was not true that he had had no discussions with Serushago from 6 April 1994.[1009] Ngeze denied having written this letter, a denial that seems absurd especially as it is written in the first person.

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

[1008] Exhibit P72.
[1009] T. 19 Nov. 2001, pp.108-112.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

8. Interactions Among the Accused

8.1 Personal Meetings and Public Presentations

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

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

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

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

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

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

[1010] T. 2 Nov. 2000, pp. 159-160.
[1011] T. 14 May 2002, pp. 147-148.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

883. Witness AGK, a Hutu man who worked in the Ministry of Foreign Affairs, named Katumba, Mutombo and Hassan Ngeze as CDR members who visited Barayagwiza at the Ministry during 1992 and 1993. He said Ngeze came twice to visit Barayagwiza in March 1993. He also said he would see Ferdinand Nahimana when he came to visit Barayagwiza in 1990, 1992 and 1993. He said he saw Nahimana twice in 1993.[1016]

884. Witness MK, a Tutsi civil servant, testified that many clandestine meetings were held by the CDR and MRND parties, which she said were a single party, in the offices of the Minister of Transport. They were attended by government officials of several ministries including the Director of ONTRACOM, the national office of public transportation, as well as Nahimana, the Director of RTLM, and Barayagwiza. The meetings would be held on Mondays, Wednesdays and Thursdays after working hours.[1017] In cross-examination, Witness MK clarified that she did not herself participate in the meetings to which she testified but rather heard about them from her friend who was the personal secretary of a top ministry official.[1018] She acknowledged that her friend did not participate in these meetings either, explaining that she had an office just adjacent which allowed her to see who was coming and going. Also, as a personal secretary she had access to information. Witness MK said that although ONATRACOM was a separate agency from the Ministry of Transport, if the Minister asked the Director of ONATRACOM, a government appointee, for something, he would have to comply. The two were on good terms and belonged to the same political parties. On request from the Minister, ONTRACOM buses were used to transport *Interahamwe* to MRND meetings in 1993 and 1994.[1019] Authority was also given to RTLM to use the Ministry's vehicles,

[1012] T. 14 May 2002, pp. 149-152.
[1013] T. 7 Nov. 2000, pp. 84-86.
[1014] T. 14 Oct. 2002, p. 70.
[1015] T. 27 Mar. 2003, p. 88.
[1016] T. 21 June 2001, pp. 66-71, 86.
[1017] T. 7 Mar. 2001, pp. 99-103; T. 7 Mar. 2001 (Fr.), p. 113; T. 8 Mar. 2001, pp. 40-41.
[1018] T. 8 Mar. 2001, pp. 16-22, 106-108.
[1019] T. 7 Mar. 2001, pp. 103-109.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

Credibility of Witnesses

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

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

Discussion of Evidence

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

[1020] T. 8 Mar. 2001, p. 144.
[1021] *Ibid.*, pp. 66-70, 104.
[1022] *Ibid.*, pp. 128-131.
[1023] *Ibid.*, p. 6.
[1024] *Ibid.*, pp. 46-49.
[1025] *Ibid.*, p. 52.
[1026] *Ibid.*, pp. 23-28.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

Factual Findings

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

8.2 1993 MRND Meeting

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

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

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

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

[1028] T. 7 Feb. 2001, pp. 20-26.
[1029] *Ibid*., pp. 26-27, 31-33.
[1030] *Ibid*., pp. 31-33.
[1031] *Ibid.*, pp. 27-30; T. 8 Feb. 2001, pp. 49-56, 69-70.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

[1032] T. 7 Feb. 2001, pp. 67-68, 94-108.
[1033] T. 8 Feb. 2001, p. 114; T. 7 Feb. 2001, pp. 109-110.
[1034] T. 23 Feb. 2001, pp. 55-60.
[1035] T. 27 Feb. 2001, pp. 109-125.
[1036] T. 28 Feb. 2001, pp. 9-10.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

Credibility of Witnesses

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

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

[1037] T. 19 Sept. 2002, pp. 109-113; T. 14 Oct. 2002, pp. 48-49.
[1038] T. 1 Apr. 2003, pp. 14-16.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

Discussion of Evidence

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

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

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

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

[1039] Exhibit 3D128.
[1040] Exhibit P158A, p. 31 (28124).
[1041] T. 22 May 2002, p. 85.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

Factual Findings

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

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8.3 Meetings at Hotel des Milles Collines and Hotel Diplomat

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

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

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

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

[1042] T. 5 Feb. 2001, pp. 42-43, 50-61.
[1043] *Ibid.*, pp. 66-70.
[1044] The witness testified that the term "*Inyenzi*" referred to the RPF opposition but he heard people say that it covered all Tutsi. The consequence of being called an *Inyenzi* was death (T. 5 Feb. 2001, pp. 95-96).
[1045] T. 5 Feb. 2001, pp. 74-79; T. 6 Feb. 2001, p. 40.
[1046] T. 5 Feb. 2001, pp. 86-90.
[1047] T. 24 Sept. 2002, pp. 12-19.

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

Credibility of Witnesses

912. **Witness WD** testified to having overheard snippets of conversation of an incriminating nature when he happened to be serving Barayagwiza, Nahimana and others. Nahimana spoke of the killing of Tutsi and said that the outcry from the international community would be short-lived; Bagosora announced plans to exterminate the Tutsi on two occasions, and twice recited his favourite phrase "Rwanda belongs to the Hutu majority, not the Tutsi minority". Witness WD's presence, and within earshot, on three separate occasions at two different venues in September 1993, and 7 and 9 April 1994, happening to hear only these few words, would be an extraordinary coincidence in the view of the Chamber. The Chamber notes that Witness WD by his own admission was a member of the RPF from 1993.[1049] He paid dues and attended meetings with six other RPF members in his cellule once a week during September 1993. In his statement, the witness affirmed his loyalty to the RPF.[1050] He said his Tutsi ethnicity and RPF leanings were suspected by his colleagues, and were known to Bagosora's brother-in-law, Alloys Ngirabatware, the Chief of the *Interahamwe* of Remera.[1051] The Chamber considers that these circumstances make it even more unlikely that the witness, as a known RPF member, would have been able to serve Bagosora, as well as the Accused and others, while they were talking about exterminating the Tutsi on 7 and 9 April 1994.[1052] The evidence of Witness WD is not corroborated. In light of these circumstances, the Chamber finds the testimony of Witness WD not credible.

Discussion of Evidence

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

8.4 Kangura and CDR

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

[1048] T. 30 Oct. 2002, pp. 21-24.
[1049] T. 6 Feb. 2001, pp. 42-44.
[1050] *Ibid.*, pp. 101-103.
[1051] T. 5 Feb. 2001, pp. 121-129; T. 6 Feb. 2001, p. 50.
[1052] Defence Closing Brief (Nahimana), pp. 112-113.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

> Nothing, really, nothing in nature can move the Tutsi who has a desiccated heart where the Nazi worm nibbles in tranquility. In spite of this illness, the ideal thing to do would be to calm him. Calm him through a mental revolution similar to yours. And through what other means?
>
> Hutus, henceforth, a chasm threatens. On one side you have the abyss which you dare not look into because its depths will make you dizzy. The chasm is "controlled" by the Liberal Party, which is now joining the government….The abyss that you dare not look at is of course the Rwandan Patriotic Front for it has just obtained new power by joining the government through the Liberal Party. However, do not give up. Help is on its way. Call your brothers, all of you, board a boat and sail towards the mental Revolution Island.
>
> The island is none other than the CDR. So now grab your oars, Hutus. Your disembarkment would no doubt be synonymous with vigilance and you will never again experience mental, administrative and economic domination.[1054]

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

[1053] T. 14 May 2002, pp. 135-139.
[1054] Exhibit P116B, p. 33 or 25124, citing *Kangura* No. 10 (International Version), pp. KA021215-1234.

PURL: https://www.legal-tools.org/doc/45b8b6/

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

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

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

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

[1055] Exhibit P116 B, p. 63 or 25094, citing *Kangura* No. 9 (International Version), p. 11; Exhibit P118, p. KA022112. The title in French reads: "Le Hutu face à la menace Tutsi un seul espoir, le CDR".
[1056] Exhibit P116 B, p. 71 or 25086.
[1057] T. 14 May 2002, pp. 135-139.
[1058] *Ibid*., pp 11-12, 63.
[1059] Exhibit P 119; T. 14 May 2002, p. 140.

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

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

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

[1060] Exhibit P107/42; T. 16 May 2002, pp. 58-64.
[1061] T. 1 Apr. 2003, p. 88.
[1062] *Ibid.*, pp. 89-92.
[1063] *Ibid.*, pp. 77-78.
[1064] *Ibid.*, pp. 95-96.
[1065] The original Kinyarwanda reads: "*Ishyaka Rya Rubanda CDR Riramagana Guverinoma Igizwe N'Ibyitso. Byagaragariye Kuri Ministri Ngurinzira Ushinzwe Ububanyi N'Amahanga. Mu Mezi Abiri Igomba Kuba Yeguye*."
[1066] T. 8 Apr. 2003, pp. 46-47.

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

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

923. Witness B3 acknowledged that this article could be considered extremist in nature.[1068] It was put to him that CDR was engaged in false propaganda by passing a judgment that Tutsi had all the money, and he replied that he did not have the relevant information to conclude whether Tutsi had all the wealth in Rwanda in 1992 and 1993.[1069] During re-examination, the witness stated that he had not read the article, nor discussed its contents with the authors, before its publication.[1070] Witness B3 denied that *Kangura* was the mouthpiece of CDR. He said that *Kangura* was an independent newspaper, not under the influence of any party.[1071]

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

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

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Discussion of Evidence

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

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

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

Factual Findings

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

PURL: https://www.legal-tools.org/doc/45b8b6/

8.5 RTLM and Kangura

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

> Unity is strength. The Hutus' dream is finally coming true, for they have been able to set up a free radio and television station whose creation was announced more than a year ago. Many were wondering why it was only the Inyenzi who had that monopoly. As such, we, the Hutu majority quickly examined the possibilities of setting up a free radio and television station. As the days went by, we saw various small groups of people advocating for the speedy creation of the station.
>
> The small groups became very many, brought their ideas together and decided on one thing: the setting up of a radio and television station… Rich Hutus of all political persuasions and natives of all the regions of the country… bought several shares in this company named RTLM.
>
> The country's intellectuals and top-ranking authorities from all over the country and members of all the political parties also bought shares. Surprisingly, however, no single Tutsi has bought shares in RTLM. But that is understandable. At the general meeting held at Amahoro Hotel in Remera on 11 July 1993, even though the participants continued to insist on the commercial aspect of RTLM, it was only a matter of words … [illegible]…the participants were worried that not only did the *Inyenzi* have their own radio station, Radio Muhabura, but they and their accomplices had infiltrated Radio Rwanda. It was obvious that all the shareholders agreed on one thing: that this radio and television station be a symbol of solidarity for the Hutus. It was, moreover, this venture that made them agree for the first time and work as a team.
>
> So, that is the situation with regard to a radio and television station that will help *Kangura* further the Hutu objectives. On the frontline, the Rwandan Armed Forces have scored successes, *Kangura* has won in the written media and now our radio and television station has just won. This station is also referred to as the station for the people fighting for the defence of the Republic… Let RTLM be for us a symbol of solidarity, let it be a voice to arouse awareness in the majority of the population and protect their interests.[1073]

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

[1073] Exhibit P6, K0151189-90.

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

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

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

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

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

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

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

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

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

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

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

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

Discussion of Evidence

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

[1079] T. 28 Feb. 2002, p. 27.
[1080] T. 2 Nov. p.168; T. 6 Nov 2000, p. 21.
[1081] T. 16 May 2002, pp. 175-176.
[1082] *Ibid*., p. 177.

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

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

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

Factual Findings

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

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CHAPTER IV

LEGAL FINDINGS

1. Introduction

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

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

2. Genocide

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

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

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

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

[1083] UN General Assembly Resolution 59 (I) (1946).
[1084] *Akayesu* (TC) para. 521.

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RTLM

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

Kangura

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

CDR

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

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Causation

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

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

Acts of Jean-Bosco Barayagwiza

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

Acts of Hassan Ngeze

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

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

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Genocidal Intent

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

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

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

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

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

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

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

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

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

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

[1085] See paragraph 392.
[1086] See paragraph 396.
[1087] See paragraph 215.
[1088] See paragraph 160.

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

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

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

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

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

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

[1089] See paragraph 181.

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

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

Individual Criminal Responsibility

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

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

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

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

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

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

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

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

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

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

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

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

3. Direct and Public Incitement to Commit Genocide

Jurisprudence

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

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

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

The International Military Tribunal at Nuremberg

Streicher

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

[1091] *Akayesu* (TC) para. 551.

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

Fritzsche

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

United Nations Conventions

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

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

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

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

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

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

[1093] Human Rights Committee, General Comment 10, para. 3.
[1094] *Ibid*., para. 4.
[1095] *Ross v. Canada* (736/1997, views adopted October 2000), para. 11.5.
[1096] *Ibid*., para. 11.6.

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

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

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

[1097] *J.R.T. and the W.G. Party v. Canada*, Case No. 104/1981 (declared inadmissible 6 April 1983).
[1098] *Robert Faurisson v. France*, CCPR/C/58/D/550/1993 (1996).
[1099] *Ibid*., Concurring Opinion by Elizabeth Evatt and David Kretzmer, joined by Eckart Klein.

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

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

The European Convention on Human Rights

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

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

[1100] *Ibid*., para. 4.
[1101] *Jersild v. Denmark,* European Court of Human Rights (ECHR), Judgment of 22 August 1994.

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

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

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

[1102] *Ibid*., Dissent of Judges Ryssdal, Bernhardt, Spielmann and Loizou.
[1103] *Ibid*., Dissent of Judges Gölcüklü, Russo and Valticos.
[1104] *Zana v. Turkey*, ECHR, Judgment of 25 November 1997.

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

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

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

[1105] *Incal v. Turkey*, ECHR, Judgment of 9 June 1998.
[1106] *Arslan v. Turkey*, ECHR, Judgment of 8 July 1999.

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

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

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

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

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

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

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

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

[1108] *Ibid.*
[1109] *Sürek v. Turkey (No.1)*, ECHR, Judgment of 8 July 1999.
[1110] *Ibid.*

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Discussion of General Principles

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

Purpose

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

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

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

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Context

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

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

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

Causation

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

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

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

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

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

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

ICTR Jurisprudence

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

> …[T]he Chamber is of the opinion that the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as 'direct' in one country, and not so in another, depending on the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit….
>
> The Chamber will therefore consider on a case-by-case basis whether, in light of the culture of Rwanda and the specific circumstances of the instant case, acts of incitement can be viewed as direct or not, by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.[1115]

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

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

[1112] *Virginia v. Black*, 123 S. Ct. 1536 (2003).
[1113] *United States v. Sokolov*, 814 F.2d 864 (1987); *United States v. Ferenc Koreh*, aff'd., 59 F.3d 431 (2d Cir., 1995).
[1114] *Akayesu* (TC) footnote 126.
[1115] *Akayesu* (TC) paras. 557-558.

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

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

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

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

Charges Against the Accused

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

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

[1116] *Ibid.*, para. 560.
[1117] *Ibid.*, para. 562.

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

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

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

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

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

[1118] T. 27 May 2002, pp. 28-29.

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

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

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

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

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

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

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

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

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

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

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

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

RTLM

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

[1119] *Musema* (AC) paras. 361-363.

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

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

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

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

CDR

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

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Kangura

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

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

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

Acts of Hassan Ngeze

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

4. Conspiracy to Commit Genocide

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

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

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

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

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

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

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

[1120] *Musema* (TC) paras. 185-191.
[1121] *Ibid*., para. 192.
[1122] *Musema* (AC) paras. 361-363.
[1123] See *State v. Bond*, 49 Conn. App. 183, 195-96 (1998); *State v. Channer*, 28 Conn. App. 161, 168-69 (1992).
[1124] See *State v. Cavanaugh*, 23 Conn. App. 667, 671 (1991); *State v. Grullon*, 212 Conn. 195, 199 (1989).

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

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

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

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

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

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

[1125] *Niyitegeka* (TC) paras. 427-428.

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

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

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

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

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

5. Complicity in Genocide

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

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

6. Crimes Against Humanity (Extermination)

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

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

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

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

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

[1126] *Akayesu* (TC) para. 532.
[1127] *Akayesu* (TC) para. 591.

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

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

Individual Criminal Responsibility

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

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

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

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

[1128] *Bagilishema* (TC) para. 87.
[1129] *Ntakirutimana* (TC) para. 813.
[1130] *Niyitegeka* (TC) para. 450.
[1131] *Semanza* (TC) para. 463.

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

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

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

7. Crimes Against Humanity (Persecution)

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

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

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

[1132] *Tadic* (TC) para. 652. *Tadic* (AC) para. 249. *Prosecutor v. Stevan Todorovic*, IT-95-9/1, Sentencing Judgment, para. 12 (Trial Chamber I, 31 July 2001), para. 236. In *Krnojelac* (AC) para. 187, the ICTY Appeals Chamber stated that the accused "had sufficient information to alert him to the risk that inhumane acts and cruel treatment were being committed agains the non-Serb detainees because of their political or religious affiliation".
[1133] Para. 895.

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

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

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

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

[1134] *Ruggiu* (TC) para. 21.
[1135] *Ibid*.
[1136] *Ruggiu* (TC) para. 22.
[1137] ICCPR, Art. 20.

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

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

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

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

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[1138] CERD, Art. 4(a)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1149] Para. 234.

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

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

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

8. Crimes Against Humanity (Murder)

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

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

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

[1150] T. 19 Aug. 2003, p. 86.

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

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

9. Cumulative Charges and Convictions

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

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

[1151] See eg. *Musema* (AC) paras. 346-370.
[1152] *Musema* (AC) paras. 346-370; *Delalic* (AC) para. 400.

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CHAPTER V

VERDICT

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

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

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

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

Count 4: Not Guilty of Complicity in Genocide

Count 5: Guilty of Crimes Against Humanity (Persecution)

Count 6: Guilty of Crimes Against Humanity (Extermination)

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

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

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Not Guilty of Complicity in Genocide

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

Count 5: Guilty of Crimes Against Humanity (Extermination)

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

Count 7: Guilty of Crimes Against Humanity (Persecution)

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

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

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

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Not Guilty of Complicity in Genocide

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

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

Count 6: Guilty of Crimes Against Humanity (Persecution)

Count 7: Guilty of Crimes Against Humanity (Extermination)

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CHAPTER VI

SENTENCE

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

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

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

Individual Circumstances of the Accused and Aggravating and Mitigating Circumstances

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

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

[1153] Prosecution Closing Brief, p. 323.
[1154] *Ntakirutimana* (TC) para. 884 ; *Niyitegeka* (TC) para. 486.
[1155] *Delalic* (AC) para. 717; *Kambanda* (TC) para. 58.

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

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

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

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

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

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

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

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

Ferdinand Nahimana

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

Jean-Bosco Barayagwiza

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

> [T]hat for the violation of his rights the Appellant is entitled to a remedy, to be fixed at the time of judgement at first instance, as follows:
>
> a) If the Appellant is found not guilty, he shall receive financial compensation;
> b) If the Appellant is found guilty, his sentence shall be reduced to take account of the violation of his rights.[1158]

1107. The Chamber considers that a term of years, being by its nature a reduced sentence from that of life imprisonment, is the only way in which it can implement the Appeals Chamber decision. Taking into account the violation of his rights, the Chamber sentences Barayagwiza in respect of all the counts on which he has been convicted to 35 years' imprisonment. Pursuant to Rule 101(D) of the Rules, Barayagwiza is further entitled to credit for time served, to be calculated from the date of his initial arrest in Cameroon, on 26 March 1996.[1159] Credit for time served has been calculated as seven years, eight months and nine days. Therefore, Barayagwiza will serve twenty-seven years, three months and twenty-one days, being the remainder of his sentence, as of 3 December 2003.

[1157] *Blaskic* (TC) para. 807; *Krstic* (TC) para. 725.
[1158] Decision on the Prosecutor's Request for Review or Reconsideration (AC), 31 March 2000, p. 28.
[1159] The Prosecutor's Closing Brief at p. 4, and Prosecution Motion to Review AC Decision dated 3/11/99, state that Barayagwiza was arrested on 28 March 1996; the Motion Based on Lack of Jurisdiction dated 19 July 2000 cites his arrest date as 26 March 1996; the Defence Memorial in Support of the Accused Person's Appeal of the Decision of Trial Chamber II on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect states that he was arrested on 27 March 1996; the Appeals Chamber Decision dated 3 November 1999 states that he was arrested on 15 April 1996. The Chamber has taken as the date of arrest that most favourable to the Accused, that is, 26 March 1996.

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Hassan Ngeze

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

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

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

Arusha, 3 December 2003

Navanethem Pillay Presiding Judge	Erik Møse Judge	Asoka de Zoysa Gunawardana Judge

(Seal of the Tribunal)

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ANNEX I

INDICTMENTS ICTR-99-52-T

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ANNEX II

INDEX OF ABBREVIATIONS

1. ICTR Judgements

Akayesu (TC)	*The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Judgment, 2 September 1998
Akayesu (AC)	*The Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-A, Judgement on Appeal, 1 June 2001
Bagilishema (TC)	*The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, Trial Chamber I, Judgement, 7 June 2001
Bagilishema (AC)	*The Prosecutor v. Ignace Bagilishema*, Case. ICTR-95-1A-A, Motifs de l'Arrêt [du 3 juillet 2002], 13 décembre 2002 (Reasons for the Judgement delivered orally on 3 July 2002, English translation pending as of writing of this Judgement)
Kambanda (TC)	*The Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Trial Chamber I, Judgement and Sentence, 4 September 1998
Kambanda (AC)	*The Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-A, Judgement on Appeal, 19 October 2000
Musema (TC)	*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-T, Trial Chamber I, Judgement and Sentence, 27 January 2000
Musema (AC)	*The Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement on Appeal, 16 November 2001
Niyitegeka (TC)	*The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Trial Chamber I, Judgement and Sentence, 16 May 2003
Ntakirutimana (TC)	*The Prosecutor v. Elizaphan and Gérard Ntakirutimana*, Cases No. ICTR-96-10-T & ICTR-96-17-T, Trial Chamber I, Judgement and Sentence, 21 February 2003
Ruggiu (TC)	*The Prosecutor v. Georges Ruggiu*, Case No. ICTR-97-32-I, Trial Chamber I, Judgement and Sentence, 1 June 2000
Semanza (TC)	*The Prosecutor v. Laurent Semanza*, Caes No. ICTR-97-20-T, Trial Chamber III, Judgement and Sentence, 15 May 2003

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2. ICTY Judgements

Blaskic (TC)	*The Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14, Trial Chamber I, Judgement, 3 March 2000
Delalic (TC)	*The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landžo*, Case No. IT-96-21, Judgement, 16 November 1998
Delalic (AC)	*The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landžo*, Case No. IT-96-21, Judgement on Appeal, 20 February 2001
Krnojelac (TC)	*The Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25, Trial Chamber II, Judgment, 15 March 2002
Krstic (TC)	*The Prosecutor v. Radislav Krstic*, Case No. IT-98-33, Trial Chamber I, Judgement, 2 August 2001
Tadic (TC)	*The Proscutor v. Dusko Tadic*, Case No. IT-94-1-T, Opinion and Judgement, 7 May 1997
Tadic (AC)	*The Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A, Judgement, 15 July 1999
Todorovic	*Prosecutor v. Stevan Todorovic*, Case No. IT-95-9/1, Trial Chamber I, Sentencing Judgment, 31 July 2001
Vasiljevic (TC)	*The Prosecutor v. Mitar Vasiljevic*, Case No. IT-98-32-T, Trial Chamber II, Judgment, 29 November 2002

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