International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 17 November 2009

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Case No. ICTR-01-69-T

JUDGEMENT

The Prosecution
Wallace Kapaya
Charity Kagwi-Ndungu
Brian Wallace
Iskandar Ismail

The Defence
Emmanuel Altit
David Hooper

TABLE OF CONTENTS

CHAPTER I: Introduction 1
1. Overview 1
2. Preliminary Matters 6
2.1 Notice 6
2.2 Alleged Procedural Violations 8
2.3 Motions 10
3. Hormisdas Nsengimana 12
CHAPTER II: Factual Findings 13
1. Introduction 13
2. Meetings 13
2.1 Introduction 13
2.2 Evidence 14
2.3 Deliberations 28
2.3.1 Meetings Before 1994 28
2.3.2 Meetings After 1 January 1994 35
3. Machetes in Dormitories, 1991 49
3.1 Introduction 49
3.2 Evidence 49
3.3 Deliberations 51
4. Stockpiling of Machetes, 1991 – 1993 52
4.1 Introduction 52
4.2 Evidence 52
4.3 Deliberations 53
5. Attack on Tutsi Students, 7 or 8 April 54
5.1 Introduction 54
5.2 Evidence 54
5.3 Deliberations 55
6. Roadblocks, April Onwards 58
6.1 Introduction 58
6.2 Evidence 58
6.3 Deliberations 73
6.3.1 Introduction 73
6.3.2 Roadblock at the Entrance of the *Collège Christ-Roi* 74

6.3.3 Roadblocks near the Homes of Pasteur Dusangeyezu and Simon Kalinda 79
6.3.4 Roadblock inside the *Collège Christ-Roi* 81
6.3.5 Roadblock behind the Nyanza Parish Church 81
6.3.6 Roadblock between the Nyanza Parish Church and the *Ecole des sciences* 84
6.3.7 Roadblocks near the Homes of Célestin Rwabuyanga and Anaclet Nkundimfura 86
6.3.8 Conclusions 88
7. Killing of Ruben Kayombya, 21 April 94
7.1 Introduction 94
7.2 Evidence 94
7.3 Deliberations 95
8. Killing of Witness BVV's Family, 24 April 97
8.1 Introduction 97
8.2 Evidence 97
8.3 Deliberations 98
8.3.1 Notice 98
8.3.2 Killing of Witness BVV's Family 100
8.3.3 Conclusions 104
9. Killing of Father Mathieu Ngirumpatse, 24 or 25 April 105
9.1 Introduction 105
9.2 Evidence 105
9.3 Deliberations 109
10. Killing of a Tutsi Woman, 24 or 25 April 112
10.1 Introduction 112
10.2 Evidence 112
10.3 Deliberations 114
11. Killing of Refugees at the *Ecole normale primaire*, From 25 April 118
11.1 Introduction 118
11.2 Evidence 118
11.3 Deliberations 120
12. Killing of Three Tutsi Refugees, Late April or Early May 123
12.1 Introduction 123
12.2 Evidence 123
12.3 Deliberations 126

12.3.1 Refuge at the *Collège Christ-Roi* 126
12.3.2 Abduction From the Nyanza Parish Church 128
12.3.3 Conclusions 130
13. Clearing of Bushes and Killing, Late April or Early May 131
13.1 Introduction 131
13.2 Evidence 131
13.3 Deliberations 133
14. Killings in Mugonzi, 3 May, and Preceding Meeting 138
14.1 Introduction 138
14.2 Evidence 138
14.3 Deliberations 143
14.3.1 Meeting at the *Collège Christ-Roi* 143
14.3.2 The Attacks 145
15. Killing of Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze, Early May 149
15.1 Introduction 149
15.2 Evidence 149
15.3 Deliberations 153
16. Killing of Callixte Kayitsinga, Early May 157
16.1 Introduction 157
16.2 Evidence 157
16.3 Deliberations 160
17. Killing of Xavérine and Her Son, Early May 164
17.1 Introduction 164
17.2 Evidence 164
17.3 Deliberations 168
17.3.1 Arrest at the *Christ-Roi* Roadblock 168
17.3.2 Abduction From the *Ecole normale primaire* 169
17.3.3 Conclusions 170
18. Killing of Judge Jean-Baptiste Twagirayezu, Early May 173
18.1 Introduction 173
18.2 Evidence 173
18.3 Deliberations 177

19. Killing of Six Tutsi Women, Early May 180
19.1 Introduction 180
19.2 Evidence 180
19.3 Deliberations 182
20. Killing of Egide Ngenzi, Early May 185
20.1 Introduction 185
20.2 Evidence 185
20.3 Deliberations 187
21. Killings at Don Bosco Orphanage, 22 May 190
21.1 Introduction 190
21.2 Evidence 190
21.3 Deliberations 191
22. Killing of Father Justin Furaha, May 193
22.1 Introduction 193
22.2 Evidence 193
22.3 Deliberations 199
22.3.1 Nsengimana's Direct Role in Father Furaha's Death 199
22.3.2 Nsengimana's Enmity Towards Father Furaha 201
22.3.3 Conclusions 203
CHAPTER III: Legal Findings 204
1. Criminal Responsibility 204
1.1 Article 6 (1) of the Statute 204
1.1.1 Planning, Instigating, Committing, Ordering, Aiding and Abetting 204
1.1.2 Joint Criminal Enterprise 205
1.2 Article 6 (3) of the Statute 207
1.2.1 Legal Principles 207
1.2.2 Superior – Subordinate Relationship 207
2. Genocide 215
2.1 Law 215
2.2 Application 216
2.3 Conclusion 217
3. Crimes Against Humanity (Murder and Extermination) 218
3.1 Widespread and Systematic Attack 218
3.2 Murder 219
3.3 Extermination 219

3.4 Conclusion 220
CHAPTER IV: Verdict 220
ANNEX A: Procedural History 222
1. Pre-Trial Proceedings 222
2. Prosecution Case 223
3. Defence Case 223
4. Further Proceedings 224
ANNEX B: Cited Materials and Defined Terms 225
1. Jurisprudence 225
1.1 ICTR 225
1.2 ICTY 227
2. Defined Terms and Abbreviations 230
ANNEX C: Indictment

CHAPTER I: INTRODUCTION

1. OVERVIEW

(i) Introduction

1. The accused in this case is Father Hormisdas Nsengimana. During the events, he was a Catholic priest and the Rector of the *Collège Christ-Roi*, a prestigious secondary Catholic school in Nyanza, Butare prefecture. The Prosecution has charged him with genocide as well as murder and extermination as crimes against humanity. The Defence disputes all charges.[1]

(ii) Meetings

2. The Prosecution alleged that Nsengimana participated in several meetings with Hutu extremists, starting as early as 1990, attended by local administrative, security and business officials as well as *Collège Christ-Roi* employees. These persons were known as members of the "Death Squad" or the "Dragons". According to the Indictment, Nsengimana acted as their spiritual leader. Many meetings purportedly occurred regularly at the *Collège Christ-Roi*, among other locations.

3. Having assessed the entire record from 1990 to 1994, it appears that the same persons attended many of the meetings, and some of the participants later committed crimes. However, there is limited direct evidence concerning the nature of these meetings, and Nsengimana's presence as well as purported role remain unclear. It has not been shown that he acted as the spiritual leader of Hutu extremists, and the evidence is too imprecise to conclude beyond reasonable doubt that his alleged participation in meetings had any connection with the killings in Nyanza during April and May 1994.

(iii) Machetes in Dormitories, 1991

4. The Prosecution alleged that Nsengimana was involved in hiding machetes under the beds of Tutsi students in order to inflame ethnic tensions at the school. Machetes were found in the dormitories, but the record demonstrates that Nsengimana acted swiftly and disciplined Hutu and Tutsi students involved. The Prosecution case has not been proved.

(iv) Stockpiling of Machetes, 1991 – 1993

5. One Prosecution witness testified that he observed Nsengimana and his driver offloading machetes, which the priest explained were for the killing of Tutsis. The Chamber has not found the evidence reliable.

(v) Attack on Tutsi Students, 7 or 8 April

6. Another Prosecution witness testified that Hutu students began attacking Tutsi students at the *Collège Christ-Roi* after President Habyarimana's death. The Chamber has

[1] The trial opened on 22 June 2007 and closed on 17 September 2008. The parties presented 43 witnesses in the course of 42 trial days. Closing arguments were heard on 12 and 13 of February 2009. The Chamber pronounced its unanimous judgement on 17 November 2009. The written judgement was filed on 18 January 2010 after the conclusion of the editorial process.

questioned the reliability of the witness. Moreover, there is no evidence that Nsengimana orchestrated this attack or that anyone was killed.

(vi) Roadblocks, April Onwards

7. In Nyanza, roadblocks were generally established from around 21 and 22 April 1994. The Prosecution alleged that Nsengimana ordered students to mount such barriers around the *Collège Christ-Roi*, and that he supervised at least three of them.

8. One roadblock was at the entrance of the school. According to the Defence, it was only established in May when soldiers from the *Ecole militaire supérieure* in Kigali arrived. The Chamber has found that it was set up around 21 April. It is not clear who made the decision. The barrier was supervised by school employees Phénéas Munyarubuga and Simon Kalinda. It is unclear whether *Christ-Roi* students manned it. How long this barrier existed, and how regularly it was manned, is also uncertain.

9. Witnesses provided few and inconclusive accounts of Nsengimana's alleged involvement as well his interactions there with Phénéas Munyarubuga and Simon Kalinda. Consequently, it has not been proved that he established roadblocks, supervised them, or was involved in criminal activities there.

10. The two other roadblocks in the vicinity of *Christ-Roi* were also in Mugonzi *cellule*. One was near the homes of Pasteur Dusangeyezu and Simon Kalinda, and another about 100 metres away. Simon Kalinda exercised control over both checkpoints. The evidence fails to show that Nsengimana participated in their establishment or supervision. The witnesses also testified about other roadblocks, including one behind the Nyanza parish church. There is no basis to conclude that Nsengimana played any role in relation to them, or any other roadblocks.

(vii) Killing of Ruben Kayombya, 21 April

11. The Prosecution alleged that around 21 April, a young Tutsi called Ruben Kayombya was captured by *Christ-Roi* employees, and that Nsengimana ordered them to hand him over to the *Interahamwe*, who killed him. One Prosecution witness testified about having seen this event, saying that Nsengimana ordered that Kayombya be taken to the authorities. The Chamber has reservations about the reliability of the witness and dismissed the charge.

(viii) Killing of Witness BVV's Family, 24 April

12. Witness BVV testified that, around 24 April, he and members of his family, all Tutsis, sought refuge at the *Collège Christ-Roi*. Nsengimana purportedly turned them away and assailants killed them. The Chamber has reservations about whether the Defence received adequate notice of this allegation. However, having considered the merits of the evidence, it is not clear that the family members were killed at the school, and that Nsengimana was involved.

(ix) Killing of Father Mathieu Ngirumpatse, 24 or 25 April

13. One Prosecution witness testified that on 25 April, Nsengimana, in the company of *Christ-Roi* employees, the gendarmerie commander and others, shot and killed Father Mathieu Ngirumpatse at the Nyanza parish church. Another witness purportedly saw Nsengimana driving gendarmes the day Ngirumpatse was killed. The Chamber has questioned the credibility of the eye-witness account of this killing, and the other Prosecution

evidence presented does not eliminate doubt. Nsengimana cannot be held responsible for Ngirumpatse's death.

(x) Killing of a Tutsi Woman, 24 or 25 April

14. The same witness who testified about the killing of Ngirumpatse also said that, immediately thereafter, Nsengimana and his attackers found an elderly Tutsi woman who had been hiding near the church. Nsengimana purportedly killed her. The testimony is not corroborated and is insufficient to sustain the charge.

(xi) Killing of Refugees at the Ecole normale primaire, from 25 April

15. According to the Indictment, Nsengimana frequently visited the *Ecole normale primaire* to verify that no Tutsis took refuge there and, by doing so, he ensured the later killing of Tutsis. It has not been shown that Nsengimana went there in order to look for Tutsi refugees. Killings did occur near the school, and some who had hidden there were subsequently killed. However, the testimonies either lack detail or rely on hearsay, and no link has been established between Nsengimana's visits and the purported killings.

(xii) Killing of Three Tutsi Refugees, Late April or Early May

16. The Indictment alleges that around 28 April, Nsengimana handed over three Tutsi refugees to *Interahamwe* who killed them and threw them into a pit latrine in the *Collège Christ-Roi*. Two Prosecution witnesses gave different accounts in support of this charge. Neither observed the killings. Nsengimana's responsibility for them has not been established beyond reasonable doubt.

(xiii) Clearing of the Bushes and Subsequent Killing, Late April or Early May

17. Two Prosecution witnesses testified that *Christ-Roi* employees and others cleared bushes surrounding the school to prevent Tutsis from hiding there. They appear to have observed this exercise at different times and locations. One purportedly observed a young Tutsi being flushed out and killed. Nsengimana's involvement is unclear. Evidence about the alleged killing is uncorroborated and lacks sufficient reliability. The Chamber has dismissed this charge.

(xiv) Killings in Mugonzi, 3 May, and Preceding Meeting

18. On the morning of 3 May, civilian attackers killed several Tutsis in Mugonzi *cellule*. The victims included Dr. Galican Kayigima and his two daughters; Charles Gakwaya; Célestin Munyakayanza, his pregnant wife, Yolande and their two children, and Mwumvaneza.

19. There is no evidence that Nsengimana was present during the attack. However, the Prosecution contends that earlier that morning he had co-chaired a meeting with gendarmerie commander François Birikunzira at the *Collège Christ-Roi*, where assailants were instructed to kill the remaining Tutsis in Mugonzi. No witness attended this alleged gathering, but there is hearsay evidence about it, and one witness observed two assailants going to the school and another saw some leaving it. While a meeting may have occurred at the school, the Chamber has not found it established that Nsengimana would have attended it.

(xv) Killings of the Three Tutsi Priests, Early May

20. Around 4 May, three Tutsi priests – Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze – were abducted from Saint Antoine's orphanage in Nyanza. According to the Prosecution, Nsengimana paid a young boy 30,000 Rwandan francs to reveal the priests' hiding place, and members of his joint criminal enterprise then killed them.

21. No witness saw Nsengimana during the abduction. According to the evidence, the priests were taken away by gendarmes and soldiers. There is no credible testimony that persons from the *Collège Christ-Roi* took part during the abduction, and the identity of the killers cannot be established beyond reasonable doubt. The testimony about payment to the young boy is unreliable. Consequently, this allegation has not been proved.

(xvi) Killing of Callixte Kayitsinga, Early May

22. In early May, a young Tutsi called Callixte Kayitsinga sought refuge at the *Collège Christ-Roi*. Nsengimana met him in the morning, but was away from the school during the day. After Nsengimana's departure, several persons abducted Kayitsinga from his room and killed him. *Christ-Roi* employee Phénéas Munyarubuga was amongst the perpetrators. The Chamber has not found that Nsengimana played a role in the killing, or that he is responsible for Munyarubuga's participation in it.

(xvii) Killing of Xavérine and Her Son, Early May

23. In early May, a Tutsi called Xavérine and her son were killed. Two Prosecution witnesses testified that she was apprehended at the roadblock at the entrance of the *Collège Christ-Roi*, while two others, as well as two Defence witnesses, said that she was taken from within the premises of the *Ecole normale primaire*.

24. The Chamber has found that Xavérine and her son were abducted from *Ecole normale primaire* by Cyprien Gasatsi and gendarmes, among others. The evidence does not exclude the possibility that they passed the roadblock at *Christ-Roi* on their way to the place where they were killed. However, it fails to link Nsengimana directly to the killings, and he cannot be held responsible for the actions of those involved.

(xviii) Killing of Judge Jean-Baptiste Twagirayezu, Early May

25. In early May, Nsengimana and Judge Jean-Baptiste Twagirayezu met at the *Collège Christ-Roi*. Nsengimana accompanied him from the school. Shortly after the two parted, the judge was arrested by gendarmes, shot and killed near the Nyanza parish church. The Prosecution alleges that Nsengimana handed the judge over to the killers.

26. Several witnesses testified about this event. There is no direct testimony that Nsengimana ordered or orchestrated the killing. The Chamber cannot infer that Nsengimana played any role and has found that he cannot be held responsible.

(xix) Killing of Six Tutsi Women, Early May

27. The Indictment alleges that, between late April and mid-May, Nsengimana, accompanied by his students and other staff, went to the women's hostel between the *Collège Christ-Roi* and the Nyanza parish church. One Prosecution witness testified that Nsengimana killed three Tutsi women and ordered his employees to kill three others. Other evidence that an attack occurred at the hostel does not corroborate the fundamental features of the

Prosecution account. The credibility of the Prosecution witness is doubtful. There is no basis to establish Nsengimana's responsibility.

(xx) Killing of Egide Ngenzi, Early May

28. One Prosecution witness testified that, in early May, he observed Nsengimana ordering *Christ-Roi* employees to bring Egide Ngenzi, a Tutsi teacher at the school, to the building containing Nsengimana's office. The employees subsequently left with a body, and the witness learned from them that they had killed Ngenzi. The Defence refers to evidence that Egide Ngenzi was not a Tutsi, and that he survived the events in 1994. The Chamber has elsewhere questioned the reliability of this Prosecution witness and has dismissed the charge.

(xxi) Killings at Don Bosco Orphanage, 22 May

29. On 22 May, Tutsi civilians hiding at the Don Bosco orphanage in Cyotamakara, including eight children, were abducted. The assailants were civilians accompanied by soldiers. Those removed from the orphanage were subsequently killed approximately 12 kilometres away. The evidence does not show that Nsengimana was present during the attack at the orphanage, or that he was involved for the killings.

(xxii) Killing of Father Furaha, May

30. The Prosecution alleged that Nsengimana had a dispute with Father Justin Furaha, a Tutsi priest. According to the Indictment, Nsengimana said in May that he would not leave Nyanza without seeing the head of Furaha and ordered his employees to search for him. Furaha was killed at the end of the month.

31. The Chamber heard conflicting evidence about the relationship between the two priests as well as Nsengimana's general attitude towards Tutsis in the period leading up to the genocide. No witness observed Furaha being killed and Nsengimana may have left Nyanza by the time of his death. There is only indirect and inconsistent evidence about where and by whom he was murdered. The Chamber has dismissed this charge.

(xxiii) Verdict

32. The Chamber has assessed all the evidence in support of the three counts, as well as the various modes of responsibility upon which the Prosecution sought to convict Nsengimana. The Prosecution case does not establish Nsengimana's criminal responsibility.

33. Pursuant to Rule 99 (A) of the Rules of Procedure and Evidence, the Chamber orders the immediate release of Hormisdas Nsengimana and requests the Registry to make the necessary arrangements.

2. PRELIMINARY MATTERS

2.1 Notice

34. Throughout its Closing Brief, the Defence raises the issue of insufficient notice of charges against Nsengimana. The specific challenges to a particular factual or legal issue are addressed in the relevant sections of the Judgement, where necessary. In many instances, the Chamber has not found it necessary to address them, in particular where the Prosecution did not prove its case. Where they have been raised and discussed, the Chamber has done so in view of the general principles established by case law, as set forth below.

35. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in an indictment so as to provide notice to the accused.[2] The Prosecution is expected to know its case before proceeding to trial and cannot mould the case against the accused in the course of the trial depending on how the evidence unfolds.[3] Defects in an indictment may come to light during the proceedings because the evidence turns out differently than expected; this calls for the Trial Chamber to consider whether a fair trial requires an amendment of the indictment, an adjournment of proceedings, or the exclusion of evidence outside the scope of the indictment.[4] In reaching its judgement, a Trial Chamber can only convict the accused of crimes that are charged in the indictment.[5]

36. The Appeals Chamber has held that criminal acts that were physically committed by the accused personally must be set forth in the indictment specifically, including where feasible "the identity of the victim, the time and place of the events and the means by which the acts were committed".[6] Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation or execution of the alleged crimes, the Prosecution is required to identify the "particular acts" or "the particular course of conduct" on the part of the accused which forms the basis for the charges in question.[7]

37. If the Prosecution intends to rely on the theory of joint criminal enterprise to hold an accused criminally responsible as a principal perpetrator of the underlying crimes rather than as an accomplice, the indictment should plead this in an unambiguous manner and specify on which form of joint criminal enterprise the Prosecution will rely.[8] In addition, the Prosecution

---

[2] *Bagosora et al.* Trial Judgement para. 110, citing *Muvunyi* Appeal Judgement para. 18, *Seromba* Appeal Judgement paras. 27, 100, *Simba* Appeal Judgement para. 63, *Muhimana* Appeal Judgement paras. 76, 167, 195, *Gacumbitsi* Appeal Judgement para. 49, *Ndindabahizi* Appeal Judgement para. 16.

[3] *Bagosora et al.* Trial Judgement para. 110, citing *Muvunyi* Appeal Judgement para. 18, *Ntagerura et al.* Appeal Judgement para. 27, *Kvočka et al.* Appeal Judgement para. 30, *Niyitegeka* Appeal Judgement para. 194, *Kupreškić et al.* Appeal Judgement para. 92.

[4] *Bagosora et al.* Trial Judgement para. 110, citing *Muvunyi* Appeal Judgement para. 18, *Ntagerura et al.* Appeal Judgement para. 27, *Kvočka et al.* Appeal Judgement para. 31, *Niyitegeka* Appeal Judgement para. 194, *Kupreškić et al.* Appeal Judgement para. 92.

[5] *Bagosora et al.* Trial Judgement para. 110, citing *Muvunyi* Appeal Judgement para. 18, *Nahimana et al.* Appeal Judgement para. 326, *Ntagerura et al.* Appeal Judgement para. 28, *Kvočka et al.* Appeal Judgement para. 33.

[6] *Bagosora et al.* Trial Judgement para. 111, citing *Muhimana* Appeal Judgement para. 76, *Gacumbitsi* Appeal Judgement para. 49, *Ntakirutimana* Appeal Judgement para. 32, quoting *Kupreškić et al*. Appeal Judgement para. 89. See also *Ndindabahizi* Appeal Judgement para. 16.

[7] *Bagosora et al.* Trial Judgement para. 111, citing *Ntagerura et al.* Appeal Judgement para. 25.

[8] *Simba* Trial Judgement para. 389, citing *Krnojelac* Appeal Judgement paras. 138-145, *Ntakirutimana*, Appeal Judgement paras. 475-484, *Kvočka et al.* Appeal Judgement paras. 41-42.

must also plead the purpose of the enterprise, the identity of the co-participants, and the nature of the accused's participation in the enterprise.[9]

38. When it is the intention of the Prosecution to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute, the indictment should plead the following: (1) that the accused is the superior of subordinates sufficiently identified, over whom he had effective control – in the sense of a material ability to prevent or punish criminal conduct – and for whose acts he is alleged to be responsible; (2) the criminal conduct of those others for whom he is alleged to be responsible; (3) the conduct of the accused by which he may be found to have known or had reason to know that the crimes were about to be committed or had been committed by his subordinates; and (4) the conduct of the accused by which he may be found to have failed to take the necessary and reasonable measures to prevent such acts or to punish the persons who committed them.[10]

39. A superior need not necessarily know the exact identity of his or her subordinates who perpetrate crimes in order to incur liability under Article 6 (3) of the Statute.[11] The Appeals Chamber has held that an accused is sufficiently informed of his subordinates where they are identified as coming from a particular camp and under their authority.[12] It has also clarified that physical perpetrators of the crimes can be identified by category in relation to a particular crime site.[13]

40. The Appeals Chamber has previously stated that "the facts relevant to the acts of those others for whose acts the accused is alleged to be responsible as a superior, although the Prosecution remains obliged to give all the particulars which it is able to give, will usually be stated with less precision because the detail of those acts are often unknown, and because the acts themselves are often not very much in issue".[14] Moreover, in certain circumstances, the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as the identity of the victims and the dates of the commission of the crimes.[15]

41. Finally, the Appeals Chamber has held that a Trial Chamber may infer knowledge of the crimes from the widespread and systematic nature and a superior's failure to prevent or punish them from their continuing nature. These elements follow from reading the indictment as a whole.[16]

42. An indictment lacking this precision is defective; however, the defect may be cured if the Prosecution provides the accused with timely, clear, and consistent information detailing

---

[9] *Simba* Trial Judgement para. 389, citing *Kvočka et al.* Appeal Judgment paras. 28, 42.
[10] *Bagosora et al.* Trial Judgement para. 112, citing *Muvunyi* Appeal Judgement para. 19, *Nahimana et al.* Appeal Judgement para. 323, *Ntagerura et al.* Appeal Judgement paras. 26, 152. See also *Naletilić and Martinović* Appeal Judgement para. 67, *Blaškić* Appeal Judgement para. 218.
[11] *Bagosora et al.* Trial Judgement para. 113, citing *Muvunyi* Appeal Judgement para. 55, *Blagojević and Jokić* Appeal Judgement para. 287.
[12] *Bagosora et al.* Trial Judgement para. 113, citing *Muvunyi* Appeal Judgement para. 56, *Ntagerura et al.* Appeal Judgement paras. 140-141, 153.
[13] *Bagosora et al.* Trial Judgement para. 113, citing *Simba* Appeal Judgement paras. 71-72 (concerning identification of other members of a joint criminal enterprise), *Simba* Trial Judgement paras. 392-393.
[14] *Bagosora et al.* Trial Judgement para. 114, citing *Ntagerura et al.* Appeal Judgement para. 26 n. 82, quoting *Blaškić* Appeal Judgement para. 218. See also *Muvunyi* Appeal Judgement para. 58.
[15] *Bagosora et al.* Trial Judgement para. 114, citing *Muvunyi* Appeal Judgement para. 58, *Muhimana* Appeal Judgement para. 79, *Gacumbitsi* Appeal Judgement para. 50, *Kupreškić et al.* Appeal Judgement para. 89.
[16] *Bagosora et al.* Trial Judgement para. 115, citing *Muvunyi* Appeal Judgement para. 62.

the factual basis underpinning the charge.[17] The principle that a defect in an indictment may be cured is not without limits.[18] The Appeals Chamber has held that a Pre-Trial Brief in certain circumstances can provide such information.[19]

2.2 Alleged Procedural Violations

43. In its Closing Brief, the Defence claims a number of procedural violations during the course of the proceedings, which principally concern the right to be tried without undue delay.[20] While these submissions are made in the context of mitigation of any possible sentence,[21] the Chamber, nonetheless, considers them independently at the outset to determine whether any of the alleged violations call into question the fairness of the trial.

44. As set forth in the procedural history (Annex I), Nsengimana was arrested in Cameroon on 19 March 2002 and transferred to the Tribunal on 10 April 2002. He pleaded not guilty to the charges against him on 16 April 2002. The evidence in his trial commenced on 22 June 2007 and closed after 42 trial days on 17 September 2008. Closing arguments were heard on 12 and 13 February 2009, and his Judgement was pronounced on 17 November 2009.

45. The Defence alleges that Nsengimana's right to be tried without undue delay was violated by the extensive period of delay between his arrest and transfer to the Tribunal and the commencement of his trial. To illustrate this delay, the Defence points to its request of 18 June 2005, after nearly 40 months of detention, to hold a pre-trial conference, set a trial date and for provisional release, which was denied by Trial Chamber II on 11 July 2005.[22]

46. The Defence contends that the Prosecution's request of October 2006 to amend the Indictment further contributed to the delay in the proceedings.[23] It emphasises that the amendment greatly expanded the case by adding allegations of joint criminal enterprise and

---

[17] *Bagosora et al.* Trial Judgement para. 116, citing *Muvunyi* Appeal Judgement para. 20, *Seromba* Appeal Judgement para. 100, *Simba* Appeal Judgement para. 64, *Muhimana* Appeal Judgement paras. 76, 195, 217, *Gacumbitsi* Appeal Judgement para. 49, *Ntagerura et al.* Appeal Judgement paras. 28, 65.

[18] *Bagosora et al.* Trial Judgement para. 116, quoting *Bagosora et al.,* Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006, para. 30 ("[T]he 'new material facts' should not lead to a 'radical transformation' of the Prosecution's case against the accused. The Trial Chamber should always take into account the risk that the expansion of charges by the addition of new material facts may lead to unfairness and prejudice to the accused. Further, if the new material facts are such that they could, on their own, support separate charges, the Prosecution should seek leave from the Trial Chamber to amend the indictment and the Trial Chamber should only grant leave if it is satisfied that it would not lead to unfairness or prejudice to the Defence."; internal citations omitted).

[19] *Bagosora et al.* Trial Judgement para. 116, citing *Muhimana* Appeal Judgement para. 82, *Gacumbitsi* Appeal Judgement paras. 57-58, *Ntakirutimana* Appeal Judgement para. 48, *Naletilić and Martinović* Appeal Judgement para. 45.

[20] Defence Closing Brief paras. 2492-2521.

[21] The Defence makes its submissions on the alleged procedural violations at the end of its Closing Brief in Chapter 6, which is titled "Mitigation". Defence Closing Brief p. 737. This chapter is divided into two subsections, with the one at issue here focusing on the trial procedure (paras. 2492-2521) and the other one highlighting Nsengimana's individual circumstances (paras. 2522-2558).

[22] Defence Closing Brief paras. 2496-2498, referring to *Nsengimana*, Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release (TC), 11 July 2005.

[23] Defence Closing Brief para. 2500.

superior responsibility.[24] These amendments should have been made at the earliest opportunity so that the Defence could have adjusted its investigations accordingly.[25]

47. As illustration of the prejudice Nsengimana suffered, the Defence contends that the Tribunal's delay in setting a date for the commencement of his trial resulted in prejudice because the Registry would not authorise a work plan for its investigations.[26] Furthermore, the denial of his request for provisional release, which was amply supported, led to an excessive amount of pre-trial detention.[27]

48. The right to be tried without undue delay is guaranteed by Article 20 (4)(c) of the Statute. The Appeals Chamber has pointed out that this right only protects the accused against *undue* delay, which has to be decided on a case by case basis.[28] The following factors are relevant: (a) the length of the delay; (b) the complexity of the proceedings (the number of counts, the number of accused, the number of witnesses, the quantity of evidence, the complexity of the facts and of the law); (c) the conduct of the parties; (d) the conduct of the authorities involved; and (e) the prejudice to the accused, if any.[29]

49. The Chamber agrees that the elapse of just over five years between Nsengimana's arrest and transfer to the Tribunal and the commencement of his trial is long. However, in denying the Defence's request to set a date for trial, Trial Chamber II explained that it was not in a position to set a date for trial bearing in mind the overall judicial calendar for the Tribunal.[30] The Defence has not identified any specific error in this reason for the delay in the commencement of Nsengimana's trial. A Bench of the Appeals Chamber made the same observation in connection with the Defence's request for leave to appeal the decision,[31] and found that the length of Nsengimana's pre-trial detention was not disproportionate in relation to the gravity of the crimes with which he was charged.[32]

50. The Defence's contention that the delay in the setting of a trial date resulted in prejudice by preventing it from undertaking investigative missions is similarly unsubstantiated. To the extent that this were the case, the Defence should have promptly

---

[24] *Id.* paras. 2506-2521.
[25] *Id.* para. 2500.
[26] *Id.* para. 2499.
[27] *Id.* paras. 2501-2505.
[28] *Bagosora et al.* Trial Judgement para. 75, citing *Nahimana et al.* Appeal Judgement para. 1074.
[29] *Bagosora et al.* Trial Judgement para. 75, citing *Nahimana et al.* Appeal Judgement para. 1075, *Mugiraneza*, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004, p. 3.
[30] Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release (TC), 11 July 2005, paras. 14-15.
[31] Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 24 August 2005, p. 5 ("Noting that in the Motion, the Appellant does not make any submission in relation to the setting of a date for a pre-trial conference and for the commencement of trial; Considering that the Appellant did not satisfy the Bench that the Trial Chamber may have erred in finding 'that it is inappropriate at this stage to set a date for a pre-trial conference', and "that at this stage of the proceedings, and having regard to the judicial calendar, [the Trial Chamber] is not yet in a position to set a date for the commencement of trial'"), quoting Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release (TC), 11 July 2005, paras. 12, 15.
[32] Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 24 August 2005, p. 5.

challenged the Registry's decision denying its request for a particular mission either administratively or brought the matter to the attention of the Trial Chamber for appropriate relief given its close relation to the fairness of the proceedings. This was not done. While Trial Chamber II noted the Defence's concerns about further investigations as a basis for the request to set a date for trial,[33] neither the underlying motion nor the Defence Closing Brief point to any specific decision of the Registry denying a request for a justified mission. Furthermore, the Defence's motion did not specifically ask for appropriate relief on this basis beyond requesting the setting of a date for trial.

51. The Defence raised this matter again during a status conference held on 26 May 2006.[34] Again, the submissions were only general and made solely in the context of setting a date for trial. During the status conference, the representative of the Registry clarified that it authorised a limited work programme and paid for at least 5,000 hours of work.[35] It further noted that further reasonable work programmes would be approved. The Chamber observes that, at this same status conference, the Defence explained that it had already identified between 20 and 30 witnesses.[36] In this context, the Chamber is not persuaded that the delay in fixing the date prejudiced the Defence's trial preparation. In any event, in view of the disposition in this case, the Chamber cannot say that the Defence's investigations were in any way prejudiced by the delay in the setting of a trial date.

52. The Defence submissions that the Prosecution's amendment of the Indictment contributed to the delay fail to appreciate that the amendment of an indictment is permissible at any stage of the proceedings where justified and consistent with the accused's fair trial rights. In granting the Prosecution motion, Trial Chamber II fully heard and addressed the Defence's concerns with respect to the fairness of the proposed amendments.[37] Beyond reiterating its concerns, the Defence has not identified any error in this decision.

53. In sum, the Chamber is not convinced that the Defence has demonstrated that the length of the proceedings amounted to undue delay nor has it shown that the delay resulted in any unjustified prejudice to the accused.

2.3 Motions

54. Five motions from the Prosecution and Defence were pending at the close of the case. The Chamber decided to consider them together with the merits of the case since their disposition was linked in varying degrees with the outcome of the assessment of certain aspects of the Judgement.

55. Two of the pending motions relate to disclosure matters, in particular: Defence Urgent Motion for the Disclosre of the Unredacted Statements of Prosecution Witness CAY, 8 January 2008; and *Requête de la Défense aux Fins de Divulgation en Vertu de l'Article 68 du Règlement de Procédure et de Preuve*, 29 May 2008.

56. There is no dispute that the Prosecution failed to timely disclose the unredacted statement of Witness CAY in conformity with the witness protection order. In its response to

[33] Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release (TC), 11 July 2005, paras. 2, 13.
[34] T. 26 May 2006 pp. 7, 12.
[35] *Id.* p. 12.
[36] *Id.* p. 6.
[37] Decision on Prosecution Motion for Leave to File an Amended Indictment (TC), 29 March 2007.

the Defence motion, the Prosecution indicated that the disclosure was inadvertent and confirmed that it conveyed the statement on 9 January 2008, the day after the matter was brought to its attention.[38] While maintaining that the late disclosure was not in conformity with the witness protection order, the Defence indicated on 14 January 2008 that it may waive its objection.[39] The testimony of Witness CAY began the next day without any further submissions. In view of these circumstances, the Chamber considers the objection to the disclosure waived. Furthermore, given that the witness's testimony was not used to convict Nsengimana, the Chamber also cannot identify any prejudice from the late disclosure. The motion is moot.

57. With respect to its request for disclosure of exculpatory material, the Defence identified a number of redacted declarations in the Prosecution's electronic disclosure system pertaining to the killing of nuns (see II.10 about the killing of a Tutsi woman), Judge Jean-Baptiste Twagirayezu (II.18) and Father Furaha (II.22), which it claimed were exculpatory. The Prosecution denied that the documents identified by the Defence were exculpatory, with the exception of one, which was disclosed.[40] The Chamber has not convicted Nsengimana based on these events. Thus, even if there were a disclosure violation, there is no prejudice. The motion is moot.

58. The remaining three motions concern the Chamber's decision to order the Registry to investigate allegations of witness interference which arose during the course of the trial, namely: Urgent Defence Motion for the Protection of the Defence Investigator, 30 January 2008; Defence Motion for Certification or Alternatively for Reconsideration of the Oral Decision Rendered on 24 January 2008, 31 January 2008; and Prosecutor's Application for Leave to File Contempt of the Tribunal Proceedings Against Mr. Safari Léonard @ Serugendo, Father Remi Mazas and Father Denis Sekimana, 26 May 2008. In view of the related nature of these issues, the Chamber considered them together.

59. The Chamber's evaluation of the general credibility of the witnesses advancing the allegations provided some relevant context to its assessment of the Prosecution's submissions as well as the reports prepared by the Registry, which investigated the matter. The Chamber denied the Prosecution motion as well as the related Defence motions in a separate decision, filed on the same day as the written Judgement.[41]

[38] Prosecution Response to Defence Urgent Motion Requesting Disclosure of the Unredacted Statements of Prosecution Witness CAY to the Defence, 11 January 2008, p. 2. See also Prosecution Disclosure of Witness CAY's UnRedacted Statements, 9 January 2008.
[39] T. 14 January 2008 p. 76.
[40] Prosecutor's Confidential Response to the Defence Motion on Rule 68 Disclosure, 3 June 2008, para. 2.
[41] Confidential Decision on Prosecution and Defence Requests Concerning Improper Contact with Prosecution Witnesses (TC), 18 January 2010.

3. HORMISDAS NSENGIMANA

60. Hormisdas Nsengimana was born on 6 August 1954 in Kinyamakara *commune*, Gikongoro. His father was a primary school teacher. Nsengimana studied at minor and major Catholic seminaries in Rwanda and was ordained as a priest on 27 July 1980. Following his ordination until 1983, he was appointed as the vicar assisting Bishop Jean-Baptiste Gahamanyi at Butare Cathedral. From 1983 to 1989, at the request of the bishop, Nsengimana undertook doctoral studies in Rome, and obtained a doctorate in classical and Christian letters.[42]

61. Nsengimana returned to Rwanda in 1989 and in August of that year was appointed director of the *Collège Christ-Roi*. Following standard procedure, he was nominated for the position by the bishop of Butare, and the appointment was confirmed by the Minister of Education. Nsengimana worked there until he left at the end of May 1994. As director of *Christ-Roi,* he had to organise classes held at the school, with the assistance of the prefect of studies. He supervised the work of about 30 teaching staff. Aided by the prefect of discipline, Nsengimana was also responsible for maintaining discipline amongst the enrolled students. Furthermore, in collaboration with the bursar, he managed school resources.[43]

62. After the events of 1994, Nsengimana travelled to Gikongoro. In late June, he went to Cyangugu and then sought refuge in Bukavu, Zaïre. He was received there by the archbishop of Bukavu, who accommodated him at the Murhesa major seminary at the end of June 1994. In September, when the seminarians were about to resume their classes, the archbishop asked Nsengimana to work in Walungu Parish in Bukavu. Nsengimana taught at a school there from 1994 to 1995.[44]

63. Nsengimana arrived in Cameroon on 4 August 1995. He went to the Bertoua Diocese in the east of the country, and was appointed priest in a parish there. After a period of time teaching at a seminary in that region, he travelled to Yaoundé and joined a monastery run by the Saint Jean brothers. He was arrested in Cameroon in 2002.[45]

[42] T. 8 July 2008 pp. 1-3, 7-8, 12-13; Prosecution Closing Brief Chapter 1 para. 2; Defence Closing Brief paras. 79-80, 93-95, 99, 102-103, 106-107, 109-110.
[43] T. 8 July 2008 pp. 5, 14-16, 18; T. 27 June 2007 p. 22 (Witness CBF); Prosecution Closing Brief Chapter 1 para. 3; Defence Closing Brief paras. 117-118, 158-159.
[44] T. 8 July 2008 pp. 8-10; Defence Closing Brief paras. 241-243.
[45] T. 8 July 2008 pp. 10-11; Prosecution Closing Brief Chapter 1 para. 4; Defence Closing Brief paras. 244-247.

CHAPTER II: FACTUAL FINDINGS

1. INTRODUCTION

64. The Prosecution case against Nsengimana relies primarily on his alleged direct participation in crimes, contribution to a joint criminal enterprise aimed at killing Tutsis, and superior responsibility over perpetrators. The events referred to in the Indictment focus on the months of April and May 1994. However, the Prosecution led evidence dating as far back as 1990 to demonstrate Nsengimana's negative attitude to Tutsis.

65. The Chamber's factual findings begin with evidence about various events prior to 1994, which in the Prosecution's view, show Nsengimana's preparations for the killings that followed (II.2-4). The Chamber also considers evidence of planning in 1994 (II.2) before addressing the specific crimes that form the Prosecution case against Nsengimana (II.5-22).

2. MEETINGS

2.1 Introduction

66. The Indictment alleges that Nsengimana was the spiritual leader of a group called *Les Dragons* or *Escadrons de la Mort*. The members were extremists, including employees at the *Collège Christ-Roi*, who were implicated in the killings of Tutsis in Nyanza. By virtue of his participation and presence within the group, he aided and abetted the killings. The Indictment specifically mentions one meeting held at the school on the evening of 6 April 1994, after which Nsengimana instructed a watchman to prohibit Tutsis from taking refuge there. The Prosecution also points to testimonies about meetings from 1990 to 1994 in support of the broader allegation. It refers to Witnesses CAW, BVW, BVI, CBC, CAO, CBE, BXM, CAY, CBF, BSV, CAR and CAN.[46]

67. The Defence argues that evidence relating to meetings is not covered by the Indictment and to a large extent falls outside the Tribunal's temporal jurisdiction. The testimonies of the Prosecution witnesses are unreliable. Reference is made to Witnesses JMR1, EMR95, PMR31, JMF2, AMC1, EMR33, EMI2, DFR85, RFCD6, VMB17, FMCD5, VMF8 and JMM1, as well as Jean-Marie Vianney Mushi, Marie Goretti Uwingabire, Marie-Cécile Uwayezu and Emmanuel Hakizimana.[47]

[46] Indictment paras. 19-21; Prosecution Closing Brief Chapter 5 pp. 21, 24, 29, 31-32, 42-43, 59-63, 65, 67, 87, 90-92, 102-131, 171-172, Chapter 6-8 paras. 55, 64-68, 95, 98-99, 123, 125, 161, 180, 217, 236. Evidence concerning the meeting on 3 May 1994 preceding the Mugonzi killings is set forth elsewhere (II.14), but considered here.

[47] Defence Closing Brief paras. 18-26, 31, 61, 273-299, 325-336, 350-351, 356-363, 375-406, 435-437, 439, 444-467, 485, 498, 577, 598, 600, 630-633, 700-711, 725-729, 756-781, 788-809, 816-821, 920-941, 986, 1007, 1094, 1105, 1140-1142, 1150-1154, 1183, 1192, 1214, 1236, 1247, 1249, 1266, 1277-1279, 1315, 1349-1350, 1357, 1368-1369, 1430, 1469, 1480-1491, 1496-1503, 1527-1714, 1790, 1942, 1944, 2290-2292, 2340-2347, 2349-2350, 2378, 2444-2446, 2450-2452, 2458. The Chamber has also taken into account the evidence of Witness GMC4.

2.2 Evidence

Prosecution Witness CAW

68. Witness CAW, a Hutu, worked at the Nyanza parish church. When he went to the *Collège Christ-Roi* in the beginning of 1993, he saw persons arriving and attend a meeting in a large reception room. It was used by students for meetings and could be rented out for receptions during holidays. Nsengimana, gendarmerie commander Birikunzira, *bourgmestre* Ngiruwonsanga, sub-prefect Kayitana and his deputy Mugenzi were present. Other participants were director Mirasano from the dairy plant who was president of the CDR, director Appolinaire Tubirimo of the foundry, Dr. Higiro who was the head of the Nyanza hospital, dairy plant employee Karege, the director of Electrogaz called Ndereye, as well as Minani, the headmaster at the *Ecole technique féminine*, and François Gashirabake, who was teaching there. *Christ-Roi* employees that were present included Phénéas Munyarubuga, Simon Kalinda, Vincent, who was responsible for the carpentry workshop, and Sebukayire, who worked in the kitchen. The witness did not go into the meeting room, but Simon Kalinda and Phénéas Munyarubuga later told him that they had attended, and Munyarubuga said that they were preparing the killing of Tutsis. Nsengimana's decision to kill persons during the genocide also led the witness to conclude that he was a member of the CDR.[48]

69. Later in 1993, there were, according to the witness, "CDR … meetings", at *Christ-Roi* three times a week. The same group also met at the dairy plant, the sub-prefecture office and the Electrogaz station. The witness never attended these meetings, as he was not a member of a political party, but spoke to persons who had participated or served the participants.[49]

Prosecution Witness BVW

70. Witness BVW, a Tutsi, lived in Mugonzi *cellule* and worked not far away from the *Collège Christ-Roi*. In August 1993, she became aware that meetings took place at the school and continued until she left on 18 April 1994. Around 4.00 p.m. every day, she would observe individuals pass by her workplace in the direction of the school. She saw sub-prefect Kayitana, commanders Birikunzira and Barahira, director Mirasano of the dairy factory, and headmasters Rwagasore and Minani from the *Ecole des science* and *Ecole technique féminine*, respectively. Phénéas Munyarubuga at *Christ-Roi*, with whom she was close, also took part and would inform her about such meetings. She believed that the killing of Tutsis resulted from these meetings.[50]

---

[48] T. 25 June 2007 pp. 4-5, 10-17, 39-40, 49, 57-60; Prosecution Exhibit 2 (personal identification sheet). Witness CAW also mentioned Rose (a relative of Nyamulinda who worked at the hospital) among the participants. The witness referred to the *Ecole technique féminine* by its current name, Mater Dei secondary school. See also Nsengimana, T. 10 July 2008 p. 69; Witness CAO, T. 15 January 2008 p. 4; Witness CAY, T. 16 January 2008 p. 59.

[49] T. 25 June 2007 pp. 17, 39, 60 (quoted). Witness CAW also heard that Nsengimana attended the rally in Gahanda that launched the CDR party's activities, but could not recall the date. *Id.* pp. 39, 60-61. This evidence is included in the section concerning the killing of Father Furaha (II.22), but considered here as well.

[50] T. 22 January 2008 pp. 45-46, 52, 54, 57; T. 23 January 2008 pp. 3-5; Prosecution Exhibit 15 (personal identification sheet).

Prosecution Witness BVI

71. Witness BVI, a Tutsi student at the *Collège Christ-Roi*, observed meetings held in a room in front of Nsengimana's bedroom. They began in 1990 and gained in frequency in 1993, occurring at least once to several times a week. The last meeting he observed took place in the second week of March 1994 before he left the school for Easter holiday. School employees that were present included Phénéas Munyarubuga, Simon Kalinda and the watchman called Cyprien. Among attendees unaffiliated with the school were sub-prefect Kayitana, gendarmerie commander Birikunzira, a former soldier or gendarme named Barahira, headmasters Rwagasore and Minani, a teacher at the science school nicknamed Tubirimo, director Mirasano and the director of Electrogaz. The witness was not aware that any teacher at *Christ-Roi* participated.[51]

72. These meetings were not announced or fixed to particular days or times but frequently occurred in the evenings. The participants, who were known to be associated with political parties that were anti-Tutsi, often arrived individually and left as a group. The witness did not attend any of the gatherings, but testified that outsiders learned of what was said during them, including that Tutsis were going to be killed. He became suspicious of them in 1993 given the growing ethnic tension and because the killings of three Tutsis after meetings were not investigated by the authorities, including the gendarmerie commander who had attended the gatherings.[52]

Prosecution Witness CBC

73. Around 1992 and 1993, Witness CBC, a Tutsi, observed three meetings of well-known individuals in Nyanza. The gatherings appeared to be chaired by Dr. Higiro. He also heard that the group held other meetings. Specifically, in late 1992 or early 1993, he entered the *Cité Nouvelle* bar with Irène Nkusi, a Tutsi who worked at the Court of Appeal. There he saw Nsengimana, Dr. Higiro, who led the CDR party in Nyanza, Anaclet Nkundimfura from the Court of Appeal, director Mirasano from the dairy, director Faustin Mbereye of Electrogaz, commander Pascal Barahira, a teacher called Célestin Rwabuyanga, school inspector Jacques Mudacumura, sub-prefect Michel Habumugisha and a certain Tassien Zibukira. They seemed to be holding a meeting. When Nkusi approached the group, Nsengimana asked where he was going and hid his papers as he said this. Others in the group also addressed Nkusi in an inhospitable manner. At the time, the witness had no knowledge of why the group was meeting there, and he did not hear what was being said.[53]

74. The second meeting also occurred at the *Cité Nouvelle* bar a short time after the first. It involved largely the same individuals, but not the sub-prefect and Tassien Zibukira. Each participant had paper and appeared to be writing. When the witness approached them, they hid the documents.[54]

[51] T. 24 January 2008 pp. 3, 21-24, 59, 61, 63; Prosecution Exhibit 18 (personal identification sheet).
[52] T. 24 January 2008 pp. 23, 59-63, 67-69.
[53] T. 28 January 2008 pp. 53-54, 56-59, 65; T. 29 January 2008 pp. 13, 19-23, 43-44; T. 30 January 2008 pp. 2-3; Prosecution Exhibit 20 (personal identification sheet). Irène Nkusi was killed at a roadblock during the genocide (II.6.2).
[54] T. 28 January 2008 pp. 58-60, 65; T. 29 January 2008 pp. 21-23.

75. On the third occasion, sometime in 1993, the witness saw Nsengimana, Higiro, Mirasano, Mbereye, Barahira, Nkundimfura and Vincent Nzigiyimfura gathered at a shop run by Nzigiyimfura on a property owned by Barahira. When the witness greeted them, they again hid papers.[55]

76. There were rumours that this group could unleash the *Interahamwe* on the Tutsis. The meetings were conducted in a time where Tutsis were concerned about retaliation against them because of RPF attacks. The witness believed that the papers being hidden when he approached the group were preparations for the events in 1994. After the genocide, an RPF intelligence officer showed him a letter to the Minister of the Interior. The witness could not recall the date of the document, but it indicated that Tutsis planned to kill Hutus in Nyanza. The letter did not identify specific Tutsis but listed influential Hutus as targets, including Nsengimana, Higiro, Mirasano, Mbereye, Nkundimfura and Barahira. It was signed by sub-prefect Habumugisha. Signatures were also next to the listed individuals, but the witness was unaware whether these were in fact their signatures. He later went to obtain a copy of the document, but the officer said he had lost it. The witness believed that this letter was created as a pre-text for attacking Tutsis.[56]

Prosecution Witness CAO

77. Witness CAO, a Tutsi living in Mugonzi *cellule* in 1994, testified that a Hutu extremist group referred to as the "Death Squad" or "Dragons" held secret meetings and subsequently committed massacres in Nyanza.[57] Its members included Augustin Mirasano and Mbereye, who were the directors of the dairy and the Electrogaz, dairy employee Jean-Marie Vianney Segema, commander Pascal Barahira and *Christ-Roi* employees Simon Kalinda and Phénéas Munyarubuga. The witness did not attend the meetings but learned about the group from Kalinda and later heard about it during Gacaca proceedings.[58]

78. From 1991 to 1994, the witness observed the group gather at Vincent Nzigiyimfura's bar in Nyanza centre at least five times until 22 April 1994, testifying that he "saw them exchanging visits". Once the genocide began in Nyanza, the group continued to meet at Kalinda's house, which had been converted to a bar.[59]

79. Nsengimana was acquainted with several members of this group. Kalinda and Munyarubuga, for example, worked at *Christ-Roi* with him, and he began meeting with individuals like Mirasano and Mbereye in 1993. Based on Nsengimana's association with this group until 1994, the witness concluded that he was a Hutu extremist with anti-Tutsi sentiments.[60]

[55] T. 28 January 2008 pp. 60, 65; T. 29 January 2008 pp. 20-21, 23.
[56] T. 28 January 2008 pp. 60-64; T. 29 January 2008 pp. 21-22, 43.
[57] Witness CAO's evidence about killings in Mugonzi *cellule* by members of the Death Squad is set forth elsewhere (II.14).
[58] T. 14 January 2008 pp. 59-62, 67, 75; T. 15 January pp. 2-5, 7, 10-11, 29; Prosecution Exhibit 8 (personal identification sheet).
[59] T. 14 January 2008 pp. 65-67, 75; T. 15 January pp. 11, 29, 30 (quoted), 31.
[60] T. 14 January 2008 pp. 59-61, 75; T. 15 January 2008 pp. 29-31.

Prosecution Witness CBE

80. Witness CBE, a Tutsi working at the *Collège Christ-Roi*, stated that, on the night President Habyarimana's plane was shot down, unidentified soldiers met with Nsengimana in his office. The witness did not attend but afterwards, Nsengimana told the school employees, including Phénéas, Simon, Gaspard, Cyprien and Nyandwi, who was referred to as "Nyambo", that the plane had been brought down by the Tutsis. He asked them to be vigilant and "step up their efforts and start before the Tutsis had the chance to surprise them". He added that the Tutsis threatened to exterminate them and their "descendants" and that they were not to enter the school. Any attempts should be reported so assistance could be sought.[61]

81. Between 7.00 and 9.00 p.m. that evening, and on a daily basis thereafter, Nsengimana would get picked up by commander Barahira. They would leave in the commander's Peugeot pick-up truck that looked like those used by the army. Barahira, who was in uniform, would drop Nsengimana off between 3.00 and 5.00 a.m. the following morning. On the first night, Phénéas followed Nsengimana and the commander on foot. Nsengimana returned with the commander alone. Generally, Phénéas and watchmen such as Cyprien and Nyambo would also accompany Nsengimana on foot during these sorties, and Nsengimana would normally return with two unidentified soldiers who were his friends. The witness did not know where they went.[62]

82. Between the shooting down of the President's plane and Nsengimana's flight from the school towards the end of May, an older man called Nkeramihigo, who was a judge in Gitarama prefecture, and a teacher referred to as Mbangambanga were the only other two civilians to visit Nsengimana. They would meet in his office and *Christ-Roi* employees, such as Cyprien Gasatsi, Simon Kalinda, Phénéas Munyarubuga, Nyambo and Gaspard would also participate. The witness did not join them and was unaware of what was said.[63]

Prosecution Witness BXM

83. Witness BXM, a Hutu living not far away from the *Collège Christ-Roi*, attended a meeting at the ESPANYA school around 12 April 1994, where commander Birikunzira and sub-prefect Kayitana had assured the 200 to 300 attendants that there would be no killings, and that persons should return to their homes. One week later, on 19 or 20 April at around 1.00 p.m., the witness met Simon Kalinda and Phénéas Munyarubuga in the field in front of the *Ecole normale primaire*. He accompanied them to *Christ-Roi*. There one of Nyamulinda's sons asked whether the meeting had started. Phénéas responded that the participants had arrived. They went to a large room, next to the classrooms, where films had been played.[64]

[61] T. 14 January 2008 pp. 3-4, 5 (quoted), 6, 7 (quoted), 8, 21-24, 26; Prosecution Exhibit 7 (personal identification sheet).
[62] T. 14 January 2008 pp. 7-9, 27-30, 32, 50, 52-53. During re-examination, Witness CBE testified that commander Birikunzira would visit Nsengimana, but he did so less frequently than Barahira. T. 14 January 2008 pp. 50, 52-53. In cross-examination, he appeared to say that Phénéas would drive Nsengimana's vehicle during these sorties and not accompany Nsengimana on foot. *Id.* p. 34.
[63] T. 14 January 2008 pp. 6, 16-20, 45-46.
[64] See Defence Exhibit 18 (photographs of Nyanza) p. 20, bottom photograph. The building on the right with an antenna is where the meeting was held. T. 7 February 2008 pp. 52-53.

Around 30 persons were gathered there. Sub-prefect Kayitana and *Conseiller* Mutaganda were not present.[65]

84. Between 1.30 and 1.45 p.m., the principal of *Christ-Roi*, who the witness referred to as "Father Leomenidas", and commander Birikunzira arrived. The priest apologised for being late and asked the attendants to listen to the commander. Referring to the 12 April meeting at ESPANYA, Birikunzira explained that the present gathering, which was not open to everyone, was intended to offer further clarification and so the "participants should know what … to do in good time". He explained that Tutsis had attacked the country and were the enemy, and asked that small groups be formed based on the areas people came from. Birikunzira requested Tubirimo to organise persons in Kavumu, whereas Dr. Higiro, with his son Zephyrin, should contact those in Gakenyeri. Special instructions were given to Nyamulinda to organise his students as well.[66]

85. The witness was directed to form a group with Simon Kalinda and François Gashirabake. Phénéas also joined the group as they were all from the same area. The groups were asked to sensitise members of the population and identify people for training. They were to avoid involving persons "who did not feel that they were concerned by the situation". The witness did not know whether the principal from *Christ-Roi* joined a group. At the end of the meeting, around 2.30 p.m., groups were being constituted. He returned home, noting that Simon and Phénéas had left, and that Gashirabake was speaking with Birikunzira. The witness did not carry out Birikunzira's orders.[67]

Prosecution Witness CAY

86. On Thursday 14 April 1994, Witness CAY, a Hutu living in Mugonzi *cellule*, went to the *Collège Christ-Roi* to meet Father Pierre Simons, the school's bursar. Around 6.00 p.m., while waiting near the bursar's office, he saw vehicles belonging to officials in Nyanza. Several individuals had gathered in a meeting room on the floor above the bursar's office. When the gathering concluded around 7.00 p.m., the witness saw several persons depart, including Nsengimana, the sub-prefect of Nyabisindu, commanders Barahira and Birikunzira, director Mirasano from the dairy factory, Frédéric Rwagasore, Phénéas Munyarubuga, Charles Basomingera, who the witness believed taught at *Christ-Roi*, an intelligence officer called Didace and *bourgmestre* François Gashirabake, who was also a teacher at the *Ecole technique féminine*. The witness did not attend the meeting and was not aware of what was being discussed there but identified the participants as persons who later carried out the genocide in Nyanza. Given that it was held at *Christ-Roi*, he presumed that Nsengimana must have chaired the meeting. Father Simons arrived around 8.30 p.m. and met the witness there.[68]

---

[65] T. 7 February 2008 pp. 5, 9-15, 45, 47-55, 66-67; Prosecution Exhibit 23 (personal identification sheet). Witness BXM testified that students from the northern regions, such as Byumba prefecture, were at the *Collège Christ-Roi* and all the schools in Nyanza when he attended the meeting there around 19 or 20 April 1994. T. 7 February 2008 p. 21.

[66] T. 7 February 2008 pp. 15 (quoted), 16, 17 (quoted), 19, 21, 54, 56-57.

[67] *Id.* pp. 19 (quoted), 20-22, 56-57.

[68] T. 15 January 2008 pp. 44-45, 47-49; T. 16 January 2008 pp. 57-60, 67; T. 17 January 2008 pp. 51-63; T. 18 January 2008 pp. 1, 8-9, 22-23, 41-42; Prosecution Exhibit 9 (personal identification sheet). Witness CAY explained that the meeting occurred on a Thursday around 14 or 15 April 1994. T. 15 January 2008 p. 47. Defence counsel correctly noted that Thursday was 14 April 1994. T. 17 January 2008 p. 51.

87. Around 20 or 21 April, the day before the killings began in Nyanza, the witness passed Augustin Twagirimana's house, opposite the Nyanza hospital. Nsengimana, the sub-prefect of Nyabisindu commune, Twagirimana and his relative Charles Basomingera, Phénéas Munyarubuga, iron foundry director Tubirimo and Ruben who was a driver and well-known *Interahamwe*, had gathered there. They were leaving the house, and some of them then drove away. The witness overheard Twagirimana's son, Leandre (also known as "Mbeba"), say to a Tutsi named Pacifique that Tutsis had tried to kill Hutus but now Hutus would kill them. Killings started the following day.[69]

Prosecution Witness CBF

88. Witness CBF, who worked at the *Collège Christ-Roi* in 1994, visited the school twice in April 1994 – during the week of the President's plane crash and about one week later. On the second occasion, he observed Nsengimana in the school refectory conversing with a group of persons. Among the group, the witness recognised sub-prefect Kayitana, who often came to the school, as well as Michel and Charles, who were teachers at the *Ecole nationale primaire* and the *Ecole technique féminine*, respectively. Nsengimana placed his finger over his lips as if to silence those who had gathered. He also warned the witness that it was not safe for him to be there. It was unclear to the witness if Nsengimana was attempting to protect him or was merely encouraging him to leave. Prior to the war, the witness had seen Nsengimana with Appolinaire Tubirimo. He could not recall seeing Nsengimana with Higiro, and did not know Mirasano or Mbereye.[70]

Prosecution Witness BSV

89. Witness BSV, a Tutsi working at the *Collège Christ-Roi*, explained that several meetings occurred at the school, but he recalled two in particular. The first was one week before the killing began in Nyanza from 21 or 22 April 1994. When he was looking for Father Simons on the second floor in the building where the principal's office was, he watched the participants going to a reception room close to Nsengimana's bedroom. Among the school employees were Phénéas Munyarubuga, Simon Kalinda, Egide Ngenzi, Liberata Nyirabagenzi and Vincent Mporeyimana. Others who did not work there included Augustin Twagirimana, Martin Mariro, a teacher at the *Ecole nationale primaire* who was married to a secretary at *Christ-Roi*, Benoît Nkeramihigo, who lived below *Christ-Roi*, and commander Barahira. Some of the participants were part of the Hutu power faction. They had participated in political rallies that were aimed at Hutu unity and getting rid of the *Inyenzi*, which came to mean all Tutsis, and their Hutu accomplices.[71]

---

[69] T. 16 January 2008 pp. 61, 62 (quoting Leandre as saying: "You see? You have killed us. But this time around – you tried to kill us, but this time around it's our turn"), 63 (quoting Leandre again: "Where you want to put us is where we are going to put you"), 64; T. 17 January 2008 pp. 45-51; T. 18 January 2008 pp. 2-3, 20, 40-42.

[70] T. 26 June 2007 pp. 59, 61; T. 27 June 2007 pp. 2, 8-9, 31, 58; Prosecution Exhibit 3 (personal identification sheet). Witness CBF testified generally that Nsengimana had met with directors of the schools in the area, the sub-prefect regularly, and that he "suppose[d]" other authorities visited Nsengimana. The witness remained discreet during these gatherings, and allowed them to meet without disturbing them. Likewise, Nsengimana did not "interfere" when the witness received persons. T. 27 June 2007 pp. 37 (quoted), 38.

[71] T. 25 January 2008 pp. 2, 4-8, 18-21, 25-28; T. 28 January 2008 pp. 2-3, 31-36, 40, 42-44; Prosecution Exhibit 19 (personal identification sheet).

90. The witness did not enter the meeting room and could not follow what was being discussed there. Given the gathering's proximity to the genocide, and in view of its participants, he believed that its purpose was to further the cause promoted by the political rallies. He did not find Father Simons. After having been on the campus for a few minutes, he left before the end of the meeting.[72]

91. On 22 April, the witness arrived at *Christ-Roi* around 7.30 a.m. He was greeted by Nsengimana. Augustin Twagirimana arrived and entered the priests' refectory, just opposite the staircase where the witness was sitting, followed by Liberata Nyirabagenzi, Martin Mariro, Charles Basomingera who taught at the *Ecole des sciences*, Phénéas Munyarubuga and others. Twagirimana and Basomingera held high positions in an anti-Tutsi political party, and the witness believed that the purpose of the meeting was to support the killing of Tutsis that eventually occurred. He later passed the room where the group had gathered and noticed that curtains hung on the window. This caused him concern and prompted him to flee the school around 10.00 a.m. Shortly thereafter he heard gunshots coming from an unspecified location. He did not return to the school until a couple of months later.[73]

Prosecution Witness CAR

92. Witness CAR, a Tutsi working for the Ministry of Public Works, observed Nsengimana attend regular meetings in the office of the sub-prefect from February 1994 until the genocide. The participants included sub-prefect Gaëtan Kayitana, Jean Damascène Mugenzi who was "head of the secretariat", the head of the intelligence service called Didace and Jérémie Nzasabimfura who was the senior deputy public prosecutor. No Tutsis were present. The witness did not enter the office, nor did other employees working in the building.[74]

93. In February and March 1994, the witness saw that individuals who met at the sub-prefecture office also regularly held meetings at the *Cité Nouvelle* bar near the Nyanza stadium. Judge Pierre Ndimumakuba, Anaclet Nkundimfura, who was the vice-president of the Court of Appeal, Appolinaire Balihutu (nicknamed "Tubirimo"), dairy director Callixte Mirasano, Léonard Rubayiza, Faustin Mbereye and other traders also attended. No Tutsis participated.[75]

94. The witness did not know what the meetings were about, but noted that they occurred at a time when the political climate was very tense. Those who had gathered were active in the genocide. Concerning the purpose of these meetings, he pointed out that Nkundimfura and Mugenzi subsequently set up roadblocks and believed that the genocide would not have occurred without these gatherings.[76]

---

[72] T. 25 January 2008 pp. 20, 26-28; T. 28 January 2008 pp. 36-37. Witness BSV saw several editions of *Kangura* with Nsengimana's name written on it in a room where guests were received in the priest's refectory. T. 25 January 2008 pp. 18, 26-27; T. 28 January 2008 pp. 17-20, 40.
[73] T. 25 January 2008 pp. 18, 28-30; T. 28 January 2008 pp. 6, 34-35, 37-38, 40, 42-44.
[74] T. 15 January 2008 pp. 53, 55 (quoted), 56-58, 74-75; T. 16 January 2008 pp. 2, 12, 14-19, 21, 55; Prosecution Exhibit 10 (personal identification sheet).
[75] T. 15 January 2008 pp. 58-62, 74; T. 16 January 2008 pp. 12, 18, 20-23, 29, 55. Witness CAR originally referred to "Anaclet Nsanzimfura", but his later testimony demonstrates that he intended to say Anaclet Nkundimfura. T. 15 January 2008 pp. 67-68.
[76] T. 15 January 2008 pp. 58, 61-63; T. 16 January 2008 pp. 12, 21-22, 50, 55.

95. At the end of March 1994, the witness attended a party celebrating the christening of one of Kayitana's children in the sub-prefect's home. Nsengimana, Anaclet Nkundimfura, Pierre Ndimumakuba, Callixte Mirasano, Appolinaire Balihuta, Faustin Mbereye and others were present. Eventually, he saw Nsengimana call the sub-prefect over. The sub-prefect subsequently approached the witness and asked him and Emmanuel Kayihura, another Tutsi, to leave. By then, all other Tutsis who had been present had left. The sub-prefect drove them to the junction where the roads lead to Urukari and Rwesero.[77]

Prosecution Witness CAN

96. According to Witness CAN, a Tutsi who lived in Mugonzi *cellule*, Nsengimana was a member of the CDR party, an anti-Tutsi party that sought to create Hutu unity. Appolinaire Barihuta, the director of government steel works in Kavumu, was the chairman of the party. Other members included Dr. Higiro, headmaster Rwagasore, director Mirasano, sub-prefect Kayitana and his assistant Mugenzi, a businessman called Kinshasa, traders Zacharie and Ephrem Nshimyumuremyi, gendarmerie commander Birikunzira, the Butare prefect who replaced Jean-Baptiste Habyarimana, and the chief warden of the prison. Employees at the *Collège Christ-Roi*, such as Phénéas Munyarubuga, Simon Kalinda, Gasatsi and Sebukayire, were also members.[78]

97. The CDR party held rallies, and its members were generally known. The witness saw public meetings held at the multi-purpose room in the sub-prefecture office and Nyanza stadium. He observed Nsengimana departing the sub-prefecture building at the end of a CDR meeting there with other members. Other *Christ-Roi* employees attending CDR rallies included Sebukayire, Kagibwami, Charles and Munyeseyege from Kavumu, Déo, who arrived in 1994 after having left the parish, and Munyeshyaka who was from Gihesi. Political rallies occurred right up to the genocide.[79]

98. On 21 April 1994, between 7.00 and 8.00 p.m., he observed a CDR gathering of 10 to 15 persons in and outside a building that had been used by the *Ecole normale primaire*, but was within the *Collège Christ-Roi*'s compound and not far from its entrance. This meeting could be distinguished from previous, public CDR meetings or rallies, as it appeared to be held in secret. The participants were creating lists of Tutsis to be killed and selecting locations with the stated purpose of setting up roadblocks that would be used to intercept and kill Tutsis. Jacques Mudacumura saw the witness, and together with others he chased him away around 8.00 p.m. The next day, the witness learned that the meeting had continued until 9.00 a.m. The witness did not see Nsengimana at the meeting, but MRND secretary François Gashirabake and, subsequently, Phénéas Munyarubuga and others told him that Nsengimana had been there. The employees of *Christ-Roi* informed the witness that other meetings were held in the houses of Nsengimana or Munyarubuga. Simon Kalinda, Phénéas Munyarubuga, Sebukayire, Gasatsi as well as others who had attended the meeting set up roadblocks the

[77] T. 15 January 2008 pp. 71-74; T. 16 January 2008 pp. 24-27, 30-33, 35, 52-55.
[78] T. 27 June 2007 pp. 67-68, 77-79; T. 28 June 2007 pp. 15, 21; Prosecution Exhibit 4 (personal identification sheet). Witness CAN also mentioned Ezekiel Gasesera (MRND president) as a CDR member, but later asserted that he was not a member, but an *Interahamwe*. T. 28 June 2007 pp. 21, 23. The English trancripts refer to Kayitana's assistant as "Rugenzi" (T. 27 June 2007 p. 79), while the French use "Mugenzi" (*id.* p. 88). The Chamber relies on the French, which is consistent with other evidence in the record. See, for instance, Witness CAR, T. 15 January 2008 p. 55 (Jean Damascène Mugenzi was the head of the secretariat).
[79] T. 28 June 2007 pp. 2-3, 39-40.

next day. There were many gatherings at the school after 22 April, but the witness could not recall the dates.[80]

Nsengimana

99. Nsengimana denied being involved in politics, which was prohibited by canon law. He never held meetings of a political nature at the school, nor did he knowingly associate with political party members as a group.[81] In particular, he did not attend meetings with Barahira, Birikunzira, Tubirimo, Phénéas Munyarubuga, Cyprien Gasatsi, Simon Kalinda and others at the *Cité Nouvelle* bar or at the *Collège Christ-Roi*. He never participated in a common design aimed at killing Tutsis.[82]

100. Gaëtan Kayitana became sub-prefect in 1993. Given his responsibility for security for secondary schools in Nyanza, he had free access to the campus. Kayitana would occasionally stop by *Christ-Roi* to see Nsengimana, who at times invited Kayitana to sit in his office, where they had superficial conversations about the security situation. Kayitana did not chair meetings at the school. Nsengimana had no recollection of meeting at *Christ-Roi* in mid-April with Charles Basomingera and Michel Kanakuze who were, respectively, a teacher at the *Ecole des sciences* and the dean of studies at the *Ecole nationale primaire*.[83]

101. Nsengimana knew Appolinaire Tubirimo, the director of the Nyabisindu foundry, but never received visits from him. If Tubirimo came to *Christ-Roi*, it was to order furniture from the carpentry there. Nsengimana frequently brought students to Dr. Célestin Higiro at Nyanza hospital. According to Nsengimana, his contact with gendarmerie commander Birikunzira was limited to the investigation into the death of a *Christ-Roi* watchman in February 1994. Birikunzira did not come to the school to see Nsengimana, and Nsengimana did not go to his home.[84]

102. Nsengimana did not know anyone by the names of Mbanzamihigo, Karege (CDR vice-president) or Cyubuhiro. He knew Nyamulinda's sons and their cousin called Bosco but did not deal with them. Ngiruwonsanga was *bourgmestre* of Nyabisindu until 1993, when he was replaced by Jean-Marie Vianney Gisagara. Ngiruwonsanga never visited *Christ-Roi*.[85]

Defence Witness JMR1

103. Witness JMR1, a Hutu who had worked at the *Collège Christ-Roi* from the second half of 1992 and was there in 1994, said that Nsengimana was not a member of any political party. The witness did not hear him discuss politics and never saw him display symbols associated with political parties. Nsengimana would have forbidden political discussions

[80] *Id.* pp. 4, 6-9, 29, 40-41, 43-50, 59-66, 71-72; T. 29 June 2007 pp. 2-3, 7-9, 11-12. Witness CAN identified the house in Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4135 as the location of the 21 to 22 April meeting. T. 29 June 2007 p. 3. His evidence about the establishment of roadblocks and a meeting at the *Collège Christ-Roi* in May 1994 is set forth elsewhere (II.6 and II.14), but considered here.
[81] T. 8 July 2008 pp. 3-4; T. 9 July 2008 pp. 12, 49. Nsengimana recalled that membership within the MRND was mandatory prior to the establishment of multi-party politics. T. 8 July 2008 pp. 4-5; T. 9 July 2008 pp. 47-48.
[82] T. 8 July 2008 pp. 48-49; T. 9 July 2008 p. 21; T. 11 July 2008 p. 3.
[83] T. 8 July 2008 pp. 41-42; T. 9 July 2008 p. 15; T. 10 July 2008 p. 64.
[84] T. 8 July 2008 pp. 29, 42-43; T. 9 July 2008 p. 31; T. 10 July 2008 p. 61.
[85] T. 8 July 2008 pp. 44-45; T. 10 July 2008 pp. 61-62.

amongst teachers if there had been any, but the witness was unaware of any formal restriction against it being in place. There were no political meetings at *Christ-Roi*, and extremists did not gather there. The tension that existed within the country based on the clash of political parties was not felt within the school. Nsengimana did not go to bars.[86]

104. On the evening of 6 April 1994, the witness returned to *Christ-Roi* around 4.00 or 5.00 p.m. No meeting was held there that evening. Between 6 April and when he left in late May, he did not observe or hear anyone discuss meetings at the school.[87]

Defence Witness EMR95

105. Witness EMR95, a Hutu working at the *Collège Christ-Roi* before the genocide, testified that although there was significant tension in the country when he arrived at the school in 1992, this was not felt at the school. Students and teachers did not discuss politics, and rules prohibited the wearing of party uniforms or other activities demonstrating party allegiances. Nsengimana did not discuss politics or give preference to or denigrate persons based on ethnicity.[88]

106. There was no evidence suggesting that Nsengimana was a member of a political party, and the witness was unaware of any political meetings being held at *Christ-Roi*. He never saw soldiers, gendarmes or the director of the foundry come there. After 7 April, the witness only returned to the school on 15 and 22 April and towards the end of May 1994, staying there for approximately 30 minutes on each occasion. Had meetings been held in his absence, he believed he would have learned about them.[89]

Defence Witness PMR31

107. Witness PMR31, a Hutu studying at the *Collège Christ-Roi* since the late 1980s, returned home for Easter recess in March 1994. He stated that Nsengimana did not have any issue related to ethnicity, he did not favour particular students and there were no divisions among students, for instance based on ethnicity. The witness was unaware of any political meeting occurring at the school. Nsengimana did not appear to belong to a political party as he did not display a flag or attend political rallies.[90]

Defence Witness JMF2

108. Witness JMF2, a Hutu student at the *Collège Christ-Roi* since 1991, went home for Easter recess in the last week of March 1994. He explained that in the early 1990s, Nsengimana would convene meetings with students and visit classes to reassure them and to eliminate any tension stemming from RPF attacks. The witness was unaware of meetings of a political nature at the school or involving officials in Nyanza.[91]

---

[86] T. 17 June 2008 pp. 2, 5-7, 11-13, 15, 17, 48, 58; Defence Exhibit 52 (personal identification sheet).
[87] T. 17 June 2008 pp. 2, 15, 17, 34, 48.
[88] T. 13 June 2008 pp. 3-5, 8-9, 18-22; Defence Exhibit 48 (personal identification sheet). Witness EMR95's evidence that students did not discuss politics can be found in the French version of the transcripts. T. 13 June 2008 p. 9.
[89] T. 13 June 2006 pp. 9-13, 25-26.
[90] T. 5 June 2008 pp. 3, 7-8, 13, 21; Defence Exhibit 42 (personal identification sheet).
[91] T. 9 June 2008 pp. 3-5, 8-12; Defence Exhibit 43 (personal identification sheet).

Defence Witness Jean-Marie Vianney Mushi

109. Jean-Marie Vianney Mushi, a Hutu boarding student at the *Collège Christ-Roi* since 1989, left in late March 1994 in connection with the Easter recess. Nsengimana did not discriminate based on ethnicity. Students and teachers did not discuss politics at *Christ-Roi*. The witness did not see or hear anything, even after the arrival of multi-party politics, suggesting that Nsengimana was involved in politics, nor did he see strangers hold meetings at the school or outsiders visit Nsengimana.[92]

110. Nsengimana rarely left *Christ-Roi* and, given his reserved nature, would not have gone to bars. The witness would go to Nyanza town centre approximately two Sundays a month and never saw Nsengimana at a bar.[93]

Defence Witness AMC1

111. Witness AMC1, a Hutu working at the *Collège Christ-Roi* until the middle of 1993, lived in Nyanza in 1994. He stated that there were no ethnic problems at *Christ-Roi*. Nsengimana was not prejudiced against Tutsis and did not distinguish between students or teachers based on ethnicity. The witness heard him say that although people were born different, they must live together.[94]

112. Nsengimana did not attend political meetings, did not discuss politics and was not a member of, for example, the MRND or MDR. He also discouraged political discussions among the teachers. The witness denied that any MRND meeting occurred at *Christ-Roi*, or that there were gatherings involving persons from outside, such as representatives of political parties. Nsengimana would say that it was not good for priests to go to bars. On the one or two occasions the witness went to the *Cité Nouvelle*, he did not see Nsengimana there.[95]

Defence Witness EMR33

113. Witness EMR33, a Hutu, was a boarding student at the *Collège Christ-Roi* from the second half of the 1980s to mid-1993. He testified that membership in a political party was often clear, based on participation in public rallies, wearing party uniforms or displaying flags on homes or vehicles. There were no visible indications that Nsengimana was a member of any political party, nor was this reflected in his homilies and lessons. The principal was very busy and remained at the school while students were present. The witness was unaware of any meetings of a political nature occurring at *Christ-Roi*, but noted that it would not be unusual for "political authorities" to attend "feasts or ceremonies".[96]

---

[92] T. 1 July 2008 pp. 40-42, 51; T. 2 July 2008 pp. 1-2; Defence Exhibit 58 (personal identification sheet). Jean-Marie Vianney Mushi was formerly referred to as Witness JMCB8.
[93] T. 1 July 2008 p. 42; T. 2 July 2008 pp. 4-5.
[94] T. 3 June 2008 pp. 2-3, 5-7, 13-15, 17; Defence Exhibit 40 (personal identification sheet). Witness AMC1 mostly lived in *Christ-Roi* housing approximately a kilometre away until he left the school in June 1993.
[95] T. 3 June 2008 pp. 13-16, 18-19, 21, 34, 36-37, 46, 56-57. The Prosecution put to Witness AMC1 letters Nsengimana had sent to Edouard Karemera (10 June 1991), Chanoine E. Ernotte (13 February 1992) and Abbé A. Demoulin (2 March 1992 and 9 April 1993). In its view, they demonstrated that Nsengimana was politically active. In each instance, the witness refuted that these letters demonstrated that Nsengimana had political affiliations. Rather, they were likely motivated by his position as the director of the *Collège Christ-Roi*. See T. 3 June 2008 pp. 37-50; Prosecution Exhibit 26 (four letters written by Nsengimana).
[96] T. 2 June 2008 pp. 14-15, 28, 51 (quoted).

Defence Witness EMI2

114. Witness EMI2 worked at the Saint Antoine orphanage in Nyanza in 1994, situated approximately 800 to 900 metres from the *Collège Christ-Roi*. He was unaware of Nsengimana favouring teachers or students based on ethnicity. The witness never heard persons speak of Nsengimana's political commitment or that political meetings were held at the school, but also said that he was not "involved in the realities of the town". From October 1992 to April 1994, he met with Nsengimana between four and five times.[97]

Defence Witness DFR85

115. Witness DFR85, a Hutu, worked at a primary school in Nyanza. She did not know Nsengimana well, but never heard that he was a member of a political party. He was a discreet man, did not wear political insignia in front of his students and she had not seen him at political rallies. The witness did not attend political meetings in Nyanza in 1994 and did not closely monitor Nsengimana's activities during this period, but she would have heard if he had participated.[98]

116. From 6 to 9 April 1994, the witness was in Kigali. After her return to Nyanza, and while living nearby the *Collège Christ-Roi*, she never heard of meetings occurring there. The witness stayed at the school for about two weeks, arriving in May and leaving between 15 to 20 June, when soldiers from the *Ecole supérieure militaire* arrived. During this period, no meetings took place at the school, and she did not see gendarmes there.[99]

Defence Witness Marie Goretti Uwingabire

117. Marie Goretti Uwingabire, a Hutu, was the daughter of Augustin Nyamulinda, headmaster of the *Ecole normale primaire*. By 6 April 1994, she had returned home from secondary school. Nsengimana was a discreet man who did not associate with just anyone. The witness had not heard that he discriminated based on ethnicity, and her father never informed her that Nsengimana belonged to a political party. She was not aware of meetings taking place at the *Collège Christ-Roi*.[100]

Defence Witness Marie-Cécile Uwayezu

118. Marie-Cécile Uwayezu, a Hutu and daughter of Augustin Nyamulinda, was a student in Gisenyi in 1994 but returned home for Easter recess. She did not have frequent contact with Nsengimana and did not know him well. Her father informed her that he was a reserved man who worked hard. Nyamulinda did not tell her that Nsengimana was involved in political matters, that he received visits from persons engaged in politics or that he

[97] T. 10 June 2008 pp. 4-6, 7 (quoted), 10; T. 11 June 2008 pp. 1-3; Defence Exhibit 45 (personal identification sheet).
[98] T. 27 June 2008 pp. 3-5, 51-52; Defence Exhibit 55 (personal identification sheet).
[99] T. 27 June 2008 pp. 6, 8, 25-27, 30-31; T. 30 June 2008 p. 9. As discussed in detail elsewhere (II.19), Witness DFR85 had difficulties determining when she sought refuge at the *Collège Christ-Roi*.
[100] T. 30 June 2008 pp. 24-28, 32; T. 2 July 2008 pp. 19-20; Defence Exhibit 56 (personal identification sheet). Marie Goretti Uwingabire was formerly identified as Defence Witness GFR99.

discriminated based on ethnicity. The witness was unaware of meetings being held at the *Collège Christ-Roi*.[101]

Defence Witness Emmanuel Hakizimana

119. Emmanuel Hakizimana, a Hutu, studied at Nyakabanda major seminary in 1994. During the 1992-1993 school year, he interned at the *Collège Christ-Roi* where he taught Latin and led a Catholic action movement group for students. Hakizimana and Nsengimana slept in the same house, shared meals and frequently discussed their personal and professional lives. Nsengimana never uttered unkind words to anyone and did not favour or discriminate among teachers or students based on ethnicity. It was clear to the witness that Nsengimana was not politically active.[102]

120. Hakizimana and Nsengimana were housed in the same building. The witness never heard of political meetings being held at *Christ-Roi* or saw high-ranking Nyanza officials or gendarmes gather there. Nsengimana did not leave school much and did not visit bars.[103]

Defence Witness RFCD6

121. Witness RFCD6, a Hutu student, lived with her family in Nyanza. A few days to about a week after the President's death, she and her family left, including her father and all except one of her brothers. The distance was several hours by foot, but they travelled by car and could cover it in about two to three hours. They returned in the second half of May 1994 and remained in Nyanza for two to three weeks before departing again. Her father had returned to Nyanza without her during their first absence when it was said that "there was calm".[104]

122. The witness did not believe that a meeting was held in her home between 6 and 21 April as her family was not there. She recalled that Nsengimana came to her home after the death of her uncle around 1989. He was accompanied by Father Furaha and Father Mathieu Ngirumpatse. Nsengimana was a friend of her father, and also visited him on other occasions, but she could not recall when. The witness was not aware of Nsengimana speaking unkindly of anyone or discriminating based on ethnicity, and she had no knowledge of him being politically committed.[105]

Defence Witness VMB17

123. Witness VMB17, a Hutu priest, worked at the major seminary in Kabgayi in 1994. He was not aware of Nsengimana participating in meetings with political extremists. Such information would, in the witness's view, have reached him had it been true. Canon law prohibited priests from being involved in politics. The witness was unaware of Nsengimana being prejudiced against Tutsis and saw no evidence of this while in school with him for two

[101] T. 1 July 2008 pp. 14-16, 18-19; T. 7 July 2008 p. 2; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was previously referred to as Defence Witness RFR58.
[102] T. 2 July 2008 pp. 24, 26, 28-29, 40; Defence Exhibit 59 (personal identification sheet). Emmanuel Hakizimana was originally known as Witness EMCB2.
[103] T. 2 July 2008 pp. 28-31.
[104] T. 8 July 2008 pp. 54-58, 68, 69 (quoted); Defence Exhibit 60 (personal identification sheet).
[105] T. 8 July 2008 pp. 58-60, 67.

years at Nyakibanda major seminary. Nsengimana would not go to bars because that would tarnish his image.[106]

Defence Witness FMCD5

124. Witness FMCD5, a Hutu, worked for the Butare Diocese in 1994 and left Rwanda on 22 April 1994. Nsengimana was an intelligent, discreet man who did not visit bars or do things that would stain his image. While Nsengimana was at the major seminary, the witness observed that he got along well with Tutsis and participated in several activities with them. He had a very close and friendly relationship with Bishop Jean-Baptiste Gahamanyi, who treated him like a son.[107]

Defence Witness VMF8

125. Witness VMF8, a Hutu, studied at the *Collège Christ-Roi* until the end of the 1970s. In 1994, he worked in Kigali, but left on 12 April and arrived in Nyanza that day to stay with a friend who taught at the *Ecole nationale primaire*. From 16 April, Nsengimana allowed the witness, his wife and three children, as well as a secretary at the school, to stay at *Christ-Roi*. The witness was there in the evenings of 16, 17, 18 and 19 April, leaving every morning. He saw two young girls, two young men, a watchman and a cook there. The witness believed that one girl was Nsengimana's niece. Other families arrived, and when the teachers' quarters were full, the dormitories were used.[108]

126. During an intense period of killings in Nyanza between 21 and 27 or 28 April, the witness remained inside the house of his friend. After that period and until 20 May, when the witness left Nyanza, he went through *Christ-Roi* approximately 10 times. On some occasions, he would stop for up to 20 minutes, chatting with a seminarian called Fratri or greeting Nsengimana there. On half of these trips, the witness would pass the entrance of *Christ-Roi*.[109]

127. While in Nyanza, the witness did not observe students, teachers, gendarmes or local dignitaries at *Christ-Roi*, nor was he told about political meetings being held there. At no point did he hear Nsengimana speak unkindly of an ethnic group. The witness attended two Masses between 17 and 19 April at the Nyanza parish church and heard Nsengimana instruct attendants to maintain "brotherly" relations in the Christian community.[110]

Defence Witness JMM1

128. Witness JMM1, a Hutu, lived in Nyanza town. Nsengimana had a reputation for being strict and enforcing discipline among his students. Like other priests, he did not participate in political activities. Nsengimana did not leave the *Collège Christ-Roi* often.[111]

---

[106] T. 16 June 2008 pp. 4, 6, 10-11; Defence Exhibit 49 (personal identification sheet).
[107] T. 16 June 2008 pp. 19, 22-23, 27-29, 35-36; Defence Exhibit 50 (personal identification sheet).
[108] T. 10 July 2008 pp. 4-9, 11-12, 16, 18, 20-21, 26-29; Defence Exhibit 67 (personal identification sheet).
[109] T. 10 July 2008 pp. 12-14, 16-18, 23-26.
[110] *Id*. pp. 14, 16 (quoted), 18, 27-28.
[111] T. 11 July 2008 pp. 12, 16-17; Defence Exhibit 69 (personal identification sheet).

Defence Witness GMC4

129. Witness GMC4, a Hutu, stayed for two nights at the *Collège Christ-Roi* with the *Ecole supérieure militaire* in the second half of May 1994. He spoke briefly with Nsengimana the day after he arrived. The priest made no unkind remarks about any ethnic group. The witness had previously lived in Butare with Nsengimana in the early 1980s and did not believe that he was politically involved. During that period, Nsengimana had encouraged people to live in peace together and did not discuss politics in the church. The witness did not hear of any political meeting occurring in the *Christ-Roi* compound.[112]

2.3 Deliberations

130. The Prosecution has presented evidence suggesting that from as early as 1990, Nsengimana met with Hutu extremists who later had prominent roles in the killings of Tutsis once they began in Nyanza in 1994. Through these meetings, the Prosecution seeks to establish that the killings that unfolded there were planned, and that Nsengimana played a prominent role in the preparations, in part, by acting as the spiritual leader of the group.

131. The Defence accepts that Nsengimana met with certain individuals, such as sub-prefect Gaëtan Kayitana, but submits that such encounters were necessary and unremarkable given their positions. It disputes, however, that Nsengimana participated in any meetings that discussed the planning of killing of Tutsis, and challenges most of the Prosecution evidence about such gatherings.

132. The Chamber will distinguish between meetings before and after 1 January 1994, given the jurisdictional limitations of the Tribunal. The Prosecution adduced considerable evidence of meetings prior to 1994, and the Chamber finds it useful to examine this evidence because it may clarify the context in which the crimes charged in the Indictment were committed and shed light on Nsengimana's conduct in 1994.[113]

2.3.1 Meetings Before 1994

133. According to the Prosecution, meetings occurred prior to 1994 at the *Collège Christ-Roi*, Vincent Nzigiyimfura's shop, the *Cité Nouvelle* bar, the dairy plant, the sub-prefecture office and the Electrogaz station. The Chamber will discuss evidence about each of these gatherings in turn.

(i) Meetings at the Collège Christ-Roi

134. Witnesses CAW, BVW and BVI testified about meetings occurring at the *Collège Christ-Roi* before 1994. According to Witness CAW, he saw a group gather in a large reception room there in early 1993. They subsequently held meetings at the school three times a week. Witness BVW, who worked in the school's vicinity, observed certain persons going towards *Christ-Roi* every day. Witness BVI, a student there, stated that meetings were

[112] T. 10 July 2008 pp. 34-46, 49; Defence Exhibit 68 (personal identification sheet). Witness GMC4 was married by Nsengimana in the early 1980s.

[113] See *Nahimana et al.* Appeal Judgement para. 315 ("[A] Trial Chamber may validly admit evidence relating to pre-1994 acts and rely on it where such evidence is aimed at: clarifying a given context; establishing by inference the elements (in particular, criminal intent) of criminal conduct occurring in 1994; demonstrating a deliberate pattern of conduct.").

held in a room next to Nsengimana's bedroom as early as 1990, and that they gained frequency in 1993, occurring one to several times a week.

135. The evidence about the participants at these meetings was largely consistent. All three witnesses mentioned gendarmerie commander François Birikunzira, sub-prefect Gaëtan Kayitana, dairy plant director Mirasano, *Ecole technique féminine* headmaster Minani, and *Christ-Roi* employee Phénéas Munyarubuga. Witnesses BVW and BVI added commander Pascal Barahira and the *Ecole des sciences* headmaster, Frédéric Rwagasore, among those on their way to or at *Christ-Roi*. Simon Kalinda, who was an employee at the school, and Faustin Mbereye, director of Electrogaz, were present according to Witnesses CAW and BVI.[114] Furthermore, Witness CAW identified Appolinaire Tubirimo, director of the foundry, while Witness BVI observed a teacher at the science school nicknamed "Tubirimo" going towards the school regularly.[115]

136. The Defence has pointed out alleged frailties within the Prosecution evidence. Witness CAW was confronted with his first statement to Tribunal investigators in June 2000, which did not mention Higiro, Birikunzira, Kayitana, Mugenzi and others attending meetings. He replied that he had mentioned their names to the investigator and also had informed him that there were many other persons without identifying them.[116] The witness had previously volunteered that when he gave his statement, the person taking it "did not include all the names".[117]

137. The Chamber has difficulties accepting that an investigator would have omitted such prominent individuals had Witness CAW identified them during the interview. However, it is also not clear how much information was sought from the witness about these meetings during that stage of the investigation. Of greater significance is the ambiguity in the witness's testimony about the gatherings. He did not attend any. When pressed about his basis for knowledge generally, he frequently referred to being informed of meetings by others.[118] The

[114] The transcripts in Witness CAW's testimony identify Mbereye as "Ndereye". It is clear that he was referring to Faustin Mbereye, the "director of Electrogaz". T. 25 June 2007 p. 15. Similarly, Witness BVW's testimony about "Kaitano", who she identifies as the sub-prefect (T. 23 January 2008 p. 40), undoubtedly was about Gaëtan Kayitana.

[115] At the meeting in 1993 were, according to Witness CAW, also *Christ-Roi* employees Sebukayire and Vincent, as well as a teacher from the *Ecole technique féminine*, François Gashirabake; dairy plant employee Karege; Dr. Higiro of the Nyanza hospital; the sub-prefect's deputy, [Jean Damascène] Mugenzi; and *bourgmestre* Ngiruwonsanga.

[116] T. 25 June 2007 pp. 59-60.

[117] *Id.* p. 16.

[118] See, for example, *id.* pp. 17 ("Q. … were you in any way present – in any capacity … at any of these meetings? A. No, I did not personally attend any of those meetings, but I would meet with people who attended them, and I would talk with them. … Q. … were you in any way responsible for the arrangement of tea or the room in which the meetings would be held? The witness: At the time, I would not go into the rooms where such meetings were held. There were other people in charge of such tasks, such as, for example, Raphael, or other people who worked at the *Christ-Roi* college. But I should say that on some occasions, I would also have the opportunity to discuss with those who would go and serve tea to those attending the meetings."), 60-61 ("Q. And were you there? A. There was a boy who hailed from my place of origin who worked at Electrogaz, … so it is this person who came and talked to us about the ceremony which had taken place, saying that they had raised this – the flag of the CDR party at that location.").

Chamber has elsewhere questioned the reliability of Witness CAW's testimony, and refuses to accept it in this context without adequate corroboration.[119]

138. Turning to Witness BVI, the Defence confronted him with a statement given to Tribunal investigators in June 2006, where he identified sub-prefect Gaëtan Kayitana and the director of Electrogaz as participants, whereas he had not mentioned them in his direct examination. The witness confirmed that Kayitana and the director of Electrogaz were present, but did not explain the omission. The Defence also noted that no mention was made of Minani, Birikunzira and Barahira as attendants in the statement. The Chamber does not consider this important, as the statement clearly reflects that not all participants were listed by the investigator.[120]

139. The Defence challenged Witness BVW's impartiality, as she blamed Nsengimana and his associates for the deaths of her parents and of Father Furaha. While the Chamber has elsewhere considered that bias may have influenced her testimony (II.22), she appears to have been well-placed to observe persons going towards the *Collège Christ-Roi*.[121] This said, her position as an outsider limited her ability to know what actually occurred within the school.[122] Furthermore, her evidence as to what she learned about the meetings was hearsay and vague.[123]

140. The Defence presented 18 witnesses who generally portrayed Nsengimana as a person who did not participate in political meetings, demonstrate political allegiances and was not overheard saying unkind words based on ethnicity. He rejected the assertion that he participated in such gatherings as involvement in politics would go against canon law. This assertion was corroborated by Witness VMB17, a fellow priest. Furthermore, Witnesses JMR1, AMC1 and EMR95, all Hutu staff at the *Collège Christ-Roi* for periods of 1992 and 1993, generally denied that political meetings were held at the school, that Nsengimana was involved in politics or that he demonstrated any political alliances. Witnesses PMR31, JMF2 and Jean-Marie Vianney Mushi were *Christ-Roi* students, who began there in the late 1980s or early 1990s and remained until March 1994. They were unaware that meetings were held at the school or that Nsengimana was involved in politics.

141. The Defence evidence is of varying strength. Given the purported regular and frequent presence of outsiders at the *Collège Christ-Roi* during the day, it seems unlikely that

---

[119] See, for instance, Nsengimana's involvement in roadblocks (II.6), the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

[120] T. 24 January 2008 pp. 62-63; Defence Exhibit 26A (statement of 28 June 2006) pp. 3-4: "Participants were, *among others*, the [sub-prefect], the director of the Nyanza dairy, the chief of Electrogaz station, the principal of ESN (Nyanza science secondary school), *etc.*" (emphasis added).

[121] See T. 22 January 2008 p. 58; Defence Exhibit 18 (photographs of Nyanza) p. 37, CIMG 0665.

[122] T. 23 January 2008 p. 4 ("I do not know the venue of the meeting convened by Father Nsengimana. … I think that the students were aware about those meetings, but I can't know what really happened because I was not inside the college.").

[123] T. 22 January 2008 p. 52 ("Often Phénéas Munyarubuga took part in those meetings, so I contacted him and asked him what transpired in those meetings. He often came to my workplace, and he would tell me a part of what was said during the meetings, because he could not tell me everything. But, as a matter of fact, he told me almost everything … "); T. 23 January 2008 p. 4 ("I told you that Nyanza is a small town and whenever there was an event in Nyanza everyone would know about such an event and the local inhabitants talked about the meeting. I would like to remind you that Phénéas who attended those meetings would tell me about some of the things that were said at the meetings.").

Witnesses JMR1, AMC1, EMR95, PMR31, JMF2 and Jean-Marie Vianney Mushi would not have seen meetings occurring within the compound. The Chamber gives some weight to Witness BVI's suggestion that Tutsis may have been more interested in following these gatherings than their Hutu counterparts, given their particular concerns and knowledge of the political leanings of the participants.[124] But even assuming that some Defence witnesses may have been less alert, or were unable to give evidence for the entire time period covered by the Prosecution testimonies about meetings, their accounts denying the existence of them create some doubt. Consequently, the Chamber is not satisfied that the evidence of Witnesses CAW, BVW and BVI alone is sufficient to establish that Nsengimana participated in political gatherings at the *Collège Christ-Roi*, as they have alleged.

142. Finally, and perhaps of ultimate significance, no first-hand knowledge exists concerning the content of these purported meetings. The Prosecution witnesses emphasised that their purpose was to plan the killing of Tutsis. To the extent Defence evidence concedes that Nsengimana met with officials at the school, such interactions were a necessary consequence of his position as the Rector of the *Collège Christ-Roi* and the need to maintain relations with the political infrastructure in place. Given the record before the Chamber, this reasonable possibility has not been eliminated by the Prosecution evidence.

(ii) Meetings at Vincent Nzigiyimfura's Shop and the Cité Nouvelle Bar

143. According to the Prosecution, Nsengimana met with hardliners at Vincent Nzigiyimfura's shop or the bar nearby. Witness CBC specified that this occurred in 1993 and that Nsengimana furtively hid papers in his presence. Witness CAO said that a group, which were referred to as the "Death Squad" or "Dragons", met at least five times there from 1991 to 1994. In line with evidence about the meetings at the *Collège Christ-Roi* considered above, both explained that commander Pascal Barahira, dairy plant director Mirasano and Electrogaz head Faustin Mbereye participated, while Witness CAO also identified Phénéas Munyarubuga and Simon Kalinda. Witness CBC said that Dr. Higiro was among those at Nzigiyimfura's shop.[125]

144. Witness CBC was confronted with two Rwandan trial judgments, in which Dr. Célestin Higiro, Anaclet Nkundimfura, François Birikunzira, Pascal Barahira, Faustin Mbereye and others were accused of having participated in meetings. The Defence argued that neither discussed the meetings described by the witness.[126] The witness explained that the gatherings he had mentioned were different from those in the judgments and maintained his testimony.[127] While the omissions are noteworthy, they do not necessarily undermine Witness CBC's evidence. Nsengimana was not on trial in either case and the absence of any

[124] T. 24 January 2008 p. 60.
[125] Witness CBC also saw at one or more of the meetings Anaclet Nkundimfura of the Court of Appeal, teacher Célestin Rwabuyanga, school inspector Jacques Mudacumura, sub-prefect Michel Habumugisha, Tassien Zibukira and Vincent Nzigiyimfura. Witness CAO said dairy plant employee Jean-Marie Vianney Segema participated in the group. He first identified Pascal Barahira as a member of the Dragons during cross-examination. T. 15 January 2008 p. 29.
[126] T. 29 January 2008 pp. 24, 26-30, 32, 35-42; Defence Exhibit 32 (summary of Rwandan trial judgment of Anaclet Nkundimfura *et al.*,) pp. 4-5; Defence Exhibit 33B (Rwandan trial judgment of Célestin Higiro *et al.*, 14 March 2003) pp. 13, 28. The Chamber notes that the Higiro judgment refers to "Hormisdas" in connection with evidence a witness gave in a different proceeding about a meeting at Twagirimana's home. However, the brief reference ("*car il fait intevener Hormisdas*") is unclear. Defence Exhibit 33B p. 21.
[127] T. 29 January 2008 pp. 32, 40, 42.

mention of him in connection with these meetings in the Rwandan trial judgments would not necessarily raise reasonable doubt. However, the paucity of the witness's evidence about the purported gathering leaves questions about whether it occurred. Assuming it did, his testimony does not eliminate the reasonable possibility that Nsengimana and others were at this location in 1993 for purposes other than planning the killing of Tutsis the following year.

145. In his statement to Tribunal investigators in June 2000, Witness CAO did not specify that Nsengimana had met with the persons he had testified about, and, in particular, that he had been with them at Vincent Nzigiyimfura's bar. The witness explained that he had said that Nsengimana had gathered with these persons although he was unsure if he specified where they had met.[128] He further suggested that Nsengimana "used to be with" persons who subsequently committed massacres, and that he had seen him among the group "before 1994". The Chamber notes that the testimony about Nsengimana meeting with members of the Dragons at Nzigiyimfura's bar was primarily elicited through cross-examination.[129] It has reservations about relying on Witness CAO, primarily because his evidence is insufficiently precise.

146. Defence Witnesses Jean-Marie Vianney Mushi, Emmanuel Hakizimana, AMC1, VMB17 and FMCD5 denied that Nsengimana would go to bars, some noting the importance the priest placed on maintaining the image of propriety. This evidence is rather general, and, in the Chamber's view, of limited probative value. However, the Chamber finds that the Prosecution evidence lacks precision about Nsengimana's purported participation in meetings at Vincent Nzigiyimfura's shop. Moreover, while the Prosecution witnesses inferred that the gatherings concerned the killings that followed in Nyanza, the record does not establish that this is the only reasonable conclusion.

147. Turning to Witness CBC's evidence about gatherings at the *Cité Nouvelle*, he testified that those he had seen at Vincent Nzigiyimfura's shop, also held two meetings at the *Cité Nouvelle* bar in late 1992 or early 1993. The Defence noted that he did not mention in his July 2000 statement to Tribunal investigators that Nsengimana addressed Irène Nkusi, the Tutsi court bailiff, during the first meeting. The witness explained that his statement was general in nature and based, in part, on his assumption that he would provide further details in court.[130] The Chamber accepts this explanation.

148. The Defence further questioned Witness CBC's reliability, given his close association to a genocide survivors group, and his former position with Rwandan authorities after the genocide.[131] The Chamber observes that such links do not render witnesses unreliable or partial. Nonetheless, the specifics of his evidence are not corroborated. Moreover, his account about the lost letter indicating that members of this group fabricated evidence that they were going to be killed is quite unusual.

149. Witness CAR also discussed meetings at the *Cité Nouvelle* bar involving Nsengimana. Like Witness CBC, he identified Anaclet Nkundimfura and directors Mbereye and Mirasano among the participants. However, Witness CAR referred to meetings in February and March 1994, occurring possibly more than a year after those allegedly viewed by Witness CBC in late 1992 or early 1993. The temporal distance is substantial. The Chamber is not able to

[128] T. 15 January 2008 pp. 30-31.
[129] T. 14 January 2008 pp. 59 (quoted), 75 (quoted); T. 15 January 2008 pp. 29-30.
[130] T. 29 January 2008 pp. 43-44; Defence Exhibit 31 (statement of 12 July 2000).
[131] Defence Closing Brief paras. 782-783.

conclude that the testimonies, when viewed together, support that the meetings occurred as alleged by each of the witnesses.

150. Assuming that the meetings occurred as alleged by Witness CBC, it has not been established that they had the same purpose. None of the witnesses provided direct evidence of what was discussed or Nsengimana's position within the group. Witness CBC's observations of the participants furtively hiding papers when they saw him and Nkusi, both Tutsis, are not sufficient to draw any adverse inferences. The situation is similar in relation to Witness CAR, who noted that no Tutsis were among the participants.

151. Furthermore, the Chamber recalls Defence evidence suggesting that Nsengimana would not have participated in political meetings or frequented bars. This is of limited probative value. However, as mentioned above, the Prosecution evidence does not demonstrate that meetings occurred. If they did, it is not clear that these were political gatherings aimed at planning the killing of Tutsis.

(iii) Meetings at the Dairy, Sub-Prefecture Office, Electrogaz Station and Nyanza Stadium

152. Witness CAW said that the group he observed at the *Collège Christ-Roi* in 1993 also met at the dairy plant, the sub-prefecture office and the Electrogaz station. On one occasion, he learned that Nsengimana had attended a CDR flag raising ceremony after rejecting a request from Father Furaha to lead Mass at the Nyanza parish church (see also II.22). Witness CAN observed public CDR rallies attended by persons who associated with Nsengimana at the Nyanza stadium and in the sub-prefecture office. On an unspecified occasion, he saw Nsengimana leaving the sub-prefecture building after such an event.

153. Witness CAN's identification of CDR members is similar to Witness CAW's description of persons attending meetings.[132] However, Witness CAW's evidence was brief. Like his evidence about the frequent meetings held at *Christ-Roi* after the one he observed in 1993 (above), it is unclear whether he observed these purported gatherings. What is undeniable is that he did not attend them.[133] Moreover, while Witness CAN saw a number of public CDR rallies, he only described Nsengimana exiting one such event, which was held in the sub-prefecture multi-purpose room. This evidence emerged during cross-examination and is also brief.[134]

154. The Chamber has elsewhere questioned the reliability of these witnesses.[135] It recalls Defence testimony denying that Nsengimana would have openly participated in political activities. While this evidence is of limited probative value, the accounts of Witnesses CAW and CAN are insufficiently precise to establish their allegations beyond reasonable doubt. Whether their evidence is convincing, when viewed in light of the totality of all alleged meetings, will be discussed below.

---

[132] Among those identified by both Witnesses CAW and CAN were sub-prefect Kayitana and his assistant Mugenzi, gendarmerie commander Birikunzira, Mirasano, foundry director Appolinaire Barihuta (or "Tubirimo"), Dr. Higiro and *Christ-Roi* employees Phénéas Munyarubuga, Simon Kalinda and François Sebukayire.
[133] T. 25 June 2007 p. 17.
[134] T. 28 June 2007 p. 39.
[135] See, for instance, Roadblocks (II.6) and the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), Xavérine and her son (II.17), Judge Jean-Baptiste Twagirayezu (II.18), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

(iv) Conclusions

155. The Chamber has considered both the amount of Prosecution evidence as well as common identification of alleged participants. It accepts that ambiguity and inconsistencies among the testimonies may arise due to varying vantage points and the significant passage of time. Moreover, it is conceivable that Prosecution and Defence witnesses would not have paid close attention to the gatherings. For the Prosecution witnesses, these meetings may have only gained significance once persons at them, such as Simon Kalinda and Phénéas Munyarubuga, committed crimes in the genocide that followed.

156. When viewed together**,** the evidence leaves the impression that Nsengimana associated with Nyanza's Hutu extremists. Moreover, the Chamber has no doubt that Nsengimana, a person who placed high emphasis on maintaining a proper image, could have concealed his political allegiances and a discriminatory attitude – even if they were extreme – from colleagues, students and other relations. In this regard, the Chamber finds the Defence evidence about his political leanings to be of limited probative value.

157. However, while beliefs may be concealed, open meetings cannot. The purported frequency with which gatherings at the *Collège Christ-Roi* are alleged to have occurred suggests that they could not go unnoticed. Yet, six witnesses, who were either staff or students, denied that meetings took place there, raising considerable doubt. The Chamber finds it difficult to set aside the Defence evidence for rather general Prosecution evidence, which is inconclusive about the purpose of the meetings. There is an insufficient basis to make inferences beyond reasonable doubt.

158. The Prosecution evidence relating to gatherings at Vincent Nzigiyimfura's shop, the *Cité Nouvelle* bar, the dairy plant, the sub-prefecture office and the Electrogaz station has weaknesses, discussed above. The Defence evidence is also largely speculative – relying on assumptions that Nsengimana was apolitical or would not go to bars. However, to the extent the existence of these gatherings is reliable, their purpose and the nature of Nsengimana's involvement are unclear. Witnesses CAW, CBC, CAO and CAN did not attend any of the meetings or hear what was discussed. There is no direct evidence of Nsengimana convening any gatherings in 1993. Furthermore, while many of the purported participants in these meetings were perceived as Hutu extremists who were central to the planning and execution of the genocide in Nyanza, the summary of one of the Rwandan trial judgments suggests that Faustin Mbereye and Callixte Mirasano, alleged participants in gatherings, were acquitted of charges against them in Rwanda.[136] Furthermore, the temporal distance between the meetings occurring prior to 1994 and the killings in Nyanza during the genocide raises additional questions about the purpose of them – specifically if they were aimed at planning the killing of Tutsis.

159. Consequently, the Chamber finds that it has not been established beyond reasonable doubt that Nsengimana participated in meetings that were held on a regular basis at the *Collège Christ-Roi* prior to 1994, or attended meetings at Vincent Nzigiyimfura's bar, or at the *Cité Nouvelle*, or CDR gatherings at the dairy plant, the sub-prefecture office and the Electrogaz station before 1994, and that they were aimed at planning the killing of Tutsis. The record, when viewed as a whole, is also insufficiently precise to make general findings about Nsengimana's associations with the purported participants of these gatherings. In

[136] Defence Exhibit 32B (summary of Rwandan trial judgment of Anaclet Nkundimfura *et al.*) pp. 9-11.

particular, it fails to show that he acted as their spiritual adviser in the context of the planning and execution of killings that subsequently occurred in Nyanza in 1994.

2.3.2 Meetings After 1 January 1994

160. Several witnesses testified about meetings in 1994 where Nsengimana allegedly participated. Reference was made to such gatherings in the sub-prefecture office, at the *Cité Nouvelle*, at the baptism of Gaëtan Kayitana's child, at the *Collège Christ-Roi* (in particular before the killings began in Nyanza)[137] and at Augustin Twagirimana's home. These meetings are discussed below.[138]

(i) Meetings at the Sub-Prefecture Office and the Cité Nouvelle Bar, February and March 1994

161. Witness CAR observed meetings at the sub-prefecture office and the *Cité Nouvelle* bar in February and March 1994. Gatherings in the office were attended by relatively few persons and included sub-prefect Gaëtan Kayitana, Jean Damascène Mugenzi (head of the secretariat), Didace (head of the intelligence service) and Jérémie Nzasabimfura, who was a prosecutor. At the bar, the number of participants was higher and also included, for instance, Judge Pierre Ndimumakuba who was vice-president of the Court of Appeal, Anaclet Nkundimfura, Appolinaire Balihutu, who was nicknamed "Tubirimo"; dairy director Callixte Mirasano, Léonard Rubayiza, Faustin Mbereye and other traders.

162. The Defence confronted the witness with a statement given to Tribunal investigators in May 2000, according to which Nsengimana began attending meetings at the sub-prefecture office in 1986. The witness said that this was an error, as 1986 was the year he started his work. He saw Nsengimana in the early 1990s, and meetings at the sub-prefect's office referred to in the statement were those that commenced in February 1994.[139] The Chamber considers the error inadvertent and immaterial.

163. The Defence put to the witness that his May 2000 statement gives the impression that no meetings were held at the sub-prefecture office, but only at the *Cité Nouvelle* bar. The witness maintained his testimony and said that he had told investigators about gatherings

---

[137] Witnesses BVW and BVI discussed meetings at the *Collège Christ-Roi* in connection with either seeing persons going to the school or gathering there with relative frequency from 1993 onward. According to Witness BVI, the gatherings continued until he left for Easter recess in late March 1994, and Witness BVW continued to see persons identified above (II.2.2) going to *Christ-Roi* until she fled Nyanza on 18 April 1994. Their evidence and its reliability are discussed above (II.2.3.1), but considered also here.

[138] As other evidence of meetings, the Prosecution Closing Brief also points to the testimony of Witness CAP (Chapter 5 p. 24), who in connection with events after the President's death said that it "was as if people – the general populace were in a congregation or a meeting". T. 30 January 2008 p. 43. He stated that the "members of the public were divided into groups" during this period, but could not describe what was "being said in those groups because [he] never took part … ". *Id.* Furthermore, it is noted that Witness CAO suggested that members of the Death Squad continued to meet at Nzigiyimfura's bar until 22 April 1994 and subsequently at Kalinda's bar once the killings began, but it appears clear that he did not see Nsengimana with them after 1994. T. 14 January 2008 p. 75 ("Judge Egorov: … You mentioned that you saw the group described as Death Squad, or Dragons, before 1994, and after the commencement of events. … Could you tell us, how many times did you see Mr. Nsengimana among the persons you have just described? The witness: I saw him before 1994. He was a friend of those people, but I did not see him amongst the people who attacked the locality of Mugonzi.").

[139] T. 16 January 2008 pp. 15-16.

there.[140] The Chamber considers that this explanation can be reconciled with his statement, which mentions Nsengimana visiting Kayitana, Mugenzi, Didace and Nzasabimfura at the sub-prefecture office.[141] The witness also explained that the reference to "Joseph" Mugenzi in his May 2000 statement to Tribunal investigators is an error, and that it should be Jean-Damascène Mugenzi.[142] Again, this explanation appears reasonable. It is clear based on the statement's reference to the "Head of the Secretariat" that he is referring to the same person as in his testimony.[143]

164. There is no mention of Nsengimana in the summary of the Rwandan trial judgment involving Anaclet Nkundimfura and several others, or of meetings at the sub-prefecture office or the *Cité Nouvelle*. Mbereye and Mirasano appear to have been acquitted.[144] The witness explained that these trials were about crimes committed in Rwesero and were not concerned by the crimes committed by Nsengimana.[145] The Chamber observes that the summary does not reflect the entire proceedings or the prosecutorial strategy. It is hearsay, and of limited value when used to impeach Witness CAR's evidence.

165. While Witness CAR is the only person to testify about meetings at the *Cité Nouvelle* bar in 1994, the Chamber considers his evidence in light of Witness CBC's testimony that meetings occurred there in late 1992 or early 1993. As discussed above (II.2.3.1), the temporal distance between the accounts is too great for the Chamber to consider them as corroborating each other.

166. The Defence concedes that Nsengimana on rare occasions visited Gaëtan Kayitana at the sub-prefecture building – an "unremarkable necessity given their respective functions" – but rejects the contention that he met with others.[146] The Chamber recalls evidence generally denying Nsengimana's involvement in political activities. It notes in particular the testimonies of Defence Witnesses Jean-Marie Vianney Mushi, Emmanuel Hakizimana, AMC1, VMB17 and FMCD5, which denied that Nsengimana would go to bars. All the Defence evidence is of limited probative value.

167. However, the specifics of Witness CAR's testimony are uncorroborated. The Chamber has elsewhere questioned his credibility (II.6). Doubts remain about whether meetings occurred at the sub-prefecture office and at the *Cité Nouvelle* bar as he alleged. Moreover, his evidence of what occurred at them relies entirely on inference. Even when considering the record in its entirety, it has not been established that the only reasonable conclusion is that these meetings concerned the planning and killing of Tutsi civilians, or that Nsengimana acted as the spiritual adviser to those present, supporting subsequent killings.

---

[140] *Id.* pp. 18-19.
[141] Defence Exhibit 10C (statement of 30 May 2000) p. 3, which reads: "[Nsengimana] often visited Gaëtan Kayitana … Jérémie Nzasabimfura … Joseph Mugenzi, Head of the Secretariat, and the Head of the State Intelligence Unit whose name I no longer remember."
[142] T. 16 January 2008 p. 16.
[143] Defence Exhibit 10C (statement of 30 May 2000) p. 3.
[144] Defence Exhibit 32B (summary of Rwandan trial judgment of Anaclet Nkundimfura *et al.*,). Witness CAR stated that Mbereye was still detained at the time of his testimony, questioning how he could have been acquitted under such circumstances. T. 16 January 2008 p. 29.
[145] T. 16 January 2008 pp. 20-21, 29.
[146] Defence Closing Brief para. 448.

(ii) Baptism of Gaëtan Kayitana's Child, End of March 1994

168. Witness CAR testified that during the reception following the baptism of Gaëtan Kayitana's child in March 1994, Nsengimana instructed the sub-prefect to send away the two Tutsis that remained. The witness did not hear Nsengimana say this, but observed the sub-prefect speak with Nsengimana before Kayitana drove the two Tutsis away. He noted that Anaclet Nkundimfura, Pierre Ndimumakuba, Callixte Mirasano, Appolinaire Balihuta, Faustin Mbereye and others were present. Nsengimana did not dispute attending the reception, but denied that he initiated that Tutsis to sent away.[147]

169. The Chamber accepts that Nsengimana was present at the gathering, but observes that the witness did not hear Nsengimana give instructions resulting in the expulsion of the Tutsis present. While this may be inferred from Nsengimana speaking with Kayitana before the witness was escorted out and driven away by the sub-prefect, it is not the only reasonable inference. Moreover, there is no direct evidence of what occurred at the baptism after the witness left.[148]

170. The Chamber recalls the Defence evidence generally denying Nsengimana's involvement in political activities. It is of limited probative value. However, the testimony of Witness CAR is insufficient to establish beyond reasonable doubt that he, and the other remaining Tutsi at the baptism reception of Kayitana's child, were expelled on Nsengimana's orders. Furthermore, the evidence does not demonstrate that those present at this event used the gathering as an opportunity to plan the subsequent killing of Tutsis in Nyanza in 1994 once the witness left.

(iii) Meetings at the Collège Christ-Roi and Nsengimana's Subsequent Sorties, From 6 April

171. Witness CBE testified that, from the evening of 6 April 1994, Nsengimana would be picked up by commander Barahira on a nightly basis between 7.00 and 9.00 p.m. and return between 3.00 and 5.00 a.m. The witness said that Cyprien Gasatsi, Phénéas Munyarubuga and Nyambo would usually follow them on foot.

172. Nsengimana confirmed the witness's position at the *Collège Christ-Roi* and that he continued to work there during the events.[149] However, the Defence challenged his truthfulness, noting that the witness's statement to Tribunal investigators in May 2000 differs from his testimony. For example, it describes Nsengimana leaving in his own vehicle, while the soldiers who were there left separately in theirs.[150] The witness explained that this was a recording error and confirmed that he left in Barahira's vehicle, an army style Peugeot pick-up truck.[151] The Chamber is not convinced that the differences are a result of recording error.

---

[147] T. 9 July 2008 pp. 20-21.

[148] The Defence put to Witness CAR that his statement of May 2000 was inconsistent with his testimony regarding when the baptism occurred. The witness explained that he was traumatised during the interview, and that the date was a mistake. T. 16 January 2008 pp. 25-26; Defence Exhibit 10C (statement of 30 May 2000) p. 3. The variation is insignificant, and Nsengimana admitted that he attended.

[149] T. 9 July 2008 p. 33.

[150] T. 14 January 2008 pp. 34-35; Defence Exhibit 7 (statement of 29 May 2000) p. 4, which reads: "I should also add that [Nsengimana] always left the *Collège*, in his vehicle, a white four-door Peugeot; he travelled in his vehicle while the soldiers travelled alone in theirs."

[151] T. 14 January 2008 pp. 28, 34.

The statement describes Nsengimana's personal vehicle with precision. It also emphasises that he "always" travelled in it while the soldiers drove "alone" in theirs.[152] The variation tends to show that the witness provided a different account to investigators than he did to the Chamber. It raises questions about his reliability, even if the discrepancies concern issues collateral to criminal conduct.

173. Of greater significance, Witness CBE's prior two statements to Tribunal investigators, given in May 2000 and March 2003, do not refer to Nsengimana and Barahira meeting at the school or accompanying each other during night-time trips. The witness testified that he mentioned Barahira's name every time he spoke with investigators.[153] The omission of Barahira's name raises doubts, and his explanation is unconvincing. Moreover, the statement from March 2003 appears to suggest that these sorties were carried out with Birikunzira.[154] While it is possible that the witness may have confused the identities of Birikunzira and Barahira, this appears less plausible in light of his testimony that he knew both individuals.[155] The inconsistency raises further doubts about his credibility, and his account will not be accepted without corroboration.

174. The Defence evidence generally portrayed Nsengimana as an apolitical man, as commanded by canon law, who did not participate in political meetings, and was not overheard saying unkind words based on ethnicity. Witness JMR1, who remained at the school for most of the time from 6 April 1994 until he fled in late May, also denied that Nsengimana held meetings at the school. The Chamber has elsewhere questioned his reliability (II.22), but considers, in the present context, that he seemingly would have noted at least one of Nsengimana's nightly interactions with Barahira and others at the school if they had occurred as described by Witness CBE. Moreover, Witness CBE's account is uncorroborated, and the Chamber has elsewhere questioned his credibility (II.5-7). He had no information regarding what was discussed at these purported gatherings or what Nsengimana and the others did during these nightly sorties after the President's death. Apart from the witness's own account of an attack on Tutsi students around 7 or 8 April at the *Collège Christ-Roi* (II.5), the record reflects that violence did not begin in Nyanza until around 21 or 22 April 1994. This raises further questions about whether such gatherings and subsequent sorties, had they occurred, concerned the killings that followed in Nyanza.

175. The Chamber concludes that the Prosecution has failed to prove, as alleged in the Indictment, that after a meeting on 6 April 1994, Nsengimana and others left the *Collège Christ-Roi* to search and kill Tutsis and thereby aided and abetted the killing of them.

---

[152] Defence Exhibit 7 (statement of 29 May 2000) p. 4.

[153] See T. 14 January 2008 pp. 32, 33 ("A. Unless they forgot to put his name down, otherwise every time I gave my statement, I mentioned the name 'Barahira'. I could not have talked about Father Nsengimana without … talking about Barahira, because they spent the night together. I have always stated that fact in my written statements. … I mentioned the name of Barahira during all my statements, and you could ask the investigators."), 34-35.

[154] Defence Exhibit 8 (statement of 25 March 2003) p. 3, which reads: " … and I do remember that on several occasions, Commander Birikunzira used to come to the college and he would go out of the college accompanied by [Nsenigimana]. [They] would come back to the college towards morning. I do not know where they went or what they did outside the college."

[155] T. 14 January 2008 p. 50. Witness CBE referred to Barahira as the gendarmerie commander, denying that there was a military camp, but said that he could not distinguish between the gendarmerie and the army generally. *Id.* pp. 7-8, 28.

(iv) Meetings at the Collège Christ-Roi, Mid-April

176. Witnesses CAY, BSV and CBF observed gatherings at the *Collège Christ-Roi* involving Nsengimana shortly before the killings began in Nyanza. Around Thursday 14 April 1994, Witness CAY saw that the sub-prefect of Nyabisindu commune, commanders Barahira and Birikunzira, director Mirasano from the dairy factory, Frédéric Rwagasore, *Christ-Roi* employees Phénéas Munyarubuga and Charles Basomingera, an intelligence officer called Didace Maneko and *bourgmestre* François Gashirabake had gathered on the floor above the bursar's office. About a week before the genocide started in Nyanza, Witness BSV was on the floor above the principal's office when he observed a meeting in a reception room close to Nsengimana's bedroom. Among those present were Hutu power adherents, such as *Christ-Roi* employees Phénéas Munyarubuga, Simon Kalinda, Egide Ngenzi, Liberata Nyirabagenzi and Vincent Mporeyimana. Augustin Twagirimana, a teacher from the *Ecole normale primaire* called Martin Mariro, Benoît Nkeramihigo and commander Barahira also attended. Around the same time, Witness CBF noticed Nsengimana with Gaëtan Kayitana, Michel and Charles, who taught at the *Ecole normale primaire* and the *Ecole technique féminine*, respectively, and others in the school refectory.

177. Witness CAY provided six statements to Tribunal investigators between 13 July 2000 and 5 March 2003.[156] The Defence pointed out purported inconsistencies between his testimony concerning the Thursday 14 April meeting, on the one hand, and many of his prior written statements, on the other. For example, there is no mention of this meeting in his interview from July 2000.[157] Reference to Gashirabake or Mirasano is not contained in any prior statement, and he did not mention the sub-prefect in his October 2000 statement.[158]

178. The witness explained that he omitted reference to the meeting in his July 2000 statement because he was initially afraid of reprisals from influential persons, including Charles Basomingera, who were imprisoned with him at the time.[159] He also seemed to testify that he did not identify Mirasano, Gashirabake or the sub-prefect for similar reasons.[160] His

[156] See Defence Exhibits 11-16 (statements of 13 July 2000, 17 and 27 October 2000, 17 February 2001, 30 May 2001, 4 February 2003 and 5 March 2003, respectively).
[157] T. 17 January 2008 pp. 51-52; Defence Exhibit 11 (statement of 13 July 2000).
[158] T. 17 January 2008 pp. 56-58; Defence Exhibit 12 (statement of 17 and 27 October 2000).
[159] See, for example, T. 17 January 2008 p. 52 ("But if I did not talk about that meeting in my statement it is for the following reasons: I was a detained person. I was with Charles in the same prison. There were many other influential people inside the prison, and if the persons had learned – in fact, when they heard that I had made a statement, they almost killed me. And that is the reason for which, after thinking about the issue in my second testimony, or in my following statements, I said the whole truth. So in the following statements, I said the whole truth."). See also T. 18 January 2008 p. 8 ("I did not talk about Charles Basomingera because he had attended the meetings at *Christ-Roi*. The file on Basomingera and the file on Nsengimana are the same, and that is why I was avoiding mentioning his name, because of my own safety. Q. And so we leave this subject, understanding clearly that you never, ever mentioned a meeting at *Christ-Roi* in your evidence against Charles. That's right, isn't it? A. That is correct.").
[160] See, for instance, T. 17 January 2008 pp. 53 ("I did not mention all the names … And you will note that amongst the co-accused there were people such as Mirasano, who was section director in Nyanza. And those were people who were still influential."), 56 ("But … [t]here are people I could not mention at the time because of their influence. François Gashirabake had been a *bourgmestre* of the commune, and he had also been a teacher. There were people who could have killed me. And he himself could have done that. And that [is] why I could not mention his name."), 58 ("Q. You don't mention the [sub-prefect] in your statement, your second statement, when you first mention this meeting. Why not? A. I said that there were influential people whose names I did not mention.").

explanations for not mentioning Charles Basomingera and others out of fear, while reasonable, create some doubt about his credibility.

179. The Defence also confronted the witness with inconsistencies about what he observed while at the *Collège Christ-Roi*. He testified that he arrived after the meeting at the *Collège Christ-Roi* had commenced. According to his February 2003 statement, however, he observed participants arrive, and Augustin Twagirimana was one of them. The witness denied having said this to the investigators, adding that it may have been invented.[161] The statement describes the witness arriving half an hour to an hour before the participants, the sequence of their arrival, and then a brief gathering before they went to the room upstairs.[162] The Chamber finds it unlikely that an investigator would have invented such details. This raises concerns about the witness's credibility.

180. When viewed together, Witness CAY's testimony and statements are generally consistent about the fact that he was at *Christ-Roi* in mid-April. However, as pointed out by Defence counsel, there are differences concerning who attended the gathering he observed and the extent of his observations. During cross-examination, he stressed that emphasis should be placed on his testimony, and that some discrepancies resulted from faults inherent in human memory.[163] The shifting nature of his accounts leaves the Chamber with reservations about his evidence. He contradicted himself when attempting to explain inconsistencies, thereby raising more questions about the quality of his testimony.[164] These concerns are compounded by the fact that the witness is an alleged accomplice of Nsengimana. His account will not be accepted without adequate corroboration.

181. Witness BSV's testimony about a meeting around the same time does not appear to corroborate the evidence of Witness CAY. The latter said that the meeting occurred in a room on the second floor above the bursar's office. Witness BSV, on the other hand, stated that he was inside that very room, and that the meeting he observed occurred in the reception area next to Nsengimana's room.[165]

---

[161] *Id.* pp. 61-62.

[162] Defence Exhibit 15B (statement of 4 February 2003) p. 3, which reads: "I went to the *Collège Christ Roi* … I arrived there at about 4 or 5 p.m. … Around 5.30 p.m., I saw a man who was known as commander, even though he was no longer in the army. His name was Barahira. He is deceased. He arrived in a yellow vehicle, a [Volkswagen]. After him, commander Birikunzira of the Nyanza gendarmerie arrived, accompanied by a chief warrant officer named Cyitso. They went into the administration office to see the director, Hormisdas Nsengimana, exited through the outside door and went upstairs."

[163] T. 17 January 2008 pp. 50 ("The witness: … I would like to remind … counsel that I'm not a computer, therefore, I cannot give you all the relevant information. I may forget some facts. And I would like him to bear this in mind when he asks me questions. I think when I forget details, it will play in favour of Defence counsel."), 53 ("A. At the beginning of your cross-examination, I told you that we were to focus on my testimony and not on any previous statement I might have given. Even [in] my testimony I mentioned those names, and that they do not all appear in my statement. I don't think there's anything wrong with that."), 57 ("A. I don't know why you are saying that I'm adding names to the list. What is important is my testimony before the Trial Chamber.").

[164] For example, while he testified that he decided to tell the "whole truth" to investigators (*Id.* p. 52), he later stated that he continued to omit references to persons in subsequent interviews based on his fears (*Id.* pp. 53, 56).

[165] Compare Witness CAY, T. 15 January 2008 p. 47 ("And besides the office of Father Hormisdas, there was the office of the bursar … and above – on the upper floor, above the bursar's office, there was a hall, and a meeting was [held] in that room.") and Witness BSV, T. 25 January 2008 p. 26 ("A. There was a room that was

182. Witness BSV was not always clear about the timing of this meeting.[166] He added participants at trial that are not in his statement, and explained that he continued to remember names after having given his statement. This includes Simon Kalinda, Egide Ngenzi, Vincent Mporeyimana, Benoît Nkeramihigo and commander Barahira. The statement mentions meetings generally and does not purport to provide an exhaustive list of attendants.[167] Nonetheless, the evolving nature of his evidence raises some concern as to its reliability. Like Witness CAY's account, Witness BSV's will not be accepted without corroboration.

183. Consistent with most of the evidence about meetings in this case, Witnesses CAY and BSV had no first-hand evidence about what was discussed by those they purportedly saw gathering. The alleged involvement of persons like Pascal Barahira and Simon Kalinda, and the proximity in time between the gatherings and the killings that started in Nyanza later that month, raise the possibility that they were used to build support for or possibly plan subsequent killings. However, lingering suspicions cannot substitute for proof beyond reasonable doubt. Even if the Chamber were to accept the accounts of Witnesses CAY and BSV, the evidence does not demonstrate that this was the purpose or effect of such meetings, or that Nsengimana acted as a spiritual leader among the participants to these ends.

184. Turning to Witness CBF's evidence, he testified about a gathering at the *Collège Christ-Roi* around mid-April, but did not mention any *Christ-Roi* employees – persons he would have recognised – among those he observed there. This appears to be a material difference between his account and those provided by Witnesses CAY and BSV. The Chamber considers that Witness CBF may not have had a full view of the room where the gathering occurred. He testified briefly about what he saw. However, while Gaëtan Kayitana and Charles Basomingera feature in his and Witness CAY's testimony, Witness CBF stated that the gathering was in the refectory, not on the floor above the administrative offices.[168] Under the circumstances, his evidence does not corroborate that provided by the other two witnesses concerning the mid-April meetings.[169]

185. Notwithstanding, Witness CBF's testimony, though brief, appears credible. His evidence was first-hand and appeared measured and unexaggerated. The Chamber recalls the Defence evidence summarised above. It notes that Nsengimana conceded that he occasionally met with Gaëtan Kayitana for security purposes. When asked to directly comment on Witness CBF's evidence, his response was an equivocal denial.[170] The Chamber accepts Witness

---

on the upper floor in the building where the principal's office was, and it was in that room on the upper floor that I was while the meeting was taking place.").

[166] Witness BSV initially testified about going to meet the bursar at the *Collège Christ-Roi* two weeks after the President's death. Later he said that it was around 10 April 1994, that he could not give the exact date, but that it was during a period when "we were not working". In connection with his observations of the meeting, he said that it occurred about one week before the genocide. T. 25 January 2008 pp. 7, 8 (quoted), 20. See also T. 28 January 2008 pp. 31-32.

[167] T. 28 January 2008 p. 34; Defence Exhibit 30A (statement of 27 March 2003) p. 3, which reads: "Twagirimana Augustin, Charles … , Nyirabagenzi Liberata, Mariro Martin and Phénéas … , and many others used to attend those meetings."

[168] Witness CAY could not recall the name of the sub-prefect of Nyabisindu during his testimony. See T. 16 January 2008 p. 57. In his May 2001 statement to Tribunal investigators, he identified the sub-prefect of Nyabisindu as Gaëtan Kayitana. Defence Exhibit 14B (statement of 30 May 2001) p. 4.

[169] See Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4323 and Defence Exhibit 4 (sketches of the *Collège Christ-Roi*), which indicate that the refectory and administration building are separate.

[170] T. 8 July 2008 pp. 41-42 ("A. As I have just said, the [sub-prefect] – because of his duties – had free access to the college, so he could come to the college at any time; he was our head. As for the two teachers, I do not

CBF's testimony as being established beyond reasonable doubt. The implications of this finding are discussed in the conclusion below.

(v) Meeting at the Collège Christ-Roi, 19 or 20 April

186. Witness BXM allegedly attended a gathering on 19 or 20 April 1994 in a room where films had been displayed within the *Collège Christ-Roi*. Simon Kalinda, Phénéas Munyarubuga, Tubirimo, Dr. Higiro and his son Zephyrin, as well as François Gashirabake were among the 30 attendants. Nsengimana arrived between 1.30 and 1.45 p.m., and introduced commander Birikunzira, who defined the enemy as the Tutsis and asked that groups be formed in order to train and sensitise members of their community. The meeting ended, and the witness went home.

187. At the outset, the witness is an alleged accomplice of Nsengimana and has been convicted for crimes committed in Nyanza in 1994.[171] His admitted willingness to mislead Rwandan authorities about crimes at issue in this case raises fundamental concerns about his evidence here.[172] His testimony will not be accepted without adequate corroboration.

188. The witness's testimony evolved as to what orders Birikunzira gave. Only during cross-examination did he state that the gendarmerie commander directed attendants to identify persons to undergo training.[173] In the Chamber's view, this is a clarification and does not contradict his examination-in-chief. The Defence put to him that in his prior statement of November 2007 to Tribunal investigators, he said that *Conseiller* Corneille Mutaganda and sub-prefect Gaëtan Kayitana were present during the subsequent meeting.[174] The witness denied that they attended and noted that reference to them may have been a recording error or a mistake on his part.[175] The Chamber finds the explanation reasonable, particularly in light of his discussion of the ESPANYA meeting earlier in April, in which he testified that the two attended.[176]

189. It is striking, however, that Witness BXM testified that Nyamulinda, the director of the *Ecole normale primaire*, was present at the meeting that the Prosecution points to as evidence of Nsengimana's involvement in criminal planning.[177] The record reflects that Nyamulinda provided refuge to several Tutsis during the genocide (II.6.3.2 and 11) and ran a considerable personal risk attempting to save some refugees (II.17). In the Chamber's view, this raises questions both about the witness's observations as well as the purpose of the meeting.

---

remember them. If you're talking about Charles Basomingera … that was a teacher at the Nyanza science school. As for Michel, if you're talking about Michel Kanakuze … he was the dean of studies at ENP, the *école normale de Nyanza*. But I do not remember that these teachers visited me in April 1994. Our own teachers came to the school, but not those two.").

[171] See T. 7 February 2008 pp. 39, 47.

[172] The Chamber discusses this in detail elsewhere (II.15).

[173] T. 7 February 2008 pp. 56-57.

[174] Defence Exhibit 39A (statement of 14 November 2007) p. 3.

[175] T. 7 February 2008 pp. 54-56.

[176] Witness BXM's reference to "Father Leomenidas" introducing Birikunzira at the meeting raises the question whether the witness was referring to Nsengimana, particularly in light of his own admission while testifying that he knew the accused's name. *Id.* p. 67. The Chamber, however, finds little significance in this error.

[177] See *id.* pp. 17, 21. See also Defence Exhibit 39A (statement of 14 November 2007) p. 3, which describes "[t]he principal of the ENP school one Nyamulinda sent his son and his students to move around and control the area" after Birikunzira's exhortations at the meeting.

190. The Chamber again recalls Defence evidence generally denying Nsengimana's involvement in political activities. Witness JMR1, who likely would have been at the school, denied that meetings occurred.[178] While Witness VMF8 stayed at the school during the evening of 19 April, his apparent denial of whether a gathering took place there would be of limited probative value as the witness left *Christ-Roi* that morning. The Defence evidence is general in nature and carries limited weight. However, Witness BXM's evidence is uncorroborated. The Chamber has elsewhere expressed reservations about his evidence (II.15). His purported first-hand account is not convincing beyond reasonable doubt.

(vi) Meeting at Augustin Twagirimana's Home, 20 or 21 April

191. Witness CAY observed Nsengimana, the sub-prefect of Nyabisindu commune, Twagirimana, Charles Basomingera, Phénéas Munyarubuga, iron foundry director Tubirimo and an *Interahamwe* called Ruben leaving Twagirimana's home the day before the killings began in Nyanza. While passing by, the witness heard Twagirimana's son, Leandre, tell a Tutsi named Pacifique that Tutsis had tried to kill Hutus, but now Hutus would kill them.

192. The Defence challenged Witness CAY's testimony that he observed cars parked in front of Twagirimana's house and persons leaving a gathering there around 20 or 21 April. He was confronted with his October 2000 statement, which made no mention of these observations. Rather, the statement indicates that Twagirimana's son, "Alexandre", told him that "Tutsis would be killed", and that "it [was] alleged" that Nsengimana attended a meeting where "it was stated: 'These Tutsis are plotting to kill the Hutus, look at the graves they have dug'".[179] The witness responded that he had told investigators that he saw Nsengimana with the sub-prefect standing in front of Twagirimana's home and questioned why they had not written that down.[180] The Defence pointed out that while the statement generally referred to Nsengimana having meetings with his staff at the home of Twagirimana, it does not mention that the sub-prefect, the foundry director or Ruben attended. The witness explained that the person writing his statement may have omitted details.[181]

193. The Chamber has considerable doubt about his explanation for these discrepancies. Had he told the Tribunal investigator that he saw Nsengimana the day before the killings began in Nyanza with persons allegedly central in committing them, it seems likely that this information would have been included in his statement. Moreover, this event, which he purportedly observed, is not mentioned in any of his five other statements.[182] Finally, the Chamber has expressed general concerns about this witness's credibility elsewhere (II. 14).

---

[178] Witness JMR1 returned to his parents' home between 7 and 12 April, again near the "end of April or early May", and on a day trip around 26 or 27 May 1994. T. 17 June 2008 pp. 19, 20 (quoted). It would appear that he would have been at the *Collège Christ-Roi* around this time.

[179] Defence Exhibit 12B (statement of 17 and 27 October 2000) p. 3, which reads: "At that time, Father Hormisdas Nsengimana held meetings with his staff at the home of Twagirimana in the premises of *Collège Christ-Roi*. I was friendly with his son named Alexandre who informed me that the Tutsis would be killed. It is alleged that at one meeting attended by Hormisdas it was stated: 'These Tutsis are plotting to kill the Hutus, look at the graves they have dug'."

[180] T. 17 January 2008 p. 47.

[181] *Id.* pp. 47-50; T. 18 January 2008 p. 41.

[182] See Defence Exhibits 11, 13-16 (statements of 13 July 2000, 17 February 2001, 30 May 2001, 4 February 2003 and 5 March 2003, respectively).

194. As mentioned previously, the Defence has generally denied Nsengimana's involvement in political activities. Although its evidence carries limited weight, the testimony of Witness RFCD6 raises the possibility that at least one of the attendants identified by Witness CAY was not in Nyanza at that time.[183] Witness CAY's evidence is uncorroborated, and he is an alleged accomplice of Nsengimana. Under the circumstances, the Chamber finds that his evidence is insufficiently reliable to support findings beyond reasonable doubt.

(vii) Meetings at the Collège Christ-Roi, 21 and 22 April

195. Witness CAN testified about a meeting starting on 21 April and lasting through the night, whereas Witness BSV gave evidence about a gathering commencing on 22 April 1994. The Chamber finds it useful to address their testimonies together, given the alleged meetings' close proximity in time and location. Witness CAN allegedly participated in a gathering held in and outside a house within the *Collège Christ-Roi* compound, near its entrance. It began around 7.00 p.m. on 21 April and lasted until 9.00 a.m. the following morning. Lists of Tutsis to be killed were created, and locations to establish roadblocks were identified. He only attended it for an hour, and others present included François Gashirabake, Simon Kalinda, Phénéas Munyarubuga, Sebukayire, Gasatsi and Jacques Mudacumura. Witness BSV saw Nsengimana, Augustin Twagirimana, Liberata Nyirabagenzi, Martin Mariro, Charles Basomingera, Phénéas Munyarubuga and others gather at the priests' refectory after 7.00 a.m. on 22 April.[184]

196. Witness CAN's evidence about the 21 April meeting at the *Collège Christ-Roi* that ended the following morning was, at times, confusing. He first said that two separate gatherings occurred on the school's compound – one on 21 April and a second the following day. The witness then stated that he had been referring to one meeting when referring to gatherings on 21 and 22 April, notwithstanding his earlier assertion that the meeting on 21 April lasted from 7.00 to 8.00 p.m.[185] This raises questions about his account.

197. Of greater significance is that the witness did not see Nsengimana at the meeting and only learned of his presence later.[186] Moreover, Witness CAN was confronted with the fact that there is no mention of him attending a meeting on 21 April at the *Collège Christ-Roi* in his statement to Tribunal investigators in June 2000. It refers to him seeing gatherings at the school, and attendants later saying that lists of Tutsis to kill were created.[187] This is materially different from his testimony of attending a specific meeting and observing the creation of lists

---

[183] According to Witness RFCD6, this particular individual, who will not be identified for witness protection purposes, returned to Nyanza only after calm had returned to it. By some accounts, this was well after 20 or 21 April 1994. See, for example, the evidence of Witnesses VMF8 and Marie-Cécile Uwayezu about when a period of calm began after the killings started in Nyanza (II.6).

[184] Witness BSV provided unclear testimony about the date. He first suggested that this event occurred on "Wednesday, and it was on the 20th" of April, and that "it was two days after … the genocide started". T. 25 January 2008 pp. 29 (quoted), 30. Later, he suggested that the meeting occurred on the day he fled, 22 April. T. 28 January 2008 p. 37. Ultimately, he suggested that he could only provide approximations. *Id.* p. 38.

[185] Compare T. 28 June 2007 pp. 8 (testifying that two meetings took place at *Christ-Roi*: one on 21 April and the other on 22 April 1994), 43 (the first meeting was "held between 7 p.m. and 8 p.m.") and *id.* pp. 44-46 (stating that he left the meeting at 8.00 p.m., but that it lasted until 9.00 a.m. on 22 April, and that the second meeting at *Christ-Roi* occurred in mid-May).

[186] T. 29 June 2007 p. 12.

[187] T. 28 June 2007 pp. 48, 49 (quoting Witness CAN's 13 June 2000 statement to Tribunal investigators). The statement was not tendered as an exhibit.

and the selection of locations for roadblocks.[188] His explanation for these discrepancies failed to address them in a meaningful manner.[189]

198. The witness was also confronted with quotes attributed to him in a report published by the organisation African Rights. He recognised that certain aspects were true, but repeatedly denied having spoken to the organisation.[190] The accuracy of the report and the methodology used to prepare it remain relatively unexplained. His firm denials of being involved in the investigation raises some questions, given the many parallels between his evidence at trial and the statements attributed to him. Nonetheless, several aspects of the African Rights publication are materially different from Witness CAN's evidence at trial. For example, the report indicates that the meeting occurred at a different location than the *Collège Christ-Roi* and, while Witness CAN testified the he did not observe Nsengimana at the meeting, the report provides a detailed account of the witness hearing Nsengimana speak.[191] In the Chamber's view, the discrepancies raise questions about Witness CAN's evidence.

199. Circumstantial support for Witness CAN's account can be found in the seemingly coordinated establishment of roadblocks near the *Collège Christ-Roi* around 22 April 1994 (II.6), the day after the purported meeting. While this suggests coordination and planning similar to that described by Witness CAN, it does not necessarily support the fundamental features that a meeting was held at the school or that Nsengimana attended it.

200. Moreover, other Prosecution evidence is inconsistent with Witness CAN's account. Witness CBE, who worked at *Christ-Roi* every night in April 1994 and would have been present at the time of the alleged meeting, did not mention it. Admittedly, he was positioned at the school's interior, but he moved around.[192] He was firm that Nkeramihigo and Mbangambanga were the only two civilians who did not work at the school that visited with Nsengimana.[193] Considering all of the above, the Chamber has doubts about Witness CAN's evidence standing alone, and refuses to accept it without adequate corroboration.

201. Witness BSV's testimony about the gathering he observed between 7.30 and 10.00 a.m. on 22 April at *Christ-Roi* does not corroborate Witness CAN's evidence that a meeting there lasted until 8.00 a.m. that day. Witness BSV appeared uncertain whether this event

---

[188] See, for example, *id.* pp. 4 ("The members of the CDR party held a meeting … When I arrived, they were drawing [up] a list of Tutsis who were to be killed, as well as the locations where roadblocks were to be set up. That was the first meeting. But when I arrived, they chased me immediately and I left."), 9 ("The participants in those meetings said that the Tutsis crossing those roadblocks had to be intercepted and killed."), 44 ("I was there for a very short time … just enough to see them draw up a list of Tutsis."), 45 ("The purpose of that meeting was to draw up a list of Tutsis to be killed and to come up with names of places where roadblocks were to be set up … When I say that the meeting ended at 8 p.m., it's because that is – what I meant was that I left the place at 8 in the evening.").

[189] *Id.* pp. 48-49, 70-72.

[190] *Id.* pp. 26, 57-72; T. 29 June 2007 pp. 4-6.

[191] Defence Exhibit 6 (extracts from a publication of African Rights: *Witness to Genocide*, issue no. 14, November 2001) pp. K0272237-K0272238.

[192] T. 14 January 2008 pp. 3-4, 21-22, 25.

[193] See *id.* pp. 17 ("Q. Okay. During that – that time, that period, did anyone come to stay at *Christ-Roi* college? A. Besides the father, no one else came. It was his school, and no one could enter his school without his authorisation."), 20 ("Mr. President: Mr. Witness, the one-and-a-half month from the shooting down to when, according to you, Father Nsengimana left, did anyone come and see him in that period? That is the question. Anyone else than the three mentioned by the Prosecution, with other words, the teacher, the commander, and the judge. Anyone else? The witness: No, no one else came to see him.").

occurred on 22 April, raising questions about whether his observations could corroborate Witness CAN's evidence about a meeting that ended that morning.[194]

202. Viewing Witness BSV's testimony alone, the Chamber notes that it evolved regarding when he arrived at the school.[195] The variations are minor in nature. Furthermore, his March 2003 statement, which provides general information about meetings at *Christ-Roi* prior to the killings, is largely consistent with his testimony about who participated in the 22 April meeting.[196] Nonetheless, the witness had previously been suspended from having access to the priests' quarters and testified that Nsengimana was responsible. At a minimum, this action appears to have caused feelings of alienation.[197]

203. The Chamber once again recalls Defence evidence generally denying Nsengimana's involvement in political activities, including meetings. Witness JMR1's evidence that no gatherings occurred at *Christ-Roi* appears to be of relatively high probative value when assessing the accounts of Witnesses CAN and BSV, given that he likely was at the school at those times. Moreover, Witness RFCD6's evidence raises doubt that a person identified by Witness BSV would have been in Nyanza at the time of the purported meeting.

204. Under the circumstances, the evidence fails to establish that a meeting occurred as alleged by Witness CAN. With regard to Witness BSV's account, the Chamber is not satisfied beyond reasonable doubt that he attended a meeting occurred as alleged, and at any rate, he did not have any direct knowledge of what occurred there.

---

[194] Compare T. 25 January 2008 p. 29 ("Q. Witness, do you remember the date on which this meeting took place? A. It was on the 22nd, but I had arrived at the college very early in the morning. No, I am mistaken … I believe it was on a Wednesday, and it was on the 20th. It was on that day that I went to the college. There were not that many participants to the meeting. They were officials. I did not see any inhabitants at that meeting, so I left. And I saw houses being burned down and I also heard gunshots around 10:30 in Nyanza. And it was two days after that that the genocide started.") and T. 28 January 2008 pp. 36-37 ("Q. And then we come to the second meeting that, you claim, you were present at. … I won't ask you about the dates, but how long was it before you fled Nyanza, do you say? A. I fled on the same day. Q. So, this is the 22nd, is it? A. It is very likely because I left Nyanza immediately."), 38 ("Q. And you tell us now that it was the same day that you fled Nyanza, which you told us was a Friday, in which you think the date was the 22nd. But, I have a note that you said that you were there at the college on a Wednesday, and that two days later the genocide started. Do you have any comment to make on that? A. Counsel, you're taking down notes. At the time I was not taking down notes, so the dates that I am giving you – or, have given you could only be approximations. So, please, don't hold me to that.").

[195] Compare T. 25 January 2008 p. 28 ("I arrived in the morning, around 10 … ") and T. 28 January 2008 p. 38 ("Q. Well, you told us you get there early in the morning. What – what time is that, approximately? A. Actually, I arrived at the college at about 7:30. … Q. And you told us last week, you got there at 10 o'clock; has that changed too? A. Counsel, I do not believe that you're following me. I remember very well that at 10 o'clock I had left *Christ-Roi* college. I do not know if I made a mistake in my testimony, but the reality is that at 10 o'clock I was leaving the college – or, had left the college already.").

[196] T. 28 January 2008 pp. 33-34, 40; Defence Exhibit 30A (statement of 27 March 2003) p. 3, which reads: "I also started seeing a lot of people who were not employees of the college coming for meetings with [Nsengimana] at the college dining hall. I saw … and many others used to attend those meetings."

[197] T. 28 January 2008 pp. 3-4, 18, 20, 39. Nsengimana testified that access was prohibited to his room and his office after warnings he had received from the bursar that Witness BSV should not have access to sensitive documents or money. T. 8 July 2008 p. 28.

(viii) Conclusions

205. There is no direct evidence of Nsengimana convening any meetings or that he spoke at them other than to introduce a speaker during a gathering in 1994.[198] On the basis of Witness CAR's evidence, the Chamber has found it established that Nsengimana attended the baptism and following reception of one of Gaëtan Kayitana's children in 1994 prior to the killings in Nyanza. Witness CBF saw him with Gaëtan Kayitana, and teachers Charles and Michel in the priests' refectory at the *Collège Christ-Roi* sometime in mid-April. The two witnesses did not provide direct evidence about the content of any comment Nsengimana may have made to those who gathered with him.

206. The evidence from both witnesses implies clandestine behaviour by Nsengimana. Witness CAR stated that he and the other remaining Tutsi were expelled from the reception, leaving Nsengimana with others he had seen meeting at the *Cité Nouvelle* in February and March 1994. Witness CBF said that Nsengimana placed a finger over his mouth, as if to silence the persons he was with while Witness CBF was in the immediate proximity. Elsewhere, Witness CBF has suggested that Nsengimana had adopted a hard-line position after the advent of multi-party politics (II.22). As set forth above, several alleged eye-witnesses stated that Nsengimana was closely associated with Hutu extremists, who subsequently turned into killers, in the days leading to 21 and 22 April, and the beginning of the killings in Nyanza.

207. However, Witnesses CAR and CBF, similar to Witnesses BVI, BVW, CBE, CAY and BSV, have no direct evidence about what occurred during the meetings they observed. Witnesses BXM and CAN purported to give first-hand accounts concerning these meetings. Even accepting their evidence as true, Nsengimana's explicit participation in them does not go beyond introducing a speaker. Moreover, the Chamber has difficulty accepting their accounts in their entirety, and they are insufficient to support an inference that the meeting Witness CBF observed related to planning of killings of Tutsis or that Nsengimana acted as the spiritual leader to those present, thereby supporting future killings.

208. The Chamber gives due weight to the conclusions of the Prosecution witnesses, given their proximity to Nsengimana and the events that unfolded in Nyanza once the killings began. Nonetheless, the nearly categorical absence of evidence about the nature of Nsengimana's participation in the meeting observed by Witness CBF and those purported to have occurred by others raises considerable doubt about what, if any, contribution he may have made.

209. The Chamber is presented with the evidence of eight witnesses – BVI, BVW, CBE, CAY, BSV, CBF, BXM and CAN – who each testified about meetings being held at *Christ-Roi* as early as 6 April. Except for Witness CBF, it has not found any of the individual accounts sufficiently reliable to establish that such meetings occurred beyond reasonable

[198] T. 13 February 2009 p. 8 ("Mr. Kapaya: Your Honours, there is, from the testimony of these witnesses, there is no direct evidence to show that Nsengimana called the meetings at the *Christ-Roi* college, at *Cité Nouvelle*, or at the – at any of the places where we alleged that meetings took place, there is no direct evidence to show that he called the meetings. So, as regards the meetings in *Christ-Roi* college, it would appear that the people like Birikunzira, the *conseillers* and the general population who attended meetings in *Christ-Roi* college went there apparently on their own accord … Judge Egorov: Mr. Kapaya, there is no evidence as to what he was speaking about at the meetings which he attended, there is no direct evidence. Mr. Kapaya: Yes, there is no direct evidence that apart from the fact that he introduced the people and participated at the meetings.").

doubt. The same is true in relation to Witness CAY's account about the meeting at the home of Augustin Twagirimana and Witness CAR's evidence related to meetings at the *Cité Nouvelle*. The Chamber now takes a broader view to see whether the evidence, viewed in its entirety, creates an undeniable pattern that would eliminate doubts as to particular inconsistencies within the Prosecution evidence. Persons are commonly identified as having participated in the 1994 meetings.[199] Many of the same individuals featured at meetings that allegedly occurred in 1993. The Chamber also considers the record as a whole, in particular the seemingly coordinated establishment of roadblocks (II.6) and the various events that implicate meeting participants – including *Christ-Roi* employees – in the killings of several Tutsis in Mugonzi *cellule* (II.14), Callixte Kayitsinga (II.16), Xavérine and her son (II.17), as well as refugees removed from the Don Bosco orphanage (II.21).

210. The Defence evidence is significantly less relevant with respect to Nsengimana's activities both inside and outside the school after 6 April 1994 than that presented for the pre-1994 meetings. Witness JMR1 is the only witness who spent significant amounts of time at the school during this period. Witness VMF8 stayed at *Christ-Roi* on the evenings of 16 to 19 April and was not present during the days. He passed through the school after the alleged meetings occurred, and Witness DFR85 also sought refuge there afterwards.

211. In spite of this, the Chamber finds that the individual frailties among the Prosecution testimonies, even when viewed in light of the entire record, create an unsound foundation for concluding that the alleged meetings – not proved above – occurred. If they occurred, the evidence, even when viewed as a whole, does not demonstrate that the only reasonable conclusion is that Nsengimana played a part in supporting or planning the subsequent killings in Nyanza. Moreover, the record is insufficiently reliable to make findings beyond a reasonable doubt about the purported meeting following Witness CAR's expulsion from the baptism reception or Witness CBF's observations of Nsengimana, Kayitana and two teachers among others in the *Collège Christ-Roi*.

[199] Individuals who featured in the testimonies of multiple Prosecution witnesses discussing meetings in 1994 include commander François Birikunzira (Witnesses BVW, BVI, BXM and CAY), commander Pascal Barahira (Witnesses BVW, BVI, CAY, BSV and CBE), Phénéas Munyarubuga (Witnesses BVW, BVI, BXM, CAY and BSV), Simon Kalinda (Witnesses BVI, CBE, BXM and BSV), Appolinaire Balihutu, nicknamed "Tubirimo" (Witnesses BVI, BXM, CAY and CAR), François Gashirabake (Witnesses BXM and CAY), sub-prefect Gaëtan Kayitana (Witnesses BVW, BVI, CAY, CBF and CAR), Charles Basomingera (Witnesses CAY, CBF and BSV), dairy factory director Mirasano (Witnesses BVW, BVI, CAY and CAR), Faustin Mbeyere (Witness BVI and CAR), Frédéric Rwagsore (Witnesses BVW, BVI and CAY), Augustin Twgirimana (Witnesses CAY and BSV), intelligence officer Didace Maneko (Witnesses CAY and CAR) and Minani (Witnesses BVW and BVI).

3. MACHETES IN DORMITORIES, 1991

3.1 Introduction

212. According to the Indictment, Nsengimana gathered machetes that were later used to kill Tutsis. The Prosecution alleges that, in 1993, he played a role in hiding machetes in student dormitories at the *Collège Christ-Roi*, which in its view illustrates his genocidal intent. Reference is made to Witnesses BSV and BVI.[200]

213. The Defence disputes the allegation. Documentary evidence shows that the event occurred in 1991 and that Nsengimana disciplined those involved. Reference is made to Witnesses AMC1, EMR33 and Jean-Marie Vianney Mushi.[201]

3.2 Evidence

Prosecution Witness BVI

214. Witness BVI, a Tutsi boarding student at the *Collège Christ-Roi*, stated that machetes used by students on weekends for work were locked at a place not far away from the dormitory. Nsengimana and the prefect of students, who was a student himself, held the two keys to that place as well as a dormitory key. Also the discipline master, Phénéas Munyarubuga, had the key to the dormitory.[202]

215. The witness testified that, on a certain day in 1993, the Tutsi students discovered that their machetes had been removed. Nsengimana reassured the students by suggesting the machetes may have been lost. That evening, five Tutsi students found their machetes underneath the blankets atop their beds. Because the storage building and the dormitory were usually locked, and based on the dislike that Nsengimana had shown for Tutsi students on many occasions, the witness believed that Nsengimana and a group of Hutu students organised by him were responsible. The witness was unaware of any investigation by the school administration, and did not remember any students being suspended for this incident.[203]

Prosecution Witness BSV

216. Witness BSV, a Tutsi working at the *Collège Christ-Roi* until April 1994, said that the dormitories were usually locked with a key held by Phénéas Munyarubuga. He heard that machetes were discovered there, and that some students later said that the Tutsis were planning an attack against Hutu students. The night before the machetes were found, the witness saw Nsengimana, Phénéas and two others enter the dormitories where they stayed "for a long time". The witness could not remember when this incident occurred.[204]

---

[200] Indictment para. 18; Prosecution Closing Brief Chapter 5 pp. 42-43, 75-76, 78, 89, 92, 95-96; T. 13 February 2009 pp. 6, 10-11.
[201] Defence Closing Brief paras. 200-201, 694-699, 725, 753-754, 1093, 1104, 1238, 1261, 1331, 1355, 1358, 1363, 1369, 1396, 1434.
[202] T. 24 January 2008 pp. 3, 5-6, 19-20, 22, 50, 52, 55; Prosecution Exhibit 18 (personal identification sheet).
[203] T. 24 January 2008 pp. 5-7, 19-20, 36, 52-56, 59, 67-68.
[204] T. 25 January 2008 pp. 2-4, 18, 19 (quoted); T. 28 January 2008 pp. 2-5, 21, 23-24, 27; Prosecution Exhibit 19 (personal identification sheet).

Nsengimana

217. Nsengimana testified that machetes were discovered at the *Collège Christ-Roi* in May 1991. That same month, he wrote five letters to parents asking them to come to the *Collège Christ-Roi* with their children. Of the five students involved, three were Tutsis and two were Hutus.[205]

Defence Witness AMC1

218. Witness AMC1, a Hutu working at the *Collège Christ-Roi* between 1990 and June 1993, stated that he learned that machetes were found in the student dormitories while he was still employed at the school. Nsengimana informed the teachers about the incident and that the situation was under control. The witness said that the machetes could not have come from the warehouse because none had disappeared from there, and that the school did not purchase any machetes while he worked there. He speculated that the machetes might have come from outside the school.[206]

Defence Witness EMR33

219. According to Witness EMR33, a Hutu boarding student at the *Collège Christ-Roi*, "a small number of students" found machetes below their mattresses in 1991. He did not recall all of the students' names or their ethnicities, and he did not know the machetes' origins. Gendarmes came to the school that evening. Although students talked about this incident, the witness never learned of its perpetrators. He noted, however, that Pacifique Kalisa and one Théophile were punished after the machetes were found.[207]

Defence Witness Jean-Marie Vianney Mushi

220. Jean-Marie Vianney Mushi was a Hutu boarding student at the *Collège Christ-Roi*. He testified that, sometime around 1992, he was awakened one night by shouting in another dormitory, when some students discovered machetes hidden underneath their mattresses. The witness saw Nsengimana, the discipline prefect Phénéas Munyarubuga and another monitor questioning the students. The "dean of studies" joined other students that were class captains, trying to calm the students down, and security officers arrived to guarantee safety. Some students blamed Hutus for hiding the machetes, while others accused Tutsis. The witness said that Nsengimana prohibited students from discussing this incident, and after two days, they stopped doing so.[208]

---

[205] T. 9 July 2008 pp. 12, 61-62.
[206] T. 3 June 2008 pp. 2, 5-6, 9-10, 28, 30-33, 74; Defence Exhibit 40 (personal identification sheet).
[207] T. 2 June 2008 pp. 14-15, 24 (quoted), 25, 34-36, 41-43, 64. Witness EMR33 remembered the names of two students who found a machete. He identified one victim as the son of Théodore Sindikubwabo, the acting president of Rwanda, but was never asked to name the other student. *Id.* pp. 24, 34-35, 41-42.
[208] T. 1 July 2008 pp. 40-41, 42 (quoted), 43-44, 46; T. 2 July 2008 pp. 5-9; Defence Exhibit 58 (personal identification sheet). Jean-Marie Vianney Mushi was formerly identified as Defence Witness JMCB8. He could not remember the name of the dean of studies, but recalled that he was a student in his final year at the *Collège Christ-Roi*. The French version refers to "*le préfet des études*" (T. 1 July 2008 pp. 50-51).

3.3 Deliberations

221. There is no dispute that an incident occurred at the *Collège Christ-Roi* where machetes were found in the beds of certain students. There are two main competing narratives as to how the event unfolded. Witness BVI testified that the machetes were discovered in the beds of five Tutsi students at some point in 1993. He suggested that Nsengimana was responsible for placing them there. This finds circumstantial support in the account of Witness BSV, who allegedly saw Nsengimana, Phénéas Munyarubuga and others enter the dormitory the night before.

222. According to Nsengimana, the incident occurred in May 1991, much earlier than the Prosecution evidence suggests, and involved both Hutu and Tutsi students. His only role in it was disciplining these students. In this connection, he referred to five letters that he wrote to the parents of the implicated students. This is supported in varying degrees by Witnesses AMC1, EMR33 and Jean-Marie Vianney Mushi. They also placed the incident much earlier than Witness BVI.

223. The Chamber is convinced that this incident took place in 1991, not in 1993. The testimonies of the Defence witnesses are corroborated by Nsenigmana's five letters of 3 May 1991 to the parents of Théophile Mpozembizi, Félicien Bangangira, Placide Sibomana, Damascène Rudasingwa and Pacifique Kalisa. These letters indicated that their child would be suspended from school for 10 days because a machete was found with their child in the dormitory.[209]

224. The Defence evidence also raises significant doubt about Witness BVI's claim that Nsengimana orchestrated the incident and targeted only Tutsi students. The witness's evidence is circumstantial and amounts to speculation. Instead, it follows from the letters that Nsengimana acted swiftly, and the evidence also shows that he disciplined both Hutu and Tutsi students.[210]

225. The Chamber concludes that the Prosecution has not proved beyond reasonable doubt that Nsengimana was involved in placing machetes in the beds of Tutsi students.[211]

---

[209] Defence Exhibits 28A through 28E (files of five students containing a letter of 3 May 1991); T. 24 January 2008 p. 56, where the letters are interpreted as follows: "Dear Parent: I regret to inform you that your child … was found with a machete in the dormitory. This incident frightened other students and caused a feeling of insecurity in our school. For this reason, I'm sending to you your child so that you can punish him and so that he'll not repeat in the future such conduct. And that he should avoid making any comments which could lead to division amongst other students. I'm requesting you to come back to the school with your child on the 13th of May, 1991."

[210] According to the letters and the files of the five students suspended from school following the incident, they were: Théophile Mpozembizi, a Hutu, and according to Witness EMR33 (T. 2 June 2008 pp. 41-42) and the Defence, the son of future interim Rwandan President Sindikubwabo Mpozembizi (T. 24 January 2008 p. 56); Félicien Bangangira, a Hutu; Placide Sibomana, a Hutu; Damascéne Rudasingwa, a Tutsi; and Pacifique Kalisa, a Tutsi. Defence Exhibits 28A through 28E (files of five students containing a letter of 3 May 1991). On cross-examination, Witness BVI agreed with the Defence that these five students were the same persons in whose beds the machetes were discovered. T. 24 January 2008 p. 59.

[211] Consequently, the Chamber need not address the Defence arguments about unfairness and lack of temporal jurisdiction. Defence Closing Brief paras. 754, 1355.

4. STOCKPILING OF MACHETES, 1991 – 1993

4.1 Introduction

226. The Prosecution alleges that, during the events referred to in the Indictment, Nsengimana gathered machetes for use in the killing of Tutsis, and that these machetes were later used for that purpose in Butare prefecture. It relies on Witness CAW.[212] The Defence argues that the witness is unreliable, and that his evidence is inadmissible as it is beyond the temporal jurisdiction of the Tribunal.[213]

4.2 Evidence

Prosecution Witness CAW

227. Witness CAW, a Hutu, worked at the Nyanza parish church. During the period of multi-party politics from 1991 to 1993, he saw machetes being offloaded at the house of a person called Kinshasa, located 800 metres from the school. Kinshasa was a trader and a member of the CDR party. The machetes were being taken out of a vehicle belonging to the *Collège Christ-Roi*. It was driven by Chogoza, Nsengimana's driver. Nsengimana was also present at that time. Both Chogoza and Nsengimana told the witness that the machetes were to be used to kill Tutsis.[214]

Nsengimana

228. Nsengimana denied the allegation that he was involved in offloading and stockpiling machetes prior to or during the events of 1994. There was a driver working for the *Collège Christ-Roi* called Chogoza, but he was a Tutsi. He was dismissed because of theft in June 1990 and did not work at the school from 1991 to 1993.[215]

---

[212] Indictment para. 18; Prosecution Closing Brief Chapter 5 pp. 60, 126, Chapter 6 paras. 60-61, 95; T. 13 February 2009 pp. 10-11. In a section entitled "Training and Arming of Militias" (Closing Brief Chapter 5 pp. 60-87, Chapter 6 para. 60), the Prosecution also refers to Witnesses CAO, CAR, CAY, CBF, BSV, BVX and BVV, but their evidence did not specifically address training and arming of militia. Some of them testified that in 1994, militant groups were wearing weapons (Witness CAR allegedly saw a machete and Nsengimana with a club; Witness CAY observed militia members with a hoe, nailed club, car tool, and iron bar; Witness BVX mentioned a sword, a worn out instrument and grenades). However, no link has been established between these observations and the distribution of machetes in 1992, as described by Witness CAW. There is therefore no need to pursue the accounts of these witnesses in the present context. Evidence relating to the episode involving machetes in dormitories is discussed elsewhere (II.3).

[213] Defence Closing Brief para. 2339 and Addendum pp. 2, 4-7; T. 12 February 2009 pp. 33-34.

[214] T. 25 June 2007 pp. 4, 7, 9-10, 30, 49, 55-56; T. 26 June 2007 p. 50; Prosecution Exhibit 2 (personal identification sheet). The correct spelling of the driver's name may be Nshogoza, see below. During examination-in-chief, Witness CAW stated that the offloading of machetes occurred in 1992, see T. 25 June 2007 p. 9 ("Yes, I remember that incident. I know that it was in 1992. Unfortunately, I am not able to give you the date or the month."). However, during cross-examination, he appeared to concede that the event may have taken place at any time during the period 1991 to 1993, see *id*. pp. 55-56 ("Q: And this was in 1991 or 1992; is that correct? A: Yes, Counsel. … Q: And this is in '91 or '92, correct? A: It might have been even in 1993, I no longer very well recall.").

[215] T. 9 July 2008 pp. 10-11 (spelling the driver's name as "Nshogoza"). The Chamber refers to him as Chogoza above for the sake of consistency.

4.3 Deliberations

229. Only Witness CAW testified that Nsengimana was involved in the stockpiling of machetes for the purpose of eventually killing Tutsis. He was imprecise regarding the time of this event, first indicating 1992 and then saying that it may have occurred at any time from 1991 to 1993. Another question is whether Chogoza and Nsengimana, when allegedly offloading machetes which are normally used as farming equipment, would volunteer clandestine information to a Nyanza parish employee such as the witness that they were intended for the killing of Tutsis. The Chamber also recalls its other concerns about Witness CAW's credibility, which have been set out elsewhere.[216] Finally, it notes Nsengimana's evidence that Chogoza was a Tutsi and did not work at the *Collège Christ-Roi* from 1991 to 1993.

230. On the basis of Witness CAW's unreliable evidence about stockpiling of machetes in a house outside the *Collège Christ-Roi*, the Chamber is unable to find that Nsengimana gathered machetes as alleged in the Indictment.[217] In view of this finding, the Chamber does not need to address the Defence arguments about notice and the Tribunal's temporal jurisdiction.[218]

[216] See, for instance, roadblocks (II.6) and the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

[217] The Chamber observes that the purported event concerning machetes in dormitories, which took place already in 1991 (II.3), does not provide sufficient corroboration.

[218] Paragraph 18 of the Indictment states that the stockpiling of machetes occurred "[d]uring the events referred to in this [I]ndictment", which are all alleged to have occurred in 1994. Consequently, the questions arise whether the evidence is outside of the scope of the Indictment and the temporal jurisdiction of the Tribunal and can only be considered as background. See *Nahimana et al.* Appeal Judgement para. 315; *Simba* Trial Judgement para. 28.

5. ATTACK ON TUTSI STUDENTS, 7 OR 8 APRIL

5.1 Introduction

231. The Indictment alleges that around 7 or 8 April 1994, Phénéas Munyarubuga left a meeting held in Nsengimana's room and awoke sleeping students by shouting that the father of the nation had been killed by the Tutsis. This prompted Hutu students to attack their Tutsi counterparts, causing them to flee. The Prosecution refers to Witness CBE.[219]

232. The Defence disputes the Prosecution evidence, in particular because students were not staying at the *Collège Christ-Roi* at that time due to Easter recess. It relies on Witnesses JMR1, Emmanuel Hakizimana, EMR33, EMR95, AMC1, VMF8 and DFR85.[220]

5.2 Evidence

Prosecution Witness CBE

233. Witness CBE, a Tutsi working at the *Collège Christ-Roi*, testified that, around 5.00 a.m. on a certain date after the President's death, he was in front of Nsengimana's office, when he observed Phénéas leave it and go to the student dormitory. He estimated that, at that time, it contained about 800 students, whereas there were "less than 100" Tutsis. Most students hailed from areas already engulfed in war, so many of them did not return home for the Easter recess. When Phénéas arrived, Hutu students were beating Tutsi students. He told them that the father of the nation was dead, and asked them not to shout in the dormitory. He did nothing to stop the attack and returned to Nsengimana's office. The witness believed that Nsengimana had sent Phénéas to "see the Hutus who were beating up the Tutsis". The attack prompted the witness to unlock the dormitory and allow those who could flee to do so. Nsengimana did not go to the dormitory during this event.[221]

Prosecution Witness CBF

234. Witness CBF, who worked at the *Collège Christ-Roi*, visited the school during the week of President Habyarimana's plane crash and about one week later. He did not see any students there and testified that the bursar had allotted money to allow war-displaced students to leave the school during the Easter holiday in 1994.[222]

---

[219] Indictment para. 22; Prosecution Closing Brief Chapter 5 p. 32. Witness CBE's testimony about meetings and roadblocks at the *Collège Christ-Roi* is set forth elsewhere (II.2 and 6, respectively), but taken into account here. The Chamber also considers the evidence of Prosecution Witness CBF concerning his trips to *Christ-Roi* and the status of its war-displaced students in April 1994.

[220] Defence Closing Brief paras. 202-206, 337-343, 990, 1151, 1193, 1246, 1276, 1715-1723, 1844, 1846, 1848, 1850, 1919, 1927-1928, 1931. The Defence also cites the testimony of Jean-Marie Vianney Mushi, formerly identified as Witness JMCB8, about this allegation. See Defence Closing Brief paras. 1241-1242, 1724-1725. Relevant aspects of his testimony are summarised elsewhere (II.2 and 6), but considered here.

[221] T. 14 January 2008 pp. 3-4, 7-12, 21, 26, 35 (quoted), 36-40; Prosecution Exhibit 7 (personal identification sheet). Witness CBE was not clear about the date of the event in the dormitory (see below).

[222] T. 26 June 2007 pp. 59, 61; T. 27 June 2007 pp. 2, 8, 31-33; Prosecution Exhibit 3 (personal identification sheet); Defence Exhibit 3 (*Christ-Roi* bursar's expense sheet for February and March 1994) p. 3, entry 259.

Nsengimana and Defence Witness JMR1

235. Nsengimana stated that not a single student remained at the *Collège Christ-Roi* during the Easter break in 1994.[223] Witness JMR1, a Hutu, worked at the school and remained there until he left on 28 May 1994. He did not see any students, the kitchen was not functioning, and the dormitories were closed.[224]

Defence Witnesses Emmanuel Hakizimana and EMR33

236. Emmanuel Hakizimana visited Nsengimana at the school on the evening of 4 to 5 April, and Witness EMR33 spent two nights there from 4 to 6 April 1994. Neither saw students at the school, and Witness EMR33 said that they had left for vacation.[225]

Defence Witnesses EMR95, AMC1, VMF8 and DFR85

237. Witness EMR95, a Hutu, worked at the *Collège Christ-Roi*. After 6 April, he returned to the school on 15 and 22 April and in May 1994. No students were there, as they had left for Easter recess on 23 March.[226] Witness AMC1, a Hutu, went to *Christ-Roi* once around 10 April, and on two or three occasions after 22 April. Nsengimana was the only person at the school as students, including war-displaced students, had left for the holiday. Witness VMF8, a Hutu, stayed at *Christ-Roi* in the evenings of 16, 17, 18 and 19 April and passed through it about 10 times between 27 or 28 April and 20 May. At no point did he see students at the school. Witness DFR85, a Hutu, sought refuge at *Christ-Roi* in May, about one week before the *Ecole supérieure militaire* arrived. She did not see any students, including war-displaced students, at the school during the war.[227]

5.3 Deliberations

238. The Chamber observes that according to paragraph 22 of the Indictment, the alleged attack against the Tutsi students occurred following a meeting in Nsengimana's room around 7 or 8 April 1994, which resulted in Phénéas going to the students' dormitory and shouting that the father of the nation had been killed. As a "consequence of this meeting and this shouted statement", the Hutu students launched the attack. The Prosecution did not adduce any evidence about a meeting in the hours preceding this event, and briefly summarised the evidence in its section about roadblocks.[228]

---

[223] T. 9 July 2008 pp. 14-15, 55; T. 10 July 2008 p. 78; T. 11 July 2008 p. 5.
[224] T. 17 June 2008 pp. 2, 4-8, 49-51, 54-56; Defence Exhibit 52 (personal identification sheet).
[225] Hakizimana (formerly Witness EMCB2), T. 2 July 2008 pp. 24-26, 34, 40; Defence Exhibit 59 (personal identification sheet). Witness EMR33, T. 2 June 2008 pp. 18-19, 26-27, 39, 43-45, 61-62.
[226] T. 13 June 2008 pp. 3-5, 11-12, 18; Defence Exhibit 48 (personal identification sheet). The timing of Witness EMR95's return to the *Collège Christ-Roi* in May 1994 is unclear. He testified that he returned "[t]owards the end of May" (T. 13 June 2008 p. 12), but did not object to questions suggesting that his return was on 15 May (*Id.* pp. 14, 21). The Chamber relies on his own words.
[227] Witness AMC1, T. 3 June 2008 pp. 23-25, 50-52, 54-55, 70; Defence Exhibit 40 (personal identification sheet). Witness VMF8, T. 10 July 2008 pp. 11-14, 20, 24-26; Defence Exhibit 67 (personal identification sheet). Witness DFR85, T. 27 June 2008 pp. 6, 8, 25-26, 30-33, 41-44; T. 30 June 2008 p. 9; Defence Exhibit 55 (personal identification sheet).
[228] Compare Indictment para. 22 and Prosecution Closing Brief Chapter 5 p. 32 (in the "Activities at Roadblocks" section). Witness CBE did mention a meeting with unidentified soldiers in "the evening" (French:

239. Prosecution Witness CBE provided the only first-hand account of Hutu students attacking Tutsi students in the dormitories at the *Collège Christ-Roi* after the President's death. Except for the ethnicity of the attackers and the victims, there is limited information available about the attack. The witness did not assert that anyone died – on the contrary, he opened the door to the dormitory, allowing the Tutsi victims to flee.[229]

240. The Chamber notes that the witness had difficulty placing the event in time, moving from immediately after President Habyarimana's death to sometime later. Although he generally connected it to the shooting down of the plane, he offered varying time periods for its occurrence.[230] The witness's inability to give a precise date, given that he was illiterate, is not in itself significant.[231] However, the lack of clarity as to when the event occurred raises some doubts about the accuracy of his account. It also precludes corroboration based on the presence of students at the *Collège Christ-Roi* on a specific date.

241. The witness was alone in suggesting that 800 students were at the *Collège Christ-Roi* during the Easter recess. The Chamber has, in its discussion of roadblocks, considered evidence that war-displaced students remained at the school. Witness CBF and a number of Defence witnesses gave evidence that raises considerable doubt as to whether any students remained at *Christ-Roi* immediately before the President's death, or in the weeks following it (II.6). Even assuming that some war-displaced students remained at *Christ-Roi*, credible evidence concerning their number suggests that it was far lower than the figure offered by Witness CBE.[232]

242. According to Witness CBE, Nsengimana was not physically present at the dormitory during the attack. The witness testified about seeing Phénéas there, and stated his belief that Nsengimana had sent Phénéas to "see the Hutus who were beating up the Tutsis".[233] The witness did not explain how he reached this conclusion, nor did he elaborate upon a possible motive. Given his testimony that Phénéas entered the dormitory immediately after exiting

---

"*la nuit*") when President Habyarimana's plane was shot down (II.2), but there is no clear link between this gathering and the dormitory incident.

[229] T. 14 January 2008 pp. 10 ("When I heard the students beating up their colleagues, I opened the dormitory, and those who wished to leave it could leave."), 37-38 (affirming his statement of 29 May 2000 to Tribunal investigators, which reads: "I allowed them to leave because they were being beaten and pursued. The Tutsi students fled through the door near the Chapel."); see also Defence Exhibit 7 (statement of 29 May 2000) p. 3.

[230] T. 14 January 2008 pp. 10-11 ("They started fighting after President Habyarimana's plane was brought down, when [Phénéas] told the Hutus that if the Tutsis were to surprise them, no Hutu child would survive. … I would say in early May. … After President Habyarimana's plane was shot down – a few days after that, the killings started, but it was not immediately after the plane was brought down that the students started fighting. … The Hutu students beat up the Tutsi students between the 10th and the 23rd … I believe it was between the 10th and the 16th of May."). Witness CBE identified the date of Habyarimana's death as "the 10th or the 12th", but did not specify the month (*id.* p. 3). When asked about the killings in Nyanza, he first claimed they began in May (*id.* p. 11), and later affirmed they commenced in April (*id.* pp. 13-14).

[231] *Id.* p. 12 (" … I do not remember dates, and I do not know how to read or write. So I cannot give you the precise date for any event. I do not know the date."). Witness CBE's difficulties in providing the timing of events are amply illustrated in the record, see *id.* pp. 5 (unable to identify the date President Habyarimana's plane crashed), 12 (indicating that in 1995, a few days after the President's plane was brought down, there were meetings to incite the population), 39-40 (discussing attacks in Byumba and Gisenyi occurring in 1994 and the war beginning in 1995).

[232] See, for instance, Witness CBF, T. 27 June 2007 p. 33 (estimating that there were 20 to 30 *Collège Christ-Roi* students from the Byumba region who had been displaced by war in 1994).

[233] T. 14 January 2008 p. 35 (quoted).

Nsengimana's office, one possibility is that Nsengimana sent him to the dormitory. But this is not a sufficient basis to infer what his instructions, if any, may have been.

243. Moreover, the Chamber observes that there is no clear causal link between Phénéas's visit and the attack. According to the witness's statement in May 2000, the Hutus began attacking the Tutsis after Phénéas's statement that the President had been killed by Tutsis.[234] However, he testified that the Hutu students had already begun attacking the Tutsis before Phénéas arrived**.** Phénéas did not stop the fighting, but told the Hutu students to stop shouting. The Chamber finds that these words are open to several reasonable interpretations. It further notes that Phénéas made no reference to Nsengimana, and that no evidence suggests that the students were aware that he purportedly came from Nsengimana's office.[235]

244. In conclusion, the Chamber has some doubts about Witness CBE's purported first-hand account that Hutu students attacked Tutsi students in the *Collège Christ-Roi* dormitory after the President's death. At any rate, it has not been shown that anyone was killed, and the evidence fails to implicate Nsengimana in the attack in a way that could be interpreted as if he aided or abetted the later killing of Tutsis. This charge is dismissed.

[234] Defence Exhibit 7 (statement of 29 May 2000) p. 3, which reads: "[I] saw Phénéas, the discipline monitor leave [Nsengimana's] room, proceed towards the dormitory and say to the students: 'You are sleeping when the father of the nation has been killed by the Tutsis.' The Hutu students immediately began to beat up the Tutsi students. I subsequently saw the discipline monitor Phénéas leave the students' dormitory and return to [Nsengimana's] room."

[235] T. 14 January 2008 pp. 10 ("Q. Where did he go to see the students? A. He went to see them at the dormitory when they were beating up the Tutsi students. But he did not say anything when they were beating the Tutsi students."), 11 ("Q. … Now, did he do anything to stop the Hutu students from beating the Tutsi students? A. He told them not to shout at night, but I believe he was rather asking them to be even more zealous in their beating, because the Hutu students continued beating up the Tutsi students."), 35 ("A. … However, I will confirm that the Hutus beat up the Tutsis in the dormitory, and Father Hormisdas sent his employee called Phénéas to go to the dormitory and see the Hutus who were beating up the Tutsis. When he arrived, he said this: 'The father of the nation is dead', and he asked the Hutus to stop shouting. And shortly after, he went back to his office near the residence of Father Hormisdas.").

6. ROADBLOCKS, APRIL ONWARDS

6.1 Introduction

245. The Indictment alleges that, around 23 April 1994, Nsengimana ordered students, his co-perpetrators in the joint criminal enterprise, to mount roadblocks around the *Collège Christ-Roi* in order to capture and kill Tutsis. Armed at all times, he supervised at least three roadblocks: one at the entrance of the school, one in front of the *Ecole normale primaire* and another near Pasteur Dusangeyezu's home. Many Tutsis were captured at these roadblocks and killed. Nsengimana thus aided and abetted the killing of these Tutsis. The Prosecution points to evidence of Nsengimana ordering the establishment of roadblocks, meetings that planned and preceded their establishment, and his presence among those manning the barriers. Reference is made to Prosecution Witnesses CAN, CAW, CAP, CAY, BVJ, CAZ, CAO, BVX, CBE, CAR, CBC and BVI.[236]

246. The Defence concedes that certain barriers were erected, but this was done on the orders of political and military authorities, and they were supervised by diverse echelons of the territorial administration, in which Nsengimana had no authority. It disputes that a roadblock existed in front of *Christ-Roi* prior to the arrival of the *Ecole supérieure militaire* in Kigali. All students had left *Christ-Roi* for Easter recess. This undermines Prosecution evidence that war-displaced students manned this roadblock. Reference is made to Defence Witnesses JMR1, DFR85, VMF8, AMC1, GMC4, EMR95, EMR33, XFR38, Emmanuel Hakizimana, Jean-Marie Vianny Mushi and Marie-Cécile Uwayezu, as well as Prosecution Witness CBF.[237]

6.2 Evidence

Prosecution Witness CAN

247. Witness CAN, a Tutsi living in Mugonzi *cellule*, testified that roadblocks were established around 10.00 a.m. on 22 April 1994 at various locations. They were set up by the participants at a meeting at the *Collège Christ-Roi* that had commenced the previous evening, including the school's employees Simon Kalinda, Phénéas Munyarubuga, Sebukayire and Gasatsi. The purpose was to kill Tutsis. Many persons were killed at these checkpoints, including persons coming from Kibuye, Gikongoro and Gitarama. The victims included a girl who lived at the hostel and worked for the Nyabisindu dairy. The witness "learn[ed]" that she

[236] Indictment paras. 25-26; Prosecution Closing Brief Chapter 5 pp. 17-60, 63-66, 79-80, 82-85, 103-106, 108, 111-112, 117-122, Chapters 6-8 paras. 55 (e), 56-59, 63, 86-90, 93, 96, 116, 118-121, 173, 175-178, 229, 231-234, Chapter 9 para. 76; T. 12 February 2009 pp. 4, 7-9, 12, 17-18; T. 13 February 2009 pp. 1, 6-7. The Closing Brief also refers to roadblocks in connection with the killings of Witness BVV's family (below, II.8), Xavérine and her son (below, II.17) and Judge Jean-Baptiste Twagirayezu (below, II.18), which the Chamber also has taken into account in the present context. The Prosecution does not cite evidence from Witness BXM concerning roadblocks, much of which arose during cross-examination. See T. 7 February 2008 pp. 6, 24, 26, 35-36, 58-59, 66. The Chamber understands this omission as consistent with its concession that it did not intend to lead such evidence through him. *Id.* pp. 24-26.

[237] Defence Closing Brief paras. 31-32, 38, 65, 74-75, 270-271, 277, 281-282, 285, 305, 334, 352-353, 414-416, 420, 435, 438, 468-486, 488, 490-492, 495, 499-537, 564-565, 585-587, 816, 823-824, 826, 828, 844-848, 860-866, 872, 878-908, 988, 1017-1019, 1177-1179, 1194, 1231-1232, 1301, 1762-1941, 2362-2370; T. 12 February 2009 pp. 33, 35-36, 40-42, 45-46. The Chamber will also consider the testimony of Witness Marie Goretti Uwingabire.

was the child of a person named Antoine. He said that bodies were exhumed from a mass grave not far away from the roadblocks.[238]

248. Simon Kalinda controlled a roadblock in collaboration with François Gashirabake not far from Kalinda's home and shop, about 25 metres from *Christ-Roi*'s entrance. Many others also manned it, including Cyumbati, Kalisa and Sebukayire. The witness frequently accompanied Gashirabake to the roadblock.[239]

249. Phénéas Munyarubuga supervised another roadblock close to the entrance of the *Collège Christ-Roi* at the path leading to the *Ecole normale primaire*. It was manned by Gasatsi, Augustin Nyamulinda's two sons, as well as war-displaced students from the Ruhengeri and Byumba prefectures, including *Christ-Roi* students. The witness rejected the assertion that no checkpoint was set up near the entrance of *Christ-Roi* until soldiers under Colonel Rusatira's control arrived in mid-May and explained that gendarmes, not soldiers, manned roadblocks. A woman called Xavérine as well as her son were captured at this roadblock and led away and killed on 4 May (II.17).[240]

250. A third roadblock was situated at the end of the Nyanza parish church. The headmaster of the *Ecole des sciences*, Frédéric Rwagasore, and his assistant, Hitimana, were in charge of it. War-displaced students staying with Rwagasore manned it. Judge Jean-Baptiste Twagirayezu was stopped at this roadblock in early May 1994 before being killed by gendarmes (II.18).[241]

Prosecution Witness CAW

251. Witness CAW, a Hutu who worked at the Nyanza parish church, stated that roadblocks were set up the day after President Habyarimana's death, which the witness estimated was sometime in April. He was at the *Collège Christ-Roi* when Nsengimana ordered the establishment of three roadblocks. Nsengimana, who was with Simon Kalinda, Phénéas Munyarubuga and officers training the *Ecole supérieure miliaire* students from Kigali, said that Tutsis seeking refuge at the school should be arrested and killed. Hutus would be allowed to pass. The witness never manned any barrier. He believed Nsengimana visited the roadblocks as he ordered them to be set up.[242]

---

[238] T. 27 June 2007 pp. 67-68; T. 28 June 2007 pp. 8-9, 10 (quoted), 13, 47, 49-50; Prosecution Exhibit 4 (personal identification sheet). Witness CAN's testimony about a meeting at the *Collège Christ-Roi* from 21 to 22 April 1994, where locations for roadblocks were being selected, is summarised elsewhere (II.2), but also taken into account here.

[239] T. 27 June 2007 pp. 68, 73; T. 28 June 2007 pp. 9-10, 32, 34-35, 50-51, 53-55, 66-70; T. 29 June 2007 pp. 10-11; Prosecution Exhibit 5 (four photographs) p. K038-4137; Defence Exhibit 5 (four photographs), photograph 1.

[240] T. 28 June 2007 pp. 9-10, 12-13, 16-18, 50-52, 67-69; T. 29 June 2007 p. 10; Prosecution Exhibit 5 (four photographs) p. K038-4097. Witness CAN testified generally that war-displaced students came from "Nyamulinda school, [*Collège Christ-Roi*] and [*Ecole des sciences*]". T. 28 June 2007 pp. 9 (quoted), 51. His evidence about those involved in the abduction of Xavérine and her son tends to suggest that those manning the roadblock in front of *Christ-Roi* came from that school. See *id.* p. 13 ("[T]here were also the students who were at the college and who were manning the roadblock not far from the college…").

[241] T. 28 June 2007 pp. 9-11, 19; Prosecution Exhibit 5 (four photographs) p. K038-4195. Witness CAN appears to use the "*Ecole des sciences*", "Nyanza secondary school" and "Nyanza technical school" interchangeably, referring to Rwagasore as the director of them all. T. 27 June 2007 p. 79; T. 28 June 2007 pp. 9, 19.

[242] T. 25 June 2007 pp. 4-5, 37-39, 49, 62; T. 26 June 2007 pp. 26-29; Prosecution Exhibit 2 (personal identification sheet).

252. One roadblock, situated near *Christ-Roi*'s entrance, was manned by the school's students from Byumba and Gisenyi prefectures, who had been displaced by the war and were living in *Christ-Roi*'s compound. They had meals prepared at the school. The witness passed this barrier daily during the period when he was going to the school. He was generally not aware of the activities at the roadblock, but he occasionally met Nsengimana there. In most cases no one was at that checkpoint. The witness denied that it was established by Colonel Rusatira and soldiers under his control.[243]

253. Simon Kalinda and Sebukayire manned another roadblock with "other students" that faced the residence of "Pasteur". The witness did not pass that checkpoint but could see it from the path leading to *Christ-Roi*. Phénéas Munyarubuga manned a third barrier on the "side leading to the Mugonzi area" with "another group of students". The witness denied that roadblocks were set up at the *Ecole technique feminine* or *Ecole sécondaire* but noted that others, unrelated to those established on Nsengimana's orders, existed in Nyanza.[244]

Prosecution Witness CAP

254. Witness CAP, a Hutu working at the *Ecole normale primaire*, remained at the school until he returned home to see his family. On that day, between 23 and 25 April 1994 around 6.00 a.m., he passed the entrance of the *Collège Christ-Roi* and noticed that a roadblock was situated near the homes of Simon Kalinda and Pasteur Dusangeyezu, approximately 10 to 15 metres from the school. The witness observed Kalinda, Gashirabake, Butera, Kibaya, Seruragasha and a teacher standing in the vicinity of the barrier, which was controlled by Kalinda. Those manning it allowed the witness to pass because they "knew" him. He testified that the purpose of the roadblock was to identify Tutsis, who would then be taken to the Kinihira woods and killed.[245]

255. The witness remained at home for approximately 30 minutes and then returned to the *Ecole normale primaire*. Again he passed the entrance of *Christ-Roi* where another roadblock had since been established. It was a tree trunk, immediately in front of the gate to the school. Phénéas Munyarubuga, Cyprien Gasatsi and students from the schools in the area, including *Christ-Roi*, manned it, and Kalinda, who would move between this roadblock and the one at his home, appeared to control it.[246]

256. A third roadblock was set up behind the Nyanza parish church. It was situated close to the parish sacristy and a canteen on a road leading to the *Ecole normale primaire*. Students from the Nyanza schools manned it. François Gashirabake, Phénéas Munyarubuga, Simon Kalinda and Nsengimana would visit it regularly, as well as commander Birikunzira and the sub-prefect.[247] Those manning it had clubs, while Gashirabake held a spear and Birikunzira had a firearm.[248]

---

[243] T. 25 June 2007 pp. 37-39, 62-63; T. 26 June 2007 pp. 26-29.
[244] T. 25 June 2007 pp. 38 (quoted), 39; T. 26 June 2007 pp. 26-27 (where Witness CAW appeared to attribute the responsibility for roadblocks in Nyanza town to civil authorities).
[245] T. 30 January 2008 pp. 43-46, 54, 56-57, 60-61, 67, 68 (quoted); Prosecution Exhibit 22 (personal identification sheet).
[246] T. 30 January 2008 pp. 44-46, 48, 62-63, 67-68.
[247] Witness CAP only referred to the "*sous-préfet*" but probably meant Gaëtan Kayitana. *Id.* pp. 48-49, 64.
[248] *Id.* pp. 44-45, 48-49, 63-64. Witness CAP discussed this roadblock in the context of leaving the *Ecole normale primaire* to visit his home on the day in the period between 23 and 25 April 1994, and it appears that he first saw it during that excursion. *Id.* pp. 44-45.

257. Around 9.00 a.m. that same day, the witness stood at the entrance of the *Ecole normale primaire*. He saw Nsengimana with Munyarubuga, Kalinda, Gasatsi and students at the *Christ-Roi* roadblock. Nsengimana joined those already at the barrier, finding them armed with clubs, and appeared to be talking with Munyarubuga and Kalinda. Some stood "on the upper side of the road" while others were on the "lower side". He estimated that they were about 10 metres from him but could not hear what was being said.[249]

258. Within two days after his trip home (between 23 and 25 April), the witness left the school on two occasions to fetch water. On his first trip, he observed the roadblock near the homes of Kalinda and Dusangeyezu again when going to retrieve water. He saw the same individuals as well as others he could not identify standing above and below it and near Simon's bar. In this context, he testified that the purpose of the roadblock was to stop members of the public and force them to display their identity cards. Hutus were allowed to pass, while those with Tutsi on the identity card would be made to sit, taken to Kinihira woods near Nyamulinda's school and killed.[250]

259. When fetching water, the witness passed the roadblock at the *Christ-Roi* entrance again.[251] He also could see it from the entrance of the *Ecole normale primaire* as well as from a window in the sixth-year classroom inside the school. Nsengimana would accompany Birikunzira and the sub-prefect in conducting morning rounds of the barriers, and they passed this one when entering *Christ-Roi*. The witness could not specify the number of times Nsengimana visited roadblocks but he did so frequently. The priest wore a long khaki coat and would talk to those manning them.[252]

260. Although a Hutu, the witness remained in the *Ecole normale primaire* permanently starting about two days after his trip home, because a Hutu colleague disappeared. He was afraid because individuals like Munyarubuga and Gasatsi did not know him, and he followed Augustin Nyamulinda's instructions not to leave the school's entrance. He remained at the school until the *Inkotanyi* arrived but stated that from the sixth-year classroom, one could see "everything happening at the *Collège Christ-Roi*, … the church, and … the science school".[253]

261. Soldiers, who had fled Kigali due to the RPF advance, arrived sometime after 26 April. They stayed at the *Collège Christ-Roi* as did Munyarubuga and Gasatsi. The witness initially testified that the roadblocks, except the one situated near the Nyanza parish church, were dismantled after the soldiers' arrival, but later said he believed that the roadblocks remained in place until the *Inkotanyi* arrived in the area.[254]

Prosecution Witness CAY

262. Witness CAY, a Hutu from Mugonzi *cellule*, explained generally that roadblocks were established on 22 April 1994, the day the genocide began in Nyanza. Many of them were close to schools, and he therefore believed that they were set up on the orders of the

[249] *Id.* pp. 46 (quoted), 47-48, 62.
[250] *Id.* pp. 45-46, 56-57, 60-61.
[251] It is not clear whether Witness CAP passed the *Christ-Roi* roadblock during his first, second, or both water trips.
[252] *Id.* pp. 48, 49 (mentioning that Nsengimana visited "roadblocks"), 54, 57, 60-63.
[253] *Id.* pp. 56, 57 (quoted), 60, 68.
[254] *Id.* pp. 45, 50, 63, 68.

different school directors. Their purpose was to prevent Tutsis from fleeing and to kill them.[255]

263. One roadblock was between the homes of Simon Kalinda and Pasteur Dusangeyezu. The witness was uncertain when this specific barrier was set up. Those manning it included François Gashirabake, François Sebukayire, Dogiri's son, Innocent Habyarimana, Mbaraga and Nsengiyumva. Simon Kalinda was in charge, and it was referred to as his roadblock. The witness first observed it on his way to loot the Nyanza parish a couple of days after Father Ngirumpatse's murder at the beginning of the genocide in Nyanza.[256]

264. Another roadblock was established in front of the *Collège Christ-Roi*. The witness heard that it "belonged" to Phénéas Munyarubuga and Cyprien Gasatsi. Munyarubuga was close to Nsengimana, and Gasatsi was Nsengimana's younger brother. Consequently, the witness thought that they reported to him and would have been unable to take actions without Nsengimana's orders. War-displaced students from Ruhengeri and Byumba prefectures who lived at *Christ-Roi* manned the roadblock, while others were at "the College of Modern Humanities". The witness heard that that they killed persons. In particular, on the morning of 3 May, between 7.10 and 7.30 a.m., he observed *Christ-Roi* students gathered at the gate to prevent the population from entering the school. By the time soldiers arrived in mid-May, the roadblock had already been established.[257]

265. A third roadblock was between the entrance of the Nyanza parish church and the *Ecole des sciences*. The witness was uncertain as to when it was set up, but it was supervised by students from Byumba and Ruhengeri. He was posted at a barrier in Mugonzi *cellule*, approximately 150 metres from *Christ-Roi*'s fence, which was situated below the school, near its generator and toilets. A fifth roadblock existed between the *Ecole normale primaire* and *Ecole des sciences*. It was manned by students from Ruhengeri and Byumba prefectures at the *Ecole normale primaire*.[258]

Prosecution Witness BVJ

266. Witness BVJ, a Hutu living in Mugonzi *cellule*, testified about four roadblocks, which were established on 21 or 22 April 1994. Phénéas Munyarubuga and Simon Kalinda set up a barrier in front of the *Collège Christ-Roi* on a path that led to a play area as well as a road that continued down below the school. It consisted of tree trunks and was manned by *Christ-Roi* students from Byumba prefecture who remained there. Employees at the school and *Interahamwe*, such as Cyprien Gasatsi and Mugemana, were also posted at it. Munyarubuga and Kalinda appeared to be in charge, although the witness believed that they answered to Nsengimana as he had seen all of them together. The witness testified that, in

[255] T. 15 January 2008 pp. 44-45; T. 17 January 2008 pp. 19-22, 25 (talking about the four roadblocks in the vicinity of the *Collège Christ-Roi*: "Those roadblocks were erected to arrest any Tutsi who was fleeing, so that he could be killed. … And let me specify that these roadblocks were not only in Nyanza, but they were set up throughout the entire country."); Prosecution Exhibit 9 (personal identification sheet).
[256] T. 16 January 2008 pp. 72-73; T. 17 January 2008 pp. 19-23; T. 18 January 2008 pp. 27-28. See also the section about the killing of Father Mathieu Ngirumpatse (II.9).
[257] T. 16 January 2008 pp. 72-73; T. 17 January 2008 pp. 2, 4, 19, 22 (quoted); T. 18 January 2008 pp. 23, 26-27.
[258] T. 17 January 2008 pp. 2-3, 19-25; T. 18 January 2008 pp. 25-26. Witness CAY explained that to reach the fifth roadblock, one followed the road from the TRAFIPRO shop towards the bursar's office of the *Ecole normale primaire*. T. 17 January 2008 p. 19.

early May, a woman referred to as Xavérine as well as her son were captured at this roadblock, led away and killed (II.17).[259]

267. Another roadblock was located in front of Simon Kalinda's home, approximately 50 metres from *Christ-Roi*. Munyarubuga and Kalinda also worked there, together with members of the general public. The witness regularly manned a third roadblock near the homes of Marie, Kibaya, Gashirabake and Kabihira, approximately 100 metres below Kalinda's residence. It was Kalinda who ordered it established, and he was also in charge there. Inhabitants from the area manned it, with older individuals working during the day and younger persons at night. No Tutsis passed this roadblock. Kalinda would order persons to circulate among the roadblocks. Finally, Rwagasore, the headmaster of the *Ecole des sciences*, mounted another roadblock between the Nyanza parish church and his school. Students from his school manned it.[260]

268. The witness believed that Nsengimana ordered the establishment of the roadblocks based on his observations of Kalinda and Munyarubuga going to *Christ-Roi*, returning and giving orders. He also saw them with Nsengimana. In particular, he witnessed them near the roadblock in front of *Christ-Roi* in April, heading towards the school. On a second occasion, in May, the witness observed Nsengimana with Kalinda and Munyarubuga in front of Munyarubuga's home inside the school compound and 30 to 50 steps from the roadblock at its entrance. Later in May, he saw Nsengimana with them at the *Christ-Roi* roadblock.[261]

269. Commander Birikunzira conducted rounds of the roadblocks in his vehicle with Simon Kalinda. On two occasions he stopped at the barrier where the witness was positioned. Acknowledging Birikunzira's authority given his position with the gendarmerie, the witness believed that Kalinda was in charge of the roadblocks.[262]

Prosecution Witness CAZ

270. Witness CAZ, a Tutsi and former employee at the *Ecole normale primaire*, hid there during the genocide. He heard that roadblocks were set up on Friday 21 or 22 April 1994, "when the genocide started in Nyanza". Simon Kalinda appeared to exercise control over four of them, as he would circulate among them and retrieve persons to commit crimes elsewhere. Students manning the various barriers would also move between them. Tutsis were killed at roadblocks, which had been established for this purpose.[263]

271. A roadblock was established three metres from the entrance of the *Collège Christ-Roi*. Phénéas Munyarubuga was in charge of the *Christ-Roi* students who manned it. The witness first observed it early on the Monday morning after the killings began on his way from his home to the *Ecole normale primaire*. From the entrance of his school, he could

[259] T. 21 January 2008 pp. 8-9, 13-14, 16-19, 28-29, 31-35, 38-40, 46, 51-54, 63; Prosecution Exhibit 13 (personal identification sheet); Defence Exhibit 18 (photographs of Nyanza) p. 29; Defence Exhibit 19 (photograph of the *Collège Christ-Roi* entrance).
[260] T. 21 January 2008 pp. 8-11, 13-16, 28, 31-32, 34-38, 41, 45, 52, 67. A roadblock was also set up near the entrance of the *Ecole normale primaire*. Witness BVJ heard of it but never saw it. *Id.* pp. 32, 35-36, 63-64.
[261] *Id.* pp. 9-14, 36, 39-43, 60.
[262] *Id.* pp. 45-46, 64-65.
[263] T. 29 January 2008 pp. 51-54, 56, 59, 60 (quoted), 61-66; T. 30 January 2008 pp. 8-9, 18-19, 28; Prosecution Exhibit 21 (personal identification sheet). The Chamber notes that 21 and 22 April 1994 were Thursday and Friday, respectively.

observe the students who manned the roadblock as they sat on top of the slope above it. From inside the school's courtyard, he could see the "crossbar at the roadblock".[264]

272. Another roadblock was approximately 70 to 100 metres from the entrance of the *Ecole normale primaire*. To reach it, one would exit that school, turn right and walk along the road leading to the Nyanza parish church. The barrier, situated near the shop, was manned by students from the *Ecole normale primaire* who hailed from the Byumba and Ruhengeri regions and had not returned home. Around 3.30 a.m. on the Monday after the genocide began, students from that school and the *Ecole des sciences* captured Major Kambanda as a group, including Kambanda and the witness, moved towards the *Ecole normale primaire*. A child was abducted during the journey as well, but Witness CAZ was not with the child when this occurred. The witness ultimately passed the roadblock that had been manned by the students between 5.30 and 5.45 a.m. and subsequently could see it from the *Ecole normale primaire*. The following day, a man called Phillip informed him that Kambanda had been killed. Furthermore, in May, Nsengimana parted with Judge Jean-Baptiste Twagirayezu near this roadblock. The judge, who was on foot, was allowed to pass by those manning it, but was abducted by gendarmes who killed him (II.18).[265]

273. A third roadblock was between the Nyanza parish church and the *Ecole des sciences*. The witness first saw it on his way to the *Ecole normale primaire* on the Monday morning after the killings began. It was approximately 100 metres from the barrier near the Nyanza parish church and the shop and was made up of wood. Students who manned that checkpoint were also present at this one as were students from the *Ecole des sciences*, and persons would travel between the two barriers. The witness only knew an individual named Makongo at that roadblock.[266]

274. On two evenings in late April or early May, the witness saw Nsengimana passing a roadblock and briefly chatting with students posted there. Around 3.30 p.m. on a Wednesday or Thursday the first full week after the genocide began in Nyanza, he saw Nsengimana carrying a club as he passed a roadblock manned by *Ecole normale primaire* students, and he continued on the road towards the church. At the time, the witness was at the entrance of the *Ecole normale primaire*, approximately 40 metres from Nsengimana. The witness did not see Nsengimana do anything with it. Nyamulinda forbade the witness from going outside the school premises or to roadblocks.[267]

Prosecution Witness CAO

275. Witness CAO, a Tutsi, lived in Mugonzi *cellule* in 1994. Roadblocks were set up in Nyanza on 22 April 1994 after President Théodore Sindikubwabo's visit to Butare prefecture on 20 April. Sindikubwabo chastened all residents "to work". On the evening of 22 April, Corneille Mutaganda, the Nyanza sector *conseiller*, announced that an order had been given

[264] T. 29 January 2008 pp. 56, 59-62; T. 30 January 2008 pp. 24-27, 28 (quoted), 39. Witness CAZ's reference to the first Monday after the genocide began (in Nyanza) would mean 25 April 1994.
[265] T. 29 January 2008 pp. 59-61, 63-67; T. 30 January 2008 pp. 8-9, 14-16, 18, 25-27, 33, 37-38; Defence Exhibit 36 (photograph).
[266] T. 29 January 2008 pp. 59-61; T. 30 January 2008 pp. 18-21, 24-26, 37-38. The fourth roadblock mentioned by Witness CAZ was manned by Kalinda and Gashirabake, but he only heard people who came to the *Ecole normale primaire* talk about it and did not see it. T. 29 January 2008 pp. 59, 61-62.
[267] T. 29 January 2008 pp. 58-59, 65, 67; T. 30 January 2008 pp. 11, 33-34.

to establish roadblocks. The witness was ordered to man one of them, and he and others were told the purpose was to stop the *Inyenzi-Inkotanyi*.[268]

276. The witness attended a roadblock led by Simon Kalinda that was situated near the homes of Kalinda and Pasteur Dusangeyezu in Mugonzi *cellule*. A hole in a hedge surrounding the *Collège Christ-Roi* overlooked the roadblock. Except for a week when he was sick, the witness spent every other night there from 22 April to 19 May, when he fled. He would remain from 6.00 p.m. to 6.00 a.m. The witness was a Tutsi but he had Hutu features and his mother, a Hutu, had raised him without his father. These factors prevented him from being identified as a Tutsi at the roadblock.[269]

277. Younger, stronger persons manned the roadblock at night, while older, weaker individuals attended it during the day. The witness heard that Dusangeyezu, who did not work the same shift as the witness, would go to the roadblock from time to time. Kalinda assigned persons to man it. He and other members of the "Death Squad" or "Dragons" came to the roadblock and discussed crimes they had committed. Kalinda boasted about killing Tutsis as a way of promoting himself. As he could do as he pleased, he would frequently go home and rest at night rather than remain at the roadblock. The witness never saw Nsengimana during the genocide.[270]

Prosecution Witness BVX

278. Witness BVX, a Tutsi, testified that, on 21 April 1994, the day that killings started in Nyanza, Hutus began to establish roadblocks. Shortly before 10 May, soldiers who were staying at the school abducted the witness from her home in Mugonzi *cellule* and took her to the *Collège Christ-Roi*.[271] After three days, a soldier helped her flee from the school. However, they came across a roadblock at its entrance, manned by students from war-displaced areas, including Byumba prefecture, who were staying at the school. A soldier spoke with them and informed the witness that it would be impossible to cross the roadblock. The witness circumvented it by fleeing through a hole in the hedge. She denied that soldiers manned this roadblock.[272]

Prosecution Witness CBE

279. Witness CBE, a Tutsi, worked at the *Collège Christ-Roi* in 1994. He stated that at the "beginning of the war", Nsengimana asked that a roadblock be established to prevent Tutsis from having access to *Christ-Roi*. It was a piece of wood, situated within the school, opposite of Nsengimana's office and between the kitchen for the students and the watchman

[268] T. 14 January 2008 pp. 67, 68 (quoted), 69; T. 15 January 2008 pp. 2-5, 7, 15-17; Prosecution Exhibit 8 (personal identification sheet).
[269] T. 14 January 2008 pp. 67-74; T. 15 January 2008 pp. 2-3, 5, 15-16, 32-34; Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4147.
[270] T. 14 January 2008 p. 61; T. 15 January 2008 pp. 16-17, 26-27, 29, 35.
[271] Witness BVX was kept there for three days and raped by the soldiers. T. 22 January 2008 pp. 14, 30. This was not part of the Prosecution case. *Id.* pp. 7, 15-16.
[272] T. 21 January 2008 p. 71; T. 22 January 2008 pp. 1-2, 14-15, 22, 30, 36-37, 39-41; Prosecution Exhibit 14 (personal identification sheet).

hut at the school's entrance. The witness would raise the barrier to allow commander Barahira's vehicle to pass.[273]

Prosecution Witness CAR

280. According to Witness CAR, a Tutsi, roadblocks were set up from 21 April 1994 by those who had attended meetings prior to the genocide.[274] Along with other Hutu and Tutsi men, he was called to establish barriers on that day. The witness joined others around 8.00 a.m. at a roadblock in front of the home of Célestin Rwabuyanga, a teacher and communal MDR party head, in Rwesero, approximately two kilometres from the *Collège Christ-Roi*. Commander Pascal Barahira, Court of Appeal vice-president Anaclet Nkundimfura, magistrate Léonard Rubayiza and Rwabuyanga worked in cooperation to set up this roadblock. Barahira, Nkundimfura and Rubayiza also established others.[275]

281. The witness remained at the roadblock, which was called "*Chez Rwabuyanga*", for approximately 30 minutes, cutting wood to assist in its construction. Gendarme Paul Niyonzima also arrived, bringing gendarmes and members of the Presidential Guard. Niyonzima knew that this was a ploy to kill Tutsis and directed the witness to leave. He sought refuge approximately 50 metres from the roadblock in a private compound. Then he heard gunshots and learned that persons were killed there, although he only identified a Tutsi bailiff for the Court of Appeal, Irène Nkusi, specifically. The witness could not see the roadblock from the compound where he was hiding.[276]

282. About seven to 10 days after the first roadblocks were set up on 21 April, the witness, from inside the compound in which he was hiding, heard a teacher named Dorothé Mukandori say "Welcome, Father". When he approached its gate, he saw Nsengimana walking up the road accompanied by Barahira, Rwabuyanga, Rubayiza, Nkundimfura, magistrate Jean Mukuralinda and Nzigiyimfura. The witness believed that Nsengimana was inspecting the functioning of the roadblocks and that he controlled them, noting that "[w]henever the *Interahamwe* saw their boss they would go over and greet him". Nsengimana wore khaki-coloured clothes, spectacles and carried a club. Barahira had a pistol and others held clubs or machetes.[277]

283. From within the compound, the witness observed the group enter it and the owner's house. No Tutsis were among them. They had a drink in a room adjacent to a store within the house. The witness did not hear what they discussed. He estimated that five roadblocks existed between the *Collège Christ-Roi* and the compound in which he was hiding, which would have allowed Nsengimana to inspect all of them. The group did not remain there long

[273] T. 14 January 2008 pp. 3-4, 9, 21, 28, 46 (quoted), 47-48, 50-51; Prosecution Exhibit 7 (personal identification sheet). Witness CBE mentioned a barrier "located at the level of the parish", which was intended to stop persons headed towards *Christ-Roi*, for the first time in re-examination. T. 14 January 2008 p. 51.
[274] Witness CAR's evidence relating to meetings is contained in the section about meetings (II.2), but also taken into consideration here.
[275] T. 15 January 2008 pp. 57-58, 62-69; T. 16 January 2008 pp. 3, 6, 9, 31, 35-38, 50; Prosecution Exhibit 10 (personal identification sheet). The distance between the *Collège Christ-Roi* and the *Chez Rwabuyanga* roadblock is based on estimates given by Witness CAR's explanation of the gap between the school and his hiding place, which was about 50 metres from the roadblock.
[276] T. 15 January 2008 pp. 64-67, 69; T. 16 January 2008 pp. 6-7, 27, 36-38.
[277] T. 15 January 2008 pp. 69 (quoted), 70 (quoted), 71, 75 (quoted); T. 16 January 2008 pp. 17, 45-47, 49-50.

and continued towards Nyanza. The witness continued to hide there until the *Inkotanyi* captured Nyanza.[278]

Prosecution Witness CBC

284. Days after the killings started in Nyanza on Friday 21 or 22 April 1994, Witness CBC, a Tutsi, hid in a bush approximately 10 to 15 metres from a roadblock near Anaclet Nkundimfura's home, believing that no one would look for Tutsis in the vicinity of it. He did not see Nkundimfura, who worked for the Court of Appeal, but heard him encourage those manning the roadblock to be brave. He also heard him instruct those at the roadblock to "finish" a man and some children. The witness did not see these persons but learned after the genocide that Emmanuel Zigiranyirazo and Fidèle Ngarambe's children were killed at the roadblock. According to the witness, he stayed for two or three days at the roadblock.[279]

Prosecution Witness BVI

285. Witness BVI, a Tutsi student at the *Collège Christ-Roi* in 1994, left school in the last week of March 1994 for Easter holidays. Approximately 10 to 15 war-displaced students from the Byumba prefecture remained at *Christ-Roi*, although he could only remember the name of one of them – Safari.[280]

Prosecution Witness CBF

286. Witness CBF worked at the *Collège Christ-Roi* in 1994. He visited the school during the week of President Habyarimana's plane crash and about one week later. The witness did not see any students there. Prior to Easter recess, Nsengimana identified all the students who had been displaced by the war and told the bursar to make money available to allow them to visit their families. The bursar distributed the money to these students. An entry on the bursar's expense report, dated 4 March 1994, indicates that 42,400 Rwandan francs were allotted as travel costs for each war-displaced student. According to the witness, this amount would have allowed the students to spend a few days away from the school.[281]

Nsengimana

287. Nsengimana denied setting up any roadblocks. As a priest, he did not have any civil authority. Prime Minister Jean Kambanda issued circulars to local government officials to establish and manage roadblocks. Nsengimana noted that there was a roadblock not far from the school and that he observed Simon Kalinda "from afar". He later testified that he became aware of Kalinda's involvement in roadblocks during the course of his own trial.[282]

---

[278] T. 15 January 2008 pp. 70-71, 74; T. 16 January 2008 pp. 17, 41, 43, 46-48.
[279] T. 28 January 2008 pp. 53, 65, 66 (quoted), 67; T. 29 January 2008 pp. 23-24, 29, 66; Prosecution Exhibit 20 (personal identification sheet).
[280] T. 24 January 2008 pp. 3, 24, 28-32; Prosecution Exhibit 18 (personal identification sheet). According to Witness BVI, there was an atmosphere of tension, and killings started on the evening of 22 April 1994. Roadblocks were set up on 23 April, and he did not encounter any while travelling between Rwesero and Nyanza on 22 April. T. 24 January 2008 pp. 28-29.
[281] T. 26 June 2007 pp. 59, 61; T. 27 June 2007 pp. 2, 8-9, 31-33; Prosecution Exhibit 3 (personal identification sheet); Defence Exhibit 3 (*Christ-Roi* bursar's expense sheet for February and March 1994) p. 3, entry 259.
[282] T. 9 July 2008 pp. 29 (quoted), 30; T. 10 July 2008 pp. 79-80; T. 11 July 2008 pp. 1-2.

288. Not a single student remained at the *Collège Christ-Roi* during the Easter break in 1994. Nsengimana denied that a roadblock was set up in front of *Christ-Roi* to prevent Tutsis from seeking refuge at his institution, emphasising that there were no students left at the school.[283]

289. During the events, Phénéas Munyarubuga was free to come and go as he pleased. Nsengimana saw him only a handful of times and did not talk to him. Simon Kalinda, who did not live on campus, did not return to *Christ-Roi* from 7 April. Cyprien Gasatsi worked at the school from 6.00 p.m. to 6.00 a.m. but otherwise Nsengimana was unaware of his activities.[284]

Defence Witness JMR1

290. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi* and remained there until he left on 28 May 1994. During this period, he generally remained inside the school but left it between 7 and 12 April, in late April or early May and around 26 or 27 May to visit his parents. He also visited the women's hostel down between the school and the church, with some frequency, including three times between 8 and 12 May. Roadblocks were established in Nyanza from the day after the President's death. The witness described one, situated on a road "opposite the field of the [*Ecole normale primaire*]". It consisted of two pieces of wood with a bar placed across them. He passed near this location but only saw it on two, unspecified occasions, emphasising that its existence was sporadic. Two unidentified students were close to it on the first occasion. On the second occasion, no one was there.[285]

291. The witness did not believe war-displaced students remained at the *Collège Christ-Roi* immediately before or after 6 April 1994, as it was Easter holidays. He did not see any students, the kitchen was not functioning, and the dormitories were closed. There were war-displaced students in Nyanza, but he did not know if they were from the *Ecole normale primaire* or *Ecole des sciences*. He questioned whether they were involved in roadblocks.[286]

292. Soldiers from the *Ecole supérieure militaire* in Kigali, led by general Rusatira, moved into the *Collège Christ-Roi* during a period of violent fighting in Kigali. They set up and controlled a roadblock at the school's entrance. Once the soldiers arrived, Rusatira ran the school as soldiers took over all buildings on campus. Nsengimana "no longer had a word" in running the school. The witness was unaware of any acts of violence committed by the soldiers within the school. He did not see Nsengimana carry a weapon.[287]

Defence Witness DFR85

293. Witness DFR85, a Hutu who worked at a primary school in Nyanza, testified that that by 22 April 1994, roadblocks had been established "everywhere". This made it difficult to move about. From outside the hostel where she was staying, she was capable of seeing the entrance of the *Collège Christ-Roi*. She sought refuge at the school in May and remained

[283] T. 9 July 2008 pp. 14-15, 55; T. 10 July 2008 p. 78; T. 11 July 2008 p. 4.
[284] T. 9 July 2008 pp. 28-29; T. 10 July 2008 pp. 78-79.
[285] T. 17 June 2008 pp. 2, 4-8, 15, 19-24, 26, 47 (quoted), 48, 55-56; Defence Exhibit 52 (personal identification sheet). Witness JMR1 referred to "other roadblocks that we found further away from the college", but did not give any other information than his belief that students were not manning them. T. 17 June 2008 p. 55.
[286] T. 17 June 2008 pp. 15, 49-51, 53-57.
[287] *Id.* pp. 34, 35 (quoted), 47.

there until about 15 to 20 June. Soldiers from the *Ecole supérieure militaire* in Kigali arrived approximately one week after her and set up a roadblock at *Christ-Roi*'s entrance. Otherwise, the witness, who could see the school's entrance, testified that there had been no roadblock there. When the soldiers arrived, they appeared to be in control of *Christ-Roi*. The witness did not see any students, including war-displaced students, at the school during the war.[288]

294. War-displaced students from the *Ecole normale primaire* mounted a roadblock near the hostel, not far from their school, from Nyanza parish and *Christ-Roi*, just before a lull in the killings but after 22 April. These students, who were among the *Interahamwe*, used pieces of wood and established the barrier in order to monitor those coming and going from the hostel. Nyamulinda had it dismantled after approximately two days. The witness saw Nsengimana pass near the compound where she was staying at least three times**.** The last time was when he escorted Judge Jean-Baptiste Twagirayezu (II.18). On no occasion did he carry a weapon.[289]

Defence Witness Marie-Cécile Uwayezu

295. Marie-Cécile Uwayezu, a Hutu student, was the daughter of headmaster Augustin Nyamulinda at *Ecole normale primaire*. She returned home for Easter recess in 1994. After the President's plane had been shot down, she left her house on three occasions. Following the commencement of the killings in Nyanza from 21 April, she attended masses on two "successive Sundays" in late April at the *Collège Christ-Roi* during a lull in the massacres.[290] The witness also visited a woman called Françoise at the Nyanza hospital approximately two to three weeks after that date. During the trips to *Christ-Roi*, she did not see students at the school or any roadblock at its entrance, nor did she hear her father mention one.[291]

296. When the witness went to visit Françoise, a wounded Tutsi, at the hospital (II.10), she observed a roadblock near TRAFIPRO manned by persons she did not know. Returning from the Nyanza hospital, she followed a path towards the *Ecole normale primaire* that passed along the Nyanza parish church. She was "not aware" of a roadblock on that route. Her father dismantled a roadblock that had been established for two days by *Ecole normale primaire* students across the football field and near a young women's hostel. Around 25 May, soldiers arrived and installed themselves at the *Ecole normale primaire*.[292]

297. Uwayezu said that water could be retrieved from a tap within the *Ecole normale primaire*, and that there was no problem with water supply in April and May. She further confirmed that apart from Médiatrice, none of the other displaced persons who took refuge at the school left it. One could not see *Christ-Roi* from the courtyard within the *Ecole normale*

---

[288] T. 27 June 2008 pp. 3-4, 6, 7 (quoted), 8, 25-27, 30-33, 41-44, 51; T. 30 June 2008 p. 9; Defence Exhibit 55 (personal identification sheet).
[289] T. 27 June 2008 pp. 4, 14-15, 27-28, 33, 44-46; T. 30 June 2008 p. 14.
[290] T. 1 July 2008 p. 21 ("Those Masses were celebrated about two weeks after the killings started. Those Masses were celebrated on two successive Sundays. That is two weeks after the killings started when there was a lull in the Nyanza region. Mr. President: And the month of these two Masses, was that then late April or early, middle May? The witness: I believe those Masses were celebrated in mid-April or maybe towards the end of April, but I do not recall the exact dates. I would say two weeks after the killings started in Nyanza. The killings did not last for long in Nyanza.").
[291] *Id.* pp. 14-15, 19-22, 28-30; T. 7 July 2008 pp. 2, 6-10; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was formerly identified as Defence Witness RFR58.
[292] T. 1 July 2008 pp. 20, 27, 29; T. 7 July 2008 pp. 9, 10 (quoted), 14.

primaire or from her parents' home, the building housing the new classrooms, the building used to prepare sorghum beer, or the kitchen, which were all on campus. She was not certain whether *Christ-Roi* could be seen from within the student dormitories, but noted that a ladder would be required in order to look out of the windows. No building was over one storey high.[293]

Defence Witness Marie Goretti Uwingabire

298. In April 1994, Marie Goretti Uwingabire, a 20 years old Hutu student and the daughter of headmaster Augustin Nyamulinda, was on vacation at her parents' home, which was located within the campus of the *Ecole normale primaire*. It was not possible to see the *Collège Christ-Roi* from within the primary teachers' school's campus.[294]

299. The witness did not leave the house after 6 April. She heard that her father dismantled a "roadblock near the school" that had been set up for two days by war-displaced students who had remained at the *Ecole normale primaire*. Otherwise, she did not hear of any roadblocks in the area, including near the entrance of *Christ-Roi*.[295]

Defence Witness VMF8

300. Witness VMF8, a Hutu, was a former student at the *Collège Christ-Roi* and worked in Kigali in 1994. From 12 April, he stayed with a friend who lived a few hundred metres from *Christ-Roi*. Once the killings began in Nyanza on 21 April, roadblocks were set up "everywhere". He remained in his friend's home from 21 to 27 or 28 April, during an intense period of killings. Afterwards, he noticed three roadblocks in Mugonzi *cellule* on a slope beyond *Christ-Roi*'s hedge. They were manned by youth who appeared to be "drug addicts" and who killed and looted. Distances from the fence of *Christ-Roi* to the roadblocks ranged from approximately 100 to 200 metres.[296]

301. From 27 or 28 April until 20 May, when the witness left Nyanza, he went through *Christ-Roi* approximately 10 times, passing the entrance around half of those trips. Sometimes he would stop for up to 20 minutes, chatting with a seminarian named "Fratri" or greeting Nsengimana there. At no point did the witness observe students. Soldiers arrived at *Christ-Roi* around mid-May and established a roadblock at a "roundabout" near the Nyanza parish church, where roads coming from it lead either to *Christ-Roi*'s entrance or the *Ecole normale primaire*. No barrier existed there prior to the soldiers' arrival. The witness also denied that there was a roadblock "at the entrance" of *Christ-Roi* before they arrived.[297]

Defence Witness EMR95

302. Witness EMR95, a Hutu, worked at the *Collège Christ-Roi* from 1992 to 6 April 1994. After 6 April, he returned to the school on 15 and 22 April and in late May, remaining

[293] T. 1 July 2008 pp. 15, 34-35; T. 7 July 2008 pp. 4-5.
[294] T. 30 June 2008 pp. 24-25; Defence Exhibit 56 (personal identification sheet). Marie Goretti Uwingabire was originally referred to as Witness GFR99.
[295] T. 30 June 2008 pp. 28, 31 (quoted), 32.
[296] T. 10 July 2008 pp. 4-6, 8-9, 12, 17-18, 20, 21 (quoted), 25-26, 30, 31 (quoted); Defence Exhibit 67 (personal identification sheet).
[297] T. 10 July 2008 pp. 12-14, 16, 17 (quoted), 18, 21, 24-28.

approximately 30 minutes on each occasion. He did not observe a roadblock on the road leading to *Christ-Roi*. During his last visit, approximately 250 cadets from the *Ecole supérieure militaire* in Kigali were training in the courtyard of the *Ecole normale primaire*.[298]

303. No students, even those who had previously been displaced because of the war, were at *Christ-Roi* once the Easter recess commenced around 23 March 1994. The bursar had given them money that allowed them to spend their holidays away from school. The witness did not observe or hear about any violence or killings within or around the school's premises except for killings that occurred behind the Nyanza parish buildings 200 metres away.[299]

Defence Witness AMC1

304. Witness AMC1, a Hutu, worked at the *Collège Christ-Roi* until June 1993 and lived in the vicinity of the Nyanza parish church in 1994. He believed roadblocks were established around 22 April. The witness observed barriers near TRAFIPRO and one near the "exit of [Nyanza] town" when he would head towards his work in Gitarama. He did not see roadblocks at the entrance of *Christ-Roi*, between the Nyanza parish church and the *Ecole normale primaire*, or near Pasteur Dusangeyezu's home.[300]

305. The witness went to *Christ-Roi* once around 10 April, and on two or three occasions after 22 April 1994. Nsengimana was the only person at the school as students, teachers and the *préfet des études*, Egide Ngenzi, had left. Although war-displaced students had remained at the school during prior holidays, the witness did not see any there during the Easter break in 1994 as they had been allowed to visit their families at camps for displaced persons. The witness testified that he would have noticed the students if any had been there, and that Nsengimana had informed him that all had gone on holiday. He did not know whether there were displaced students at the *Ecole normale primaire*.[301]

Defence Witness GMC4

306. Witness GMC4, a Hutu, taught at the *Ecole supérieure militaire* in Kigali. He arrived at the *Collège Christ-Roi* in the second half of May 1994, joining soldiers from the school who had been there for approximately two to three weeks. The witness remained at *Christ-Roi* for two nights before leaving for Kigeme in Gikongoro with the rest of *Ecole supérieure militaire*. The day after he arrived, he spoke briefly with Nsengimana, who appeared anxious and stated that he was tired of the growing number of persons passing through the school. He made no unkind remarks toward any ethnic group.[302]

307. The witness saw some roadblocks between Kigali and Nyanza, and in Nyanza town. Some were abandoned, and others appeared to be manned by *Interahamwe*. The witness did

[298] T. 13 June 2008 pp. 3-5, 11-15, 18-21; Defence Exhibit 48 (personal identification sheet). The timing of Witness EMR95's return to the *Collège Christ-Roi* in May 1994 is unclear. He testified having returned "[t]owards the end of May" (T. 13 June 2008 p. 12), but did not object to questions suggesting that he returned there on 15 May (*id.* pp. 14, 21). The Chamber relies on his own words.
[299] T. 13 June 2008 pp. 11-12, 14, 23-25, 27.
[300] T. 3 June 2008 pp. 2-3, 5-8, 28, 57 (quoted); Defence Exhibit 40 (personal identification sheet).
[301] T. 3 June 2008 pp. 23-25, 28, 50-56, 69-70.
[302] T. 10 July 2008 pp. 34, 36-40, 42-46, 49; Defence Exhibit 68 (personal identification sheet).

not see killings in Nyanza on his way to the school or any dead bodies when he left the town.[303]

308. *Ecole supérieure militaire*, which was led by General Léonidas Rusatira, requisitioned the *Collège Christ-Roi*, occupying almost all of the school. The military command was giving orders there, and the witness believed that Nsengimana would have been unable to prevent it from taking over the school given the war.[304]

309. The student officers established a roadblock near the dormitories. The witness was unaware of any roadblock set up at the entrance of *Christ-Roi*, and said that he did not know what was happening outside the *Ecole supérieure militaire*'s camp, which was within the school's premises. Apart from three individuals next to the dormitories who the witness could not identify, he did not see students or teachers from *Christ-Roi* there. The witness was not aware that any soldiers from his institution participated in the killings in Nyanza.[305]

Defence Witness Emmanuel Hakizimana

310. Emmanuel Hakizimana, a Hutu studying at Nyakabanda major seminary in 1994, arrived at the *Collège Christ-Roi* around 3.00 p.m. on 4 April, where he met Nsengimana in his office. They went to the priests' sitting room and remained there until 7.00 p.m., when they shared a meal with another seminarian. A cook prepared the meal. The witness left the following day around 7.00 a.m. He did not see any other individuals at the school, including students.[306]

Defence Witness EMR33

311. Witness EMR33, a former Hutu student at the *Collège Christ-Roi*, arrived at the school between 5.00 and 5.30 p.m. on 4 April 1994 and spent the night there. He stayed in the priests' accommodations, less than 100 metres from the students' dormitories. Only Nsengimana, a cook named Gaspard, a watchman and Father Simons were at *Christ-Roi*. The students were away on vacation. The witness left early the next morning and returned to the school around 4.00 or 5.00 p.m. On 6 April, he accompanied Nsengimana, who was driving to Kigali to pick up provisions for the school. The witness was with Nsengimana and a teacher named Édouard in the priest's Peugeot, and a driver and another person were in a pick-up. The witness parted with the group at Gitarama. At no point did he tour *Christ-Roi*.[307]

Defence Witness Jean-Marie Vianney Mushi

312. Jean-Marie Vianney Mushi, a Hutu student at the *Collège Christ-Roi* in 1994, left for Butare in late March for Easter recess. There were possibly 60 students – the number fluctuated – at *Christ-Roi*, whose families had been displaced from Byumba and Ruhengeri prefectures by the war. Mushi believed that all the students, including the displaced ones, had

[303] T. 10 July 2008 pp. 37-38, 40, 48.
[304] *Id.* pp. 38-42. According to Witness GMC4, other leaders – apart from General Rusatira – were Major General Jeanne Ndamage (S4), Major Emmanuel Habyarimana, Major François Ndamage and Captain Gaspard Ntibakunza. *Id.* pp. 38-39.
[305] *Id.* pp. 40-42, 48-50.
[306] T. 2 July 2008 pp. 24-26, 34-35, 40; Defence Exhibit 59 (personal identification sheet). Emmanuel Hakizimana was formerly referred to as Witness EMCB2.
[307] T. 2 June 2008 pp. 14-15, 18-20, 26-27, 38-39, 43-46, 61-62.

left the school at the end of March when he had departed for Easter recess. War-displaced students could be received by families elsewhere, and Nsengimana had previously encouraged other students to receive them. The witness did not return to *Christ-Roi* after leaving in March 1994.[308]

Defence Witness XFR38

313. Witness XFR38, a Tutsi working in Nyanza, hid in her home after the killing of the President and did not leave it until she fled in late May or early June. A gendarme lived in the witness's neighbourhood. The witness never saw Nsengimana go to that area once killings started in Nyanza and had not heard that he had visited her neighbour's house. She learned after the genocide that the gendarme had hid a family in his residence, noting she was in no position to know about it during the war.[309]

314. The witness and her husband fled Nyanza in late May or early June. When they arrived at a roadblock near the border of Nyabisindu and Gikongoro and close to the Mongo river, soldiers manning it called her a spy as she did not have her identity card. Nsengimana, who was coming from his father's home nearby, intervened and stated that he knew her. Those at the roadblock became less suspicious and she was directed to pass.[310]

6.3 Deliberations

6.3.1 Introduction

315. The Indictment alleges that Nsengimana ordered students to mount roadblocks on or about 23 April 1994, and that he subsequently – armed at all times – supervised them. It provides a non-exhaustive list of three barriers in the vicinity of the *Collège Christ-Roi* that he allegedly supervised. One was at the entrance of the school; another in front of the *Ecole normale primaire*; and a third near Pasteur Dusangeyezu's and Simon Kalinda's houses. The Prosecution adduced considerable evidence about these three barriers.[311] Its witnesses also testified about other roadblocks: in Mugonzi *cellule* below the one at Kalinda's home; within *Christ-Roi*; between the Nyanza parish church and the *Ecole des sciences*; in front of Célestin Rwabuyanga's house; and close to Anaclet Nkundimfura's residence.

316. The evidence almost uniformly suggests that roadblocks were established when the killings began in Nyanza, around 21 or 22 April 1994.[312] Only Prosecution Witness CAW and Defence Witness JMR1 testified that barriers were set up the day after President Habyarimana's death.[313] The Chamber notes that Witness CAW could only provide an

---

[308] T. 1 July 2008 pp. 40, 51; T. 2 July 2008 pp. 10-13; Defence Exhibit 58 (personal identification sheet). Jean-Marie Vianney Mushi was previously identified as Witness JMCB8.
[309] T. 15 September 2008 pp. 10, 13-14, 20, 22, 26; Defence Exhibit 72 (personal identification sheet).
[310] T. 15 September 2008 pp. 12-13, 21-22, 24-25.
[311] The roadblock in front of the *Ecole normale primaire* will be considered below in "Roadblock behind the Nyanza Parish Church" (II.6.3.5), which is a more precise formulation.
[312] See the summaries above of the accounts given by Witnesses CAN, CAY, BVJ, CAZ, CAO, BVX, CAR, DFR85**,** VMF8 and AMC1.
[313] Witness CAW, T. 25 June 2007 p. 39; T. 26 June 2007 pp. 26, 29 (roadblocks were set up in April the day after the President's death); Witness JMR1, T. 17 June 2008 p. 47 (except for the barrier established by soldiers all others were set up the day after the President's death). See also Witness CBE, T. 14 January 2008 pp. 8-9, 46-47 (he was instructed to establish a roadblock at the "beginning of the war", and he appeared to suggest that

estimate, and he, on occasion, had difficulty recalling dates.[314] Witness JMR1's evidence about roadblocks is scant. The evidentiary weight of these two accounts is therefore limited. But even assuming that these two witnesses gave correct accounts, the Chamber finds that there is overwhelming evidence, including from persons who manned the checkpoints, that roadblocks were established – at least on a broad scale – in Nyanza when the killings started around 21 or 22 April 1994. It follows from this that any order by Nsengimana to establish roadblocks must have been given around these dates, or earlier.

317. The Chamber will consider whether it has been proved that each of the roadblocks referred to by the witnesses actually existed, and, if so, whether Nsengimana was observed specifically ordering that it be set up or supervising it (II.6.3.2-6.3.7). It will then assess more generally Nsengimana's alleged role in the planning and the establishment of a network of roadblocks, and whether many Tutsis were stopped at them and subsequently killed as alleged in the Indictment (II.6.3.8). Nsengimana's alleged involvement in meetings leading to the creation of roadblocks is discussed elsewhere (II.2), but this evidence has also been taken into account here.

6.3.2 Roadblock at the Entrance of the *Collège Christ-Roi*

318. According to Prosecution Witnesses CAN, CAW, CAP, CAY, CAZ, BVJ and BVX, a roadblock was set up at the entrance of the *Collège Christ-Roi*. Witnesses CAN and CAY testified that this occurred on 22 April 1994; BVJ indicated 21 or 22 April; Witness CAZ heard that roadblocks were established on Friday 21 or 22 April and first saw this one the following Monday morning; Witness CAP observed it for the first time on the morning of 23 to 25 April; whereas Witness BVX testified generally about barriers being established on 21 April and encountering this roadblock shortly before 10 May.[315]

319. Witnesses CAN, CAP, CAY, CAZ and BVJ mentioned Phénéas Munyarubuga as having a hand in establishing, manning or controlling the roadblock. Witnesses CAN, CAP, CAY and BVJ also included Cyprien Gasatsi. Witnesses CAP and BVJ stated that Simon Kalinda appeared to be in charge of this barrier in addition to the one in front of his house.[316] No witness observed Nsengimana giving any order to specifically set up this roadblock. But Witnesses CAN, CAW, CAP, CAY, CAZ, BVJ and BVX testified that war-displaced students were posted there, and according to Witnesses CAN, CAW, CAP, CAY, CAZ and BVJ they studied at *Christ-Roi*, thereby implicating Nsengimana.

320. Defence Witnesses JMR1, DFR85, Marie-Cécile Uwayezu, VMF8, EMR95 and AMC1, as well as Nsengimana, denied that a roadblock existed in front of *Christ-Roi*. According to three of them – Witnesses JMR1, DFR85 and VMF8 – soldiers from the *Ecole supérieure militaire* were the first to establish a checkpoint there in May. Witness GMC4, who joined the soldiers, confirmed that they had set up a roadblock, but described it as being near the school's dormitories. Furthermore, Witnesses JMR1, DFR85, Uwayezu, VMF8,

---

it was established as early as 6 April 1994, when Nsengimana began leaving during the evening with commander Pascal Barahira).

[314] See, for instance, the sections about the three Tutsi refugees (II.12), the three Tutsi priests (II.15) and Father Justin Furaha (II.22).

[315] As mentioned above (II.6.3.1), Witness CAW testified that the roadblock at the entrance of the *Collège Christ-Roi* was among those set up the day after the President's death.

[316] Witness CAN also identified Nyamulinda's "two sons" (see II.17.3.2) as manning the roadblock at the *Christ-Roi* entrance, whereas Witness BVJ said that Mugemena was posted there.

EMR95, AMC1, Hakizimana, EMR33 and Jean-Marie Vianney Mushi as well as Prosecution Witness CBF did not observe any students at *Christ-Roi* after the Easter recess had commenced.[317]

321. The Chamber observes that Witnesses CAN, CAY and BVJ were frequently posted at roadblocks in the vicinity of the entrance to the *Collège Christ-Roi*. Although they did not specifically staff the roadblock there, the distance between the barriers in that area was limited, and they circulated between them. They would therefore be in a position to observe the entrance. Certain aspects of the testimony of Witnesses CAN and BVJ have been questioned in connection with the abduction of Xavérine and her son from the checkpoint at the entrance (II.17), but this does not undermine their credibility in the present context, given the other evidence about the existence of this roadblock. Similarly, the Chamber's reticence about certain elements in Witness CAY's account, in particular the Mugonzi killings (II.14), has limited weight here, and he did not directly implicate Nsengimana.

322. Witnesses CAZ and CAP had sought refuge at the *Ecole normale primaire*. Witness CAP testified that he saw the roadblock from inside the school, from its entrance, and when he had temporarily left it. While Witness CAZ generally referred to being able to see students manning the roadblock, he also suggested that he could see the crossbar used to create it from within the courtyard of the *Ecole normale primaire*. The Chamber finds it difficult to accept that any of the two witnesses could see a barrier immediately in front of *Christ-Roi* from the entrance of that school, given the distance and the downward slope after the football field to arrive at the road leading to *Christ-Roi*.[318] Similarly, the evidence does not support that it could have been seen from within the *Ecole normale primaire*. Marie-Cécile Uwayezu and Marie Goretti Uwingabire, who lived within the school's compound, credibly testified that one generally could not see *Christ-Roi* while inside the *Ecole normale primaire*'s campus. Consequently, the Chamber has doubts regarding these aspects of testimonies of Witnesses CAP and CAZ.

323. Witness CAP also said that he saw the barrier just after it was set up on his return to the *Ecole normale primaire* from home between 23 and 25 April. He saw it again while retrieving water within the following couple of days. His testimony about going home appears logical. Moreover, as a Hutu, he may have felt greater ease about circulating around town even after roadblocks had been established. However, Marie-Cécile Uwayezu testified that apart from Médiatrice, no one else who had sought refuge at the school left. Of greater significance, she stated that water could be retrieved from a tap within the *Ecole normale primaire*, and that she was not aware of any water stoppage there during April and May. This raises doubts about Witness CAP's justification for leaving the *Ecole normale primaire* after

[317] The Chamber notes that Defence Witness Marie Goretti Uwingabire testified that students from the Byumba region stayed at the *Ecole normale primaire* and the *Collège Christ-Roi*. However, she also stated that she did not leave her home between 6 April 1994 and until she left Nyanza. T. 30 June 2008 p. 32. Her evidence, therefore, carries limited weight in light of the other first-hand accounts that students were not at *Christ-Roi*.

[318] See, for instance, Prosecution Exhibit 1 (Maps, Sketches and Photos). Diagram marked K038-4324 displays the entrance to the *Ecole normale primaire* on the side of the playground. Photographs marked K038-4059 and K038-4093 show that the road leading into the entrance to the *Collège Christ-Roi* is down a hill from the grounds on which the entrance to the primary teacher's school is situated. It seems improbable that someone standing on ground level from the entrance of the *Ecole normale primaire* could see a roadblock or individuals gathered at the roadblock near the entrance of *Christ-Roi*, unless such persons were situated on top of the hill. The Chamber's observations during its site visit confirm that this is unlikely.

his initial trip. Nonetheless, the Chamber finds his observations about the existence of the roadblock credible.

324. Witness CAZ stated that he first observed the roadblock at the entrance of *Christ-Roi* early Monday morning after the killings had begun in Nyanza on his way to the *Ecole normale primaire* from his home. The Chamber has no reason to doubt this testimony. He also said that he could, from the entrance of the school, observe the students manning the roadblock as they sat on top of the slope above it. The Chamber accepts that this could have been physically possible (as opposed to seeing the roadblock itself). It may be asked whether a Tutsi in refuge would have dared to be visible at the entrance of the school. The witness acknowledged that Tutsis were subject to grave risks and testified that he would have been taken away to be killed had it not been for Nyamulinda's intervention.[319] The Chamber has elsewhere questioned evidence concerning his positioning outside of the *Ecole normale primaire* in relation to the killing of Judge Jean-Baptiste Twagirayezu (II.18), given the presence of danger. However, the Chamber finds Witness CAZ's observations of the existence of the roadblock credible in this context.

325. Witness BVX testified that she observed the barrier at *Christ-Roi*'s entrance when a soldier helped her flee from the school in May. She noted that war-displaced students were manning it, and that the soldier, after conferring with them, directed her to circumvent it**.** Information concerning her time at *Christ-Roi*, including this encounter at the roadblock, is not contained in her statement to Tribunal investigators in March 2007.[320] The traumatic and sensitive nature of what she endured there might have dissuaded the witness from discussing this generally. Nonetheless, the omission raises concerns about her observations relating to the roadblock. Moreover, the Chamber has some doubts as to whether war-displaced students, if any, would have manned a roadblock at the school's entrance after soldiers had taken residence there.

326. Witnesses CAP and BVJ explained that the roadblock was a tree trunk. Witness CAW said that, in most cases, no one was at the roadblock. The Prosecution evidence is not clear as to how permanently the roadblock was manned.

327. The strength of the Defence evidence regarding the absence of a barrier at the *Christ-Roi* entrance varies. Witness GMC4 arrived at *Christ-Roi* in the second half of May after the *Ecole supérieure militaire* had been there for two to three weeks. He would therefore have no first-hand knowledge about roadblocks before May. The Chamber notes that he was unaware of any roadblock established at the *Christ-Roi* entrance.

328. Witness AMC1 went to *Christ-Roi* on two or three occasions after 22 April and did not see any roadblock at the entrance. However, he also said that he did not observe any barrier between the Nyanza parish church and the *Ecole normale primaire*, or at Pasteur Dusangeyezu's house. In view of credible evidence from several other witnesses about these roadblocks, in particular the one near Dusangeyezu's and Kalinda's homes (II.6.3.3), his evidence does not raise reasonable doubt about the existence of the *Christ-Roi* roadblock.

329. Witness JMR1 remained at the school from 6 April until 28 May and therefore covers the relevant period. He generally remained inside the school, although he left between 7 and 12 April, in late April or early May and around the 26 or 27 of May to visit his parents.

---

[319] T. 30 January 2008 p. 9.
[320] Defence Exhibit 20A (statement of 7 March 2007) pp. 3-4.

The witness also visited the women's hostel down the road from the school's entrance on at least three occasions between 8 and 12 May. Under the circumstances, he was relatively well placed to have observed a roadblock at *Christ-Roi*'s entrance. His testimony suggests that soldiers from the *Ecole supérieure militaire* were the first to establish a roadblock at the school's entrance after their arrival. The Chamber has elsewhere questioned the witness's impartiality, given his relationship to Nsengimana, and views his evidence with some scepticism (II.22).[321]

330. Of greater interest is the account of Witness DFR85, who could view the entrance of *Christ-Roi* from immediately outside the compound where she stayed and later sought refuge at the school in May. Her testimony suggests that before going to *Christ-Roi*, she would have frequently been in a position to see the school's entrance.[322] She said that the soldiers from the *Ecole supérieure militaire* set up a roadblock there. Her timing of the soldiers' arrival was different from the one given by Witness GMC4. She appeared to give honest and measured testimony. Her admitted memory lapses appeared to impact her ability to recall dates and incidental details, rather than what she observed.[323]

331. Witness VMF8 passed *Christ-Roi*'s entrance about half of the 10 times he travelled through *Christ-Roi* between 27 and 28 April and 20 May. The Chamber notes that his testimony may be influenced by the fact that he received assistance from Nsengimana, staying at the school for four nights.[324] Marie-Cécile Uwayezu gave first-hand evidence that she did not see the roadblock, but her observations were limited. They were made when she was on her way to Mass on two consecutive Sundays at *Christ-Roi* around late April, during a lull in the killings.

332. Before drawing any conclusions as to whether the roadblock at the entrance of *Christ-Roi* existed, the Chamber will also consider the evidence concerning war-displaced students at the school. As mentioned above, six Prosecution witnesses said that these students manned that roadblock, whereas nine Defence witnesses testified that they had left the school. The Chamber attaches limited weight to the three Defence witnesses whose observations were made before the roadblock was purportedly established around 22 April. Jean-Marie Vianney Mushi left for Butare prefecture in late March, Emmanuel Hakizimana observed no students there on 4 or 5 April, and Witness EMR33 gave similar evidence about the situation from 4 to 6 April.

333. The remaining Defence witnesses provided credible evidence that they did not see students at the school in the relevant period. Prosecution Witness CBF convincingly explained that the war-displaced students had been provided funding from *Christ-Roi* to leave for Easter. This testimony was supported by documentary evidence. A contemporaneous report created by the school's bursar shows that 42,400 Rwandan francs were allotted as

---

[321] The Prosecution put to Witness JMR1 that Witness CBF had implicated him in crimes. See T. 17 June 2008 pp. 52-53. However, a reading of Witness CBF's testimony suggests that he referred to another person. Compare Witness CBF (T. 26 June 2007 p. 68) and Defence Exhibit 52 (personal identification sheet of Witness JMR1).

[322] T. 27 June 2008 p. 51 ("A. … I had to go out of the fence to see what was happening at *Christ-Roi* college. And I further specify that we were tired of staying inside; we wanted to breathe some fresh air, so we would go out of the fence.").

[323] See *id.* pp. 30, 45; T. 30 June 2008 p. 14.

[324] T. 10 July 2008 pp. 7-9, 11-12, 16, 18, 21, 26-28.

travel costs for such students.[325] Under these circumstances, the Chamber is not persuaded that war-displaced students from *Christ-Roi* were posted at its entrance. However, there is testimony that war-displaced students from other institutions remained in the area, and the evidence suggests that some of them assisted in the administration of this roadblock.[326]

334. Having assessed the evidence in its totality, the Chamber finds that around 22 April 1994, a roadblock was established in front of the *Collège Christ-Roi*. Simon Kalinda and Phénéas Munyarubuga played supervisory roles in the barrier's establishment and administration. Cyprien Gasatsi also worked at the roadblock. The evidence has not shown that *Christ-Roi* students manned the roadblock. It appears to have been a tree trunk, and it is also a question how permanently it was manned. This may explain why some witnesses did not remember it.

335. The Chamber now turns to particular sightings of Nsengimana at the roadblock in front of the *Collège Christ-Roi*. Three witnesses gave evidence about this. Witness CAP saw him there in the company of Kalinda and Munyarubuga sometime between 23 and 25 April 1994. He observed this from the entrance of *Ecole normale primaire*. The Chamber has expressed doubts as to whether it would be possible to see the roadblock from this vantage point. However, his testimony could be understood as indicating that Nsengimana, Kalinda and Munyarubuga were on the hill above the roadblock, which could be seen from the entrance of the school.[327] The Chamber observes that while Nsengimana purportedly was present among persons at the barrier who were carrying clubs, this sighting did not involve any criminal activities. Moreover, the context of the gathering is unclear.

336. Witness BVJ estimated that in early May, Nsengimana was watching, about 30 metres away from the roadblock, when Xavérine and her son were abducted. The Chamber has expressed doubt about this particular observation (II.17). Furthermore, the witness purportedly saw Nsengimana with Simon Kalinda and Phénéas Munyarubuga in the immediate vicinity of the roadblock in April and two times in May. On this basis, he presumed that Nsengimana controlled all roadblocks established by Kalinda and Munyarubuga. His testimony evolved when describing the particular circumstances relating to these sightings.[328] The evidence concerning these last sightings lacks clarity about Nsengimana's involvement at the roadblock.

337. Witness CAW observed Nsengimana occasionally at the roadblock but did not describe him as participating in any criminal activities. Furthermore, immediately prior to discussing his presence there, he noted that the roadblock was usually unattended when he

---

[325] Defence Exhibit 3 (*Christ-Roi* bursar's expense sheet for February and March 1994) p. 3, entry 259. The Chamber has taken into account the possibility that some war-displaced students at the *Collège Christ-Roi* may have received money without actually travelling, for instance because fighting was taking place in their home region, but still finds that it has not been demonstrated beyond reasonable doubt that *Christ-Roi* students manned the roadblock at the school's entrance.

[326] This follows from the testimonies of Prosecution Witnesses CAN, CAW, CAP, CAY, BVJ, CAZ and BVX, as well as Defence Witnesses JMR1, Marie-Cécile Uwayezu and Marie Goretti Uwingabare, summarised above.

[327] T. 30 January 2008 p. 46 ("A. Yes. I saw them talking. Some of them were on the upper side of the road, others were on the lower side of the road.").

[328] Compare T. 21 January 2008 pp. 9-11, 40-43 (testifying that he first saw Nsengimana with Kalinda and Munyarubuga after Kalinda had directed the witness to begin circulating, and that the second occurrence was while feeding his pigs) and 10-11, 13, 39-40 (testifying that the first two sightings happened in reverse order).

saw it.[329] Even accepting his evidence as true, and considering the alleged roadblock's proximity to the school, the record is unclear about Nsengimana's role.[330]

338. Nsengimana testified that he stopped interacting with Munyarubuga and Kalinda once the events began. His denial does not in itself raise doubt in relation to the sightings made by Prosecution witnesses. However, the evidence of his presence at the roadblock, and his activities there, is sporadic and of a general nature. There is no direct evidence concerning the content or nature of his conversations with those at the barrier. Noting its immediate proximity to the *Collège Christ-Roi*, his position as the school's director, and his presence among his employees Simon Kalinda and Phénéas Munyarubuga, there is some basis to infer that Nsengimana ordered that it be established and that he exercised control over it. However, the Chamber is not convinced that this is the only reasonable inference, given the absence of any substantial evidence beyond his mere presence. The evidence does not show beyond reasonable doubt that he ordered the establishment of this roadblock, supervised it or contributed to its administration.

6.3.3 Roadblocks near the Homes of Pasteur Dusangeyezu and Simon Kalinda

339. Several witnesses testified about at least two other roadblocks in Mugonzi *cellule,* and the Defence does not appear to dispute this evidence.[331] One of them was near the homes of Pasteur Dusangeyezu[332] and Simon Kalinda in Mugonzi *cellule*. According to Witnesses CAN and CAO, who worked at this barrier, it was set up on 22 April 1994. Similarly, Witness CAY said that roadblocks were established on 22 April but that he first observed this checkpoint a day or two after Father Mathieu Ngirumpatse's murder (which occurred on 24 April, see II.9). Witness CAP saw the roadblock on a trip home from the *Ecole normale primaire* between 23 and 25 April and again within two days. Witness BVJ identified it as one of the four barriers that were mounted around 21 and 22 April.

340. Witnesses CAN, CAO, CAW, CAP, CAZ and BVJ credibly and consistently testified that Simon Kalinda manned this roadblock, and Witnesses CAN, CAO and CAY convincingly stated that Kalinda exercised control over it. Witness BVJ said generally that Kalinda and Phénéas Munyarubuga established and gave commands at roadblocks. Moreover, the Prosecution witnesses gave similar evidence as to who staffed this barrier.[333]

---

[329] T. 25 June 2007 p. 39 ("A. Most of the time I was inside, which means that I could not know what was happening at the level of that roadblock. And more often than not, when I would pass by the roadblock, there was no one there.").

[330] Witness CAW's allegation that Nsengimana ordered the establishment of this (and other) roadblocks is discussed below (II.6.3.8).

[331] Defence Closing Brief paras. 1806, 1890; T. 12 February 2009 p. 41 ("The only roadblock whose existence is certified and with which we are concerned, is the one which is on the road going down to the Mugonzi neighbourhood, close to the houses where the pasteurs lived – the priests."). See also T. 21 January 2008 p. 44 ("Mr. Hooper: … [W]e can accept that there was, for example, a roadblock down at Pastor Simon Kalinda's house down the hill there. We have heard quite a lot of evidence about that, and I see no particular reason or basis to dispute it. And, indeed, a further roadblock 200 metres on, which we've heard … Witness CAY, spoke of being attached to.").

[332] Para. 26 of the Indictment refers to "the Pasteur's house". The evidence shows that this clearly is a reference to the home of Pasteur Dusangeyezu.

[333] Witness CAN identified Simon Kalinda, François Gashirabake, Cyumbati, Kalisa, François Sebukayire and himself among those at the roadblock; Witness CAP observed Kalinda, Gashirabake, Butera, Kibaya, Seruragasha and a teacher there; Witness CAY said François Gashirabake, François Sebukayire, Dogiri's son, Innocent Habyarimana, Mbaraga and Nsengiyumva staffed it; Witness CAO noted Kalinda's and

Witness CAW also mentioned that Kalinda worked at this roadblock but testified that students staffed it as well.

341. Turning to the other roadblock in Mugonzi *cellule*, Witness BVJ explained that he manned one approximately 100 metres below Simon Kalinda's residence. It was established on 22 April on Kalinda's orders and staffed by area inhabitants. Witness CAY attended a roadblock approximately 150 metres from *Christ-Roi*'s fence in the vicinity of the school's toilets.[334] Witness BVV appears to have described a roadblock at a location similar to that described by Witness CAY (II.8).

342. Defence Witness VMF8 observed three roadblocks in Mugonzi *cellule* on a slope beyond *Christ-Roi*, providing circumstantial corroboration to the Prosecution evidence.[335] Nsengimana's testimony suggests that he may have seen Simon Kalinda at one of the roadblocks in Mugonzi.[336] Moreover, Witness AMC1's account that he did not see a barrier near Pasteur Dusangeyezu's home carries little weight (II.6.3.2). In the Chamber's view, the consistent and detailed first-hand accounts relating to at least two barriers are credible and convincing.

343. Consequently, the Chamber finds that when the killings began in Nyanza, around 21 or 22 April 1994, one roadblock was established near the homes of Pasteur Dusangeyezu and Simon Kalinda, and a second approximately 100 metres below it. Simon Kalinda exercised control over these two roadblocks. The evidence suggests that the purpose of these roadblocks was to intercept and kill Tutsis.[337] There is no evidence that Nsengimana was seen

---

Dusangeyezu's presence; and Witness BVJ testified that Kalinda, Munyarubuga and members of the general public worked at the roadblock.

[334] Witness CAW clearly identified a roadblock at the entrance of the *Collège Christ-Roi* and near Pasteur Dusangeyuzu's home. He also mentioned a barrier manned by Phénéas Munyarubuga "on the side leading to the Mugonzi area". It is not clear that this is the same roadblock as the one mentioned by Witnesses BVJ and CAY. See T. 25 June 2007 pp. 37 ("A. I can also mention the roadblocks that had been set up around the [*Collège Christ-Roi*]. There were three roadblocks. There was one facing *Collège Christ-Roi* and there was another roadblock further down the road from the college, and there was another roadblock immediately after exiting the college."), 38 ("Mr. President: And the roadblock manned by Phénéas, was where? The witness: That roadblock was on the side leading to the Mugonzi area.").

[335] T. 10 July 2008 pp. 30-31.

[336] T. 9 July 2008 pp. 29 ("A. Let me specify that Kalinda … did not come back to the college to work. Since there was a roadblock not far from the college, I believe I saw him from afar. But to say that he came inside the college, no, he never came."), 30. Nsengimana later testified that he became aware of Kalinda's involvement in roadblocks during his trial. T. 10 July 2008 pp. 79-80.

[337] See, for instance, Witness BVJ, T. 21 January 2008 pp. 16 ("A. We were being told that was in order to kill the Tutsis. We were told that we were to kill all the Tutsis who would pass through those roadblocks."), 36 ("[Simon Kalinda] came and he found people sitting and he asked them to set up a roadblock and said that each passerby was asked – should be asked to show his identity card and that Tutsis should not be let through."); Witness CAN, T. 28 June 2007 p. 10 ("A. [T]he roadblocks were used to intercept the Tutsis who tried to cross them, and then to kill them."); Witness CAZ, T. 29 January 2008 pp. 62-63 ("A. The objective of the roadblocks was to kill people and nothing else. The purpose of the roadblocks was not to save lives."); Witness CAP, T. 30 January 2008 p. 45 ("Q. And what was the purpose of the roadblock? A. … But if the card – identity card showed that one was a Tutsi, then that person would be asked to sit down there … They were asked to sit down, and later they would be taken away … They were taken to the woods near Nyamulinda's place, at a place called Kinihira … The only thing that happened to them was that they were killed."); Witness CAY, T. 17 January 2008 p. 25 ("Q. … What was the purpose for these [four roadblocks in the vicinity of the *Collège Christ-Roi*]? A. Those roadblocks were erected to arrest any Tutsi who was fleeing, so that he could be killed. So they were set up to prevent the Tutsis from fleeing.").

ordering or supervising these two roadblocks, and the Chamber cannot conclude that he did so.[338]

6.3.4 Roadblock inside the *Collège Christ-Roi*

344. Witness CBE testified that Nsengimana ordered the establishment of a roadblock to prevent Tutsis from accessing the *Collège Christ-Roi* at the beginning of the war. The witness emphasised that the barrier – a piece of wood – was within the school, opposite of Nsengimana's office.[339] He described it as being between the watchman's hut and the kitchen for students. The precise location of this roadblock appears unclear.[340] The Defence does not dispute this witness's access to *Christ-Roi* during the relevant period. Nsengimana verified his employment position within the school and confirmed that he continued to work during the events.[341]

345. The witness's evidence is uncorroborated and scant. Furthermore, in his statement to Tribunal investigators in May 2000, he mentioned a roadblock between the Nyanza parish church and *Christ-Roi* as well as Nsengimana giving orders to report the arrival of any Tutsis.[342] However, no reference was made to this particular barrier, and the witness did not suggest that Nsengimana ordered the establishment of any roadblock. His statement in March 2003 is similarly silent with respect to Nsengimana ordering the establishment of a barrier within *Christ-Roi* or elsewhere.[343]

346. The Chamber therefore has reservations about Witness CBE's testimony concerning this barrier. It does not consider it has been demonstrated beyond reasonable doubt that Nsengimana ordered that this roadblock be established, or that he supervised it.

6.3.5 Roadblock behind the Nyanza Parish Church

347. As discussed above (II.6.3.1), the Indictment mentions a roadblock "located in front of the *Ecole normale primaire*", which, more precisely, can be placed behind the Nyanza parish church.[344] Witness CAN testified about a roadblock "at the extreme end of the church", and Witness CAP described it as "behind the church not far from the sacristy". Both placed it in the vicinity of the signposts where roads split, leading to the *Collège Christ-Roi* and the *Ecole normale primaire*.[345] Witness CAZ described what seems to be the same

---

[338] The evidence of Witness CAW about Nsengimana allegedly ordering the establishment of a network of three roadblocks is discussed below (II.6.3.8). Witness CAN's testimony regarding the meeting Nsengimana purportedly attended, where roadblock locations were selected, is considered here, but set forth in detail in the section about meetings (II.2).

[339] See T. 14 January 2008 pp. 47 ("A. The roadblock was opposite the office of Father Hormisdas. Q. So … this was actually within the college? A. Yes, it was within the premises, not outside the premises; it was within the premises of the school."), 51 ("It was inside the premises of the school. … But as for the barrier that was located at the *Christ-Roi* college, it was within the premises of the school.").

[340] See Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4328, a diagram of the *Collège Christ-Roi*; Defence Closing Brief para. 1860 (suggesting that this roadblock would be in the middle of the school); Defence Exhibit 4 (sketches of the *Collège Christ-Roi*).

[341] T. 9 July 2008 p. 33.

[342] Defence Exhibit 7 (statement of 29 May 2000) p. 3.

[343] Defence Exhibit 8 (statement of 25 March 2003).

[344] In the Chamber's view, the evidence reasonably fits within the description of the roadblock "located in front of the *Ecole normale primaire*" as alleged in Indictment para. 26. *Rutaganda* Appeal Judgement paras. 301-306.

[345] Witness CAN, T. 28 June 2007 p. 19 (quoted); Witness CAP, T. 30 January 2008 pp. 44 (quoted), 63. See also Prosecution Exhibit 5 (four photographs) p. K038-4195.

checkpoint, situated approximately 70 to 100 metres from the *Ecole normale primaire*'s entrance towards the Nyanza parish church and close to a shop.[346] Witness CAY testified that a roadblock was on the road that led from TRAFIPRO between the *Ecole normale primaire* and the *Ecole des sciences*. Witness CBE also seemed to refer to this barrier.[347]

348. According to Witness CAN, *Ecole des sciences* headmaster Frédéric Rwagasore, and his assistant, Hatimana, controlled the roadblock, and war-displaced students staying with Rwagasore manned it. Witness CAP testified that students of the Nyanza schools were posted there, and that Nsengimana, Gashirabake, Munyarubuga, Kalinda, Birikunzira and the sub-prefect visited it. Witness CAZ identified this roadblock as one of the four that appeared to be under Simon Kalinda's control. He stated that it was manned by *Ecole normale primaire* students displaced by the war, but noted that students from other schools also were at the barriers nearby and would circulate among them. Students from the *Ecole normale primaire* worked at the roadblock described by Witness CAY.

349. The Defence contests that civilians set up a roadblock at this location, arguing that none existed until the arrival of the *Ecole supérieure militaire*.[348] Defence Witness DFR85 said that an attempt to establish a roadblock in front of the women's hostel by *Ecole normale primaire* students was thwarted after two days by Augustin Nyamulinda. Marie-Cécile Uwayezu corroborated Witness DFR85's account that Nyamulinda dismantled a roadblock near the women's hostel established by *Ecole normale primaire* students.[349] Marie Goretti Uwingabire offered second-hand evidence in support of this proposition that her father dismantled a roadblock near the school, set up by its students. Witness VMF8 stated that no roadblock existed at a roundabout near the Nyanza parish church, where roads led to either the *Collège Christ-Roi* or the *Ecole normale primaire*, until soldiers arrived in mid-May.[350] Finally, Witness JMR1 described a roadblock opposite the field from the *Ecole normale primaire*, which he only saw manned on one occasion by two students.

---

[346] Witness CAZ, T. 30 January 2008 pp. 14 ("I told you that [the distance between the *Ecole normale primaire*'s entrance and the roadblock] was around 70 to 80 metres or even 100 metres because the road went round the field."), 15 ("The roadblock was not far away from a shop, but it was not right next to the shop. It was some metres away from the shop …"), 16 (" … When you leave – when you go out of the ENP, you turn right towards the church. The roadblock was in the corner going towards the church …"), 33 ("From the entrance to the ENP to the place where the roadblock was set up, the distance was not up to 150 metres. It was right at the corner near the fence – right at the corner going towards the fence … When I look at the place where the fence of the school was located and the place where the roadblock was located, I would say the distance was about 80 metres. Between 80 and 90 metres."). See also *id.* p. 35.

[347] Witness CBE, during his re-examination, described a roadblock at the "level of the parish, which was a roadblock where one was to stop people who were going to the college". T. 14 January 2008 p. 51.

[348] See Defence Closing Brief paras. 1891-1896; T. 21 January 2008 p. 44.

[349] Witnesses DFR85 and Marie-Cécile Uwayezu described this roadblock in relation to the women's hostel, which differed from points of references provided by Witnesses CAN, CAZ and CAP. Prosecution Investigator Rajesh Neupane noted the immediate proximity of the women's hostel to the purported roadblock. T. 22 June 2007 pp. 31-32; Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4109. Considering all the evidence, the witnesses apparently described the same roadblock.

[350] Witness VMF8's testimony could be interpreted to be referring to an area immediately before the entrance of the *Collège Christ-Roi*, where there is a juncture with a road leading down to Mugonzi *cellule* and a foot-path leading up the hill towards the *Ecole normale primaire*. See Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4135, which depicts this location. The witness clearly denied that a roadblock existed at the entrance of the school prior to the arrival of soldiers. T. 10 July 2008 pp. 17-18. However, his evidence also appears relevant to the consideration of the roadblock behind the Nyanza parish church, given his description of one set up by soldiers, who had positioned themselves on the football pitch, as "right near the church". *Id.* p. 17.

350. In its consideration of Judge Jean-Baptiste Twagirayezu's alleged apprehension, the Chamber questioned Witness CAN's ability to observe this particular roadblock from the barrier in front of Kalinda's home (II.18). The witness gave a general impression of having remained in Mugonzi *cellule*, moving between the location where he stayed and the Kalinda roadblock.[351] This raises doubt about his ability to monitor whether a roadblock existed behind the Nyanza parish church generally. While Witness CAY provided some information related to this roadblock, namely who manned it, his basis for knowledge was not clear. The Chamber finds Witness CBE's brief reference insufficient.

351. Witness CAP saw this roadblock while moving between his home and the *Ecole normale primaire* between 23 and 25 April. Likewise, Witness CAZ passed it early on Monday 25 April. Above, the Chamber has found their observations generally reliable during their sorties either to or from the school.

352. Furthermore, they suggested that this area could be seen from the entrance of the *Ecole normale primaire.* Marie-Cécile Uwayezu said it would be difficult to view this roadblock from "inside [her] house" in the *Ecole normale primaire*.[352] However, only a football field appears to have separated the barrier and the school, raising little doubt that this roadblock could be seen from the school's entrance had it remained in place.[353]

353. Witness DFR85 appears to have been particularly well positioned to monitor this purported roadblock and provided compelling testimony that none existed there except for a very brief period right before a lull in the killings, but after 22 April. She struggled with dates, however, and the Chamber places little weight on her recollection about when this barrier existed.[354] Witness VMF8 made several sorties passing through the *Collège Christ-Roi* between 27 or 28 April and 20 May, lending some credence to his testimony that there was no roadblock there prior to the arrival of soldiers. Uwayezu's observations, although limited, appear to offer further corroboration that no roadblock existed there when she observed the abduction of Judge Jean-Baptiste Twagirayezu two to three weeks after 21 April (II.18). Witness JMR1's observations of a barrier that appeared to be sporadic, were first-hand, but it is not clear how frequently he passed this area. Marie Goretti Uwingabire's hearsay evidence, although consistent with the testimonies of Witnesses DFR85 and Marie-Cécile Uwayezu that Nyamulinda dismantled a roadblock, is of limited evidentiary value.

354. Based on the testimonies of Witnesses CAP and CAZ, the Chamber concludes that a roadblock was in place around Monday 25 April 1994.[355] Their evidence finds circumstantial support in Defence Witnesses DFR85, Uwayezu and Uwingabire. However, the Chamber has doubts that it existed more than a couple of days.

355. Turning to Nsengimana's alleged presence at the roadblock, Witness CAZ testified that Nsengimana passed it with a club (II.6.2), and on two other occasions he observed him

---

[351] T. 28 June 2007 pp. 29-30.
[352] T. 1 July 2008 p. 27.
[353] See Neupane, T. 22 January 2007 pp. 31-32; Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4109, which depicts a field in front of the women's hostel. When viewed with the diagram of Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4324, it would appear that the vantage point in this photo would be similar to that from the entrance of the *Ecole normale primaire*.
[354] About Witness DFR85's problem with dates, see T. 27 June 2008 p. 30. Like Marie-Cécile Uwayezu, she said that no roadblock existed where Judge Jean-Baptiste Twagirayezu was arrested (II.18).
[355] Below, the Chamber assesses Witness CAZ's allegations pertaining to the abduction of Major Kambanda and a child (II.6.3.8).

chat briefly with students posted there.[356] Circumstantial support can be found in the testimony of Witness CAP, who said that Nsengimana conducted rounds of all the roadblocks in the company of civilian and military authorities.

356. The Chamber has some reservations about whether Witness CAZ would have gone to the entrance of the school while in hiding, given the danger this would entail (II.6.3.2). Such reticence appears less well-founded in relation to Witness CAP, a Hutu, although he testified that he remained within the *Ecole normale primaire* beginning two days after his trip home in late April.

357. Of greater concern is Witness CAZ's statement to Tribunal investigators in May 2000. It suggests that he only heard about Nsengimana going to roadblocks and did not see this himself.[357] The witness was not confronted with this inconsistency. Moreover, while the statement includes reference to Nsengimana carrying a studded club when coming to the *Ecole normale primaire*, there is no reference to him passing a roadblock with the club. When confronted with this aspect of his statement, he denied ever having said that he saw Nsengimana with a studded club and maintained his testimony.[358] When viewed together, the Chamber finds these inconsistencies material.[359]

358. The Prosecution evidence concerning Nsengimana's presence at this particular roadblock is imprecise. Moreover, even if the Chamber were to accept that the testimonies of Witnesses CAZ and CAP established that Nsengimana did pass it and talked briefly with those manning them, there is no direct evidence of him ordering its establishment, supervising it or contributing to its operations. In fact, Witness CAP's evidence suggests that Nsengimana was accompanied by the sub-prefect, Gaëtan Kayitana, and the gendarmerie commander, François Birikunzira. This creates alternate civilian and military chains of command that could have filled the role Nsengimana allegedly held. Based on the entire record, the Chamber would be unable to infer that the only reasonable conclusion is that Nsengimana established, supervised or contributed to the operation of this roadblock.

6.3.6 Roadblock between the Nyanza Parish Church and the *Ecole des sciences*

359. Four Prosecution witnesses mentioned a roadblock between the Nyanza parish church and the *Ecole des sciences*, which is not specifically identified in the Indictment. Witness CAZ discussed a barrier situated at the front corner of the Nyanza parish church on

[356] It appears clear that Witness CAZ is referring to this particular roadblock as his testimony about Nsengimana talking with students at "the roadblock" follows immediately after the discussion concerning Judge Jean-Baptiste Twagirayezu, who purportedly passed this barrier. See T. 29 January 2008 p. 65 ("Q. Apart from the event when you saw Father Hormisdas with Judge Jean, did you see before or after that incident Father Hormisdas in front or at the roadblocks? A. I used to see him pass close to the roadblock and talk to the students, but I never saw him spend the day at the roadblock. He would go there and chat briefly with the students manning the roadblock. I saw him on two occasions and it was in the evening. I did not go out often. I did not spend my days following what Father Hormisdas was doing."). See also *id.* p. 67 (describing Nsengimana passing by this location while going to the church).

[357] Defence Exhibit 34B (statement of 30 May 2000) p. 4 ("The pupils of the ENP who used to go to those roadblocks said that [Nsengimana] visited the roadblocks.").

[358] T. 30 January 2008 p. 34.

[359] Differences also emerge in the evidence generally. Witnesses JMR1 and DFR85 denied that they ever saw Nsengimana being armed.

the road separating it from the *Ecole des sciences*.[360] Witnesses CAY and BVJ likewise described a roadblock between the Nyanza parish church and the *Ecole des sciences*.[361] Witness CAP appears to have described the same roadblock, but he never went there and could not provide any details about it.[362]

360. According to Witnesses CAY, CAZ and BVJ, this roadblock was one of several that were set up when the killings began around 21 or 22 April 1994. Witness BVJ testified that Frédéric Rwagasore established it, and Witnesses CAY, CAZ and BVJ stated that students manned the roadblock. According to Witness CAZ, this was one of four roadblocks controlled by Simon Kalinda. He could only identify Makongo but added that students at this roadblock appeared to act in coordination with those at the roadblock behind the Nyanza parish church.

361. The Defence confronted Witness BVJ with a statement to Tribunal investigators in September 2006, in which he did not mention this roadblock. He responded that he had talked about it.[363] The explanation is not convincing. However, the omission, when viewed with his testimony, appears minor in nature. When read together, his statement and evidence reflect that the witness, who was positioned in Mugonzi *cellule*, likely had limited knowledge concerning the roadblock.

362. Witness CAY's description of the roadblock is limited. He conceded that he was unaware of who had ordered it established, although he thought directors of the various schools had them set up for their protection. It is not clear that he observed the students manning it, or if he acquired such information second-hand. He too was positioned at a roadblock in Mugonzi *cellule*, raising questions about his ability to monitor this roadblock.

363. Witness CAZ testified that this was one of the roadblocks he saw on his way to the *Ecole normale primaire* on the Monday after the killings began in Nyanza. The Chamber has elsewhere relied on Witness CAZ's evidence in relation to his observations that morning (II.6.3.2). In this instance, however, Witness CAP's corroboration is of limited utility given his own concession that he could not provide any details relating to it. Moreover, there is no mention of this specific roadblock in Witness CAZ's statement to Tribunal investigators in May 2000.[364] Under the circumstances, the Chamber finds his evidence insufficiently reliable.

---

[360] T. 29 January 2008 pp. 59 ("… The third roadblock was located at the church, and it was manned by the students of the science school in Nyanza …"), 60 ("… the roadblock that was in front of the Nyanza science school."); T. 30 January 2008 p. 18 ("A. The roadblock at the church was at the corner of the church."). See also T. 30 January 2008 pp. 24, 35-36 and Defence Exhibit 36 (photograph K038-4095), and the marking of "Y" indicating the location of the barrier.

[361] Witness CAY, T. 17 January 2008 p. 19 ("A. The first roadblock was at the entrance to the church, where the church plot ends and the science school plot starts, the Nyanza science school. … The roadblock was between the church and the school and there were no other physical obstacles. There was only a cypress fence or a fence made of pine tree trunks. … And on the other side of the road there was the church."); Witness BVJ, T. 21 January 2008 p. 8 ("The first roadblock was between the church and the ESN school; that was the *Ecole de science de Nyanza*, the Nyanza science school.").

[362] Witness CAP's evidence about this roadblock came up in cross-examination. T. 30 January 2008 p. 64. It is unclear whether Witness BVX suggested that roadblocks were situated at the *Ecole normale primaire* and the *Ecole des sciences*. T. 22 January 2008 p. 37.

[363] T. 21 January 2008 p. 28; Defence Exhibit 17A (statement of 26 September 2006) p. 3.

[364] Defence Exhibit 34B (statement of 30 May 2000).

364. The paucity of evidence in relation to this roadblock raises doubts as to its existence. Furthermore, there is no direct evidence of Nsengimana playing any role there. Witness CAY's testimony tends to lay responsibility for it with *Ecole des sciences* headmaster Fréderic Rwagasore, as he believed "roadblocks were set up on the orders given by the directors of the different schools who wished to ensure the security of their schools".[365] Witness BVJ directly implicated Rwagasore in setting it up. In conclusion, it has not demonstrated beyond reasonable doubt that Nsengimana ordered the establishment of or supervised a roadblock between the *Ecole des sciences* and the Nyanza parish church.

6.3.7 Roadblocks near the Homes of Célestin Rwabuyanga and Anaclet Nkundimfura

365. During the trial, evidence emerged about two roadblocks, not mentioned in the Indictment, that were located in Rwesero sector, a couple of kilometres from the *Collège Christ-Roi*. Witness CAR, a Tutsi, described a barrier in front of Célestin Rwabuyanga's home. He assisted in setting it up on 21 April 1994. In view of the danger for Tutsis, a friend rushed him away and hid him in a nearby compound. Sometime thereafter, he heard gun shots and later learned that a Tutsi bailiff named Irène Nkusi was killed at it. The witness could not see the roadblock from where he had taken refuge.[366]

366. The Defence confronted Witness CAR with his statement to Tribunal investigators in May 2000, where he is quoted as saying that his protector "immediately intervened and asked the people to release [him]". According to the Defence, the statement suggested that he had already been taken captive at the roadblock, rather than leaving before that occurred. The witness maintained his testimony and explained that when they left, his protector had called him over and told the others that they would be departing together. The Defence also noted that the statement reads that he had heard gunshots "hours later", not immediately after his departure. The witness emphasised that he heard gunshots, whether they were hours or minutes after his departure.[367] The Chamber finds the explanations reasonable. These minor variances do not affect his credibility.

367. The witness's evidence lays a sufficient basis for the Chamber to conclude that this roadblock existed, and that killings occurred there. Those that Witness CAR identified as primarily responsible for establishing this roadblock – Pascal Barahira, Anaclet Nkundimfura, Léonard Rubayiza and Célestin Rwabuyanga – were implicated in Rwandan proceedings with killing persons at roadblocks and the murder of Irène Nkusi.[368]

368. There is little evidence implicating Nsengimana in the establishment or supervision of the roadblock. The witness allegedly spotted him carrying a club while passing in its vicinity with Barahira, Rwabuyanga, Rubayiza, Nkundimfura, magistrate Jean Mukuralinda and Nzigiyimfura in late April. Nsengimana was purportedly greeted by *Interahamwe* manning roadblocks. The witness's testimony evolved in relation to how he could observe

---

[365] T. 17 January 2008 p. 22.

[366] T. 16 January 2008 p. 7 ("A. For a person who was able to move – to go out and about, and who could pass the road and pass in front of the house, it was possible to see the roadblock. But for me, it was impossible because I could not go outside the house.").

[367] *Id.* pp. 37-38; Defence Exhibit 10C (statement of 30 May 2000) p. 3.

[368] Defence Exhibit 32B (summary of Rwandan trial judgment of Anaclet Nkundimfura *et al*.) pp. 1-2. The proceedings against Barahira were terminated as unnecessary, given his death. *Id.* pp. 3, 8. Anaclet Nkundimfura, Léonard Rubayiza and Célestin Rwabuyanga were sentenced to six years' imprisonment, although it does not appear that their convictions relate to this roadblock. *Id.* pp. 4-5, 8-10.

Nsengimana passing the roadblocks that day. He first stated that one could see someone on the road through the gate of the compound in which he was hiding.[369] When the Defence put to him that according to his May 2000 statement he was "watching through a small window", he explained that there was a window in the gate.[370] He concluded that he was able to see Nsengimana because of the gate.[371] The witness said that the group ultimately entered the compound.[372] Nonetheless his evidence is uncorroborated, and the shifting nature of his testimony raises concerns.

369. Witness CAR also pointed to evidence of Nsengimana's participation in meetings in February and March 1994 with the persons involved in setting up the roadblock. The Chamber has sets forth that evidence elsewhere (II.2.2), but notes that the witness had no direct knowledge of what was said at the purported meetings, and that his testimony is uncorroborated. Moreover, the fact that the distance between the *Chez Rwabuyanga* roadblock and the *Collège Christ-Roi* was approximately two kilometres, raises further doubts about Nsengimana's involvement in it. The Chamber cannot conclude beyond a reasonable doubt that Nsengimana was involved in the establishment or supervision of this roadblock, or that he contributed to it. It is therefore not necessary for the Chamber to reach a firm conclusion as to whether the alleged roadblock existed or killings occurred at it.

370. Turning to the testimony of Witness CBC, he stated that he hid 10 to 15 metres from a roadblock situated in front of Anaclet Nkundimfura's residence.[373] The witness identified the barrier based on light coming from the location, as fires would be lit at roadblocks during the war.[374] He did not see Nkundimfura, but heard him give instructions to not let Tutsis pass and to "finish" a man and some children. After the events, he learned that Emmanuel Zigiranyirazo and the children of Fidèle Ngarambe were killed there.

---

[369] T. 16 January 2008 pp. 43 ("A. So I could see what was happening on the road through the gate."), 45 ("… And when I heard the lady welcome the priest, I went near the gate and from there I could see what was happening outside the compound. I was not, at that time, inside the annex looking through the window or the door. At that time I was outside the annex building. And even if you are to visit that place … you can see that you can see someone who's on the road through the gate."), 47 ("A. … I was inside the compound, and that I looked through the gate. Through the gate, you could see what is happening outside.").

[370] *Id.* p. 47 ("A. You keep relying on that statement, and you bring out very small details to try to say that I am not credible. Questions were not put to me before judges, and the questions were not very clear. But when I'm talking about a small window, I am talking about a small window that was on the gate. And that is where I was. That could have been five metres away, or ten metres away. That is what happened. There was no difference between – there's no difference between what I'm saying here now and what I said in my statement. I am not changing anything.").

[371] *Id.* p. 49 ("I'm telling him what I know, but he's doing his best to prove that I am lying. But from where I was, I could see them, and I have asked you to go there yourselves to check for yourselves. And he keeps insisting by talking about a small window, whereas I have said that this – it was a gate. He has nothing more to say.").

[372] T. 15 January 2008 pp. 69-71, 74; T. 16 January 2008 pp. 46-48. After the closing arguments, the Defence sought to adduce evidence that there was no window on the gate. The Chamber denied the motion. See Decision on Defence Requests Concerning New Evidence (TC), 31 August 2009.

[373] That Nkundimfura's residence was in Rwesero appears clear when comparing the testimonies of Witnesses XFR38 (T. 15 September 2008 p. 20) and CAR (T. 16 January 2008 p. 4), which identify the location of Nkundimfura's home in relation to another home in Rwesero. See also Prosecution Exhibit 10 (personal identification sheet).

[374] T. 28 January 2008 p. 66; T. 29 January 2008 p. 23.

371. The killings of Emmanuel Zigiranyirazo and Fidèle Ngarambe's two children – Ngoga and Muhire – featured in Nkundimfura's trial.[375] It appears that the Rwandan trial court found that a roadblock existed in front of Nkundimfura's residence although it determined that the evidence failed to demonstrate his authority over the killers.[376]

372. Witness CBC did not testify that Nsengimana was at the roadblock or was observed in connection with the killing. Rather, Nsengimana's involvement must be inferred based on meetings that allegedly occurred at the *Cité Nouvelle* bar and Vincent Nzigiyimfura's shop in 1992 and 1993, which involved Nkundimfura (II.2). However, the witness at no time heard what was said at these meetings, only observing papers being hidden in the presence of Tutsis. Under the circumstances, the Chamber cannot conclude beyond a reasonable doubt that Nsengimana was involved in the establishment or supervision of this roadblock, or that he contributed to it. The Chamber finds it unnecessary to determine whether the alleged roadblock existed or killings occurred at it.

6.3.8 Conclusions

373. The Chamber recalls that none of the findings above establish that Nsengimana was observed directly ordering the establishment of or supervising any specific roadblock. There is no testimony indicating his presence at the barriers near the homes of Pasteur Dusangeyezu and Simon Kalinda, or at the roadblock further below the school in Mugonzi *cellule*. Likewise, the evidence is insufficiently clear to demonstrate that Nsengimana passed a roadblock behind the Nyanza parish church carrying a club. There are Prosecution witnesses placing him at the barrier near the entrance of the *Collège Christ-Roi*, and suggesting that he conversed with Simon Kalinda and Phénéas Munyarubuga in the immediate vicinity of it. However, the details of those conversations can only be inferred. The Chamber has concluded that this evidence does not demonstrate that he ordered the establishment of this roadblock, supervised it or contributed to its administration.

374. The Chamber will now turn to more general evidence about Nsengimana's alleged role in the planning and establishment of a network of roadblocks around the *Collège Christ-Roi*. Witness CAN testified that Nsengimana participated in a meeting at *Christ-Roi*, which started on the night of 21 April and continued until the early morning. The participants identified Tutsis to be killed and selected locations where roadblocks should be established. The Chamber has summarised the evidence elsewhere, but recalls that it was rejected as insufficiently reliable (II.2.3.2).

375. Witness CAW stated that he was present when Nsengimana, in the presence of Simon Kalinda, Phénéas Munyarubuga and *Ecole supérieure militaire* (ESM) officers, ordered the establishment of three roadblocks, including one near the entrance of the *Collège Christ-Roi* and another near Simon Kalinda's home (II.6.2).[377] Consequently, roadblocks

---

[375] Defence Exhibit 32B (summary of Rwandan trial judgment of Anaclet Nkundimfura *et al*.) p. 2.

[376] *Id.* pp. 4-5, which reads: "*Cette défense est sans fondement puisqu'il n'a pas pu expliquer ce que [Anaclet Nkundimfura] faisait à la barrière sise en contre haut de son habitation (au croisement des routes) … Toutefois, le procureur n'a pas pu montrer comment sa complicité le classe parmi les concepteurs, les planificateurs, les incitateurs, les directeurs et les exécutants puisque aucun témoin n'a démontré à la cour l'ascendant ou l'autorité réels que Nkundimfura avait sur les tueurs*".

[377] As noted above (III.6.3.3), the precise location of the third roadblock Witness CAW described is not clear. See T. 25 June 2007 pp. 37 ("A. I can also mention the roadblocks that had been set up around the *Christ-Roi* college. There were three roadblocks. There was one facing *Collège Christ-Roi* and there was another roadblock

were established the day after President Habyarimana's death, which he concluded was sometime in April. He was the only witness to this incident. The Chamber has already noted that only Witness CAW said that the roadblocks at the *Christ-Roi* entrance and near Simon Kalinda's house were set up the day after the President's death, in early April (II.6.2). Leaving this aside, the question arises whether the witness would have been at *Christ-Roi* after the ESM's arrival. According to his testimony, he was at the school to assist in the preparation of meals for the soldiers.[378] However, Defence evidence suggested that ESM had its own cooks at *Christ-Roi*, raising doubts about the witness's explanation.[379] Furthermore, while he said that he heard this order in April and in the presence of ESM soldiers, several Prosecution and Defence witnesses testified that ESM did not arrive in Nyanza until May.[380] Indeed, the witness, after further questioning, was unclear about whether ESM soldiers would have even been at *Christ-Roi* in April.[381] The Chamber has questioned the reliability of

---

further down the road from the college, and there was another roadblock immediately after exiting the college."), 38 ("Mr. President: And the roadblock manned by Phénéas, was where? The witness: That roadblock was on the side leading to the Mugonzi area.").

[378] T. 25 June 2007 pp. 29, 63; T. 26 June 2007 pp. 3-6, 27, 29.

[379] Witness GMC4, T. 10 July 2008 p. 40 ("Q. And who prepared food for the ESM members? A. Those in charge of the organisation, we had a civilian manpower that was in charge of cooking for the students, and specialist cooks who were soldiers who cooked for everyone."); Nsengimana, T. 8 July 2008 p. 47 ("Q. And who would cook for them, do you know? A. The soldiers organised themselves. They always moved about with their cooks. Amongst them, there are cooks and jacks of all trades. They had their full logistics. This Major Jeanne Ndamage, who was responsible for logistics – at any rate, they asked nothing of me in terms of staff. We had no one left at the college. They had their own personnel.").

[380] Witness CAO, T. 15 January 2008 p. 28 ("All I know is that [ESM soldiers] came in the month of May, but I can't tell whether it was at the beginning of the month or in the middle of the month."); Nsengimana, T. 8 July 2008 pp. 45-46 (ESM requisitioned the *Collège Christ-Roi* in mid-May of 1994); Witness GMC4, T. 10 July 2008 pp. 37, 42, 44-45 (ESM soldiers arrived two to three weeks before his own arrival between 16 and 30 May); Witness DFR85, T. 27 June 2008 pp. 25-26, 31 ("I came to the college at the end of May, and the [ESM] soldiers arrived during the month of June."); Witness CAY, T. 18 January 2008 pp. 23, 25 (six soldiers arrived by helicopter around 20 May); Marie Goretti Uwingabire, T. 30 June 2008 pp. 43-44 (a helicopter and then around 200 soldiers arrived and set up camp at the *Ecole normale primaire* and the *Collège Christ-Roi* in the end of May); Witness VMF8, T. 10 July 2008 p. 17 (soldiers set up camp on the *Ecole normale primaire* football pitch in mid-May); Witness EMR95, T. 13 June 2008 pp. 10-11 ("It was only at the end of the war that the [ESM] moved to the premises of the … *Collège Christ-Roi*."). Other witnesses offered conflicting testimony about the arrival of soldiers generally. See Witness BVX, T. 22 January 2008 p. 36 (about two battalions of soldiers had arrived around 21 April and were staying in the *Collège Christ-Roi*); Witness CAP, T. 30 January 2008 pp. 50, 63 (soldiers fleeing from Remera and Kanombe in Kigali settled in all the schools in the area in April after the 26th of that month, although he was unsure when); Witness JMR1, T. 17 June 2008 p. 35 (Rusatira's soldiers took over the *Collège Christ-Roi* during a period of intense fighting in Kigali, although he was unsure of its date).

[381] Witness CAW initially placed himself at *Christ-Roi* with the *Ecole supérieure militaire* soldiers in late April or early May. T. 25 June 2007 pp. 26 (28 April), 28-30 (3 and 4 May), 57 (28 April). But when asked three specific questions about the date, he settled on late May. *Id.* p. 63 ("Q. … you were saying that … at some time you were asked to prepare … meals at *Collège Christ-Roi*. And I'm asking you the approximate date when that was. Was that in April, May, or June of 1994, or are you talking about another time? Can you clarify your position, please? A. When I went to work at the college and when we were to serve up the midday meal to those people, well, this was towards the end of the month of May, approximately. Q. And so you were helping with the meals towards the end of the month of May. Is that the position? A. Yes, around that period. … Q. And that was towards the end of the month of May; is that correct? A. It was during the month of May, around that period. I believe I have explained that to you.").

Witness CAW in relation to several events.[382] For all the above reasons, the Chamber attaches limited weight to his testimony, which is uncorroborated.

376. When considering evidence of Nsengimana's presence at roadblocks or among those responsible for their administration, the Chamber is unable to conclude that he generally held authority over paramilitary groups that included *Christ-Roi* employees, war-displaced students or Nyanza residents. As discussed above (II.6.3.2-6.3.5), the evidence about his presence at specific roadblocks is largely inconclusive.[383] Conclusions about his authority rest in most cases on speculation.[384] Moreover, questions about Nsengimana's relationship with roadblocks, in particular his authority over them, remain, given that Prosecution evidence suggests governmental and military support of them. Witnesses BXM and CAO testified about orders to establish roadblocks coming from *Conseiller* Corneille Mutaganda.[385] While Witness BVJ implicated Nsengimana, he also noted Birikunzira's involvement in the same barriers, monitoring them with Simon Kalinda.[386] Similarly, Witness CAN testified that gendarmes manned roadblocks.[387]

377. Consequently, the evidence does not demonstrate that Nsengimana ordered the establishment of roadblocks, individually or as part of a network of barriers, that he

---

[382] See, for instance, the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

[383] Witness CAP, T. 30 January 2008 pp. 46 ("A. [Nsengimana] was there with the students, as well as Phénéas, and Gasatsi. But since I did not go near the group, I cannot tell you what they were doing there, what they were saying. ... I cannot tell you what they were saying. Some of the people who were there were his employees, some were his students. As I've already told you, I did not go near the group, so I cannot tell you what was being said at the roadblock. However, you remember that I told you the purpose of the roadblocks."), 49 ("Q. And did you see him do anything at all when he went to these roadblocks on these daily visits? A. No. I would only see him go to the roadblock and talk with those who were manning the roadblocks."); Witness CAZ, T. 29 January 2008 p. 65 ("A. I used to see [Nsengimana] pass close to the roadblock and talk to the students, but I never saw him spend the day at the roadblock. He would go there and chat briefly with the students manning the roadblock. I saw him on two occasions and it was in the evening."). See also Witness CAR, T. 15 January 2008 p. 71.

[384] See, for instance, Witness BVJ, T. 21 January 2008 pp. 14 ("Q. … Do you know to whom Phénéas and Simon Kalinda reported to regarding the activities of that [second] roadblock? A. It must be Father Hormisdas because I would see them go to the *Christ-Roi* college and come back, and when they would come back, they would give orders to the people who were manning the roadblocks."), 36 ("A. I understood that [Nsengimana] was the one who had given such instructions because his employees were the ones who set them up. So from my understanding, he was the one who had told his employees to set up those roadblocks. Otherwise, why did – didn't he prevent them from setting the roadblocks up? Why did he not prevent them from cutting the shrubs that were on the fence? Why didn't he do anything to stop them? This means, implicitly, that he was the one who had given such orders."); Witness CAY, T. 17 January 2008 p. 22 ("A. As you can observe yourself, the roadblocks were not far from the secondary schools. And it is my belief that the roadblocks were set up upon orders given by the directors of the different schools who wished to ensure the security of their schools. … Q. Phénéas and Cyprien, who did Phénéas and Cyprien report to as far as activities at this roadblock were concerned? A. You know, Cyprien was the junior brother of Father Hormisdas Nsengimana. Phénéas was very close to Father Hormisdas Nsengimana. It is, therefore, clear that they could not do anything without implementing the [orders] of Father Nsengimana. So I imagine that the two would report to Father Nsengimana.").

[385] Witness BXM, T. 7 February 2008 pp. 24, 26; Witness CAO, T. 14 January 2008 pp. 68-69; T. 15 January 2008 p. 15. The Defence objected to Witness BXM's evidence about roadblocks based on lack of notice. The Prosecution conceded that it did not intend to pursue this evidence, in particular, because the witness expressed that he was not responsible for manning roadblocks around the *Collège Christ-Roi*. T. 7 February 2008 pp. 24-26. The Chamber considers this evidence for context, finding no prejudice to Nsengimana in doing so.

[386] T. 21 January 2008 pp. 45-46, 64-65.

[387] T. 29 June 2007 p. 10.

contributed to their maintenance, or that he generally exercised effective control over those manning them.

378. The Chamber will now consider the Prosecution's general allegation that many Tutsis were stopped at the roadblocks "around the *Collège Christ-Roi*" and subsequently killed. Witness CAN, who manned the roadblock near Simon Kalinda's home (II.6.2), testified that victims at "roadblocks" included a girl who lived at the hostel and worked for the Nyabisindu dairy. He "learn[ed]" that the child of a person named Antoine was stopped and killed. Furthermore, bodies were exhumed from a mass grave not far away from the roadblocks.[388] Without specifying which roadblocks, he also stated that many persons coming to Nyanza from Kibuye, Gikongoro and Gitarama were killed at them.[389]

379. Witness CAN's knowledge of these crimes is second-hand or unknown. Moreover, other witnesses provided first-hand accounts that a woman, who worked at the dairy and stayed at the hostel near the Nyanza parish church, was killed after being abducted from that hostel.[390] Given the imprecision of Witness CAN's testimony, this evidence raises further doubts that such a woman was stopped at a roadblock and subsequently killed. Moreover, Witness CAO, who manned the same roadblock as Witness CAN, did not corroborate his testimony about the woman and the child, or about many killings generally.[391]

380. Witness CAP stated that roadblocks were established to identify Tutsis, who would then be taken to the Kinihira woods to be killed.[392] He said this when describing that he had passed the barrier near Simon Kalinda's home. However, it not clear from his testimony that he saw Tutsis being stopped at any roadblock.[393] Moreover, given his own fears about approaching roadblocks (II.6.2), it is unlikely that he followed those who allegedly took Tutsis into the woods and observed killings.

381. Witnesses CAY and BVJ were posted in Mugonzi *cellule* further down from the roadblock near Kalinda's home (II.6.3.3). The former generally testified that the purpose of the roadblocks were to arrest fleeing Tutsis to be killed. When asked if this occurred, he replied that "[s]ome people were killed following the setting up of this roadblock". No

---

[388] T. 28 June 2007 p. 10.
[389] *Id.* p. 13.
[390] Witness DFR85 testified about the abduction of Médiatrice, who worked at a dairy, by gendarmes from the hostel on the day Judge Jean-Baptiste Twagirayezu was killed (II.18). Witness CAW testified that Gracia, who worked at the dairy plant, was abducted from the hostel and killed on 8 May 1994 (II.19).
[391] Witness CAO said that he was ordered to stop *Inyenzi-Inkotanyi* at the roadblock by Simon Kalinda's home, but when he saw that "innocent Tutsis were being killed" he tried to distance himself from such activities. T. 15 January 2008 p. 16. No further evidence was elicited about these purported killings. It is far from clear that he saw killings while posted at his roadblock.
[392] T. 30 January 2008 pp. 45-46, 56-57, 60-61.
[393] See *id.* p. 45 ("Q. And what was the purpose of the roadblock? A. Members of the public were stopped and asked to show their identity cards, and then they would be asked to sit down near the roadblock. Q. All the members of the public who showed their identity cards were told to sit down near to the roadblock, or was it just some? A. They were checking identity cards. And if someone was a Hutu, he'd be allowed to leave. But if the card identity card showed that one was a Tutsi, then that person would be asked to sit down there. Q. Do you know what happened to the people who were told to sit down there? A. They were asked to sit down, and later they would be taken away. Q. And when they were taken away, do you know what happened to them? A. They were taken to the woods near Nyamulinda's place, at a place called Kinihira. Q. And what happened to them there? A. The only thing that happened to them was that they were killed.").

specific evidence was provided.[394] Notably, Witness BVJ said that he never saw a Tutsi be arrested or pass the roadblock that he manned, and his only purported observations about Tutsis being stopped at a barrier concerned Xavérine's abduction at the roadblock in front of the *Collège Christ-Roi* (II.17).[395]

382. Also Witness CAZ stated that the purpose of roadblocks was to kill Tutsis. When asked for specific killings, he explained that those who manned them killed, but that they carried out attacks elsewhere, such as Nyakabuye and Nyamagana.[396] When pressed to give a first-hand account, he testified that a major called Kambanda was arrested by students from the *Ecole normale primaire* (ENP) and the *Ecole des sciences* as he and others were trying to reach the ENP around 3.30 a.m. on Monday 25 April. He heard the following day from a man called Phillip that Kambanda, whose ethnicity he did not know, had been killed. Another child was abducted during the trip, but the witness was not present when this occurred.[397] The witness's account is uncorroborated and he had no first-hand knowledge regarding the death of Kambanda, or the abduction and killing of the child.[398]

383. In the Chamber's view, the evidence unequivocally demonstrates that the roadblocks in Mugonzi *cellule* and in front of the *Collège Christ-Roi* were manned by killers such as Simon Kalinda, Phénéas Munyarubuga and Cyprien Gasatsi. Witnesses consistently testified that the purpose of the barriers was to single out Tutsis for slaughter. Other cases clearly show the primary role that roadblocks played in this respect.[399] In the present case, the evidence about killings of many individuals captured at roadblocks is general or hearsay. The Chamber considers it possible that such killings occurred, but in the absence of reliable and concrete examples of killings, the record before the Chamber cannot support a finding beyond reasonable doubt that many Tutsis were captured at the roadblocks around the *Collège Christ-Roi* and killed, as alleged in the Indictment.[400]

384. Given these general findings, the Chamber will consider, on a case-by-case basis, specific crimes that occurred at roadblocks or were committed by those posted at them to

---

[394] T. 17 January 2008 p. 25. The Chamber notes that Witness CAY testified that he captured a person called Shuny and brought him to a roadblock in Nyakabuye – several kilometres from Mugonzi *cellule* – where he was killed (II.14).

[395] T. 21 January 2008 pp. 16, 38, 46, 67.

[396] T. 29 January 2008 pp. 62-63 ("Q. What makes you say that the purpose of those roadblocks was to have people killed? A. I am saying so because at those roadblocks people were killed. They were doing nothing else. Q. Who were killed? A. Tutsis, as I've already said. Q. Who were the Tutsis who were killed at those roadblocks? A. For example, at the roadblock at – in front of Simon's place I know that it was said that the people manning the roadblock went to carry out attacks in Nyamagana and Nyakabuye. So those attackers killed people in those areas, and they also looted. All the people manning the various roadblocks were collaborating. They would go and attack some areas together. For example, I can give you two names of people who were killed in Nyakabuye. There were other people who were killed on the same occasion, but I know only two of them.").

[397] T. 29 January 2008 pp. 52-54, 60, 63-66; T. 30 January 2008 pp. 8-9, 18.

[398] The Chamber has further reservations about Witness CAZ's evidence concerning the abduction and killing of Kambanda and the child as there is no reference to them in his statement to Tribunal investigators. See Defence Exhibit 34B (statement of 30 May 2000). The omission was not put to the witness, but his failure to provide detail of at least Kambanda's abduction, given his first-hand observation of it, raises some questions about his testimony.

[399] See, for instance, *Renzaho* Trial Judgement paras. 116-185; *Bagosora et al.* Trial Judgement paras. 1901-1941.

[400] The Chamber is mindful of the evidence about the killings at roadblocks in Rwesero (II.6.3.7), and recalls that they were not in the immediate vicinity of the *Collège Christ-Roi*.

determine Nsengimana's involvement. Reference is made to the killings of Witness BVV's family (II.8), Xavérine and her son (II.17) and Judge Jean-Baptiste Twagirayezu (II.18).

7. KILLING OF RUBEN KAYOMBYA, 21 APRIL

7.1 Introduction

385. The Prosecution alleges that on or about 21 April 1994, Nsengimana and other members of the joint criminal enterprise left his room armed, proceeded outside where they captured a young Tutsi, Ruben Kayombya, and handed him over to the *Interahamwe* who killed him. It relies on Witness CBE. The Defence disputes this and refers to Witnesses JMR1 and DFR85.[401]

7.2 Evidence

Prosecution Witness CBE

386. Witness CBE, a Tutsi working at the *Collège Christ-Roi*, testified that, between 7.00 and 9.00 a.m. one day in April 1994, soon after the killings started in Nyanza**,** he heard shouts outside the fence behind the school. Nsengimana and Phénéas Munyarubuga exited a school office. Phénéas said that the *Inyenzi* were attacking, and that they should take some action. The three of them met at the place where the yelling was coming from. The witness discovered that the so-called *Inyenzi* was Ruben Kayombya, a Tutsi friend of Nsengimana. Simon Kalinda, Cyprien Gasatsi (a *Christ-Roi* watchman) and others were also behind the school fence. Simon told Ruben that he should have been killed at his hiding place. Kayombya replied that he had come so that they could kill him themselves if he had done any harm.[402]

387. Nsengimana asked Simon and Phénéas to hand Kayombya over to the authorities. The two of them escorted Ruben away, with the assistance of *Christ-Roi* employees Cyprien, Gaspard and Nyandwi (also known as "Nyambo"), as well as others. The witness followed them to a location between the *Ecole normale primaire* and the nearby football pitch, before returning to the *Collège Christ-Roi*. He did not see what happened to Kayombya, but believed that he was killed, as he did not see him again.[403]

Nsengimana

388. Nsengimana denied any involvement in the abduction of Kayombya. He said that, if the abduction took place at 9.00 a.m., then Witness CBE could not have seen it because his work finished at 6.00 a.m. He also noted that the witness's evidence was contradicted by his prior statement that the place of abduction was inside *Christ-Roi*.[404]

---

[401] Indictment para. 23 (referring to "Kayonibya"); Prosecution Closing Brief Chapter 5 pp. 136-138, Chapters 6-8 paras. 71, 102, 116, 127, 142, 157, 173, 183, 198, 213, 229, 239 (using "Kayombya"); T. 12 February 2009 p. 11; Defence Closing Brief paras. 325, 344-349, 1726-1743, 2335, 2354-2357, 2391, 2394-2396 ("Kayombya"); T. 12 February 2009 pp. 36-37. The Chamber will use the version in the two briefs.
[402] T. 14 January 2008 pp. 3-4, 12-16, 21-22, 24, 29, 40-43, 53; Prosecution Exhibit 7 (personal identification sheet).
[403] T. 14 January 2008 pp. 6 (quoted), 13-15, 42-43. Witness CBE identified the *Ecole normale primaire* as the school where Nyamulinda was in charge. *Id.* pp. 13-14.
[404] T. 11 July 2008 p. 4.

Defence Witness JMR1

389. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi* in 1994. He stated generally that, in April and May, there were no acts of violence at the school.[405]

Defence Witness DFR85

390. Witness DFR85, a Hutu, lived in Nyanza and worked at a primary school. From outside the compound in which she was staying in April 1994, she could see the entrance of the *Collège Christ-Roi*. The witness saw Nsengimana pass her compound at least three times. She never saw him armed or in disguise.[406]

7.3 Deliberations

391. According to the Indictment, Nsengimana and co-perpetrators in the joint criminal enterprise left his room, armed with spears, machetes, clubs and swords, proceeded outside where they captured Kayombya and handed him over to the *Interrahamwe*, "resulting in his being killed". Witness CBE was the only Prosecution witness. He observed Kayombya's abduction, but not the alleged killing.

392. Several of the details provided by Witness CBE were only elicited during cross- or re-examination after he was confronted with his statement to Tribunal investigators in May 2000.[407] Much of his evidence was, at a minimum, confusing.[408] Regarding when the event occurred, the witness gave alternatives in his testimony: 9.00 a.m., between 7.00 and 7.30 a.m., and between 7.00 and 8.00 a.m.[409] In light of his illiteracy, lack of clarity about the exact time is not, in itself, significant.[410] But he was categorical that the incident took place after the "sun [was] up" and in "broad daylight".[411] This is in stark contrast with his May 2000 statement, where he estimated that the event took place "around 4.00 a.m.".[412] When it was put to him that it would have been dark at that time, he explained that the person who took down the statement made a mistake.[413] The Chamber does not consider this entirely convincing.[414]

---

[405] T. 17 June 2008 pp. 2, 4-8, 19, 35; Defence Exhibit 52 (personal identification sheet).
[406] T. 27 June 2008 pp. 3-8, 27-28; Defence Exhibit 55 (personal identification sheet).
[407] For example, Witness CBE only confirmed that Nsengimana and his associates were armed with swords and a nail studded club once confronted by his May 2000 statement. T. 14 January 2008 pp. 51-52, 54. Similarly, he only mentioned that gun shots drew his attention immediately before finding Kayombya after being confronted with the same statement indicating that he heard them. *Id.* p. 41.
[408] As an example, the Chamber considers it peculiar that Witness CBE, a Tutsi, believed that "*Inyenzi*" had cows' ears and tails. See *id.* p. 14 (" … In Rwanda, when one referred to the *Inyenzi*, one would say that they had tails and cows' ears. So we ran to see these *Inyenzis* who had tails and cows' ears."). See also *id.* p. 26.
[409] *Id.* pp. 13, 40-42.
[410] *Id.* p. 12 ("I do not remember dates, and I do not know how to read or write. So I cannot give you the precise date for any event. I do not know the date.").
[411] *Id.* pp. 40 (quoted), 42 (quoted).
[412] Defence Exhibit 7 (statement of 29 May 2000) p. 4.
[413] T. 14 January 2008 p. 41.
[414] The Defence put to Witness CBE that the timing of the event – between 7.00 and 9.00 a.m. – would have been after his working hours. He explained that he would sometimes remain at the school until 8.00 a.m. in order to report to his superiors, and because he would not be in a rush to return home after his shift. See *id.* pp. 4, 41. The Chamber accepts this explanation.

393. Witness CBE's testimony evolved regarding who purportedly gave the orders for Kayombya to be taken to the authorities. He first said that Nsengimana asked Simon and Phénéas to hand Kayombya to the authorities.[415] Later he volunteered that Nsengimana and Phénéas gave the order, before stating that it was Simon Kalinda who did so.[416] Upon further questioning, the witness repeatedly said that Nsengimana announced that Kayombya was to be taken to the authorities.[417] The Chamber is aware that such variances could have resulted from a simple misunderstanding or slip of the tongue.[418] However, according to his May 2000 statement, Simon Kalinda ordered Kayombya to be taken to the authorities, whereas Nsengimana "remained silent".[419] Under the circumstances, the discrepancies are material, as they relate directly to the role allegedly played by Nsengimana in the abduction.

394. While Witness CBE never saw Kayombya again, there is no direct evidence about the circumstances surrounding his purported death. The Chamber is mindful that a request to hand Kayombya over to the authorities – in particular during the prevailing circumstances – could be indirect language to the effect that he should be killed. However, as explained above, Witness CBE's evidence about Nsengimana's exact role and utterance raises credibility issues. His testimony was not corroborated by any other witness.[420] Finally, the Chamber has elsewhere questioned the reliability of Witness CBE (II.2.3.2, II.5, II.6.3.4). Consequently, the Chamber is unable to find that Ruben Kayombya was apprehended at the *Collège Christ-Roi*, or that Nsengimana handed him over to the *Interahamwe* to be killed.

---

[415] *Id.* p. 13 ("A. … At that point, Father Hormisdas called Simon and Phénéas and asked them to leave with [Kayombya] in order to hand him over to the authorities.").

[416] *Id.* p. 42 ("A. … Father Hormisdas Nsengimana and Phénéas who were in charge of the school ordered that he be handed over to the authorities … I was there when that man was arrested, and when he was taken away. And I heard Simon say, 'Take that stupid man to the authorities.'").

[417] *Id.* pp. 42 ("Q. … Why would Simon Kalinda be giving the orders if Father Hormisdas was there because Simon Kalinda was merely the odd-job man at the school, wasn't he? A. That is not what I told you, Counsel. The order was given by the father. He asked that that stupid man be taken to the authorities, so it was not Simon who gave that order. Simon could not have given such an order when the person in charge of the school was present …"), 43 ("Mr. President: Did you ever hear anyone say, 'Take that stupid man to the authorities'? … The witness: I told you that it was the father who uttered such words, and he was right next to us and he asked those who had arrested that man to take him to the authorities. It was not Simon; it was a person in charge who gave that order.").

[418] See, for instance, *id.* p. 42 ("Q. Sorry, maybe my misunderstanding. I thought you told us it was Simon Kalinda who gave that order. A. No, it was the father who gave that order.").

[419] Defence Exhibit 7 (statement of 29 May 2000) p. 4 ("Simon then responded: 'Come, we are going to take you to the authorities.' Meanwhile, I noticed that … Nsengimana remained silent but had a smile on his face.").

[420] The Chamber has also considered the testimonies of Defence Witnesses JMR1 and DFR85. Their observations are general and of limited weight.

8. KILLING OF WITNESS BVV'S FAMILY, 24 APRIL

8.1 Introduction

395. Without referencing any paragraph in the Indictment, the Prosecution points to the testimony of Witness BVV, who said that members of his family were killed around 24 April 1994 while fleeing the *Collège Christ-Roi*. Nsengimana ordered the attack.[421]

396. The Defence argues that the event was not pleaded in the Indictment. Alternatively, the Prosecution evidence is unreliable.[422]

8.2 Evidence

Prosecution Witness BVV

397. Witness BVV, a Tutsi, lived in Nyanza where he worked at the *Ecole normale primaire*. On 20 April 1994 around 10.00 a.m., he saw a helicopter land in the courtyard of the classrooms of the *Collège Christ-Roi*. Soldiers unloaded Kalashnikovs from the helicopter in the presence of Nsengimana and several *Christ-Roi* employees armed with traditional weapons.[423]

398. On Sunday 24 April, the witness, five Tutsi members of his family and a number of other persons went to the *Collège Christ-Roi* to seek refuge as neighbouring Hutus began to threaten them. They entered the school by going over a fence next to an embankment below the *Ecole normale primaire*, passed the *Christ-Roi*'s classrooms and went towards Nsengimana's office. Simon Kalinda, Phénéas Munyarubuga, Cyprien Gasatsi and students were close to the office, giving threatening looks at the witness and his group when they arrived. The witness's brother spoke to Nsengimana, asking for refuge. Nsengimana responded that he did not need Tutsis inside the school, and that they needed to leave it and die outside. Nsengimana appeared threatening to the witness.[424]

399. The witness fled by returning the way he entered the *Collège Christ-Roi*. His family left in a different direction towards the dormitories. He heard gunshots once he was near the grille by the fence he had originally gone over to get into the school. He climbed "above the fence". The witness believed that members of his family had been followed by soldiers, Simon Kalinda, as well as Jacques Mudacumura and Pie Ntibakige (both manning a nearby roadblock), who then killed them on the *Christ-Roi* football pitch below the dormitories. He also described the place as being close to a roadblock and near a forest. The witness did not see them again, but said that he saw the bodies without explaining how. Later he learned that

[421] Prosecution Closing Brief Chapter 5 pp. 85-87. While not referred to by the Prosecution, the Chamber also considers as relevant Witness BVV's testimony that a helicopter landed in the *Collège Christ-Roi*, and that soldiers unloaded weapons from it on 20 April 1994.
[422] Defence Closing Brief paras. 638-673, 1461; T. 12 February 2009 p. 35. The Chamber has also considered the evidence of Witness JMR1, which is relevant.
[423] T. 23 January 2008 pp. 15, 18-21, 26-29, 38-39, 41-43, 47-49, 53, 55-56, 58-60, 64-68; Prosecution Exhibit 16 (personal identification sheet). Witness BVV testified that a second helicopter landed on the football pitch of the *Ecole normale primaire*, but he could not recall the date. T. 23 January 2008 pp. 39, 41.
[424] T. 23 January 2008 pp. 21-24, 31-33 (identifying family members), 53, 55-56, 58-64, 73.

the corpses had been taken to a house and then removed by a truck. According to the witness, Nsengimana had ordered the killings.[425]

Nsengimana

400. Nsengimana denied that a helicopter landed at the *Collège Christ-Roi*. He rejected that Witness BVV and his family were chased from *Christ-Roi* and also participation in any crimes.[426]

Defence Witness JMR1

401. Witness JMR1, a Hutu working at the *Collège Christ-Roi*, remained there until he departed on 28 May 1994. During this period, he generally stayed inside the school, but left it between 7 and 12 April, late April or early May and around 26 or 27 May to visit his parents. The witness denied that any act of violence was committed at the school.[427]

8.3 Deliberations

402. The Prosecution Closing Brief does not explicitly argue that the killing of BVV's family is a separate basis for conviction, but the incident is summarised in connection with training and arming of militia.[428] Although the Indictment contains no express reference to the killing of Witness BVV's family at the school around 24 April 1994, the Prosecution has previously referred to more general paragraphs. In order to avoid lack of clarity, the Chamber has decided to consider this evidence as a separate event. It will first address whether Nsengimana received adequate notice.[429]

8.3.1 Notice

403. Paragraph 19 of the Indictment, referred to by the Prosecution in its pre-trial submissions, states that Nsengimana was the spiritual leader of extremists, including employees at the *Collège Christ-Roi*, and that he aided and abetted killings by "virtue of his participation and presence within the group as a spiritual leader".[430] This paragraph does not give adequate notice that the Prosecution seeks to hold Nsengimana responsible for the killing of Witness BVV's family around 24 April 1994. Thus, the Indictment is defective with respect to this specific allegation.

---

[425] *Id.* pp. 21-22, 24, 25 (quoted), 49-50, 60, 64-65.
[426] T. 9 July 2008 p. 28.
[427] T. 17 June 2008 pp. 2, 4-8, 15, 19-20, 35; Defence Exhibit 52 (personal identification sheet).
[428] Closing Brief Chapter 5 pp. 85-86. The Prosecution did not refer to this event in its oral submissions.
[429] Similarly, the Indictment does not include the helicopter landing and the unloading of weapons. The Prosecution did not refer to this evidence in its Closing Brief. This gives the appearance that it is not pursuing this incident in its case against Nsengimana, and the Chamber finds it unnecessary to make express findings about it. See *Ntagerura et al.* Appeal Judgement paras. 148-150 (omission of facts from the closing brief that are necessary to support a mode of responsibility indicate that the Prosecution is no longer pursuing a conviction on that basis). As mentioned above, the Chamber has nevertheless briefly included the helicopter incident in order to place Witness BVV's evidence about the killing of his family in context.
[430] According to the Prosecution Pre-Trial Brief, the anticipated evidence about the killing of Witness BVV's family would support paras. 16, 19 and 24 of the Indictment as well as paragraphs that do not support counts (Annex 1 p. 21). The Chamber considers that para. 19 is the only possible paragraph with which this event could correspond.

404. It is established case law that timely, clear and consistent notice of material facts underpinning a charge may cure a defective indictment (I.2.2). Unlike the other allegations pleaded in the Indictment, the killing of Witness BVV's family is not mentioned in the nearly 80 pages of text within the Prosecution Pre-Trial Brief, filed in May 2007. It only surfaces in its Annex 1 through a summary of Witness BVV's anticipated evidence. The Annex indicates that the witness and his family sought refuge at *Christ-Roi*, that Nsengimana turned them away telling them to "go and die in your own homes", and that soldiers with firearms and armed militia, including *Christ-Roi* employees Kalinda and Munyarubuga as well as students were present at the school. However, the summary is ambiguous as to the killings, their timing and who was involved; it merely asserts that the witness "fled and has never seen his family again".[431]

405. The allegation first surfaced in the witness's statement to Tribunal investigators in March 2007, which was disclosed in redacted form in April 2007, about one month prior to the Pre-Trial Brief.[432] Several material elements are redacted, such as the fact that he and his family sought refuge at the *Collège Christ-Roi*, and that Nsengimana was the person who told him and his family to die in their homes.[433] There is also no reference to the witness observing Kalinda and students as part of the militia being at the school that day, whereas Phenéas and some other names are mentioned.[434] The statement does add that the witness heard gunshots when he fled (although the Prosecution redacted the words that the sound came "from *Christ-Roi* college"), and that he did not see his family again. This gives some indication that killings occurred during this event.[435] But there is no clear reference to Nsengimana ordering the killings and that they occurred at the school.

406. In some instances, the Prosecution Pre-Trial Brief can be considered together with witness statements that provide further details in order to cure a defective indictment.[436] The Chamber considers that the combined reading of the summary in the Pre-Trial Brief and the redacted witness statement may have allowed the Defence to understand that the witness was implicating Nsengimana, his alleged subordinates and co-perpetrators identified in the Indictment in the killing of his family. The information would add greater clarity to the general allegations in paragraph 19 of the Indictment. However, the Chamber has reservations that the notice here is sufficiently clear. Material details in the statement (i.e. the location of refuge**,** Nsengimana's presence and alleged perpetrators) were redacted in the statement, and the Annex to Pre-Trial Brief did not mention that the witness "heard gunshots" in the summary of his anticipated evidence. Therefore, the Defence would be forced to sort piecemeal through submissions that were not necessarily consistent in order to ascertain the complete picture of Witness BVV's evidence against Nsengimana. Moreover, the un-redacted version of his March 2007 statement, which allowed the Defence to obtain a complete narrative of the event in one place, was disclosed on 17 December 2007, about six months

[431] Pre-Trial Brief, Annex 1 p. 21.
[432] See Letter from the Prosecution to the Court Management Section with attachments, time stamped 5 April 2007, pp. 772 *bis* to 781 *bis*, 843 *bis*. The witness statement is dated 8 March 2007.
[433] Having heard Witness BVV testify and having read his unredacted statement, the Chamber considers that a careful reading of other parts of the redacted statement would provide some indication about the elements that have been removed. However, it has doubts that such clarity could easily being achieved when approaching the statement without any other information.
[434] *Id.* p. 779 *bis*.
[435] *Id.* The unredacted statement was filed on 17 December 2007.
[436] See *Ntakirutimana* Appeal Judgement para. 41.

after the commencement of the trial and just over one month before he testified. This raises questions whether timely notice was provided.[437]

407. Finally, the allegation emerged five months after the Prosecution sought to file the Indictment in October 2006.[438] The event was not mentioned in the Prosecution's opening statement, which confined its case to the victims it highlighted to the Chamber.[439] These raise further questions about whether this incident was part of the Prosecution case and whether consistent notice was being provided to Nsengimana.

408. Consequently, it is doubtful whether the Prosecution provided clear, consistent and timely notice about Nsengimana's alleged role in connection with the killing of Witness BVV's family. The Chamber will nevertheless also consider the merits of the evidence, because this is a borderline issue and the evidence may be useful for contextual purposes.[440]

8.3.2 Killing of Witness BVV's Family

409. The Defence does not dispute that members of Witness BVV's family died during the genocide.[441] The critical questions are whether they were killed in the vicinity of *Christ-Roi* around 24 April 1994 after Nsengimana purportedly refused to give them refuge, where the killings took place, the identity of the killers, and in particular Nsengimana's involvement in the alleged attack.

410. Witness BVV was the only person to testify about this event. His testimony raises some questions. At the outset, it may be asked whether he and his family, after being threatened by neighbouring Hutus, would seek refuge at an institution where he claimed to have seen soldiers with Kalashnikovs unloading weapons in the presence of armed militiamen four days earlier.[442] Violence in Nyanza, in the view of several witnesses,

---

[437] Prosecution Disclosures, 17 December 2007 pp. 1149 *bis* to 1152 *bis*.

[438] See Defence Exhibit 23 (statement of 8 March 2007); Decision on Amendments to the Indictment (TC), 29 March 2007, para. 4 (amendment – which were unrelated to the present issue – sought on 2 October 2006).

[439] T. 22 June 2007 p. 9 ("Your Honours, an exhaustive list of the people who were killed in the presence of Father Hormisdas Nsengimana or at his behest may never be known. *The case is confined to the few we are bringing to your attention*." Emphasis added.). Moreover, contrary to Witness BVV's evidence that he and his Tutsi relatives sought refuge at the school, the Prosecution opened its case by stating that "when genocide broke out in Nyanza, around 21st April 1994, Tutsi did not rush to *Collège Christ-Roi* … for refuge." T. 22 June 2007 p. 4.

[440] See *The Prosecutor v. Arsène Shalom Ntahobali and Pauline Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15.

[441] Defence Closing Brief para. 655; T. 23 January 2008 p. 31 ("Q. … And I do appreciate you lost family in the genocide. No one is doubting your word about that at all.").

[442] While others stated that a helicopter landed in Nyanza, Witness BVV was the only person to testify about a helicopter landing at the *Collège Christ-Roi* on 20 April 1994. See Witness CAY, T. 18 January 2008 pp. 23-25 and Defence Exhibit 12 (statement of 17 and 27 October 2000) p. 4. (correcting his statement by testifying that a helicopter landed on 20 May 1994 or, alternatively, some days after the 3 May attack in Mugonzi *cellule*); Witness CAO, T. 15 January 2008 pp. 27-29 (a helicopter landed in May at the *Ecole normale primaire*); Marie Goretti Uwingabire, T. 30 June 2008 pp. 24, 43-44 (a helicopter landed in Nyanza around the end of May and that soldiers who alighted spoke with her father, the headmaster of the *Ecole normale primaire*). There is other evidence indicating that soldiers arrived in Nyanza around the time Witness BVV purportedly saw the helicopter land at the *Collège Christ-Roi* and weapons being unloaded, but the record does not corroborate the fundamental features of his account. Witness CAO, T. 14 January 2008 p. 68; T. 15 January 2008 p. 13 (soldiers and Presidential guards were present in Nyanza on 22 April 1994); Witness CAR, T. 16 January 2008 p. 37 (witness's prior statement reflects that Presidential guards were present in Rwesero on 21 April 1994); Witness

corresponded with the arrival of soldiers.[443] Under these circumstances, his explanation that he thought the school would be safe because it was an institution run by priests raises some doubts.[444]

411. The witness implicated Nsengimana in the killings through the priest's refusal to house his family at the school once they had entered. According to him, Nsengimana said that "he did not need Tutsis inside the school" and added that they "had to leave and go and die outside his school". He described Nsengimana saying this in a threatening manner.[445]

412. The Chamber has no other evidence confirming that Nsengimana used those words, or about any other utterance or action by him indicating that he intended to facilitate the killing of the family. Furthermore, denying refugees to stay might also be motivated by a wish to avoid that they remain in an area that entails risk.[446] Locations, even those administered by priests, were susceptible to attack in Nyanza once the killings began (II.15 and 21), and the *Collège Christ-Roi* may not have been a safe place.

413. The witness described where his family went, where they were killed and who killed them. After they had purportedly been turned away, he spoke briefly with the other family members and then left them by departing in the direction from which he had entered. They went in a different direction, towards the school's dormitories. When he had reached the grille close to the fence he had gone over to get into the school, he heard gunshots. He testified that he later saw the bodies of his family members.[447]

414. The Chamber has reservations about the strength of the witness's evidence about the killings. He did not appear to claim that he saw them. Similarly, the witness's description of the killers was unclear. He placed responsibility on soldiers, Kalinda, Mudacumura, Ntibakige and others without indicating that he observed any action taken by them.[448] His

---

EMI2, T. 10 June 2008 pp. 12-15 (after 9.30 a.m. on 22 April 1994, there was a heavy military presence, including possibly the Presidential Guard); Witness BVX T. 22 January 2008 p. 36 (soldiers started staying at the *Collège Christ-Roi* around 21 April 1994); Witness CBE, T. 14 January 2008 pp. 3-5, 9, 16, 19-20 (soldiers visited Nsengimana after 6 April 1994, but no one other than Nsengimana, employees and students lived at the school).

[443] See Witness DFR85, T. 27 June 2008 pp. 6-7, 11-12 (violence started in Nyanza after busloads of soldiers arrived around 21 April 1994); Witness CAO, T. 14 January 2008 p. 68, T. 15 January 2008 pp. 13, 17-18 (soldiers identified to the witness as members of the Presidential Guard, in coordination with Nyanza soldiers and gendarmes, fired on residences in Mugonzi *cellule* on 22 April 1994); Witness EMI2, T. 10 June 2008 pp. 12-15 (after 9.30 a.m. on 22 April 1994, there was a heavy military presence, including possibly the Presidential Guard, and soldiers were firing upon persons).

[444] T. 23 January 2008 p. 55.

[445] *Id.* p. 23.

[446] The Chamber recalls that Nsengimana assisted in finding refuge for Callixte Kayitsinga outside of the *Collège Christ-Roi* (II.16).

[447] T. 23 January 2008 pp. 21-22, 24-25, 63-64.

[448] *Id.* pp. 23 ("Q. And these people who you say you saw there, Simon Kalinda, Phénéas, and Cyprien Gasatsi, what were they doing at that time? A. They were well known génocidaires. And I *learned* that some of the victims were killed below the *Christ-Roi* football pitch, opposite the generator."), 24 ("A. Yes, because when they got to the level of the field, I heard gunshots. There was also a roadblock that was manned by Pie and Jacques Mudacumura, who at the time was co-inspector. And all the persons who were with me died at that roadblock. … Q. Do you know who killed them? A. I heard gunshots, and I *felt* that it was soldiers and people like Simon who was manning this roadblock."), 25 ("Mr. President: Mr. Witness, you said that you *'felt'* who killed them. The French word was '*estimer*.' Did you actually observe this? The witness: I was farther away, up near the grille. So I went above the fence and it is the soldiers collaborating with Simon and Jacques Mudacumura and Pie Ntibakige, were the ones that followed them and killed them."), 63 ("A. … When we were

description of where he was when he heard the gunshots – near the grille behind the *Christ-Roi* classrooms – also raises doubts that he would have had a direct line of vision to any of the locations at which his family was purportedly killed.[449]

415. The witness's evidence of where his family was killed varied. He first said that his family members were killed on the *Christ-Roi* football pitch,[450] and then at the roadblock manned by Jacques Mudacumura and Pie Ntibakige.[451] He later gave conflicting responses as to whether the school had a football pitch[452] and said that they were killed in a "forest that was near the road".[453] Finally, he asserted that they were killed on the football field near the aforementioned roadblock.[454] The ambiguity about the location demonstrates the frailties of his evidence in this regard.

416. The Chamber has also noted some discrepancies between the testimony and the witness's March 2007 statement to Tribunal investigators. His statement reads that after he heard gunshots, he "didn't see [his] relatives again", and it contains no mention of bodies.[455] However, he testified that he saw their bodies after they had been killed.[456] It is not clear from his testimony how he could see their corpses, and the Chamber finds this doubtful in light of his evidence that he fled in a different direction and hid in the bushes near the school

---

chased, we took different directions. Some people were killed, and I survived. But I had taken my own direction, and I was not with the others."), 64 ("A. Yes, my family members went down towards the dormitories, and the employees of the *Christ-Roi* college who had seen them, and knew them before, followed them and killed them on the football field. Q. And that was, you said, *something you didn't see, but you did say you saw the bodies*. Is that right, that you saw the bodies? A. *Yes, I saw the bodies, and I understood that* it is the employees of *Christ-Roi* who had killed them. But my family members were not killed by persons who had come from elsewhere. Even the members of the population knew that."). Emphasis added.

[449] See *id.* pp. 22, 55-56, 58-60; Defence Exhibit 18 (photographs of Nyanza) p. 18, top photograph. In particular, while Witness BVV testified that his family went in the direction of the dormitories and were killed on the *Christ-Roi* football field or nearby roadblock (T. 23 January 2008 pp. 24, 49-50, 64), he emphasised that the fence he had gone over was near the classrooms as opposed to the dormitories (*id.* p. 58).

[450] T. 23 January 2008 pp. 23-24.

[451] Witness BVV's description of the roadblock being situated near the "field … below the dormitory" (*id.* p. 24) appears to correspond to Witness CAY's evidence of the roadblock about 150 yards from the *Christ-Roi* fence. The latter stated that one would head to the lower side of the school, passing through its football field and beyond its toilets. He also affirmed that it was in the vicinity of the dormitories. T. 17 January 2008 p. 3 ("A. … I was at the roadblock that was below the *Christ-Roi* college. You had to go through the *Christ-Roi* football field towards the town at a place where there was the *Christ-Roi* – where there was the *Christ-Roi* generator. So it is after that point that we had the roadblock which I had indicated."); T. 18 January 2008 pp. 25-26 ("A. … From the entrance – from the fence of the college to where my roadblock was, the distance was less than 150 metres. ... The roadblock which I manned was on the lower side of the *Christ-Roi* college toilets."). See also Defence Exhibit 4 (sketches of the *Collège Christ-Roi*).

[452] T. 23 January 2008 pp. 49-50 ("… A. Counsel, the *Christ-Roi* college doesn't have a football field. Q. But I thought you told us that's where your family [was] killed? A. Yes, it was on a football field, and they were killed in a forest that was near the road. Q. Well, whose football field was it? A. It was Hormisdas Nsengimana's field.").

[453] *Id.* p. 49.

[454] *Id.* pp. 64-65. See also *id.* p. 25.

[455] Defence Exhibit 23A (statement of 8 March 2007) p. 3.

[456] T. 23 January 2008 pp. 25 ("The witness: … But their bodies were dragged to the place where there were – where there was an old house, the ruins of a house. And it is in the evening that the dead bodies were loaded onto a truck. Mr. President: Did you see this? The witness: Yes, I saw the bodies. But I did not witness the bodies being carried away. But during the Gacaca hearings it was said that a tipper truck would go around carrying the bodies."), 64 ("Q. … but you did say you saw the bodies. Is that right, that you saw the bodies? A. Yes, I saw the bodies … ").

until a young Tutsi boy was found in connection with clearing of bushes around 29 April 1994 (II.13).[457] Finally, the Chamber also notes that statements attributed to Witness BVV in a report prepared by the organisation African Rights do not indicate that he saw any bodies.[458]

417. Other discrepancies further create concerns about the witness's reliability generally. He testified that five relatives accompanied him and were killed. According to his statement to Tribunal investigators, he was one of nine relatives to enter the school.[459] When confronted with the discrepancy, he confirmed his testimony, stating that the person who took his statement made a mistake.[460] However, statements attributed to the witness in the African Rights report similarly indicate that more than five other family members accompanied him to the school and were killed there.[461] He testified that this also was a mistake, and later said that he had no recollection of speaking with this organisation.[462] Furthermore, he stated that certain persons who were identified in this report were killed elsewhere or that they were not related or known to him.[463]

418. In the Chamber's view, the variance between the witness's testimony and previous statement concerning the number of relatives who sought refuge at the school and were never seen again is noteworthy. Furthermore, he stated that he did not recall speaking to African Rights. Although not directly denying having done so, his remark is unconvincing in light of the parallels between the statements attributed to him in its report and his statement to Tribunal investigators. While the methodology used to prepare the report remains unknown, it is surprising that an organisation would simply add victims not mentioned by the witness. It appears that the witness's account has shifted over time, raising concerns about his credibility.

419. Finally, while the witness testified that the perpetrators were implementing Nsengimana's orders, this conclusion also appears to rely on speculation. His evidence does not demonstrate that he heard Nsengimana give an order to kill them.[464]

---

[457] See, for instance, *id.* pp. 26, 64 ("A. Yes, we [the family members] parted ways and they took the road that was going down towards the dormitory, while I took the other road leading to the bushes …"), 65 ("Q. … So let's pick up the story from the time you leave the school. … A. … I hid in this place and *I only left that hideout* when the child that I mentioned was killed by students.") (emphasis added).

[458] Defence Exhibit 25 (extracts from African Rights: *Witness to Genocide*, issue no. 14, November 2001) p. K0272257, which indicates that someone saw and informed him of the bodies.

[459] Defence Exhibit 23A (statement of 8 March 2007) p. 3 (quoted).

[460] T. 23 January 2008 pp. 60-61, 73.

[461] Defence Exhibit 25 (extracts from African Rights: *Witness to Genocide*, issue no. 14, November 2001) p. K0272257.

[462] T. 23 January 2008 pp. 61, 70- 71, 74 (indicating that he recalled speaking in Gacaca proceedings), 75 (denying that he spoke with anyone the year in which the African Rights report indicates he was interviewed).

[463] *Id.* pp. 71-73.

[464] *Id.* pp. 24 ("Q. Where was Father Nsengimana when this was happening? A. Those persons were implementing his orders. He stayed inside the school and he sent those people and he waited for those persons to come and report on what they had done."). See also *id.* p. 26 ("Q. Okay. You said a little earlier that Father Hormisdas was there when your relatives were being killed. Did he do anything to try to stop the killing? A. No, he did not protect them, whereas, he had influence. If he had wanted, he could have saved their lives. Unfortunately, he did nothing.").

8.3.3 Conclusions

420. As noted above, it is not disputed that members of Witness BVV's family were killed during the genocide. However, there are doubts whether this event occurred within the *Collège Christ-Roi*. Even if the Chamber were to accept that they were killed there on 24 April 1994, the identity of the attackers as well as Nsengimana's participation can only be surmised. While the priest's purported presence at *Christ-Roi* during the incident may raise suspicion, this does not eliminate other reasonable possibilities that assailants acted on their own, without any order from Nsengimana. It has not been proved beyond reasonable doubt that Nsengimana was involved in the killing of Witness BVV's family.

9. KILLING OF FATHER MATHIEU NGIRUMPATSE, 24 OR 25 APRIL

9.1 Introduction

421. The Prosecution alleges that, on or about 25 April 1994, Nsengimana, accompanied by some soldiers and employees, including Cyprien Gatsasi, Simon Kalinda and Phénéas Munyarubuga, all members of the joint criminal enterprise, went to the room of Father Mathieu Ngirumpatse, a Tutsi priest and the bursar at the Nyanza parish church. Armed with traditional weapons and firearms, they stole his safe and brought him out of his room. Nsengimana then shot and killed Ngirumpatse. Reference is made to Witnesses CAW, CAY, CAP and BVJ.[465]

422. The Defence does not dispute that Ngirumpatse was murdered, but denies Nsengimana's involvement. It refers to Witnesses DFR85, AMC1, Marie Goretti Uwingabire, Marie-Cécile Uwayezu, EMI2, JMR1 and EMR95.[466]

9.2 Evidence

Prosecution Witness CAW

423. Witness CAW, a Hutu, worked at the Nyanza parish church. Around 12.00 p.m. on about 25 April 1994, he was in the parish's courtyard since Father Mathieu Ngirumpatse, a Tutsi, had asked all workers to remain on the premises. He saw Nsengimana arrive accompanied by Phénéas Munyarubuga, Simon Kalinda, Cyprien Gasatsi, Sebukayire, Vincent, Commander Birikunzira of the gendarmerie, *Interahamwe* and soldiers.[467]

424. Nsengimana was armed with a pistol, a large-calibre rifle and a sword. He demanded money from Father Ngirumpatse, who then asked the witness to give Nsengimana the keys to the safe. Phénéas removed a large amount of money. Nsengimana led Ngirumpatse near the stable and told the soldiers that he wanted to kill the priest himself. He shot Ngirumpatse in the head. After the killing, Nsengimana said: "I am telling you I will boast about it, and when my gun would have killed five people, I will rest." The witness was about five metres away at the time.[468]

---

[465] Indictment para. 29; Prosecution Closing Brief Chapter 5 pp. 18, 26, 67, 144-152, Chapters 6-8 paras. 72, 103, 116, 128, 143, 158, 173, 184, 199, 214, 229, 240, Chapter 9 paras. 67, 89(a); T. 12 February 2009 pp. 7-8, 10-11; T. 13 February 2009 pp. 1-3. Several witnesses referred to the victim only as Father Mathieu, but it is clear that they were discussing Father Ngirumpatse.

[466] Defence Closing Brief paras. 31, 219, 431-432, 912-913, 980, 992, 1012, 1086, 1095, 1145, 1165-1170, 1182, 1194, 1198, 1216, 1267, 1490, 1952-1992, 2110, 2301, 2372 and Addendum pp. 1, 11-18; T. 12 February 2009 pp. 28, 32-34, 36, 42-43; T. 13 February 2009 pp. 22-23. The Defence also refers to evidence that killings were perpetrated by *Ecole normale primaire* students (Witness PMR31, T. 5 June 2008 p. 11), that Ngirumpatse was shot dead by unidentified assailants (Witness XFR38, T. 15 September 2008 p. 18), that he enjoyed normal relations with Nsengimana (Witness RFCD6, T. 8 July 2008 p. 59), and that the local bishop did not think poorly of Nsengimana (Witness VMB17, T. 16 June 2008 p. 11), Defence Closing Brief paras. 1095, 1182, 1989-1991. The Chamber has considered this evidence, and accords it very little weight. The Defence reliance on Witness VMF8 (Defence Closing Brief para. 1216 about Ngirumpatse being killed because he was against looting) appears speculative.

[467] T. 25 June 2007 pp. 4-5, 18, 21-23, 25-26, 61-63, 65-66; T. 26 June 2007 pp. 1-3, 43, 51; Prosecution Exhibit 2 (personal identification sheet).

[468] T. 25 June 2007 pp. 23, 24 (quoted), 25-26, 61, 67-68; T. 26 June 2007 pp. 41, 46, 48.

Prosecution Witness CAY

425. Witness CAY, a Hutu, was an *Interahamwe* from Nyanza. On Friday 22 April 1994, he saw Nsengimana driving his Peugeot in Nyanza town with gendarmes on board. He was uncertain what their final destination was, as they were going in the direction of either the Nyanza parish church or the *Collège Christ-Roi*. Father Ngirumpatse was killed on the same day, just behind the presbytery fence. Ngirumpatse had attempted to flee but did not get far because of his age. The day after the killing, 23 April, the witness went to the parish and saw that Ngirumpatse had been buried. Nsengimana did not hold a mass for his colleague.[469]

Prosecution Witness CAP

426. In 1994, Witness CAP, a Hutu, worked at the *Ecole normale primaire*. At a meal time on an unspecified day, some students told him that Father Ngirumpatse had been shot. The witness went to the Nyanza parish church to verify the news and saw the priest's body near the mill behind the church. The following day, Augustin Nyamulinda, headmaster of the school, and his students buried the body. Nsengimana did not help. The witness also said without further explanation that Nsengimana had ignored Nyamulinda's request for assistance with the burial.[470]

Prosecution Witness BVJ

427. Witness BVJ, a Hutu, lived and worked in Nyanza. He saw Father Ngirumpatse's body between the parish stable and the convent on 24 or 25 April and estimated that he had been killed about two days earlier. Dogs had started eating it so the witness and others covered the body with earth to prevent this. In the witness's view, it was not a proper burial, and after the genocide, the corpse was exhumed and buried in a dignified manner.[471]

Nsengimana

428. Nsengimana testified that he had heard that Father Ngirumpatse had been killed and improperly buried from Augustin Nyamulinda. He could not recall exactly when Nyamulinda contacted him, other than saying it was one evening in the days after the killing, which likely occurred on about 24 April 1994. The news upset Nsengimana greatly as he respected Ngirumpatse and both were on good terms. Around 9.00 a.m. on the morning after being informed, Nsengimana assisted Nyamulinda, about 10 students from the *Ecole normale primaire*, and a cook from *Christ-Roi* bury Ngirumpatse. Nsengimana said some prayers over the body and performed the eucharist for the slain priest. The burial was interrupted by

[469] T. 15 January 2008 p. 44; T. 17 January 2008 pp. 21, 29-30, 38, 41-42; T. 18 January 2008 pp. 11-12, 26-28, 29 (quoted); Prosecution Exhibit 9 (personal identification sheet). According to Witness CAY, Nsengimana led the gendarmes who killed the "priests" in Nyanza. The witness did not state the basis for his opinion. T. 18 January 2008 p. 29.
[470] T. 30 January 2008 pp. 43, 53-56, 65; Prosecution Exhibit 22 (personal identification sheet).
[471] T. 21 January 2008 pp. 4, 23-24, 27, 60, 62; Prosecution Exhibit 13 (personal identification sheet). Witness BVJ initially testified that "when dogs started eating their corpses, it was Nyamulinda who had the bodies buried". T. 21 January 2008 p. 60.

looting and gunfire at the parish as they added earth to the grave. Safety concerns prevented Nsengimana from giving a full funeral or mass.[472]

429. Nsengimana speculated that the local police were behind the killings in Nyanza, including the death of Ngirumpatse. As a result, he did not know to whom he should report the crimes. He denied participating in the killings and emphasised that he did not even know how to fire a gun. Nsengimana also pointed to other Defence evidence, including a book, suggesting that Ngirumpatse was killed by a gendarme or soldier.[473]

Defence Witness DFR85

430. Witness DFR85, a Hutu, lived in Nyanza and worked at a primary school. Around 21 April 1994, she saw three buses coming from the direction of Kigali, possibly from Mugandamure or Kavumu, carrying soldiers and their families. That night she heard gunshots, and was later told that Tutsis had been killed and roadblocks erected. The soldiers did not stay in Nyanza for a long time, but she considered that they were responsible for starting the killings.[474]

431. On 22 April, following the attacks that had commenced the previous evening, the witness was standing opposite a hostel when she saw people carrying stolen goods and heard gunshots originating at the presbytery of the Nyanza parish church. Later on the same day, Jean, a parish worker, said that there had been an attack on the parish by the *Interahamwe*. They were supervised by an unidentified soldier. Jean had been in the stable taking care of the cows when he saw the group looking in the presbytery for priests. The attackers could only find Ngirumpatse, who was naïve and asked them what they were doing. They assaulted him and asked him where the valuable objects were located in the compound. The soldier, assisted by the others, then took Ngirumpatse to the parish stable and killed him with a bullet. She never heard that Nsengimana was involved.[475]

Defence Witness AMC1

432. Witness AMC1, a Hutu living in Nyanza, testified that Father Ngirumpatse was on good terms with Nsengimana. Sometime after 22 April 1994, the witness heard two gunshots from the direction of the Nyanza parish church. He left his home and saw people leaving the presbytery, carrying stolen objects. Later, he learned that Ngirumpatse had been killed on that occasion. Subsequently, the witness met Nsengimana at the *Collège Christ-Roi* and told him what had happened. Nsengimana appeared surprised and disturbed by the news. The witness said to Nsengimana that Ngirumpatse's body might need to be buried.[476]

---

[472] T. 9 July 2008 pp. 21-22; T. 10 July 2008 pp. 64-67, 69-70.
[473] T. 9 July 2008 p. 27; T. 10 July 2008 p. 77; T. 11 July 2008 p. 3; Defence Exhibit 65 (Neno Contran: *They are a Target,* 1996) p. 95.
[474] T. 27 June 2008 pp. 3-7, 11-12; Defence Exhibit 55 (personal identification sheet). Witness DFR85 testified that the soldiers arrived and the killings began "about" 21 or 22 April 1994. T. 27 June 2008 pp. 6 (quoted), 7. However, a broader reading of her testimony tends to show that they arrived on 21 April, the killings commenced that evening and they carried into the following day when Ngirumpatse was killed, the "22nd of April". *Id.* pp. 6-7, 11 (quoted).
[475] T. 27 June 2008 pp. 7-11, 49-51.
[476] T. 3 June 2008 pp. 3, 7-8, 21, 23-24, 60-61; Defence Exhibit 40 (personal identification sheet). Witness AMC1 stated that he heard one gunshot, and later that he heard multiple gunshots.

Defence Witness Marie Goretti Uwingabire

433. Marie Goretti Uwingabire, a Hutu student, is the daughter of headmaster Augustin Nyamulinda. One day during the genocide, she observed that a number of persons were stealing property belonging to the parish. Nyamulinda went out to talk to them. They informed him that Father Ngirumpatse had been abducted by a gendarme and killed not far from the mill belonging to the parish. Ngirumpatse had tried to give the gendarme money, but he did not take it, and then shot the priest in the head.[477] After hearing gunshots, Nyamulinda became afraid and decided not to visit the murder location. He later visited the mill and buried the body.[478]

Defence Witness Marie-Cécile Uwayezu

434. In April 1994, Marie-Cécile Uwayezu, a Hutu, was staying with her father, headmaster Augustin Nyamulinda, at the *Ecole normale primaire*. He told her about the death of his friend, Father Ngirumpatse. One day, soon after the killings had started in Nyanza, some persons informed Nyamulinda that Ngirumpatse was going to be killed. Nyamulinda went to the *Ecole des sciences* to see if the priest was safe in his hiding place there. At the school, he saw gendarmes escorting Ngirumpatse to the presbytery, but did not observe what happened subsequently.[479]

435. According to the witness, her father heard from others that, upon arrival at the presbytery, a gendarme asked Ngirumpatse to give him money. Despite his compliance, the gendarme, who was not identified, killed him. She estimated that this was one of the first killings in Nyanza. Nsengimana was not mentioned as being responsible. Nyamulinda was told that Ngirumpatse's body had been left unburied for two days. Nyamulinda decided to bury the dead priest, and did so with the assistance of Nsengimana and some students.[480]

Defence Witness EMI2

436. Witness EMI2 worked at an orphanage in Nyanza. In the afternoon on 24 April 1994, older boys staying there told him that Father Ngirumpatse had been killed. They had heard that Ngirumpatse was shot dead by soldiers around noon at the parish. The boys did not mention Nsengimana's name in connection with the killing.[481]

Defence Witness JMR1

437. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi*. In late April or early May 1994, a girl named Françoise told him that, three to four days earlier, she had been at the parish with Father Ngirumpatse. According to Françoise, a gendarme arrived at the parish to

[477] It appears that Marie Goretti Uwingabire did not hear the conversation between Nyamulinda and the looters, but subsequently heard her father repeat it to other visitors. See T. 30 June 2008 pp. 33-34.
[478] *Id.* pp. 24-25, 33-34; T. 2 July 2008 p. 21; Defence Exhibit 56 (personal identification sheet). Marie Goretti Uwingabire was previously referred to as Witness GFR99. She did not provide a date for the killing of Ngirumpatse, or specify where he was buried.
[479] T. 1 July 2008 pp. 14-15, 18, 27-28; T. 7 July 2008 p. 29; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was originally listed as Witness RFR58.
[480] T. 1 July 2008 p. 28; T. 7 July 2008 p. 29.
[481] T. 10 June 2008 pp. 4, 18-19; Defence Exhibit 45 (personal identification sheet).

loot, asked Ngirumpatse where he stored the parish's property, and shot him in the back. The witness never heard that Nsengimana was involved with this killing but, during an unspecified evening, he saw Nsengimana and a *Christ-Roi* employee carrying tools. They said they were going to bury Ngirumpatse.[482]

Defence Witness EMR95

438. Witness EMR95, a Hutu who worked at the *Collège Christ-Roi* in 1994, stated that relations between Nsengimana and Father Ngirumpatse were good, although he did not often see them together. He was told after the war by one of the other workers that Ngirumpatse had been killed.[483]

9.3 Deliberations

439. There is no dispute that Father Mathieu Ngirumpatse, a Tutsi, was killed at the Nyanza parish church. The evidence of when he died ranges from 22 to 25 April 1994.[484] There are two competing narratives surrounding his death. According to the Prosecution's version of the killing, Nsengimana personally shot Ngirumpatse in the head. The Defence denies Nsengimana's involvement and submits that a soldier or gendarme killed him. Nsengimana, aggrieved by the priest's death, assisted in the burial days later, providing whatever funeral rites he could under the circumstances.

440. The viability of the Prosecution's case rests principally on the credibility of Witness CAW, the only purported eye-witness to the killing. The Chamber notes that, according to a statement attributed to the witness by the organisation African Rights, he was not present during the killing and heard about it from one of the assailants. The account further states that Nsengimana ordered the killing rather than personally perpetrated it. The witness accepted that he had been interviewed, but denied that he gave the version recorded by the organisation. He explained that this was the first time that he had heard it, and confirmed his testimony.[485]

441. In the Chamber's view, the differences between Witness CAW's testimony and his purported prior statement are significant and material. The Chamber does not have a complete picture of the organisation's methodology in order to assess fully the witness's explanations for these differences. Nonetheless, it remains surprising that a human rights

---

[482] T. 17 June 2008 pp. 2, 4-6, 8, 27-29; Defence Exhibit 52 (personal identification sheet).
[483] T. 13 June 2008 pp. 3-5, 15-16; Defence Exhibit 48 (personal identification sheet). Witness EMR95 did not provide the date when he heard the news.
[484] Witness CAW, T. 25 June 2007 pp. 26, 61-62, 65 (saw Ngirumpatse being murdered on 25 April 1994, but could only provide estimates and was possibly mistaken); Witness CAY, T. 17 January 2008 pp. 21, 29; T. 18 January 2008 p. 26 as well as Witness DFR85, T. 27 June 2008 pp. 6, 9, 11 (Ngirumpatse was killed on 22 April, the day the killings began in Nyanza); Witness AMC1, T. 3 June 2008 pp. 23, 61 (heard gunshots and saw looters exiting the Nyanza parish "after 22 April"); Witness BVJ, T. 21 January 2008 p. 62 (saw Ngirumpatse's body around 24 or 25 April); Witness CAP, T. 30 January 2008 pp. 43-44, 47, 56-57, 60, 68 (would have seen Ngirumpatse's body around 25 and 27 April at the latest, because he did not leave the *Ecole normale primaire* after that point); Nsengimana, T. 10 July 2008 p. 64 and Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4151 (appears to refer to Ngirumpatse's tombstone, which reads that he was killed on 24 April 1994); Witness EMI2, T. 10 June 2008 pp. 18-19 (heard on 24 April that Ngirumpatse had been killed around noon).
[485] T. 26 June 2007 pp. 38-41; Defence Exhibit 2 (Extract from a publication of African Rights: *Witness to Genocide*, issue no. 14, November 2001).

organisation investigating the death of Father Ngirumpatse would have so misrepresented the witness's account. While this cannot be excluded, it does raise significant questions about the credibility of Witness CAW's version, in particular given that, elsewhere, the Chamber has identified numerous problems with other aspects of his testimony.[486] The Chamber declines to rely on Witness CAW's evidence of the killing of Father Ngirumpatse in the absence of corroboration.

442. In the Chamber's view, Witness CAY did not provide adequate support for Witness CAW's version of the killing. He testified that, on 22 April, three days before Ngirumpatse was killed according to Witnesses CAW, he saw Nsengimana driving gendarmes. He was uncertain about where they were going, but identified the Nyanza parish church as a possible destination.[487] His evidence linking Nsengimana to Ngirumpatse's murder appears to be hearsay.[488] The Chamber has elsewhere questioned the reliability of Witness CAY (II.2), and his purported first-hand observations that Ngirumpatse had been buried by 23 April is inconsistent even with other Prosecution evidence that it occurred later.[489] Even if the Chamber were to accept Witness CAY's observations of Nsengimana driving gendarmes on 22 April, this and his hearsay evidence that Nsengimana was involved fail to establish that the only reasonable conclusion is that Nsengimana participated in the attack and personally shot Father Ngirumpatse.[490]

443. Witnesses CAP and BVJ did not give evidence concerning the attack, but about the burial. Therefore, their testimonies do not corroborate Witness CAW's purported first-hand account that Nsengimana killed Father Ngirumpatse. Furthermore, their evidence concerning the burial arose in cross-examination and was brief. It is not clear whether Witness CAP's

---

[486] See, for instance, roadblocks (II.6), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

[487] See T. 17 January 2008 pp. 29-30 ("A. … And when I saw him, he was heading towards the church, or towards the *Christ-Roi* college. I cannot tell you with certainty what was his final destination; that was towards where he was heading.").

[488] Witness CAY did not expressly testify about how he learned of Father Mathieu Ngirumpatse's death. When confronted with his statement from February 2003 to Tribunal investigators that reads he had heard about it, he simply responded that Nsengimana "led the gendarmes who killed the priests (sic)" without arguing otherwise. T. 18 January 2008 pp. 28-29; Defence Exhibit 15B (statement of 4 February 2003) p. 4, which reads: "All I heard is that [Nsengimana] ordered the murder of the priests [who were killed] at Nyanza, including Father Mathieu … ." His July 2000 statement also says that he had heard about it, identifying Alphonse Nyiriminega as his source. It reads that Nyiriminega had said that he had killed Ngirumpatse after Nsengimana and soldiers had left him for dead. Defence Exhibit 11B (statement of 13 July 2000) p. 4. The witness said that statement was recorded improperly and that he had said that Nyiriminega had looted from the church. T. 18 January 2008 p. 28. However, his other statement about this incident to Tribunal investigators also tends to show that he only heard about the circumstances of Ngirumpatse's death. Defence Exhibit 13B (statement of 17 February 2001) p. 3, which reads: "The gendarmes who killed the priests and Reverend sisters were led to the spot by [Nsengimana], who had used his Peugeot car to transport them to Nyanza town. And there are two persons, Damien Minani and one Habyarimana, residents of Mugonzi in Nyanza, who can testify to that." Given the ambiguity in his testimony and his prior statements, his evidence about Nsengimana killing Ngirumpatse appears to be second-hand.

[489] Witness BVJ, for example, testified that Ngirumpatse had not been buried until 24 or 25 April.

[490] In any case, the Chamber also observes that Witness CAY's reference to Nsengimana travelling with the gendarmes was included in only one – the second – of his five statements. This statement also suggests that Fathers Ngirumpatse, Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze were killed at the same location. However, the evidence clearly shows that the other Tutsi priests were killed at the Saint Antoine orphanage (II.15). Defence Exhibits 12-16 (statements of 17 and 27 October 2000, 17 February 2001 (referring to Nsengimana travelling in the Peugeot), 30 May 2001, 4 February 2003, and 5 March 2003).

basis for knowledge is first-hand.[491] Witness BVJ's testimony that he participated in a cursory burial of Ngirumpatse without Nsengimana is not inconsistent with Nsengimana's evidence that he reburied Ngirumpatse because the initial burial was too superficial.[492]

444. According to Marie-Cécile Uwayezu, Marie Goretti Uwingabire and Witnesses JMR1, EMI2 and DFR85, a soldier or gendarme killed Father Ngirumpatse. Nsengimana's account of assisting in his burial is corroborated by Witness JMR1 and the second-hand testimony of Uwayezu.[493] The Defence evidence concerning Father Ngirumpatse's death and burial is largely hearsay, and, in the case of Nsengimana, self-interested. While not definitive, it nonetheless raises additional doubt about the Prosecution's case. The Chamber has elsewhere considered testimony concerning Nsengimana's relations with the various Tutsi priests in the area (II.15 and 22). Here, like elsewhere, the impressions of enmity between Nsengimana, on the one hand, and Ngirumpatse, on the other, are disputed, and insufficient to demonstrate that Nsengimana physically killed the latter.

445. Accordingly, the Prosecution has not proved beyond reasonable doubt that Nsengimana killed Father Mathieu Ngirumpatse as alleged in the Indictment.

[491] Whether Witness CAP was present when Nsengimana allegedly rejected Nyamulinda's request to bury Ngirumpatse is uncertain. Moreover, while he denied that Nsengimana participated in the burial, he did not participate either, noting that he was "standing next to the place". T. 30 January 2008 p. 65. Where this place was, and whether it gave him a view of the burial, remains unclear.

[492] Nsengimana testified after Witness BVJ. The Chamber is mindful of the possibility that he may have altered his testimony so that it was not inconsistent with Witness BVJ's.

[493] The Chamber finds it unnecessary to adjudicate whether Nsengimana participated in Ngirumpatse's burial.

10. KILLING OF A TUTSI WOMAN, 24 OR 25 APRIL

10.1 Introduction

446. The Indictment alleges that, soon after he had killed Father Mathieu Ngirumpatse on or about 25 April 1994, Nsengimana requested that an elderly Tutsi woman from Ngirumpatse's family, who had sought refuge at the presbytery, follow him behind the Nyanza parish church. He then killed her by sticking his sword in her thorax.[494] The Prosecution relies on Witness CAW.[495]

447. The Defence argues that the Prosecution evidence about the killing of an old Tutsi woman after Ngirumpatse's murder is unreliable. Instead, it points to evidence that a young woman called Françoise, who was attacked in the vicinity of the Nyanza parish church around the same time as Ngirumpatse's killing, survived. Nsengimana was not involved. It refers to Witnesses Marie-Cécile Uwayezu, Marie Goretti Uwingabire and JMR1.[496]

10.2 Evidence

Prosecution Witness CAW

448. Witness CAW, a Hutu working at the Nyanza parish church, testified that after the killing of Father Mathieu Ngirumpaste, on 25 April 1994, Nsengimana continued to check the rooms of the parish. About 15 minutes after Ngirumpatse's murder, around 12.15 p.m., Nsengimana and his group moved to the banana plantation near the parish mill to continue their search for Tutsis. There, they found an old Tutsi woman hiding. She was a relative of Ngirumpatse and had been staying with him for about three days. The witness, who was no more than six metres away, observed her beg for her life, but Nsengimana killed her by stabbing her with the sword he was carrying. Three days later, the witness returned to the parish area and looked for the old lady's body, but could not find it.[497]

Prosecution Witness CAP

449. Witness CAP, a Hutu working at the *Ecole normale primaire*, sought refuge there once the killings began in Nyanza. At an unspecified time in April 1994, he went to the Nyanza parish church after some students had told him that "Father Mathieu" had been shot. There, he saw Ngirumpatse's body near the mill behind the church. He also testified that "next to [Ngirumpatse's] body there was the body of Françoise, or, rather, when Father

[494] The thorax is the part of the body that is surrounded by the ribs, between the neck and the waist. See Webster's Third New International Dictionary of the English Language Unabridged (2002) p. 2380.
[495] Indictment para. 30; Prosecution Closing Brief Chapter 5 p. 161, Chapters 6-8 paras. 73, 104, 116, 144, 159, 173, 200, 215, 229, Chapter 9 para. 89 (b); T. 12 February 2009 pp. 7, 11-12. The Prosecution does not refer to Witnesses CAP (observations at the Nyanza parish church) or BVJ and CAY (killing of two nuns) in support of this specific incident. In the Chamber's view, these testimonies are relevant and therefore included here. See Prosecution Closing Brief Chapter 5 pp. 26 (Witness CAP) as well as 67 (Witness CAY) and 147 (Witnesses CAY and BVJ).
[496] Defence Closing Brief paras. 31, 431-432, 1014-1016, 1031-1032, 1040, 1044-1055, 1165-1167, 1198, 1993-2009 and Addendum pp. 1, 18-21; T. 12 February 2009 pp. 33-34, 42; T. 13 February 2009 pp. 22-23.
[497] T. 25 June 2007 pp. 4-5, 24-26, 68-70; T. 26 June 2007 pp. 1, 3, 30; Prosecution Exhibit 2 (personal identification sheet).

Mathieu was killed, Françoise was also shot at". The witness explained that Françoise was Bazatoha's daughter.[498]

Prosecution Witness BVJ

450. Witness BVJ, a Hutu living not far from the *Collège Christ-Roi*, stated that, around 24 or 25 April 1994, he went to the Nyanza parish church. There, he found Father Ngirumpatse's body between the stable and the nuns' convent. He also saw that the bodies of Sisters Augustine and Françoise had been dumped in the pit latrine there. The witness made these observations about two days after their deaths.[499]

Prosecution Witness CAY

451. Witness CAY, a Hutu from Mugonzi *cellule*, said that the day Father Mathieu Ngirumpatse was killed, two nuns were thrown into pit latrines alive and the population subsequently stoned them.[500]

Nsengimana

452. Nsengimana testified that he did not know an elderly relative of Father Ngirumpatse and denied that he had killed her. Instead he referred to other evidence that "the housemaid working at the presbytery" – Françoise – had been attacked. However, she survived and took refuge at the *Ecole normale primaire*.[501]

Defence Witness Marie-Cécile Uwayezu

453. Marie-Cécile Uwayezu, a Hutu student, was the 23 years old daughter of Augustin Nyamulinda, the headmaster of the *Ecole normale primaire*. She returned home for Easter vacation in 1994. A few days after the death of Father Mathieu Ngirumpatse, Françoise, a Tutsi woman who was slightly older than the witness and responsible for the laundry at the Nyanza parish church, arrived at their home in the evening. She was seeking assistance with a serious head wound and said that she and others had been attacked in a wooded area behind the parish, and that she had been abandoned in a pile of bodies. Françoise could not identify any of the attackers. The witness helped her sister Marie Goretti Uwingabire, a student nurse, attend to Françoise while she stayed at their house. After about a week, Nyamulinda took her

[498] T. 30 January 2008 pp. 43-44, 53-57, 60-61, 65 (quoted); Prosecution Exhibit 22 (personal identification sheet).
[499] T. 21 January 2008 pp. 4, 23, 28, 62; Prosecution Exhibit 13 (personal identification sheet).
[500] T. 15 January 2008 p. 44; T. 17 January 2008 p. 30; T. 18 January 2008 p. 27; Prosecution Exhibit 9 (personal identification sheet).
[501] T. 9 July 2008 p. 27 ("Now, with regard to the relative of Father Mathieu, I did not know her. Witnesses talked about the housemaid working at the presbytery. Maybe that's the person they're talking about. But it was clearly said that she was killed by assailants, and she did not die and took refuge at the house of the ENP director."). Although Nsengimana did not explicitly mention Françoise's name, only her profession, it is clear from the context that he was referring to her.

to the hospital, because her condition had deteriorated. Two to three days later, Uwayezu went to the hospital to visit Françoise but could not find her there.[502]

Defence Witness Marie Goretti Uwingabire

454. Marie Goretti Uwingabire, a Hutu, was also the daughter of headmaster Augustin Nyamulinda. By 6 April 1994, she had returned home for Easter recess from a secondary school elsewhere. On an unspecified day during the events, a girl with a serious head wound sought assistance at their home at the *Ecole normale primaire*. She was called Françoise and worked at the Nyanza parish church. Uwingabire, a student nurse, took care of her while she stayed at their house. Just before she testified, Uwingabire learned from her sister, Marie-Cécile Uwayezu, that Françoise had been stabbed by the same attackers who were responsible for Ngirumpatse's death.[503]

Defence Witness JMR1

455. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi*. In late April or early May 1994, three or four days after Father Mathieu Ngirumpatse had been killed, he took Françoise, a Tutsi girl, from headmaster Nyamulinda's house to hospital. She had a serious head wound and told him that she had been injured at the Nyanza parish church. A gendarme had arrived there, and asked Ngirumpatse where he kept the property. He then shot Ngirumpatse in the back and other persons beat up Françoise, who was nearby. She did not tell the witness that Nsengimana had been involved in these events. The witness was unaware whether Françoise managed to survive her injuries.[504]

10.3 Deliberations

456. The Prosecution refers to Witness CAW in support of its allegation that Nsengimana killed an elderly Tutsi female relative of Father Mathieu Ngirumpatse. The witness purportedly saw Nsengimana stab her near the Nyanza parish church moments after Ngirumpatse's death, probably on 24 or 25 April 1994 (II.9).

457. The Defence argues that Witness CAW's account is uncorroborated and lacks credibility. It also refers to evidence that Françoise, a young Tutsi woman working at the presbytery, was attacked around the time of Ngirumpatse's murder, but survived. It is the Defence case that the witness heard about this incident and changed it to accuse Nsenigmana.[505]

---

[502] T. 1 July 2008 pp. 14-15, 20, 29-30; T. 7 July 2008 pp. 7-9; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was previously referred to as Witness RFR58. She only identified the person tending to Françoise as her younger sister, but it is clear she was describing Marie Goretti Uwingabire.

[503] T. 30 June 2008 pp. 24-25, 34-35; T. 2 July 2008 pp. 21-22; Defence Exhibit 56 (personal identification sheet). Marie Goretti Uwingabire was originally listed as Witness GFR99. The Chamber notes that Marie-Cécile Uwayezu did not testify that Françoise had told her that she had been attacked by the assailants who killed Father Ngirumpatse.

[504] T. 17 June 2008 pp. 2, 4-6, 8, 27-29; Defence Exhibit 52 (personal identification sheet).

[505] Defence Closing Brief paras. 2003, 2007, 2009 ("*La défense est d'avis que le témoin CAW, qui n'était pas à Nyanza au moment du meurtre du père Mathieu, a entendu l'histoire de Françoise et qu'il l'a transformée pour pouvoir accuser arbitrairement le père Hormisdas Nsengimana*.").

458. The Chamber will focus on the killing of the elderly Tutsi woman as alleged in the Indictment. Witness CAW's account about this is uncorroborated and presents problems. He testified that he saw Nsengimana stab the old Tutsi woman, but that he did not know exactly where on her body.[506] According to his statement given to Tribunal investigators in June 2000, he saw Nsengimana stab her through the "thorax". When this was put to him, he responded that one could "take what is in [his] statement".[507]

459. The Chamber realises that the witness's memory may have faded during the seven years from when the statement was taken until the trial, and the 13 years that had elapsed since the genocide. But the purported killing was a dramatic event, even in an extraordinary period, and the witness was only six metres away when it took place. It would not have been easily forgotten. Furthermore, his testimony that he did not actually see where she was stabbed, shows a significant and specific shift from his written statement, raising doubts about his reliability.

460. A report published by the organisation African Rights in 2001 discusses Ngirumpatse's death, relying in part on an interview with Witness CAW.[508] It contains no reference to the killing of Ngirumpatse's elderly relative immediately thereafter. In the Chamber's view, it is difficult to separate these two killings given their proximity in time and place. The absence of any reference to her killing is noteworthy, given the report's reliance on the witness when describing Ngirumpatse's death. The omission is also significant in light of the witness's assertion during the testimony that he discussed with the interviewer "the events that had occurred in Nyanza parish and the role that [Nsengimana] played in them", and that he had informed her that Nsengimana "had killed a number of people".[509]

461. The witness refuted the report's content, noting that he had talked with the organisation's representative for less than 20 minutes, that he was not given the opportunity to review his statement, and was not asked to sign it.[510] The Chamber accepts that the accuracy of the report and the methodology used to prepare it remain relatively unexplained.[511] However, the differences between the report and the testimony are difficult to explain merely by pointing to weaknesses in methodology. African Rights was compiling and

---

[506] T. 25 June 2007 p. 69 ("A. I simply saw that he stabbed her with that sword, but I do not know exactly where. I was not close enough to him to see precisely where he had stabbed her.").

[507] *Id.* p. 69 ("You can take what is in my statement. He stabbed her with the sword, but before that the old lady had begged him to spare her. Q. Did he stab her in her throat, as you said you saw him do in your statement? Mr. President: Did you hear the question, Mr. Witness? Mr. Hooper: I'll ask again. By Mr. Hooper: Did he stab her in her throat, as you said, or claimed, in your statement? I have told you what I observed, and you have the text of my statement. You can repeat precisely what I say – said in that statement without distorting it."). Witness CAW's statement of 1 June 2000 was not exhibited.

[508] Defence Exhibit 2 (Extract from a publication of African Rights: *Witness to Genocide*, issue no. 14, November 2001).

[509] T. 26 June 2007 pp. 32 (quoted), 39 (quoted). Witness CAW later provided what appears to be more detailed evidence about the killings he had discussed with African Rights, which does not include Ngirumpatse's elderly relative. See *id.* pp. 41 ("She asked me what [Nsengimana] had done, and I told her that he had killed the priests as well as young girls who were staying at the nuns' hostel, and this in collaboration with the *Interahamwe*."), 46 ("She then asked me whether I knew anything about Father Hormisdas in Nyanza. I told [her] about his participation in the genocide, the murder of Mathieu and Egide as well as the girls.").

[510] See, for instance, *id.* p. 32.

[511] In its closing arguments, the Prosecution reiterated the unreliability of the African Rights report and suggested that Witness CAW had explained the discrepancies between it and his testimony. T. 12 February 2009 pp. 6-7, 15.

reporting information that implicated Nsengimana in the targeted killings of Tutsis in Nyanza. Had the witness mentioned this incident, the Chamber finds it surprising that the organisation would omit a first-hand account of the priest stabbing a woman to death.

462. Even assuming that the witness did not mention the murder of the old woman to African Rights, or that its report omitted this event, the fact that it describes him as not being present during Ngirumpatse's killing (II.9) equally raises doubt that he would have been there when she was killed about 15 minutes thereafter. Under the circumstances, Witness CAW's testimony will not be accepted without adequate corroboration.[512]

463. Other evidence about female victims of an attack in the vicinity of the Nyanza parish church around the time of Ngirumpatse's killing does not support Witness CAW's account. First, Witness BVJ testified that he saw the bodies of Sisters Augustine and Françoise in pit latrines when he discovered Ngirumpatse's corpse between the parish's stable and the nuns' convent. His evidence does not corroborate that Nsengimana participated in their attack, or that either victim was Ngirumpatse's elderly relative.[513]

464. Second, Witness CAY's evidence that two nuns were thrown in the "pit latrine" on the same day as Ngirumpatse's death also does not support Witness CAW's testimony. His information about these killings was second-hand, as he said that he arrived at the Nyanza parish church the day after they had occurred.[514] It has not been shown that either victim was the elderly relative of Ngirumpatse. The method of killing described by Witness CAY – being thrown alive into a pit latrine and subsequently stoned to death – is materially different from the description of the woman being stabbed to death. Moreover, he testified that members of the "population" killed the nuns rather than Nsengimana.[515] This raises further doubts about Nsengimana's involvement.[516]

---

[512] The Chamber recalls that it has also expressed doubts about Witness CAW's credibility elsewhere. See, for instance, Roadblocks (II.6), the killings of three Tutsi refugees (II.12), three Tutsi Priests (II.15), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

[513] The Chamber notes that the Prosecution did not include the killing of the two nuns at the Nyanza parish church as a separate event in its Closing Brief, but only within witness summaries in Chapter 5 pp. 26, 67, 147. Furthermore, there was not sufficient notice with respect to this allegation. Nsengimana's involvement in the killing of the nuns – even in light of references at paras. 188 and 237 of the Pre-Trial Brief and at pp. 10-11 of its Annex 1 – would materially expand the specific allegations about attacks at the Nyanza parish church, pleaded in paras. 29 and 30 of the Indictment. See *Karera* Appeal Judgement paras. 296-297.

[514] See T. 18 January 2008 pp. 27 ("It is true that two sisters were thrown into … a pit. But I was at another place. I was not at the same place where the sisters were. Now, let us come back to your question. Yes, I went to loot at the parish after those people had been killed. "), 28 ("Q. … Did you go to … loot the same day they were killed? Did you go to loot the same day the priests were killed? A. We went to loot on the second day. That is the day after his killing."). The quoted formulation in the English version (*Id.* p. 27) differs from the French version, see *id.* p. 33 ("*C'est vrai que deux sœurs ont été jetées dans la fosse. Mais le père Mathieu a été jeté dans un autre endroit, ce n'était pas au même endroit que les sœurs.*"). This difference is immaterial to the Chamber's conclusion, as it follows from both versions that Witness CAY went to the Nyanza parish church the day after the killings.

[515] T. 17 January 2008 p. 30 ("On that same day, the priests were killed, and among them, there was Father Mathieu Ngirumpatse, if my memory serves me well, and there were two nuns, two sisters, who were thrown alive into pits. Subsequently, the population came to stone the two sisters who had been thrown into the latrines.").

[516] The Chamber has general doubts about the reliability of Witness CAY, an alleged accomplice of Nsengimana (II.2 and 14). It has viewed his purported first-hand evidence that he saw Nsengimana driving gendarmes the day of Ngirumpatse's death with caution (II.9). The same concerns exist in the present context.

465. Third, Witness CAP testified that he saw the body of a woman named Françoise next to Ngirumpatse, and clarified that she was "shot at".[517] This is different from being stabbed, and it does not follow from the evidence that this woman was necessarily killed.

466. In support of its theory that it was not an old woman, but Françoise, a young woman, who was attacked, the Defence has referred to the testimonies about her. The Chamber observes that such an incident is not pleaded in the Indictment, and this evidence is therefore only relevant as an attempt to further undermine the credibility of Witness CAW. It is noted that the witnesses did not implicate Nsengimana in this incident, and that the victim possibly survived.[518]

467. Only Witness CAW testified about an attack against the elderly Tutsi woman. Apart from describing her as an elderly relative of Ngirumpatse who had stayed with him for three days, the witness provided no particulars. No other witness gave evidence about her.[519] Leaving aside the question whether she actually existed, the Chamber has not found his evidence about the attack credible. Consequently, the Chamber does not find it established that Nsengimana killed an elderly relative of Father Mathieu Ngirumpatse.

[517] T. 30 January 2008 p. 65 ("Q. Now, in your statement you refer to: 'One day, as I walked around near the mill behind the church, I saw the body of Father Mathieu.' Is that right? Is that right? A. That's right, I saw his body, and next to his body there was the body of Françoise, or, rather, when Father Mathieu was killed, Françoise was also shot at.").

[518] The testimony of Witness CAP leaves open the possibility that Françoise, who was shot at, survived the attack. Furthermore, three Defence witnesses provided second-hand evidence of limited weight. Witness JMR1 learned from Françoise that Ngirumpatse was killed moments before she was attacked, and that Nsengimana was not implicated. According to Marie-Cécile Uwayezu, Françoise could not identify the assailants who had attacked her and others in the woods outside the Nyanza parish. Marie Goretti Uwingabire purportedly heard from her sister that Françoise had been stabbed by those who killed Father Ngirumpatse, but her sister did not testify to that effect.

[519] The Pre-Trial Brief is clear that the Prosecution believed that the two nuns were different from the old Tutsi woman. See Pre-Trial Brief paras. 188 and 237 ("[S]oon after killing … the Tutsi nuns, Father Hormisdas requested an old woman of the family of Father Mathieu Ngirumpatse to follow him behind the parish. … Nsengimana then killed her.").

11. KILLING OF REFUGEES AT THE *ECOLE NORMALE PRIMAIRE*, FROM 25 APRIL

11.1 Introduction

468. The Indictment alleges that Nsengimana frequently visited the *Ecole normale primaire* to verify that no Tutsis took refuge there and that, by doing so, he ensured the later killing of Tutsis. The Chamber considers the evidence of Witness CAZ.[520]

469. The Defence submits that the Prosecution evidence is unreliable, and that there is no connection between Nsengimana's visits and any specific killings. Reference is made to Witnesses Marie-Cécile Uwayezu and Marie Goretti Uwingabire as well as Prosecution Witness CAP.[521]

11.2 Evidence

Prosecution Witness CAZ

470. Witness CAZ, a Tutsi, worked at the *Ecole normale primaire*, where he sought refuge very early in the morning of 25 April 1994. He travelled to the school with four persons who met an untimely death, including Major Kambanda (II.6.3.8). There were at least nine other Tutsis staying there with the witness, in addition to the family of a certain Paulin Muswahili, whose ethnicity he did not specify. He also mentioned that Xavérine had sought refuge at the school. She was later taken away by Simon Kalinda and killed (II.17).[522]

471. Around 9.00 a.m. on 25 April, he saw Nsengimana arrive and enter the office of headmaster Augustin Nyamulinda. The two spent about 10 minutes together. The witness did not know what they discussed. About 3.00 p.m., Nsengimana returned with Phénéas Munyarubuga, the discipline master at the *Collège Christ-Roi*. Nyamulinda met with them for about 15 minutes, but they did not go inside the office. Afterwards, Nyamulinda told the witness that it was strange that Nsengimana had visited as he never used to come to the school. Nyamulinda thought that Nsengimana had come to see who may be hiding there.[523]

472. Nsengimana returned with Simon Kalinda around 10.00 a.m. on 26 April. The witness was in the kitchen, and he could see Nsengimana through a grille in the wall. The two met with Nyamulinda in his office for about 15 minutes. The witness did not know what they discussed.[524]

473. One or two days later, around 3.30 p.m., the witness was at the entrance to the *Ecole normale primaire*. He observed Nsengimana leave the *Collège Christ-Roi* and walk, armed

---

[520] Indictment para. 20; Prosecution Closing Brief Chapter 5 p. 30 (concerning refugees at the *Ecole normale primaire*).
[521] Defence Closing Brief paras. 822-831, 833-843, 2342, 2346.
[522] T. 29 January 2008 pp. 51-54, 56, 62; T. 30 January 2008 pp. 7-9; Prosecution Exhibit 21 (personal identification sheet).
[523] T. 29 January 2008 pp. 53-57, 66; T. 30 January 2008 pp. 10-11, 13. According to the English version, Witness CAZ initially described the first meeting as taking place in Nyamulinda's "house", but from the context and later testimony, it appears he meant Nyamulinda's office. T. 29 January 2008 p. 54 (quoted). The French transcripts confirm this (*id.* p. 63).
[524] T. 29 January 2008 pp. 56-58; T. 30 January 2008 pp. 11, 13.

with a club, towards the Nyanza parish church. Later he returned unarmed and "entered … the ENP premises". The witness did not provide additional information about this visit.[525]

474. While taking refuge at the school, Witness CAZ saw a young man being killed in the playground within the premises of the *Ecole normale primaire*. A second young man was murdered on the school football pitch. The witness did not identify either man or the perpetrators, nor did he indicate the date of these events.[526]

Prosecution Witness CAP

475. Witness CAP, a Hutu, worked at the *Ecole normale primaire*. From about 23 to 25 April 1994 until the end of the events, he lived at the school for safety reasons. He did not give evidence about Nsengimana coming inside the school complex. Other than the abduction of Xavérine and her son (II.17), he did not mention any attacks occurring inside the school or against those taking refuge there.[527]

Nsengimana

476. Nsengimana testified that he went to the *Ecole normale primaire* to see Augustin Nyamulinda, but not with Phénéas Munyarubuga or Simon Kalinda. It was a three minutes' walk, and he had no reason to be accompanied.[528]

Defence Witness Marie-Cécile Uwayezu

477. Marie-Cécile Uwayezu, the daughter of headmaster Augustin Nyamulinda at the *Ecole normale primaire*, stated that Nsengimana visited their house only once during the Easter holiday, when he brought a wayward traveller. She did not describe any attack taking place inside the school, except for the one involving Xavérine and her son (II.17). The witness denied hearing her father associate Nsengimana with the killings.[529]

478. Uwayezu mentioned 22 individuals who took refuge at her parents' house and throughout the *Ecole normale primaire*. All were Tutsis, except for Paulin Muswahili and his children. The witness said that, after soldiers settled at the school, around 25 May 1994, her father became worried and spoke with the Muswahili family. Uwayezu did not overhear the conversation, but knew that Muswahili's wife, who was a Tutsi, subsequently left the school before the rest of her family. Later, the witness heard that she had been killed. Other than Xavérine and her son (II.17), Muswahili's wife was the only person hiding there that Uwayezu identified as having been killed.[530]

---

[525] T. 29 January 2008 pp. 58 (quoted), 59.
[526] T. 30 January 2008 p. 9. Witness CAZ provided this evidence during cross-examination.
[527] *Id.* pp. 43-44, 53-57, 60-61; Prosecution Exhibit 22 (personal identification sheet).
[528] T. 9 July 2008 pp. 28-29, 34. Nsengimana did not specify a time period but, in responding to Witness CAZ's allegation that he visited the *Ecole normale primaire*, confirmed that he went without indicating whether it was on one or more occasions.
[529] T. 1 July 2008 pp. 14-16, 35-36; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was previously referred to as Witness RFR58.
[530] T. 1 July 2008 pp. 22-25, 27, 34-35; T. 7 July 2008 pp. 7, 14-21.

Defence Witness Marie Goretti Uwingabire

479. Marie Goretti Uwingabire, also a daughter of headmaster Nyamulinda, testified that her sister told her that Nsengimana "came to [their parents'] house in the company of someone else". Uwingabire did not recall this visit. The only attack described by the witness involved Xavérine and her son (II.17). She never heard her father associate Nsengimana with the killings.[531]

480. Uwingabire estimated that about 15 persons hid in her parents' house, with others concealed elsewhere in the *Ecole primaire normale*. All were Tutsis, except for Paulin Muswahili and his children. His wife, a Tutsi, was killed after the Muswahili family left the house.[532]

11.3 Deliberations

481. Paragraph 20 of the Indictment alleges that Nsengimana often visited the *Ecole normale primaire* to ensure that no Tutsis were taking refuge there, and that this led to the later killing of Tutsis. The Prosecution Closing Brief makes only cursory submissions about this event and does not mention Nsengimana's purported visits. This may suggest that it has abandoned this incident as part of its case, even though it is pleaded in the Indictment.[533] The Chamber has decided to consider this evidence, in particular because of Nsengimana's possible interactions with Phénéas Munyarubuga and Simon Kalinda. This is relevant to other aspects of the case, including superior responsibility (III.1.2.2).

482. The Defence does not dispute that Nsengimana visited the *Ecole normale primaire* during the genocide, and that there were refugees there. However, it maintains that such visits had no evil purpose, and Nsengimana testified that he went alone.[534] The main questions for the Chamber are whether Nsengimana visited the *Ecole normale primaire* with Phénéas Munyarubuga and Simon Kalinda, and whether any of his visits were connected to the subsequent killing of Tutsis.

483. Witness CAZ provided a first-hand account of Nsengimana visiting the *Ecole normale primaire* on four occasions: in the morning of 25 April; in the afternoon with Phénéas Munyarubuga; in the morning of 26 April with Simon Kalinda; and around 28 April. Most of his evidence is uncorroborated. Prosecution Witness CAP did not testify that Nsengimana visited the school.[535] Marie-Cécile Uwayezu and Marie Goretti Uwingabire mentioned one such visit, but not that he was accompanied by Phénéas Munyarubuga or

---

[531] T. 30 June 2008 pp. 24-25, 37; T. 2 July 2008 pp. 20, 21 (quoted); Defence Exhibit 56 (personal identification sheet). Marie Goretti Uwingabire was originally listed as Witness GFR99.
[532] T. 30 June 2008 pp. 28-30.
[533] See *Ntagerura et al.* Appeal Judgement paras. 148-150.
[534] Defence Closing Brief paras. 833 ("Father Hormisdas may have paid visits from time to time to his colleague Mr. Nyamulinda, but if he did it was unarmed and without evil purpose"), 834 ("Father Hormisdas does not recall visiting the ENP in the company of anyone. He also denies that he possessed a weapon"); Nsengimana, T 9 July 2008 p. 34 ("I went to the ENP to see my colleague, the director of the ENP, and that school is very near, and it takes three minutes. So there is no reason for me to be accompanied by anyone. So I did not go there with Phénéas or with Simon Kalinda.").
[535] Witness CAP gave evidence the day that Witness CAZ concluded his testimony, but was not asked whether he saw Nsengimana at the school. The Chamber notes that Witness CAP's statement to investigators does not mention any such visit, see Defence Exhibit 36 (statement of 11 July 2000).

Simon Kalinda. The Chamber realises that Witness CAZ may have seen more than the other three witnesses did, but this still creates some doubt.[536]

484. Assuming that the visits took place as described by Witness CAZ, there is no evidence about the conversations between the two headmasters. The witness's perception that Nsengimana had come to see how many refugees were hiding at the *Ecole normale primaire* was based on a remark purportedly made to him by Nyamulinda. This is uncorroborated hearsay evidence, and also speculation.[537] Moreover, Marie-Cécile Uwayezu and Marie Goretti Uwingabire said that their father did not associate Nsengimana with the killings. The Chamber considers that, even if Witness CAZ's testimony were accepted as true, his account of what Nyamulinda said he believed to have motivated Nsengimana carries limited weight.

485. The evidence about the ensuing killings is also unclear. Witness CAZ referred to the death of four Tutsis who travelled with him to the *Ecole normale primaire*. Two – Major Kambanda and a child – were killed before reaching the school. The Chamber addresses this evidence within the context of roadblocks (II.6.3.8). As for the other two refugees, the witness acknowledged that he was not familiar with the circumstances surrounding their death.[538] Consequently, no link has been established between the killing of these four persons and Nsengimana's visits.

486. Witnesses CAZ, CAP, Marie-Cécile Uwayezu and Marie Goretti Uwingabire gave evidence about the abduction and killing of Xavérine and her son, who had sought refuge at the *Ecole normale primaire*. This is discussed elsewhere (II.17) in light of the Prosecution claim that they were not taken from the school, but abducted from a roadblock.

487. Witness CAZ testified that he witnessed a young man being killed in the playground within the *Ecole normale primaire*'s premises, and that a second young man was murdered at the school's football pitch. There is little evidence about these events. The first killing is mentioned in the witness's statement to Tribunal investigators in May 2000, but was not raised by the Prosecution during its examination-in-chief.[539] Both killings came up during the Defence cross-examination. The Chamber has no basis for finding any connection between these killings and Nsengimana's visit.

488. Witnesses CAZ, Uwayezu and Uwingabire stated that Paulin Muswahili's family sought refuge at the school, and the two sisters said that his wife, a Tutsi, was killed after she left the school.[540] Both accounts of her death are vague and rely on hearsay evidence. Uwayezu's description indicates that the killing must have occurred after the soldiers settled at the school around 25 May. Without additional information, including the identity of the perpetrators, the Chamber is unable to determine whether the killing of Muswahili's wife can be attributed to Nsengimana or any individual allegedly connected to him.

---

[536] The Chamber recalls that it has raised questions about Witness CAZ's testimony. See, for example, his account about the killing of Judge Jean-Baptiste Twagirayezu (II.18).

[537] During cross-examination, Witness CAZ acknowledged that "[i]t is hardly surprising that a director [like Nsengimana] would come and visit another director [like Nyamulinda] who was his neighbour". T. 30 January 2008 p. 13.

[538] T. 29 January 2008 p. 63 (the other refugees "were subsequently killed in circumstances I do not know").

[539] Defence Exhibit 34 (statement of 30 May 2000) p. 4, according to which a soldier handed the young man to two young killers, including headmaster Nyamulinda's son.

[540] It is unclear when and how Paulin Muswahili's wife left the school. According to Marie-Cécile Uwayezu, the wife departed before her husband and children (T. 7 July 2008 p. 15), whereas Marie Goretti Uwingabire gave the impression that the family moved out together (T. 30 June 2008 p. 29).

489. The Chamber concludes that the Prosecution has not proved beyond reasonable doubt that Nsengimana frequently visited the *Ecole normale primarie* with the purpose of preventing Tutsis from seeking refuge at the school, thereby contributing to their death.

12. KILLING OF THREE TUTSI REFUGEES, LATE APRIL OR EARLY MAY

12.1 Introduction

490. According to the Indictment, Nsengimana handed over – around 28 April 1994 – three Tutsi refugees to members of the *Interahamwe*, who then killed them and threw their bodies into the pit latrine at the *Collège Christ-Roi*. It relies primarily on Witness CAN, but reference is also made to Witnesses CAW and CBF.[541]

491. The Defence argues that Witnesses CAW and CAN are unreliable. It also refers to the testimonies of Witnesses JMR1, EMR95, VMF8, AMC1, VMB17, FMCD5, EMRF1 and GMC4, which, in its view, raise the possibility that the RPF killed and dumped bodies in the school's latrines.[542]

12.2 Evidence

Prosecution Witness CAN

492. In early May 1994, Witness CAN, a Tutsi living in Mugonzi *cellule*, was with Kalisa, Butera, Gashirabake, Habyarimana and others at the roadblock between the homes of Pasteur Dusangeyezu and Simon Kalinda. Three persons he did not know approached. They said that they were from Nsengimana's native region of Gikongoro, knew him and his family well, and that they were going to ask him for refuge.[543] No killers were manning the roadblock at that time, and those posted there warned the refugees that Nsengimana was a member of the CDR party, well known for its hatred of Tutsis, and that it was unlikely that he would assist. The three individuals nevertheless continued on their way to seek refuge from Nsengimana, and the witness did not see what happened to them. He believed that Nsengimana ordered his students or employees to kill them but did not have first-hand evidence supporting the conclusion.[544]

493. In 1996, the witness was present during the exhumation of "remains of bones" from a pit latrine next to the carpentry workshop in the *Collège Christ-Roi*. The three persons who had passed his roadblock were removed and recognised based on their identification cards, which indicated that they were Tutsis. The *responsable de cellule* broadcast their names over the radio. As five days passed and no one came, the bodies were buried within *Christ-Roi*. Other exhumations occurred, and over 20 bodies were recovered.[545]

---

[541] Indictment paras. 31, 40; Prosecution Closing Brief Chapter 5 pp. 18-19, 161-162, Chapters 6-8 paras. 74, 105, 116, 135, 145, 160, 173, 191, 201, 216, 229, 247. The Brief refers to the killing of "Three Tutsi Women". The Chamber prefers "Three Tutsi Refugees", which appears in the Indictment and reflects the evidence of Witness CAN (three Tutsi refugees) and Witness CAW (three Tutsi young men). The Chamber also takes into account Witnesses CBG (Chapter 6 para. 82, recounting testimony about bodies in the *Collège Christ-Roi*'s pit latrine after the genocide), CAO (Chapter 5 pp. 22-23, Chapter 6 para. 56, discussing his observations at the Simon Kalinda roadblock), and BVI.

[542] Defence Closing Brief paras. 2010-2026, 2244-2257, Addendum pp. 21-22; T. 12 February 2009 pp. 34-35.

[543] Witness CAN explained that in 1994, refugees came to Nyanza from different parts of Rwanda because, during previous times of conflict, there had never been killings there. Furthermore, the genocide started later – around 23 April 1994 – in Nyanza than in other parts of the country.

[544] T. 27 June 2007 pp. 67-68; T. 28 June 2007 pp. 13-16; Prosecution Exhibit 4 (personal identification sheet). Details concerning the roadblock are given elsewhere (II.6).

[545] T. 28 June 2007 pp. 14-15, 54 (quoted).

Prosecution Witness CAW

494. Witness CAW, a Hutu, worked at the Nyanza parish church. Around 28 April 1994, about three days after the killing of Father Mathieu Ngirumpatse and his elderly relative (II.9-10), Nsengimana and parish employee André John came to the witness's house in the morning, telling him that he should return to work. The witness went to the parish to assist with cleaning tasks there. At 12.00 p.m., he continued to the *Collège Christ-Roi* to undertake housekeeping duties for soldiers from the *Ecole supérieure militaire* in Kigali who were staying there. Afterwards, Nsengimana and *Christ-Roi* employees Simon, Phénéas, Vincent, Sebukayire and Cyprien went to the Nyanza parish church with the witness, arriving there at 1.00 p.m. They left him there and went to collect some others.[546]

495. When the group returned, they broke into the vestry of the parish church and brought out three young men with Tutsi features, who had been hiding there. The witness did not know when those three had entered the vestry, what their names were, or where they had come from. He saw Nsengimana and the others take them away from the parish, but did not hear anyone speak at that time. The witness stayed at the parish. Around 4.00 p.m. that day, Cyprien, who was armed with a gun, returned to the parish. He told the witness that the three men had been killed, and their bodies thrown into the Nyamagana pond. He did not specify who in fact killed them.[547]

Prosecution Witness CBF

496. Witness CBF worked at the *Collège Christ-Roi* in 1994. In August or September, the witness learned that Callixte Kayitsinga had been killed at *Christ-Roi* and thrown into a pit latrine there. His informer also observed five to six bodies of other young persons around the school's carpentry workshop. The witness returned to *Christ-Roi* in November that year and found significant traces of blood in a room inside the "teachers' building". In 1995 or early 1996, Witness CBG found a number of human bones that belonged to "series of corpses" in a pit latrine next to the carpentry workshop. Witness CBF was present as bones were being organised in a mass grave as an attempt to reconstitute the corpses. The only body he thought he recognised was that of Callixte Kayitsinga, based on a pair of black trousers on one of the remains (II.16).[548]

Prosecution Witness CBG

497. Witness CBG, a Tutsi, worked at the *Collège Christ-Roi* in 1995. Around 1996, a student informed him that the outside of the carpentry shed had been repainted red to cover blood stains of persons killed there. He also said that the bodies of these victims were not far,

[546] T. 25 June 2007 pp. 4-5, 14, 21-22, 26-27, 62; T. 26 June 2007 pp. 5, 8, 11-12, 42-43; Prosecution Exhibit 2 (personal identification sheet).
[547] T. 25 June 2007 pp. 27-28; T. 26 June 2007 pp. 8, 11, 42-43.
[548] T. 26 June 2007 pp. 59, 61; T. 27 June 2007 pp. 2-4, 7, 9, 10 (quoted), 11 (quoted), 19-20; Prosecution Exhibit 3 (personal identification sheet). Witness CBF also testified that in January or February 1994, Nsengimana told him that during disturbances in the past, people sought refuge in churches and parishes, which provided them safe harbour, but that those days were over. A complete summary of Witness CBF's evidence relating to this statement is given in connection with the killing of Father Furaha (II.22).

and led the witness to nearby toilets where the floor had been destroyed. The student did not identify the victims.[549]

498. Two or three days later, the witness reported this to local authorities, who exhumed the bodies and placed them in a room within the *Collège Christ-Roi* compound. He did not supervise the removal of the corpses but saw them there afterwards. Rosaries and clothing were among the remains. A radio announcement asked persons "who knew that their family members had died" to come and see if any were among those recovered at *Christ-Roi*. After a week and a half, no one came, and they were reburied in the school's campus. The witness was unaware whether anyone other than Callixte Kayitsinga was identified, and he did not specify their gender.[550]

Prosecution Witness BVI

499. Witness BVI, a Tutsi and *Collège Christ-Roi* student in 1994, returned to school in June that year in order to locate personal effects he had not taken with him when he left for holiday. He noticed blood on the walls of the carpentry workshop and in the nearby toilets.[551]

Prosecution Witness CAO

500. Witness CAO, a Tutsi, regularly manned a roadblock near Simon Kalinda's house in Mugonzi *cellule* from 22 April until 19 May 1994 (II.6). He did not testify that three Tutsis from Gikongoro sought refuge at the *Collège Christ-Roi*.[552]

Nsengimana

501. Nsengimana denied Witness CAW's allegations. He referred to the witness's evidence that he and others had to break into the sacristy and questioned how refugees could have hidden there in the first place without having a key.[553]

Defence Witness JMR1

502. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi* and generally remained there until he fled Nyanza on 28 May 1994. He did not observe any violence within the school and was unaware of Nsengimana being involved in any such activity.[554]

Defence Witnesses EMR95, VMF8, AMC1, FMCD5, VMB17, EMRF1 and GMC4

503. Witnesses EMR95, VMF8, AMC1, FMCD5, EMRF1 and GMC4 were present in Butare prefecture for periods between April and May 1994, and Witness VMB17 remained in Gitarama prefecture during the genocide.[555] They were all Hutus. Witness EMR95 testified

[549] T. 29 June 2007 pp. 19-20, 23-26, 28, 30; Prosecution Exhibit 6 (personal identification sheet).
[550] T. 29 June 2007 pp. 24-26, 31, 32 (quoted). See also II.16.
[551] T. 24 January 2008 pp. 3-4, 25, 66; Prosecution Exhibit 18 (personal identification sheet).
[552] T. 14 January 2008 pp. 68-73; T. 15 January 2008 pp. 3-5, 15-17, 35; Prosecution Exhibit 8 (personal identification sheet).
[553] T. 9 July 2008 p. 27.
[554] T. 17 June 2008 pp. 4-7, 34-35; Defence Exhibit 52 (personal identification sheet).
[555] Witness EMR95, T. 13 June 2008 pp. 3-4, 11-12, 14, 19; Defence Exhibit 48 (personal identification sheet). Witness VMF8, T. 10 July 2008 pp. 5-6, 8-9, 11-12, 17-18, 20, 24-26, 28; Defence Exhibit 67 (personal

that the RPF took control of Nyanza, which included the *Collège Christ-Roi,* around 27 May.[556] Witnesses VMF8, AMC1, VMB17 and FMCD5 heard that, in Nyanza and elsewhere, the RPF had killed intellectuals, businessmen, at least one teacher, priests and family members.[557] Witness EMRF1 testified that the RPF forced him and others to march about 25 kilometres from Murama to Ruhango, and sent a group of peasants to Gitwe college to be killed. The RPF chose this destination because it had pit latrines that could be used to dispose of victims.[558] Witnesses EMR95 and GMC4 confirmed that soldiers from the *Ecole supérieure militaire* occupied *Christ-Roi* near the end of May, and stated that no violence took place inside *Christ-Roi* during this time.[559]

12.3 Deliberations

504. Paragraph 31 of the Indictment alleges that Nsengimana handed three Tutsi refugees to members of the *Interahamwe,* who killed and then disposed of them in the pit latrine of the *Collège Christ-Roi*. Two Prosecution witnesses gave relevant evidence. According to Witness CAW, three refugees were abducted by Nsengimana and others from the Nyanza parish church on 28 April 1994, killed and left in Nyamagana pond. Witness CAN, however, testified that, in early May 1994, three persons passed a roadblock, indicating that they would be seeking refuge with Nsengimana, and were recovered from the *Christ-Roi* pit latrine after the genocide.

505. The Prosecution has not commented on the differences between the two accounts, but appears to place primary emphasis on Witness CAN's evidence.[560] The Chamber will consider them separately before viewing them together, and begins with Witness CAN's testimony.

12.3.1 Refuge at the *Collège Christ-Roi*

506. It follows from Witness CAN's evidence that he and others manning the roadblock near the *Collège Christ-Roi* spoke with the three Tutsis from Gikongoro in early May 1994. They were on their way to the school to seek refuge from Nsengimana. He did not see them

---

identification sheet). Witness AMC1, T. 3 June 2008 pp. 3, 22-24; Defence Exhibit 40 (personal identification sheet). Witness FMCD5, T. 16 June 2008 pp. 23, 35; Defence Exhibit 50 (personal identification sheet). Witness EMRF1, T. 9 June 2008 pp. 19-20; Defence Exhibit 44 (personal identification sheet). Witness GMC4, T. 10 July 2008 pp. 34, 36-39, 43-45; Defence Exhibit 68 (personal identification sheet). Witness VMB17, T. 16 June 2008 pp. 4, 7; Defence Exhibit 49 (personal identification sheet).

[556] Witness EMR95, T. 13 June 2008 p. 15.

[557] Witness VMF8, T. 10 July 2008 p. 19 (intellectuals, businessmen and a teacher in Nyanza); Witness AMC1, T. 3 June 2008 p. 26 (intellectuals in Nyanza); Witness VMB17, T. 16 June 2008 pp. 4-5, 10 (priests in Kabgayi diocese, Byumba diocese and other RPF-controlled areas); Witness FMCD5, T. 16 June 2008 p. 35 (family members in Butare).

[558] Witness EMRF1, T. 9 June 2008 pp. 21, 24-27, 28 ("…bodies [were] placed in [pit] latrines because the RPF could not bury all these people. They did not have the strength to go and dig and bury all these people. It was easier for them to put them in latrines and to cover up the latrines."), 30-31.

[559] Witness EMR95, T. 13 June 2008 pp. 10-14, 27; Witness GMC4, T. 10 July 2008 pp. 36-39, 41, 48.

[560] The Prosecution only summarises Witness CAN's evidence in support of the allegation (Prosecution Closing Brief Chapter 5 pp. 161-162). While it indicates that Witness CAW will also be relied upon, it does so either without detailing his evidence (Chapter 6 para. 74) or misattributing Witness CAN's evidence to him (compare Chapter 5 pp. 161-162 and Chapters 6-8 paras. 135, 191, 247). The Prosecution's summary of the relevant aspects of Witness CAW's testimony is contained in the "Activities at Roadblocks" section of the Brief (Chapter 5 pp. 18-19).

again until their bodies and identity cards were purportedly recovered from the school's pit latrines with others in 1996.

507. Witness CAN's account indicates that Witness CAO might have been at the roadblock when the three Tutsis passed. Witness CAO, who testified more than six months after Witness CAN, was not questioned about nor did he discuss this incident.[561] Whether he was present at the roadblock when this occurred is unclear. Therefore, Witness CAN's account lacks corroboration in this respect.

508. Witness CAN thought that the three refugees were killed at the *Collège Christ-Roi*, and that Nsengimana had ordered his students or employees to do so. To support this belief, the witness referred to the refugees' death at the school and their sharing the same place of origin with Nsengimana.[562] This is speculation and does not in itself allow the Chamber to conclude that Nsengimana was involved. It will therefore consider other evidence that can support this conclusion.

509. It is undisputed that bodies were found in the *Collège Christ-Roi*'s pit latrine after the genocide. This also follows from the evidence of Witnesses CAN, CBG and CBF.[563] No witness offered a direct account surrounding the deaths of those recovered there. Witness CBF heard that bodies were near the carpentry shed at the time of Callixte Kayitsinga's murder (which occurred in early May 1994, see II.16), suggesting that persons were killed on the *Collège Christ-Roi* compound before that time.[564] Witness CBG was told that persons found in the latrines had been killed at the school, but it is not clear that his informant observed this first-hand.[565] The question is whether the three refugees were among the bodies found during the exhumation.[566]

---

[561] There is no mention of Witness CAO observing three Tutsis from Gikongoro in his statement to Tribunal investigators. Defence Exhibit 9 (statement of 14 June 2000). The Chamber notes, however, that he manned this roadblock from 6.00 p.m. to 6.00 a.m. every other night from 22 April to 19 May 1994, and that he missed one week due to illness (II.6.2).

[562] T. 28 June 2007 p. 16 ("Q. Do you know how [these Tutsi refugees] were killed and who killed them? A. I believe the three persons were killed by employees, or students who were given the order to do so by Hormisdas. Q. And why is it that you are saying so, Witness? A. Well, simply because they died at the *Christ-Roi* college and nobody else knew the three persons. There was only Father Hormisdas who knew them, because the three persons also hailed from his place of origin.").

[563] Defence Closing Brief para. 2244. Furthermore, Witnesses CBG and CBF corroborated Witness CAN's testimony that a number of dead were recovered from the school's pit latrines in 1995 or early 1996. Witness CBG referred to "bodies" (T. 29 June 2007 pp. 24-25, 32), while Witness CBF clarified that the bones recovered constituted a "series of corpses" (T. 27 June 2007 p. 11).

[564] T. 27 June 2007 pp. 4 ("A. Ndereye claims that Callixte was killed near the latrine … located to the left of the carpentry workshop, and … that he was thrown into the pit latrine. He also says that, at that time, around the building, he also saw five or six dead bodies of young people."), 7 ("A. It is the witness Jean de Dieu Ndereye who claims that he saw five or six other dead bodies near the carpentry workshop.").

[565] T. 29 June 2007 p. 30 ("Q. … And it would seem, if I'm correct, that this person was not present at all during the events at the college but had fled Nyanza and, in fact, had gone to Burundi and returned very much later. Does that accord with your own recollection? A. … I don't know how he escaped from the genocide, where he had gone into hiding. I don't know. I met him at the college [around 1996].").

[566] Witness CBF believed that one body was Callixte Kayitsinga based on the black trousers that were similar to those he wore the day he was last seen (II.16). It seems that he shared this belief with Witness CBG. T. 29 June 2007 p. 25 (Witness CBG: "… But as for any specific individual who would have been in the pit, I often went to see [Witness CBF] … and I told him about … the people that had been killed in the college and the place where the dead bodies had been thrown, and he told me that he did know someone and that that person was a Kayitsinga, Callixte … ").

510. Witness CAN's testimony about the exhumation was remarkably similar to the evidence of Witness CBG, and it is clear that they spoke about the same event.[567] However, it does not follow from Witness CBG's account that individuals other than Callixte Kayitsinga were identified, and he made no mention of identification cards being recovered during the exhumation, storing or reburial process.[568] Similarly, Witness CBF's testimony does not give the impression that anyone other than Kayitsinga was identified or identifiable.[569] This raises doubts about Witness CAN's testimony that identity cards were recovered with the remains, or that the persons he allegedly saw pass him were identified.[570]

511. In the Chamber's view, Witness CAN's largely uncorroborated account is too imprecise to infer that the three unidentified refugees he saw were later killed at the *Collège Christ-Roi*. Similarly, the record does not support a finding beyond reasonable doubt that Nsengimana was responsible for their killing.[571]

12.3.2 Abduction From the Nyanza Parish Church

512. Witness CAW testified that on 28 April 1994, Nsengimana, *Christ-Roi* employees Simon, Phénéas, Vincent, Sebukayire and Cyprien and others abducted three young persons hiding in the Nyanza parish church vestry. Before this took place, he purportedly served lunch to *Ecole supérieure militaire* soldiers at the *Collège Christ-Roi*. However, his own evidence suggested that he did not serve these soldiers until after April, likely around mid to late May.[572] Other Prosecution and Defence evidence corroborates this later date by suggesting that they were not there in April.[573]

---

[567] Witnesses CAN and CBG testified that after the remains were exhumed, a radio announcement was made, no one retrieved the bodies and they were buried in the *Collège Christ-Roi*.

[568] In this respect, Witness CBG's testimony is consistent with his prior statement. T. 29 June 2007 p. 31 ("Q. And I see from your statement that it reads, 'I had all the bodies dug out. Some still wore rosaries around the neck, while others had clothes on, but it was impossible to identify them positively.' And that was the sad fact, was it not, that after that time it wasn't possible to identify any of the remains as belonging to any particular person? A. Since I did not see those people before, I could not have identified them just from the rosaries. Maybe those who had been there could say this shirt belonged to … such and such a person, but I didn't know the people. I did not know their shirts. Q. Yes. And – but just reading from your statement, it was impossible to identify them. None of them were identified. That's right, isn't it? A. I'm saying no one told me this is such-and-such a person's body, whether they identified them or not. No one told me that such-and-such a body was so-and-so's body. No one told me that.").

[569] T. 27 June 2007 p. 11 ("A. … However, they were not the bones of one body, but the bones of a series of corpses, of bodies. … We had already dug the mass grave where we were to bury those human remains, and he placed those human remains, one next to the other, whilst trying to reconstitute those corpses. And I was there with one of my co-workers … And in talking together, we thought that we recognised the body of Callixte by the black trousers that he was wearing at the time when he left our centre. But you know very well, of course, I say we thought we recognised him because it is very difficult, when face-to-face with a group of human … remains of a number of people, to recognise somebody amongst them.").

[570] The Chamber notes that Witness CAN did not even identify the gender of the victims. The ambiguity raises more questions about the reliability of his account. It is also recalled that the Chamber has questioned the evidence of Witness CAN elsewhere (II.2, 17 and 18).

[571] The Defence also presented several witnesses who, in its view, suggest that the RPF may have deposited the bodies into *Collège Christ-Roi*'s pit latrines after taking over Nyanza. It refers to anecdotal accounts of the RPF killing persons and using pit latrines as mass graves elsewhere. None of their evidence directly concern the RPF's activities at *Christ-Roi* after its arrival in Nyanza. The Chamber finds the Defence evidence to be of minimal probative value.

[572] Witness CAW initially asserted that he joined the soldiers at the *Collège Christ-Roi* in late April or early May 1994. T. 25 June 2007 pp. 26 (28 April), 29-30 (3 and 4 May), 57 (28 April). But when asked three specific

513. Furthermore, there are differences between Witness CAW's testimony and statements attributed to him in a report by the organisation African Rights. Both indicate that he saw Nsengimana leading others in removing three Tutsis; however, only his testimony mentions Cyprien Gasatsi returning that day and informing him that they were killed and dumped in the Nyamanga pond. The report, on the other hand, quotes the witness as not knowing where the victims were taken, and gives no indication that he knew what happened to them.[574] The witness explained differences between the report and his evidence about this incident by suggesting he "did not give [the reporter] all the details" in the document.[575] He generally disputed the report's accuracy as he spoke with the reporter for less than 20 minutes, was not given the opportunity to review his statement and was not asked to sign it (II.9-10).

514. The Chamber has accepted that the report's accuracy and the methodology used to prepare it remain relatively unexplained (II.9-10). Coupled with the witness's explanation that he did not share all details during his interview, this may excuse the omission of Cyprien and his announcement. But it does not account for the statement attributed to Witness CAW that he did not know where the victim was ultimately taken. This contradicts his testimony and raises questions as to whether his evidence has evolved over time. The Chamber will not rely on him absent sufficient corroboration.[576]

515. The Chamber considers the attack on the Nyanza parish in light of Witness CBF's evidence regarding his memorable conversation with Nsengimana prior to the events of 1994 where the accused said that churches would no longer be places of safe haven (II.22). The

---

questions about the date, he repeatedly said that this occurred in late May. *Id.* p. 63 ("A. When I went to work at the [*Collège Christ-Roi*] and when we were to serve up the midday meal to those people, well, this was towards the end of the month of May, approximately. Q. And so you were helping with the meals towards the end of the month of May. Is that the position? A. Yes, around that period. … Q. And that was towards the end of the month of May; is that correct? A. It was during the month of May, around that period. I believe I have explained that to you.").

[573] Witness CAO, T. 15 January 2008 p. 28 ("All I know is that [ESM soldiers] came in the month of May, but I can't tell whether it was at the beginning of the month or in the middle of the month."); Nsengimana, T. 8 July 2008 pp. 45-46 (ESM requisitioned the *Collège Christ-Roi* in mid-May of 1994); Witness GMC4, T. 10 July 2008 pp. 37, 42, 44-45 (ESM soldiers arrived two to three weeks before his own arrival between 16 and 30 May); Witness DFR85, T. 27 June 2008 pp. 25-26, 31 ("I came to the college at the end of May, and the [ESM] soldiers arrived during the month of June."); Witness CAY, T. 18 January 2008 pp. 23, 25 (six soldiers arrived by helicopter around 20 May); Marie Goretti Uwingabire, T. 30 June 2008 pp. 43-44 (a helicopter and then around 200 soldiers arrived and set up camp at the *Ecole normale primaire* and the *Collège Christ-Roi* in the end of May); Witness VMF8, T. 10 July 2008 p. 17 (soldiers set up camp on the *Ecole normale primaire* football pitch in mid-May); Witness JMR1, T. 13 June 2008 pp. 10-11 ("It was only at the end of the war that the [ESM] moved to the premises of the Christ King college or *Collège Christ-Roi*."). Other witnesses offered conflicting or unclear testimony about the arrival and settling of soldiers. See Witness BVX, T. 22 January 2008 p. 36 (about two battalions of soldiers had arrived around 21 April and were staying in the *Collège Christ-Roi*); Witness CAP, T. 30 January 2008 pp. 50, 63 (soldiers fleeing from Remera and Kanombe in Kigali settled in all the schools in the area in April after the 26th of that month, although he was unsure when); Witness BVI, T. 24 January 2008 pp. 24-25 (between March and June); Witness JMR1, T. 17 June 2008 p. 35 (Rusatira's soldiers took over the *Collège Christ-Roi* during a period of intense fighting in Kigali, although he was unsure of its date); Witness BVV, T. 23 January 2008 p. 52 ("I cannot confirm the date, but what I can say is that there were soldiers in all the schools.").

[574] Defence Exhibit 2 (Extract from a publication of African Rights: *Witness to Genocide*, issue no. 14, November 2001).

[575] T. 26 June 2007 pp. 42, 43 (quoted).

[576] It is recalled that the Chamber has questioned the reliability of Witness CAW's testimony elsewhere, including purported eye-witness accounts (II.4, 6, 9-10, 15 and 19).

words spoken by Nsengimana are open to different interpretations, and the Chamber considers the evidence insufficiently direct or precise to corroborate Witness CAW's account.

12.3.3 Conclusions

516. Two Prosecution witnesses gave evidence about the killing of three Tutsi refugees. Their accounts were very different. Witness CAN testified that the event occurred at the *Collège Christ-Roi* in early May 1994, and that their bodies were found in the pit latrine there. Witness CAW stated that the Tutsis were abducted from the Nyanza parish church, killed around 28 April 1994, and their corpses thrown into the Nyamagana pond. Neither witness suggested that the corpses were moved from the pond to the pit latrines. The Chamber has great difficulty reconciling the two testimonies, and the question arises whether they, if true, relate to the same event.

517. The Indictment alleges that, around 28 April 1994, Nsengimana handed over three Tutsi refugees to members of the *Interahamwe*, who then killed and threw them in the pit latrine at the *Collège Christ-Roi*. Witness CAW described Nsenimana's involvement in the abduction, but made no reference to the school. According to Witness CAN, the bodies were thrown into the *Christ-Roi* latrine, but the timing of the event differs from the one in the Indictment, and there is no evidence about Nsengimana handing the Tutsis over to the *Interahamwe*. Both versions also have other weaknesses, explained above (II.12.3.1 and 2). Consequently, the allegation in the Indictment has not been proved beyond reasonable doubt.

13. CLEARING OF BUSHES AND KILLING, LATE APRIL OR EARLY MAY

13.1 Introduction

518. The Prosecution alleges that, around 23 April 1994, Nsengimana ordered students and *Interahamwe* to cut the bushes surrounding the *Collège Christ-Roi*, so that no Tutsis could hide there. By so doing, he aided and abetted the killing of Tutsis. It relies on Witnesses BVV, BVJ and CAO.[577]

519. The Defence submits that the Indictment is defective as it does not refer to the killing of Emmanuel. Alternatively, the Prosecution evidence is unreliable. It refers to Witnesses VMF8 and JMR1.[578]

13.2 Evidence

Prosecution Witness BVV

520. Witness BVV, a Tutsi, lived in Nyanza where he worked at the *Ecole normale primaire* (ENP). On Sunday 24 April 1994, following the killing of some of his relatives, he hid in bushes near the *Collège Christ-Roi* classrooms and below the ENP. The witness stayed there for four or five days until persons from *Christ-Roi* and the ENP started clearing bushes near to where the witness was hiding.[579]

521. The witness saw Nsengimana moving inside and outside the *Collège Christ-Roi* grounds in the areas where the bushes were being cleared. He believed that Nsengimana had ordered this be done and was inspecting the work. During the clearing, a young Tutsi child called Emmanuel was discovered a few metres from the *Christ-Roi* football field, just below the area where the witness was hiding. The witness observed that Nsengimana was about 75 metres away from Emmanuel, at a grille near the fifth-year classroom at *Christ-Roi*. Students and employees from *Christ-Roi* and the ENP were chasing Emmanuel to the fields next to the *Ecole normale primaire* and killing him with a hammer. Nsengimana did not join the group of assailants but remained at his position, which was "a long distance" across the "courtyard" from where Emmanuel was killed. He did not try to protect the child. The witness went to another nearby hiding spot around 6.00 p.m. and remained there until the RPF arrived.[580]

Prosecution Witness BVJ

522. Witness BVJ, a Hutu, lived not far from the *Collège Christ-Roi*. In early May 1994, after the killing of Xavérine (II.17), Simon Kalinda ordered *Interahamwe,* students and local

---

[577] Indictment para. 24; Prosecution Closing Brief Chapter 5 pp. 23, 35, 63, 86-87, 133-135. The Prosecution did not expressly set forth arguments relating to the clearing of the bushes or the killing of Emmanuel in a specific section of its Closing Brief. Relevant summaries of the evidence can be found in the Brief under "Training and Arming of Militias", "Activities at Roadblocks" and "Xavérine and Her Son".
[578] Defence Closing Brief paras. 546-563, 638-639, 674-691, 1156, 1744-1761, 2348-2361; T. 12 February 2009 p. 35.
[579] T. 23 January 2008 pp. 15, 21-22, 26-29, 43, 47-49, 55-56, 58-60, 64-68; Prosecution Exhibit 16 (personal identification sheet). The references include Witness BVV's description of how he entered the *Collège Christ-Roi* on 24 April 1994. This is necessary to determine were he hid, as he left the school taking the same route (which passed the classrooms) before finding his hiding spot below the *Ecole normale primaire*.
[580] T. 23 January 2008 pp. 26-28, 29 (quoted), 65-68, 70.

inhabitants, including the witness, to cut down the hedge, composed of shrubs, that acted as a fence and surrounded the school. The purpose was to prevent *Inyenzi* from hiding there. The witness participated in the removal of bushes near the roadblock close to Kalinda's home. As this occurred, he saw Nsengimana pass by on the road leading into the school. He did not stop anyone from doing this. When Kalinda was asked "[w]hy are we clearing the vegetation?", he answered: "Just go ahead because Father Nsengimana instructed me to have the vegetation cleared." No one was found in the area where the witness participated in the clearing.[581]

523. An inspector at a primary school – Jacques Mudacumura – and a man called Gatuku ordered that the bushes be cleared on "the other side of the fence". The witness learned that those working "in other areas, still around the *Christ-Roi* college" had flushed out "*Inyenzis*". He did not provide further detail or explain how he knew this.[582]

Prosecution Witness CAO

524. Witness CAO, a Tutsi living in Mugonzi *cellule*, testified that soldiers from the *Ecole supérieure militaire* arrived at the *Collège Christ-Roi* in May 1994. He could hear them but could not see them inside the school as it was surrounded by a hedge of cypress trees, which prevented him from looking into *Christ-Roi*. There were three openings in the hedge. The first was close to the roadblock that the witness manned near Simon Kalinda's home. The second overlooked the dwellings in Mugonzi *cellule*, and the third "[faced] the town". In connection with the 3 May attack in Mugonzi (II.14), the assailants exited through the hedge that faced the *cellule*'s dwellings.[583]

Nsengimana

525. Nsengimana denied that he directed that the bushes around the *Collège Christ-Roi* be cleared. He testified that they could not have been cleared at that time as no students were at the school during the Easter holidays of 1994. Furthermore, the local authorities were responsible for clearing bushes behind the school, not Nsengimana. He also denied being involved in the search for, abduction and killing of a young boy called Emmanuel.[584]

Defence Witness VMF8

526. On 12 April 1994, Witness VMF8, a Hutu, fled from Kigali and arrived in Nyanza on that day. He stayed with a friend who lived about 300 metres from the *Collège Christ-Roi*. Between 21 and 27 or 28 April, there was a period of intense killings during which the witness remained at his friend's home. After the killings subsided, and until 20 May, he passed through *Christ-Roi* on about 10 occasions. A cypress hedge surrounded the school, but there were openings in it which could be used by pedestrians. The witness, when heading

[581] T. 21 January 2008 pp. 4, 19, 20 (quoted), 23-24, 56-61, 65, 67; Prosecution Exhibit 13 (personal identification sheet).
[582] T. 21 January 2008 pp. 19, 20 ("And Jacques Mudacumura cleared the other side of the fence"), 56, 57 ("I was not sitting on the side where Jacques and Gatuku were clearing the bushes and where *Inyenzis* were flushed out … Other groups cleared bushes in other areas, still around the *Christ-Roi* college."), 59-61.
[583] T. 15 January 2008 pp. 2-5, 15-16, 18-19, 27-28, 32-33, 34 (quoted); Prosecution Exhibit 8 (personal identification sheet).
[584] T. 9 July 2008 pp. 27, 34; T. 11 July 2008 p. 5.

to Nyanza town, would often enter the school through an opening near the "external toilets", pass the dormitories and then exit another gap that would let him out "onto the football pitch of the [*Ecole normale primaire*], close by the church". The witness said that he did not see any students at the school at that time.[585]

Defence Witness JMR1

527. Witness JMR1, a Hutu, lived and worked at the *Collège Christ-Roi* in 1994. He testified that, sometime during the period from 6 April to his departure from the school in late May 1994, he saw that some plants, which were climbing around the school's perimeter fence, were cut down. No bushes were cleared inside the school.[586]

13.3 Deliberations

528. There appears to be no dispute that vegetation, referred to as bushes, a hedge or plants, surrounded the school.[587] Two of the three Prosecution witnesses testified that Nsengimana was behind the clearing of this growth.[588] Witness BVV had hidden in bushes near the school's classrooms and below the *Ecole normale primaire*. Around 29 April 1994, he allegedly observed Nsengimana inspecting the removal of the bushes when students and employees of the *Collège Christ-Roi* and the *Ecole normale primaire* flushed out a Tutsi child and killed him. In early May, Witness BVJ, acting under Simon Kalinda's orders, assisted in clearing a hedge consisting of shrubs around the school and bushes near the roadblock at Kalinda's home. *Christ-Roi* students, *Interahamwe* and local inhabitants participated, but no Tutsis were found. The Chamber will consider the merits of their respective accounts before considering them together and in light of all the evidence.

529. Only Witness BVV testified about the killing of the Tutsi child called Emmanuel. While he said that Nsengimana ordered that the bushes be cleared, his testimony did not establish that he heard this himself.[589] However, he purportedly saw Nsengimana moving inside and outside the school's property where the clearing occurred. Nsengimana was about 75 metres from where the boy was flushed out of the bushes. Although he did not pursue Emmanuel with the assailants, he did nothing to stop them.

530. The witness was not consistent about when he hid in the bushes and when Emmanuel was killed. He began hiding there on the day when he and his family had sought refuge at the

---

[585] T. 10 July 2008 pp. 5-6, 8-9, 11-14, 24, 25 (quoted), 26; Defence Exhibit 67 (personal identification sheet).
[586] T. 17 June 2008 pp. 18-20; Defence Exhibit 52 (personal identification sheet).
[587] See, for example, Witness VMF8, T. 10 July 2008 pp. 12, 14, 24 (a cypress "hedge" surrounded the *Collège Christ-Roi*); Witness CAO, T. 15 January 2008 p. 28 (a cypress hedge acted as a fence around the school); Witness JMR1, T. 17 June 2008 p. 18 (plants were around a fence that surrounded the school); Witness BVJ, T. 21 January 2008 pp. 19, 56-58 (the fence around *Christ-Roi* was made of trees and a hedge which consisted of shrubs that had thorns).
[588] Witness BVV referred to bushes, while Witness BVJ mentioned a hedge. However, when discussing what was being cleared, both witnesses seem to be referring to the same vegetation. Witness BVV described Nsengimana as moving "around everywhere, inside and outside the college" and going "around the areas where … the bushes were being cleared". T. 23 January 2008 p. 27. Moreover, he described the bushes that were cleared as "thorny" (*id.* p. 28), which is similar to Witness BVJ's description of shrubs that formed part of the natural barrier around the school as having "thorns" (T. 21 January 2008 pp. 57-58).
[589] T. 23 January 2008 pp. 26 ("A. One day while the clearing was going on – Father Nsengimana is a witness to this because he is the one who gave orders that the bush be cleared."), 27 ("It is Nsengimana who had sent his employees to clear the bushes, and the purpose was to seek out all Tutsi and exterminate them.").

Collège Christ-Roi, which, according to him, was Sunday 24 April 1994.[590] However, when asked precise questions about when he hid in bushes and the timing of Emmanuel's killing four to five days later, he repeatedly suggested that these events occurred towards the end of May.[591] During cross-examination he again suggested that he began hiding in the bushes near the end of April or early May.[592] The Chamber cannot rule out that the witness misspoke, but the shifting nature of his testimony raises questions about his credibility.

531. The witness's accounts about where Emmanuel was killed also varied. They ranged from "the other side of the courtyard" from where Nsengimana was standing, to the fields next to the *Ecole normale primaire* (ENP). He further said that the boy was killed "at the ENP" or had been "taken to the ENP and … killed".[593] The descriptions fail to create a convincing narrative of where the killing occurred.

532. According to the witness, he made his observations from his hiding place.[594] The Defence confronted the witness with a prior statement to Tribunal investigators from March 2007, which indicates that the child was killed in the *Ecole normale primaire* "playground". According to his testimony, the witness would not have been able to see the murder if it had occurred there.[595] He ultimately concluded that Emmanuel was killed at the field next to the ENP rather than its playing field, implying that he could have seen the killing at this location from his hiding spot.[596] The Chamber finds the discrepancy between his statement and testimony significant, and the evolving nature of his evidence creates additional doubts about its reliability. In addition to the concerns expressed above, the Chamber has elsewhere questioned the reliability of Witness BVV's testimony (II.8). It will therefore not accept his account without corroboration.

---

[590] See, for instance, *id.* pp. 21 ("A. Yes. I think it was a Sunday, the 24th or the 25th of April 1994. And we were in a group, the group of persons that had gone to seek refuge."), 61 ("A. I saw that on the 24th when we arrived at the *Christ-Roi* college."), 62 ("A. … It is only on the 24th that we jumped over the fence. … and there was another incident that occurred subsequently on the 24th when we jumped over the fence."), 65 ("A. I went to the school on that Sunday, and when I left the school I went to my first hideout."). Defence counsel correctly noted that Sunday was 24 April 1994. *Id.* p. 53.

[591] *Id.* pp. 26 ("Q. And how long did you stay in the bushes? A. I went towards the end of May and I stayed there for a short while. When the place was being cleared and someone was killed, that is when I left my hideout."), 28 ("The witness: I saw him at the end of May. And when the bush was being cleared, Father Nsengimana was right there. … Mr. President: And when was the flushing out of the boy? The witness: End of May, when it was being said that all Tutsis had to be wiped out. They had to be sought out from their hideouts, be they children, old men, they all had to be exterminated, all Tutsis. … Q. You say this happened at the end of May. Can you just tell us what year this was? A. 1994."). The French version of the transcripts also indicates "*fin mai*" repeatedly. See *id.* pp. 31-32.

[592] *Id.* p. 65 ("Q. But this morning you said that it was the end of May when the thorny bushes had to be cut down, when it was being said that all Tutsis had to be sought out from their hideouts. A. No, it was not towards the end of May. I said it was towards the end of April, towards the beginning of May. Please, understand what I told you."). See also *id.* p. 43 (Witness BVV explaining that he did not return to the *Collège Christ-Roi* in the months of April and May 1994, which was the period he hid in the bushes).

[593] *Id.* pp. 29 (describing the distance between Nsengimana and the place where Emmanuel was killed as follows: "It was a long distance. He was five metres from the gate, and he stayed there; whereas Emmanuel was killed on the other side of the courtyard. … And let me confirm that he was not at the place where Emmanuel was killed"), 67 (quoted), 68, 70.

[594] See, for example, *id.* pp. 26, 28, 67-68. See also Defence Exhibit 23A (statement of 8 March 2007) p. 4.

[595] T. 23 January 2008 p. 67 ("Q. From where your hideout was, could you see the ENP playing fields? A. No, I could not see the ENP playing fields and I would never leave my hideout because it was an ideal place of hiding.").

[596] Compare Defence Exhibit 23 (statement of 8 March 2007) p. 4 and T. 23 January 2008 pp. 68, 70.

533. Turning to Witness BVJ, he had no first-hand evidence that Nsengimana was in charge of the removal of the bushes. Rather, he only heard Simon Kalinda state that Nsengimana had ordered this. His description of Nsengimana passing on the road as the bushes were being cleared is brief and, in the Chamber's view, fails to show support for the activity.[597]

534. The witness was not consistent as to when the event took place. He first testified that the bushes were being cut "the day following" Xavérine's killing, which would mean early May (II.17).[598] The Defence put to him that, according to his statement to Tribunal investigators in September 2006, this occurred towards the "end of [the] genocide".[599] The witness denied that this was in his written statement, noting that Xavérine was killed at the beginning of May, and that the bushes were cleared "two days" later.[600] His explanation is unconvincing**,** but the Chamber does not attach much importance to this. His statement and testimony consistently indicate that the bushes were cleared after Xavérine's death and that the purpose was to prevent *Inyenzis* from hiding in them.

535. Witness BVJ's September 2006 statement contains no reference to Nsengimana having ordered the bushes to be cleared or passing by as it occurred.[601] When confronted with the failure to mention Nsengimana's purported order, the witness responded that he had not said this to the investigator.[602] During re-examination, he explained that he was not certain whether he had been asked if Nsengimana was present while the bushes were being cleared.[603] The Chamber observes that the purpose of the interview was to obtain information about Nsengimana's possible involvement in the genocide. Even though the statement is brief, it contains one paragraph about the clearing of the bushes. It is certainly not unusual that some witnesses may hesitate to volunteer information. However, in the present context, Witness BVJ's failure to mention Nsengimana's purported order and presence while the bushes were cleared raises some doubt. In view of the various concerns mentioned above, the Chamber will not accept his account without corroboration.

536. The Chamber will now consider the accounts of Witnesses BVV and BVJ together. It is recalled that Witnesses BVV and BVJ had different vantage points, as they were positioned

---

[597] T. 21 January 2008 pp. 20 ("Q. During the process of clearing the vegetation, do you know where Father Hormisdas Nsengimana was? A. He was … at the college; I saw him come down. Later, he returned to the school."), 57 ("Q. Now, you say that you saw Father Hormisdas at this point, is that right? A. He passed by on foot on the road leading inside the premises of the school. It's as if he was leaving the gate, going down towards the place where his office was located. He never prevented anybody from cutting down the bushes, and that is why we continued doing our work with the students.").

[598] *Id.* p. 20 (Mr. President: When was this clearing event? The witness: … it was on the day following the killing of the lady whom I talked about, but I do not remember the date.").

[599] Defence Exhibit 17A (statement of 26 September 2006) p. 3.

[600] T. 21 January 2008 p. 59 ("Q. … But in your statement I see you refer to bush cutting taking place towards the end of the genocide. Now, how does that tie in? A. No, that is not true. That's not in my written statement. [Xavérine] was killed at the beginning of May, and two days after her death we cleared the bushes there.").

[601] Defence Exhibit 17 (statement of 26 September 2006) p. 3 ("Towards the end of the genocide, I saw students and *Interahamwe* including one Mugemana living in the college cut the bushes around the *Collège Christ-Roi*. Simon, Jacques … and Gatuku ordered them to cut bushes. Reason to cut bushes were to kill all *Inyenzi*s and preventing them from hiding in those bushes.").

[602] T. 21 January 2008 p. 58.

[603] *Id.* p. 65.

on nearly opposite sides of the *Collège Christ-Roi*.[604] Furthermore, Witness BVV testified that he made his observations in late April, while Witness BVJ referred to early May, following the killing of Xavérine. Nevertheless, certain common features emerged in their accounts. Both believed that Nsengimana had ordered the clearing of the bushes, and they testified that he was present during this exercise. They stated that the purpose was to find Tutsis in hiding.[605] Each, with varying degrees of specificity, implicated *Christ-Roi* employees and students in it.

537. Witness BVV's account of the discovery and killing of Emmanuel could be considered in light of Witness BVJ's testimony that *Inyenzis* had been flushed out on the opposite side of the school. However, Witness BVJ's evidence was too vague to offer even circumstantial corroboration of Witness BVV's account. It appears that he did not see this event. Moreover, Witness BVJ's evidence that "*Inyenzis*" were flushed out indicates that more than one person was found during the hunt, whereas Witness BVV only described Emmanuel's flight and capture.

538. In the Chamber's view, the common aspects of Witnesses BVJ's and BVV's evidence do not provide sufficient corroboration.[606] Their conclusions rely primarily on inferences drawn from Nsengimana's purported presence during the clearing, and on second-hand information. Furthermore, it is not obvious that their observations concerning clearing of vegetation relate to the same event.

539. Witness JMR1's testimony that climbing plants were "cut down at some point" does not necessarily support the proposition that this was done during a hunt for Tutsis.[607] Nor does his evidence indicate that Nsengimana was behind this process.[608] Prosecution Witness CAO mentioned a cypress hedge that surrounded the *Collège Christ-Roi*. He said that it prevented him from looking into the school in May. This raises some doubt that vegetation was cleared in that area as described by Witness BVJ.

540. Witness VMF8's description of a hole in the hedge towards the football pitch of the *Ecole normale primaire* suggests that he would have passed near where Witness BVV

---

[604] Witness BVV's position (near the *Collège Christ-Roi* classrooms and below the *Ecole normale primaire*) was on the opposite side of where Witness BVJ allegedly cleared bushes (*Christ-Roi*'s boundary near Simon Kalinda's roadblock, in the vicinity of the school's entrance, see II.6). This is reflected in a diagram found in Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4323 as well as Defence Exhibit 4 (sketches of the *Collège Christ-Roi*).

[605] See, for example, Witness BVV, T. 23 January 2008 p. 27 ("It is Nsengimana who had sent his employees to clear the bushes, and the purpose was to seek out all Tutsi and exterminate them."); Witness BVJ, T. 21 January 2008 p. 19 ("A. … Simon ordered the students and *Interahamwe* to cut down the hedge because he said that they were looking for *Inyenzis* and Tutsis who were hiding there.").

[606] The Chamber also considers the evidence of Witness CAZ that a young man was killed on the *Ecole normale primaire* football field. As noted elsewhere (II.11.3), this evidence lacks any specificity, and, in the Chamber's view, is insufficient to corroborate Witness BVV's evidence.

[607] T. 17 June 2008 p. 18 ("A. I do not know whether we can talk about clearing of bushes as such. The truth is that there were some plants that were around the fence, so it is these plants that were climbing that were cut down at some point, and these plants were around the fence, the fence that surrounded the school. Otherwise, inside the college there was no clearing.").

[608] Nsengimana testified that it was the local authorities that were responsible for clearing bushes behind the school. No other witness testified about this.

allegedly hid, below the ENP and near *Christ-Roi*'s classrooms.[609] Witness VMF8 walked this way approximately 10 times between 27 or 28 April and 20 May, explaining that he had to exit through an opening in the hedge. He did not mention that any bushes surrounding the school were cleared. His evidence raises questions as to whether Witness BVV's account was correct.

541. The Chamber has also taken into account that Witnesses CAO and CAN worked at the roadblock near Kalinda's home and where the clearing occurred. Witness CAY appears to have manned the same barrier as Witness BVJ (II.6). All gave evidence that Kalinda exercised authority in the area. None, however, described being enlisted or learning of others being called on by Kalinda to clear the vegetation surrounding the *Collège Christ-Roi* in the hunt for Tutsis. The Chamber finds this noteworthy, given that Witness BVJ's description of the activity indicates that participation was on a large scale and included those manning roadblocks.[610]

542. The Chamber has elsewhere questioned whether *Christ-Roi* students remained at the school during and after the Easter vacation in 1994 (II.6). This raises further doubt about the reliability of Witnesses BVV's and BVJ's evidence, as they both testified that the students at the school were involved in clearing the bushes.

543. In conclusion, it is possible that some vegetation was cleared in April or May 1994.[611] But the Prosecution has not proved beyond reasonable doubt that Nsengimana ordered that this be done, that the purpose was to ensure that no Tutsi could hide there, and that he aided and abetted the killing of Tutsis. Under these circumstances, it is unnecessary to address the Defence submission that the killing of Emmanuel was insufficiently pleaded.

---

[609] Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4323, which shows that there are fields adjacent to the *Collège Christ-Roi* classrooms that lead to the playground of the *Ecole normale primaire* and Nyanza town. See also Defence Exhibit 4 (sketches of the *Collège Christ-Roi*).

[610] See, for instance, T. 21 January 2008 pp. 19 ("A. Students at the college, as well as *Interahamwe* and local inhabitants who were at the roadblocks. So that area was cleared."), 58 ("A. There were many of us there. I spent some time there. After clearing the area, I went back home. On the previous day, he had ordered us to come there with machetes in order to help students clear that area.").

[611] The Chamber is aware that it was not uncommon in Rwanda in 1994 that orders were given to remove vegetation. See, for instance, *Renzaho* Trial Judgement paras. 554, 557.

14. KILLINGS IN MUGONZI, 3 MAY, AND PRECEDING MEETING

14.1 Introduction

544. The Prosecution alleges that, in early May 1994, a meeting chaired by Nsengimana and gendarmerie commander Birikunzira, was held at the *Collège Christ-Roi*. As a result, a group of about 15 persons, including Nsengimana's employees Phénéas Munyarubuga and Simon Kalinda, left for Mugonzi *cellule*. They killed Tutsi civilians, including Galican Kayigima, a Tutsi medical doctor, and his two daughters Madoudou and Solange; Charles Gakwaya; Célestin Muyakayanza and his pregnant wife and sons; Mwanvaneza; and Murangamirwa and her child. Reference is made to Witnesses CAY, BVX, CAO, CAN and BVJ.[612]

545. The Defence does not dispute the killings, but challenges the Prosecution evidence implicating Nsengimana. It relies on Witnesses JMR1, JMM1, PMR31, DFR85, Emmanuel Hakizimana, Marie-Cécile Uwayezu and XFR38.[613]

14.2 Evidence

Prosecution Witness CAY

546. On the morning of 3 May 1994, Witness CAY, a Hutu, went to the Nyanza city centre. On his way back to his house in Mugonzi *cellule* with Israel Murwanashyaka, a fellow looter, they met Michel and Cyubahiro, a barber and a mechanic, who were members of the Death Squad. Near the Nyanza parish church, the witness saw gendarmerie commander Birikunzira accompanied by three gendarmes, including Cyitso. The gendarmes left in the direction of the *Collège Christ-Roi* in a vehicle. Shortly thereafter, between 7.10 and 7.30 a.m., the witness and his companions ran into Frédéric Rwagasore, the director of the *Ecole des sciences*. At this location, the path split, leading either towards a barrier at the entrance to *Christ-Roi*, manned by the school's students, or down towards a checkpoint referred to as Simon Kalinda's roadblock. Michel and Cyubahiro ignored the witness's warning that the students could kill them. They replied that they were going to a place that they knew very well and where they were allowed to pass. The witness did not know why they were going to the school and continued home.[614]

547. In early 1995 while in exile in Zaïre, the witness learned from Cyubahiro that a meeting of more than 15 individuals had been held that morning of 3 May at *Christ-Roi* in the priests' refectory. Members of the Nyanza Death Squad participated, including Nsengimana, gendarmerie commander Birikunzira and three other gendarmes, Simon Kalinda, Phénéas Munyarubuga, Michel, Cyubahiro, Nyamulinda's two sons Bosco and Louis, Segema, Emmanuel Nkurunziza (nicknamed "Gafuni"), Frédéric Rwagasore and *Christ-Roi* students.

---

[612] Indictment para. 35; Prosecution Closing Brief Chapter 5 pp. 36, 61-64, 66-67, 79-81, 88, 90, 105, 111-113, 139-144, Chapters 6-8 paras. 66-68, 100-101, 125-126, 181-182, 237-238; T. 12 February 2009 pp. 8, 12. The submissions contain various versions of the names of Galican (Galacan, Gallican) and his two daughters (Solange, Marie-Solange, Bienvenue Marie Solange and Madoudou, Marie-Therese, Bienvenue Marie Thérèse). For consistency, the Chamber uses "Galican", "Solange" and "Madoudou", respectively.
[613] Defence Closing Brief paras. 364-371, 407-430, 572-583, 1287, 1504-1526, 2112-2169.
[614] T. 15 January 2008 pp. 44-45; T. 16 January 2008 pp. 59, 66-67, 70-74; T. 17 January 2008 pp. 2-5; T. 18 January 2008 pp. 10-14; Prosecution Exhibit 9 (personal identification sheet).

During the meeting, it was discussed that the Tutsis of Mugonzi *cellule* had not yet been killed and that they needed to be sought out.[615]

548. At about 8.30 a.m., a person arrived at Witness CAY's home and asked him to help kill Galican Kayigima, a Tutsi medical doctor. The witness had previously heard that the local authorities had wanted Galican to stay alive because of his medical skills. After the person left, the witness went with Israel Murwanashyaka to a roadblock near the doctor's house. There, at a distance of five metres, he saw Galican being attacked by a group of persons wearing disguises and armed with clubs, nailed clubs, hoes and a grenade. As the attackers had arrived at the doctor's home before him, the witness did not know whether they came from *Christ-Roi*. In the group, he recognised Phénéas Munyarubuga, Simon Kalinda, Segema, Cyubahiro, Michel, Nyamulinda's sons Bosco and Louis, as well as Emmanuel Nkurunziza.[616]

549. The witness observed Phénéas Munyarubuga, the *Christ-Roi* prefect of discipline, hit the doctor twice with an iron bar and Segema strike him with a spare car part. Other group members, including Simon Kalinda, armed with nailed clubs, joined in and beat Galican to death. Phénéas Munyarubuga and Segema were not wearing their hoods, and the witness's neighbour Simon was noticeable because of his gait and stocky build. Nyamulinda's son Bosco was a tall young man, whereas the other son, Louis, was perhaps 15 or 16 years old.[617]

550. Immediately after Galican had been killed, the group attacked his two daughters Madoudou and Solange. Madoudou was struck on the head and died, although the witness did not see who did it, and Solange fainted. Subsequently, he learned that Solange was taken away and killed. He also heard that Célestin, an *Ecole des sciences* employee, his pregnant wife and two children were removed from their home and killed by these members of the Death Squad. Célestin's wife did not die immediately but was finished off by an *Interahamwe* called Jean-Claude Muhutu.[618]

551. Later that day, Charles Gakwaya, a Tutsi trader, was killed where Galican and his children were. The witness did not see this event, but observed his body afterwards. He also witnessed persons digging a grave in a banana plantation "at Nkeramihigo", in order to bury the body of a Tutsi man called Mwumvaneza. The witness also noted that the assailants killed a woman named Murangamirwa and a man who worked for Electrogaz.[619]

552. Shortly after the attack in Mugonzi *cellule*, a gendarme and Ruben, a notorious *Interahamwe* who, according to the witness, had participated in the meeting at *Christ-Roi*, urged him and other assailants to attack Nyakabuye *cellule*, some five to six kilometres away. Ruben drove the attackers there where they killed many persons. There, the witness captured

[615] T. 16 January 2008 pp. 65-74; T. 17 January 2008 pp. 4, 8; T. 18 January 2008 pp. 12-13; Prosecution Exhibit 9 (personal identification sheet). During cross-examination, Witness CAY said that a certain Ruben also attended the meeting. T. 18 January 2008 pp. 20-21.
[616] T. 17 January 2008 pp. 5-6, 8-12; 18 January 2008 pp. 11, 16-17. Witness CAY did not identify the visitor. T. 17 January 2008 p. 5.
[617] T. 16 January 2008 p. 58; T. 17 January 2008 pp. 8-10.
[618] T. 17 January 2008 pp. 10-13; T. 18 January 2008 p. 17.
[619] T. 17 January 2008 pp. 12, 14, 17 (quoted), 18-19.

an individual named Shuny and brought him to the "Nyakabuye roadblock" where he was killed.[620]

Prosecution Witness BVX

553. Witness BVX, a Tutsi living in Mugonzi *cellule*, testified that Nsengimana led a group of persons who had all been part of the CDR party prior to the genocide but were referred to as the "Death Squad" once the killings began. This group included *Collège Christ-Roi* employees Simon Kalinda, Cyprien Gasatsi, Phénéas Munyarubuga and Mariro. Other members were François Gashirabake, Barahira, Segema, Jacques Mudacumura, Nyamulinda's sons Louis and Bosco, Tubirimo and his sons, Zephyrin, Mbereye, Dr. Higiro and Jacques Ntiberinda. The witness observed that certain members, including Phénéas Munyarubuga, Mariro, Jacques Mudacumura and their families, were living at the school when she arrived there around 8 May 1994. She also observed about two battalions of soldiers there and said that they had arrived around 21 April.[621]

554. On the morning of 3 May 1994, around 8.00 a.m., the witness saw unspecified members of the Death Squad pass by on the road opposite her house. She became concerned for the safety of Charles Gakwaya, who had left his home earlier that day to go to Dr. Galican Kayigima's residence. She went to the doctor's house, located about 45 metres from *Christ-Roi,* to investigate.[622]

555. When the witness arrived at the house, she saw the bodies of several persons, including Gakwaya, Galican and his two daughters, one of whom was named Solange, next to *Christ-Roi*'s fence. Gakwaya had been dealt a severe blow to his head, likely by a hoe, which caused his brain to come out. Their bodies were thrown in a pit and covered with earth near the fence. She then observed that Célestin's pregnant wife, Yolande, and their two children had been killed. Their bodies were in the banana plantation facing their house, approximately 10 metres from where the witness saw the other bodies. The only killing she witnessed was that of Mwumvaneza. He started to run but was caught in the banana plantation by Simon Kalinda and Nyamulinda's son Bosco, and killed there. Feeling threatened, the witness did not stay long at the scene. Later that day, the assailants went to Nyakabuye, Gakenyeri, Rwesero and Mwima and killed people there.[623]

---

[620] *Id.* pp. 27, 28 (quoted); T. 18 January 2008 pp. 19-21. Witness CAY mentioned Birikunzira when he discussed being led to Nyakabuye. Read in context, it appears that he was referring to his prior observation of the commander that morning rather than testifying that Birikunzira was the gendarme who led them to Nyakabuye. T. 18 January 2008 p. 19.

[621] T. 21 January 2008 p. 71; T. 22 January 2008 pp. 2-3, 5-6, 16-17, 30, 36, 38-39; Prosecution Exhibit 14 (personal identification sheet). When asked who lived at the *Collège Christ-Roi*, Witness BVX also briefly mentioned that Nsengimana sent persons to seek out a Tutsi teacher, Mr. Kayitankore, who was subsequently killed in Gakenyeri, but the Prosecution did not solicit further testimony about this. T. 22 January 2008 pp. 17, 40. The evidence is insufficient to establish that Nsengimana was involved in this alleged killing, and it does not appear to form part of the Prosecution case. The Pre-trial Brief of 11 May 2007 and Annex 1 summarising Witness BVX's proposed testimony (pp. 19-20) do not mention this event.

[622] T. 22 January 2008 pp. 6, 8-9, 13.

[623] *Id.* pp. 6, 8-13, 27-28. It also follows from Witness BVX's testimony that Amiel Rindiro was killed during this event, but his murder is not mentioned in the Indictment. *Id.* pp. 6, 8, 11-12.

Prosecution Witness CAO

556. Witness CAO, a Tutsi living in Mugonzi *cellule*, heard from Simon Kalinda at some point after 22 April 1994 that a group had been formed, and used the names "Death Squad" and "Dragons". Nsengimana and local authorities, such as Augustin Mirasano and Mbereye, were in it, as well as Simon Kalinda, Phénéas Munyarubuga and Jean-Marie Vianney Segema. Nsengimana had an employment relationship with Phénéas Munyarubuga and Simon Kalinda. Prior to 1994, the witness saw Nsengimana in the company of group members, including Mirasano and Mbereye, who were known as anti-Tutsi extremists. The group held secret meetings. The witness heard Kalinda identify members while boasting about the crimes they committed at a roadblock he and the witness attended.[624]

557. On 3 May 1994, between 6.00 and 7.00 a.m., the witness was in front of his home when he saw members of the "Dragons", which was led by Simon Kalinda, leaving the *Collège Christ-Roi* on foot, through an opening in the hedge which surrounded the school. They wore hoods and face paint and were armed with grenades, swords, machetes, spears and clubs. The assailants formed groups. One of them, comprising four persons, searched the home of the witness and other persons in Mugonzi, looking for Tutsis. He recognised Simon Kalinda, Phénéas Munyarubuga, Cyprien Gasatsi and Jean-Marie Segema, but did not see Nsengimana among the attackers.[625]

558. Approximately 20 minutes after the attackers searched the houses, Witness CAO saw dead bodies after learning from his neighbours that there were many victims who needed to be buried. Down the road from the *Collège Christ-Roi* he saw dead Tutsis, including Célestin Munyakayanza, his wife and two children. The bodies of Galican, his two daughters Solange and Madoudou, and Charles Gakwaya were together. Later, the witness heard Simon Kalinda, Munyaneza and Michel Usungu brag about committing these crimes, and he learned that Cyubahiro and Juma were among the attackers during Gacaca proceedings.[626]

Prosecution Witness CAN

559. Witness CAN, a Tutsi, lived in Mugonzi *cellule*. In mid-May 1994, very early in the morning, members of the Death Squad approached the witness at François Gashirabake's residence and asked for his identity card, saying that a meeting had been held the previous evening at Phénéas's house. Lists of Tutsis who had survived were created, and they prepared "mopping-up operations". The witness's name was on the list among many others, including Dr. Galican Kayigima, a medical doctor, who was subsequently killed with his daughters. The graves were located on the lower side of the *Collège Christ-Roi*.[627]

---

[624] T. 14 January 2008 pp. 58-62, 75; T. 15 January 2008 pp. 2-4, 10-11, 26-27; Prosecution Exhibit 8 (personal identification sheet). Witness CAO did not have the typical Tutsi features and was not generally known as one. T. 14 January 2008 p. 67; T. 15 January 2008 pp. 2-3. The witness did not specify when he heard Simon Kalinda speak about the Death Squads, but noted that it occurred at a roadblock which was erected after 22 April 1994. T. 14 January 2008 pp. 61-62, 68, 75; T. 15 January 2008 p. 11.

[625] T. 14 January 2008 pp. 61-64, 74-75; T. 15 January 2008 pp. 10, 18-21, 23, 34, 36, 40.

[626] T. 14 January 2008 p. 63; T. 15 January 2008 pp. 20-22, 36. While Jacques Ntiberinda may have participated, the witness did not see him. T. 15 January 2008 p. 39.

[627] T. 27 June 2007 pp. 67-68, 75; T. 28 June 2007 pp. 29, 40, 45, 47 (quoted), 48, 55; T. 29 June 2007 p. 10; Prosecution Exhibit 4 (personal identification sheet).

Prosecution Witness BVJ

560. Witness BVJ, a Hutu farmer, lived in the vicinity of the *Collège Christ-Roi* in 1994. On a day he could not recall, he learned that attackers had the same morning killed Dr. Galican Kayigima and his son, Célestin with his wife and children, and Charles. Later that evening, the witness heard that they had been buried on the lower side of *Christ-Roi*.[628]

Nsengimana

561. Nsengimana denied having any role in the organisation or attack in Mugonzi *cellule* on 3 May 1994. He first learned of "the Dragons" during his trial and noted that other witnesses testified that they had not heard the names Dragons or Death Squad during the killings.[629]

Defence Witness JMR1

562. Witness JMR1, a Hutu, had worked at the *Collège Christ-Roi* from the second half of 1992 and was there in 1994. Between 6 April and when he left in late May, he did not observe or hear anyone discuss meetings at the school. The witness did not see or hear anything indicating that Nsengimana had a role in killings.[630]

Defence Witness JMM1

563. Witness JMM1, a Hutu, was detained as a genocide suspect in Rwanda in 1998 but released without conviction in 2005. While in prison, he heard from an assailant, who participated in the attack in Mugonzi *cellule*, that Galican Kayigima, a Tutsi medical doctor, was killed and then buried behind the *Collège Christ-Roi* fence, near the victim's house. Galican's killers were from Gakenyeri sector, rather than Nyanza sector. The witness also heard that Nsengimana was "not involved in any way in the genocide in Nyanza".[631]

564. In mid-2004, Witness JMM1 learned that the prison administration had asked an assailant, who participated in the attack, to give evidence against Nsengimana at the Tribunal. The witness said that some persons were trying to implicate Nsengimana, highlighting the proximity of the doctor's grave to the school. Witness JMM1 suggested that the assailant's willingness to cooperate was influenced by the benefits, including the use of a telephone and the possibility of work opportunities and early release. The witness said that he was never himself asked to testify because he did not ever confess any crimes.[632]

[628] T. 21 January 2008 pp. 4, 23, 38-39, 47; Prosecution Exhibit 13 (personal identification sheet).
[629] T. 8 July 2008 p. 42; T. 9 July 2008 pp. 27-28; T. 11 July 2008 p. 5.
[630] T. 17 June 2008 pp. 2, 15, 17, 34, 48; Defence Exhibit 52 (personal identification sheet).
[631] T. 11 July 2008 pp. 17, 24 (quoted), 25, 28-29, 30-32, 40; Defence Exhibit 69 (personal information sheet).
[632] T. 11 July 2008 pp. 18-19, 24-31, 37-39.

Defence Witnesses PMR31, DFR85, Emmanuel Hakizimana, Marie-Cécile Uwayezu and XFR38

565. Defence Witnesses PMR31, DFR85, Emmanuel Hakizimana and Marie-Cécile Uwayezu testified that they were unaware or had not heard that Nsengimana was involved in killings in Nyanza.[633] Witness XFR38 never heard anything negative about Nsengimana.[634]

14.3 Deliberations

566. The Defence does not dispute that killings occurred in Mugonzi *cellule*.[635] The Chamber will first consider the alleged meeting at the *Collège Christ-Roi* and then the subsequent attacks.

14.3.1 Meeting at the *Collège Christ-Roi*

567. Two Prosecution witnesses testified about a meeting prior to the Mugonzi *cellule* attacks. Their evidence is hearsay. Witness CAY heard about it from a fellow attacker when the two were in exile in the former Zaïre in early 1995. Witness CAN was told about one by unspecified members of the Death Squad who found him at François Gashirabake's residence in mid-May 1994.

568. The Chamber notes that Witness CAY's source of information – Cyubahiro – said that he had participated at the meeting, that it took place at the priests' refectory at the *Collège Christ-Roi*, and that Nsengimana was present. This hearsay evidence should be seen in the context of Witness CAY's own observations of Michel and Cyubahiro going into the school that morning. Furthermore, Witness CAO observed assailants leave *Christ-Roi* through an opening in the hedge before the ensuing attack.

569. Witness CAY had given several statements to Tribunal investigators before he appeared in court. According to his July 2000 statement, he wanted to go to *Christ-Roi* with Cyubahiro, whereas it follows from his February 2001 statement and his account in court that he warned the two not to enter the school. When cross-examined about this discrepancy, the witness maintained his testimony.[636] The Chamber does not exclude that the truth is that the witness – an *Interahamwe* – wanted to join Michel and Cyubahiro, and it is difficult to understand why he should have advised two members of the Death Squad not to enter the school. It is therefore possible that the witness has downplayed his own involvement in the events. This said, the details of this exchange are of minor significance in light of his

---

[633] Witness PMR31, T. 5 June 2008 pp. 10-11; Defence Exhibit 42 (personal identification sheet). Witness DFR85, T. 27 June 2008 p. 34; Defence Exhibit 55 (personal identification sheet). Emmanuel Hakizimana, T. 2 July 2008 p. 32; Defence Exhibit 59 (personal identification sheet). Marie-Cécile Uwayezu, T. 1 July 2008 pp. 35-36; Defence Exhibit 57 (personal identification sheet).

[634] T. 15 September 2008 pp. 18, 21.

[635] Defence Closing Brief para. 2121. See also T. 18 January 2008 p. 16 (" … Now, I want to make it plain that we don't dispute that there [were] killings in Mugonzi – a genocide, if you'd prefer that word to be used in Mugonzi, and that a number of these people may well have participated in it."); T. 22 January 2008 p. 30 ("Now, this morning you told us and presented us with a list of deaths, and I'm not going to dwell on that, because it's not disputed that many of those deaths occurred in the course of the genocide.").

[636] Defence Exhibit 11B (statement of 13 July 2000) p. 3 ("Israel and I expressed the wish to attend the meeting also, but they refused on the pretext that we did not belong to their group."); Defence Exhibit 13B (statement of 17 February 2001) p. 3 ("We tried to stop them from going there because they risked death there."); T. 18 January 2008 pp. 13-14.

consistent accounts that Cyubahiro and Michel went to *Christ-Roi* that morning and entered its premises.

570. In his testimony, the witness mentioned Nkurunziza or Nyamulinda's sons Bosco or Louis as having participated at the meeting. They do not appear in his July 2000 statement. On the other hand, his October 2000 statement includes Barahira and Didace, whom he did not refer to when he testified.[637] The witness explained that emphasis should be placed on his testimony and suggested that poor living conditions may have impacted the accuracy of his accounts to investigators.[638] Be that as it may, the Chamber notes that the witness testified that he was unsure of who took part in the meeting at *Christ-Roi*.[639] But he has consistently, both in statements and testimony, maintained that Nsengimana was present at the meeting, based on what he was told by Cyubahiro.[640]

571. The only other witness who testified about a meeting at the *Collège Christ-Roi* – Witness CAN – received this information from an unidentified member of the Death Squad during a raid at Gashirabake's house in mid-May. This testimony differs from Witness CAY's account in several respects. Witness CAN suggested that the meeting occurred in mid-May, not in the beginning of that month; it took place in the evening, not in the morning; and the location was Phénéas' house, not the priests' refectory. Consequently, these two witnesses' hearsay evidence do not corroborate one another. There is also no express indication from Witness CAN that he had heard that Nsengimana had participated in this specific meeting. The Chamber, therefore, declines to rely on the specific details of their evidence concerning the purported meeting.

572. Witness JMM1 testified that he heard in prison that Nsengimana was not involved in the murder of Galican, and that the attackers were not from Nyanza. The Chamber notes, however, that Witnesses BVX, CAO and CAN provided consistent eye-witness accounts that local attackers were involved in the killings. In addition, according to Witness JMM1, some assailants agreed to cooperate with the Prosecution in order to obtain benefits. The Chamber is not convinced that this second-hand evidence demonstrates that Rwandan prison officials offered benefits to any particular Prosecution witness in exchange for testimony against Nsengimana. Nonetheless, the Chamber has considered such possibilities generally in assessing the credibility of alleged accomplices.

573. In the Chamber's view, it is possible that a meeting took place at the *Collège Christ-Roi* in the morning of 3 May 1994, before the attack at Mugonzi. This follows from what Witness CAY was told, as well as his own and Witness CAO's observations of members of the Death Squad going to and leaving the school before the attacks. The coordinated nature of the searches and attacks, and the fact that assailants were in disguise, suggest that the attacks had been planned. It is not decisive that Witness JMR1, who lived at *Christ-Roi* in that

---

[637] T. 18 January 2008 p. 14; Defence Exhibit 11B (statement of 13 July 2000); Defence Exhibit 12B (statement of 17 and 27 October 2000) p. 3.
[638] T. 18 January 2008 pp. 14-15.
[639] T. 17 January 2008 p. 8 ("A. I have given you the names of the members of the group that I saw during the attack on Mugonzi. I believe those were the members of the Death Squad. I do not know if these were people who were at the meeting at the *Christ-Roi* – sorry, I do not know whether it was those attending the meeting at the *Christ-Roi* college who led those people to come and kill.").
[640] Witness CAY testified that the roadblock at the entrance of the *Collège Christ-Roi* was manned by students at the school. The Chamber has elsewhere considered Defence evidence suggesting that the students, including those displaced by the war, were not at the school during this period (II.6).

period, did not observe the meeting, as it may not have been seen by him. This said, the Prosecution evidence is indirect and relies to some extent on Witness CAY, whose testimony the Chamber has considered with caution (II.2).

574. Assuming that the meeting took place, the question remains whether Nsengimana was present. In the Chamber's view, the evidence, even when viewed in light of the entire record, is insufficiently reliable in making such a finding. The Chamber has elsewhere considered testimony that Nsengimana was present during some meetings with persons known as Hutu extremists. Much of it has not been considered credible, and there is limited evidence about the nature of the meetings (II.2). This is not a sufficient basis for concluding that he participated at the meeting on 3 May.

575. According to the Indictment, the attackers left the *Collège Christ-Roi* where they received weapons and masks stockpiled by Nsengimana as alleged in paragraph 18 of the Indictment. No witness testified about the source of the weapons used in the Mugonzi attack. Consequently, the Prosecution has not proved beyond reasonable doubt that Nsengimana provided the weapons and masks.[641]

14.3.2 The Attacks

576. As mentioned above, there is no dispute that Tutsis were killed in Mugonzi *cellule* in early May 1994. It follows from the evidence that the attack occurred in daylight, between 6.00 and 9.00 a.m. The differences between the testimonies were not significant.[642]

577. Regarding the date of the killings, Witnesses CAY, BVX and CAO all mentioned 3 May 1994. Witness CAY's testimony differed from his statement to Tribunal investigators in February 2001, which indicates between 10 and 15 May. When this was put to him, he responded that he chose the 3 May date after talking to members of the public.[643] He also linked the date to the arrival of a helicopter at the *Collège Christ-Roi* with six soldiers on board. However, in a statement of October 2000, he had suggested that the helicopter landed on 20 April 1994. Confronted with this discrepancy, he claimed that the interviewer made a mistake, and that the date should have been 20 May 1994 or, alternatively, that the helicopter arrived some days after the Mugonzi attack.[644] In the Chamber's view, these answers illustrate the need to assess his testimony with caution.

578. Witness CAO did not mention a particular date for the attack on Mugonzi in his written statement, but provided 3 May 1994 as the date in his testimony. When asked whether he learned this during Gacaca proceedings, he responded that he looked up the date on a

---

[641] The evidence about stockpiling of machetes before 1994 (II.4) is clearly not a sufficient basis for finding that Nsengimana supplied the weapons used during the attack in Mugonzi *cellule*.

[642] Witness CAY was asked to provide assistance in the killing of Dr. Galican "about 8.30 a.m." (T. 17 January 2008 p. 5 and T. 18 January 2008 p. 16); Witness CAO saw the alleged attackers "between 6.00 a.m. and 7.00 a.m." (T. 14 January 2008 p. 64 (quoted) and T. 15 January 2008 p. 21); Witness BVX estimated that "it was 8 [a.m.]" (T. 22 January 2008 pp. 6, 10 (quoted)); and Witness BVJ, who said that he knew nothing about the killings, heard about them around 10.00 a.m. (T. 21 January 2008 p. 39).

[643] T. 18 January 2008 p. 12; Defence Exhibit 13 (statement of 17 February 2001).

[644] T. 18 January 2008 pp. 23-25; Defence Exhibit 12 (statement of 17 and 27 October 2000). By comparison, Witness BVV stated that the helicopter landed at *Christ-Roi* on 20 April 1994. T. 23 January 2008 pp. 18-21, 38-39. Witness CAO suggested that the helicopter arrived in May, but landed at the *Ecole normale primaire*. T. 15 January 2008 pp. 27-29. The Chamber considers that the lack of clarity about the arrival of one or more helicopters is insignificant in this context.

calendar before testifying. The Chamber notes that Witness BVX's evidence about 3 May was not contradicted by her prior statement and finds it established that the attack took place on that date.[645]

579. Turning to the specific murders, the Chamber finds beyond reasonable doubt that Galican Kayigimana and his two daughters, Solange[646] and Madoudou, as well as Charles Gakwaya[647] were killed together. This follows not only from Witness CAY, who observed the attacks on Galican and Madoudou, but is also based on Witnesses BVX[648] and CAO who saw the bodies of Galican, his daughters and Gakwaya almost immediately after the attack commenced. Furthermore, Witness BVJ provided hearsay evidence relating to the killings of Galican and Charles Gakwaya,[649] and Witness CAN referred briefly to the deaths of Galican and his daughters.[650]

580. The testimonies of Witnesses BVX and CAO leave no doubt that Yolande, the wife of Célestin Munyakayanza, and their two children were killed during this attack. These killings are further supported by the second-hand accounts of Witnesses CAY and BVJ. Relying on Witness CAO's detailed observation of Célestin Munyakayanza's body, the hearsay testimonies of Witnesses CAY and BVJ, and Witness BVX's passing reference to Célestin Munyakayanza's death, the Chamber is also satisfied that he was killed during this incident.[651]

581. Mwumvaneza was also murdered on this occasion. Witness BVX saw this happen, and Witness CAY observed that the victim was buried. Witness BVX was confronted with a prior statement provided to Tribunal investigators in March 2007, in which no reference is made to the killing of Mwumvaneza, the only person the witness testified she saw being killed. She explained that she told the investigator everything she said in court.[652] The Chamber finds the omission immaterial, as the statement does not purport to be a detailed

---

[645] T. 15 January 2008 p. 18; Defence Exhibit 20 (statement of 7 March 2007).

[646] Certain differences between the testimonies are not important. For instance, Witness CAY suggested that Solange "did not die on the spot" but that "members of the population … shaved her [head] and started treating her wounds" and then "took her away and killed her". T. 17 January 2008 p. 11. Witness BVX's testimony regarding her death is not quite clear, but indicates that she was not killed elsewhere. T. 22 January 2008 pp. 6, 10, 12-14, 28.

[647] Witness CAY noted that while Gakwaya was killed at the same location as Galican, it occurred later, and the witness did not observe it. However, he also gave the impression of turning his attention away after observing Galican's murder. T. 17 January 2008 p. 11 ("A. I did not see the person who hit [Madoudou]. After having witnessed the scene where her father was being beaten up, I did not wish to continue watching such a spectacle.").

[648] It is not entirely clear how much time elapsed between Witness BVX's first observation of members of the Death Squad and her observations of the body. Compare T. 22 January 2008 p. 8 (about members of the Death Squad passing in front of her house) and *id.* p. 9 (concerning her arrival at Galican's home). Given the witness's observation of the killing of Mwumvaneza, the Chamber accepts that she arrived shortly after the killings of Galican, Madoudou, Solange and Gakwaya.

[649] These killings were not included in Witness BVJ's September 2006 statement. Defence Exhibit 17 (statement of 26 September 2006). However, this does not affect his credibility. He only provided this evidence when it was suggested to him that he "must have heard something about" that attack. T. 21 January 2008 p. 38.

[650] T. 28 June 2007 pp. 47-48 (members of the Death Squad showed him a list including Dr. Galican who was killed with his wife and children); T. 29 June 2007 p. 10 (clarifying that the doctor's wife was not killed).

[651] Witness BVX first testified that "Célestin and his wife and his two children" were killed on 3 May (T. 22 January 2008 p. 6), but did not elaborate further. She also identified Célestin as one of the victims in her March 2007 statement to Tribunal investigators. Defence Exhibit 20A (statement of 7 March 2007) p. 3.

[652] T. 22 January 2008 p. 31.

account. Moreover, its list of persons who were killed ends in "etc.", demonstrating that it is not exhaustive.[653]

582. Witnesses CAY, BVX and CAZ testified about killings in Nyakabuye, and Witnesses CAY and BVX specified that they occurred following the Mugonzi attack.[654] The Chamber has considered this evidence as background, but finds it unnecessary to make findings with respect to it since the events are not pleaded in the Indictment.[655]

583. The evidence describing the assailants was first-hand and generally consistent. They were armed with traditional weapons.[656] Witnesses CAY and CAO, who each had direct contact with the assailants, said that they were disguised. The Chamber finds it insignificant that Witness BVX did not mention this in her testimony or her written statement. Witness CAY described the assailants removing disguises early in the attack, and Witness BVX's account suggests that she may have arrived afterwards.[657]

584. Among the attackers, Witness CAY recognised Phénéas Munyarubuga, Simon Kalinda, Segema, Cyubahiro, Michel, Nyamulinda's sons Bosco and Louis, as well as Emmanuel Nkurunziza. Witness CAO observed Simon Kalinda, Phénéas Munyarubuga and Cyprien Gasatsi, as well as Segema; he later heard from Munyaneza and Michel Usungu that they had participated, and of Cyubahiro and Juma's presence through Rwandan proceedings. While Witness BVX identified several purported members of the Death Squad, she only described Simon Kalinda's and Bosco's roles in the attack against Mwumvaneza. Witness CAN gave a general reference to members of the Death Squads and suggested that preparations had been made at Phénéas Munyarubuga's home the night before.

585. It was suggested to Witness CAY that he had not mentioned Nyamulinda's sons Bosco and Louis in his prior statements to Tribunal investigators. The witness noted that he was "not a computer" and suggested that poor living conditions in prison could have impacted his prior statements.[658] This explanation is difficult to understand. As already mentioned, the Chamber has certain reservations about Witness CAY's credibility.

586. Witness CAO was confronted with his June 2000 statement to Tribunal investigators, according to which he saw members of the Dragons go to the *Collège Christ-Roi*, and he could only identify Segema when they exited the school. The witness denied that he observed the group enter the school and testified that he informed the investigator of the assailants such as "Kalinda and Phénéas and the others" in addition to Segema. In both

[653] Defence Exhibit 20A (statement of 7 March 2007) p. 3. The statement also fails to mention the deaths of Galican and his daughters. For the reasons explained in the text, the Chamber finds the omission immaterial.
[654] Witness CAY, T. 17 January 2008 pp. 27-28; T. 18 January 2008 pp. 19-21; Witness BVX, T. 22 January 2008 p. 6; Witness CAZ, T. 29 January 2008 p. 63.
[655] Paragraph 35 of the Indictment is specific and confined to killings occurring in Mugonzi. A summary of Witness CAY's anticipated testimony in the Pre-Trial Brief that "they also forced us to kill people in Nyakabuye" (Annex 1, p. 8) does not add greater clarity to the charge, but constitutes a new one that must be pleaded in the Indictment. *Karera* Appeal Judgement para. 293.
[656] Witness CAY said they were armed with hoes, grenades, clubs, nailed clubs, metal bars and the distinctive car spare parts; Witness BVX mentioned hoes, grenades, spears and swords; and Witness CAO referred to grenades, spears, swords, clubs and machetes.
[657] Witness CAY, T. 17 January 2008 pp. 8-9; Witness BVX, T. 22 January 2008 pp. 6, 8-9.
[658] T. 18 January 2008 p. 16 (quoted).

instances, he suggested that the statement likely reflected recording error and concluded that emphasis should be placed on his testimony.[659]

587. The Chamber finds the variances immaterial. The statement is consistent with the witness's testimony that he observed assailants leave from the school. Moreover, the document states that "Simon, Phénéas, [Segema], [Jacques Mudacumura] and several others were members of the group of killers" and that he "saw them" going to the school that day.[660] In spite of his later statement that "it was practically impossible to identify anyone among [the assailants]", the statement clearly implicates many of those the witness identified as participating in the attack during his trial testimony.[661] Finally, as mentioned above, Witness JMM1's second-hand testimony that the killers were not from Nyanza, fails to raise doubt in light of the consistent Prosecution evidence.

588. Based on the first-hand, corroborated accounts of Witnesses CAY, CAO and BVX, the Chamber finds that Phénéas Munyarubuga, Simon Kalinda, Segema and Bosco were among the attackers. While uncorroborated first-hand accounts, hearsay and circumstantial evidence implicate others in the attack, this does not establish their involvement beyond a reasonable doubt.

589. The Chamber recalls that the evidence was insufficient to establish beyond reasonable doubt that Nsengimana participated in a meeting at the *Collège Christ-Roi* prior to the attack on 3 May 1994. There is no evidence that Nsengimana was present during the attack. The Chamber will nonetheless consider in its legal findings whether Nsengimana is accountable for the crimes committed by Phénéas Munyarubuga, Simon Kalinda, Segema and Bosco based on any other theory of responsibility.

[659] T. 15 January 2008 pp. 23 (quoted), 24; Defence Exhibit 9B (statement of 14 June 2000) pp. 4-5.
[660] Defence Exhibit 9B (statement of 14 June 2000) p. 4 (quoted).
[661] *Id.* p. 5 (quoted).

15. KILLING OF FATHERS JEAN-BOSCO YIRIRWAHANDI, INNOCENT NYANGEZI AND CALLIXTE UWITONZE, EARLY MAY

15.1 Introduction

590. The Indictment alleges that Nsengimana and other members of the joint criminal enterprise threatened the Tutsi priests at the *Collège Christ-Roi,* causing Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze to flee. Around 4 May 1994, after paying an orphan for information, Nsengimana, his co-perpetrators, and soldiers found the three priests at an orphanage and killed them at Mpanga. Reference is made to Witnesses BXM, CAW, CBC and BSV.[662]

591. The Defence argues that the Prosecution evidence is inconsistent and unreliable. It refers to Witnesses EMI2, IMR5, JMR1, RFCD6, JMM1 and EMR95.[663]

15.2 Evidence

Prosecution Witness BXM

592. At about 8.00 a.m. one day between 3 and 7 May 1994, Witness BXM, a Hutu, saw Simon Kalinda, Phénéas Munyarubuga, Nyamulinda's son, Tubirimo's two sons and other masked members of the Death Squad at the home of *Conseiller* Corneille Mutaganda of Nyanza sector. They came in a red Toyota pick-up belonging to Tubirimo, the foundry manager. Phénéas Munyarubuga asked the *conseiller* for permission to search the orphanage for "priests".[664] Mutaganda refused, noting that Commander Birikunzira of the gendarmerie had forbidden civilians from going there. The assailants discussed seeking authorisation on their own. Two soldiers came by around 8.40 or 9.00 a.m. and asked Mutaganda why he refused permission to search the orphanage. The *conseiller* reiterated the gendarmerie commander's instructions, but the soldiers insisted on being taken to the orphanage. Mutaganda then requested the witness to accompany the soldiers.[665]

---

[662] Indictment paras. 28, 33-34; Prosecution Closing Brief Chapter 5 pp. 106, 151, 153-161, Chapters 6-8 paras. 66, 77-79, 107, 116, 129, 147, 162, 173, 185, 203, 218, 241, Chapter 9 paras. 67, 89; T. 12 February 2009 pp. 7-8, 11-12, 18-19; T. 13 February 2009 pp. 2-3. The Prosecution incorrectly refers to Witness CAZ when discussing the testimony of Witness CBC (Closing Brief Chapter 5 pp. 153-154, Chapter 6 para. 77). Whereas para. 28 of the Indictment uses the spelling "Yiriwahandi", the Chamber prefers "Yirirwahandi", as on his tomb. See Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4152.

[663] Defence Closing Brief paras. 9, 31, 216-218, 220, 810-815, 914-919, 921, 942-954, 1075-1082, 1122-1123, 1186, 1419, 1443, 1703, 1946-1951, 1969-1970, 2061-2111, 2302-2303, 2335, 2377 and Addendum pp. 10, 30-36; T. 12 February 2009 pp. 44-45; T. 13 February 2009 pp. 11-15. The Defence, in para. 2111 of its Closing Brief, also refers to Witness DFR85's evidence about the killing of Father Mathieu Ngirumpatse. The Chamber considers this evidence in II.9.

[664] Witness BXM's statement to Tribunal investigators identifies the orphanage as Saint Antoine's Orphanage. Defence Exhibit 39A (statement of 27 November 2007) p. 3.

[665] T. 7 February 2008 pp. 5-6, 26-28, 29 (quoted), 31, 34, 45, 60-62, 65-67; Prosecution Exhibit 23 (personal identification sheet). Witness BXM first testified that this event occurred about one week after the killings had begun, which, by his account, started around 21 April 1994. T. 7 February 2008 pp. 9, 14, 21-22, 24, 26, 51. He used the term "commander" frequently, which was his short form reference for gendarmerie commander Birikunzira. See also Defence Exhibit 39A (statement of 27 November 2007) p. 3, which reads: "Corneille refused and told them that Commander Birikunzira said that he would not allow anybody to go to check people at the orphanage".

593. On arrival at the orphanage around one kilometre away, the soldiers asked the witness to locate the priests. He entered an opening in the fence, and an orphan, named Kibombo, acknowledged that there were priests inside. The witness informed the soldiers, and they drove to the orphanage's entrance where they were joined by Simon Kalinda, Phénéas Munyarubuga and the other masked assailants on board Tubirimo's red Toyota. Once inside the premises, the soldiers and assailants went to various parts of the orphanage before returning with Fathers Yirirwahandi and Nyangezi. Commander Birikunzira and *Conseiller* Mutaganda then arrived. One of the soldiers, escorting the priests, spoke with Birikunzira and then told the witness that he could return home. On his way, he saw two priests being driven away in a military vehicle. The witness later heard during Gacaca proceedings that the priests were killed in the Mpanga area. He also learned that a third priest, Callixte, was taken from the orphanage and killed.[666]

Prosecution Witness CAW

594. Witness CAW, a Hutu, worked at the Nyanza parish church in 1994. Sometime in the middle of April 1994, an elderly woman named Hélène from Gachenyeri informed four priests that they would be killed that day. They were Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Mathieu Ngirumpatse, all Tutsi parish priests at Nyanza, as well as Father Callixte Uwitonze, a visiting Tutsi priest. The priests asked the witness to contact Nsengimana to see if he would provide them refuge. Nsengimana answered the witness that there was no room, but suggested that they seek refuge at the orphanage. About five days later, around 21 or 22 April, Fathers Yirirwahandi, Nyangezi and Uwitonze went to the orphanage, which was some 800 to 900 metres away. Father Ngirumpatse remained, assuming that no one would kill him given his advanced age. Several persons knew that the priests were hiding at the orphanage.[667]

595. Around 10 May, a 15 years old orphan came to Nyanza parish to speak with Nsengimana, who was in the secretariat with the witness cleaning up after looters. The orphan told Nsengimana that the priests were "upstairs in the orphanage building", adding that Simon Kalinda's brother André John had said that he would be paid for providing this information. Nsengimana paid the orphan 30,000 Rwandan francs.[668]

596. Later that day, the witness saw Nsengimana travelling towards the orphanage in a red Toyota, belonging to Tubirimo. Together with him were some *Christ-Roi* employees, including Simon Kalinda, Phénéas Munyarubuga, Cyprien Gasatsi, François Sebukayire and Vincent, who led the carpentry shop. Commander Birikunzira, *Interahamwe*, and soldiers also accompanied Nsengimana. Gasatsi was carrying a gun. The witness did not see any other vehicle. Around sundown that day, Gasatsi informed the witness that the three priests had

[666] T. 7 February 2008 pp. 29-34, 60, 62-65, 67.
[667] T. 25 June 2007 pp. 4-5, 18-21, 34, 49, 64-65; T. 26 June 2007 pp. 9, 47-49; Prosecution Exhibit 2 (personal identification sheet).
[668] T. 25 June 2007 pp. 26, 33 (quoted), 34-35; T. 26 June 2007 pp. 9-12, 39, 41, 48. Witness CAW's testimony about this date was not consistent. T. 25 June 2007 p. 35 ("It was on … the 10th of May of 1994."); T. 26 June 2007 pp. 13-14 ("Mr. President: … "When I asked you when this event took place yesterday, you said it was on the 10th of May. Do you recall that? The witness: I do remember, but I apologised, I told you that that was an approximation. I do not recall the date, and I could not know which date it was. I could not know which day of the week it was. But what I can tell you is the month and the year."); 16 ("Q. Now, the day of the killing of the priests, in your statement, you put as the 4th of May, which is the day that appears on their tomb. Do you understand that? A. I have understood, but it might be that I cannot recall precisely the dates and the days.").

been killed in an area called Nyakabuye, approximately three kilometres from the orphanage in the direction of Mpanga sector.[669]

Prosecution Witness CBC

597. In 1995, Witness CBC, a Tutsi, spoke with Marguerite Mujawayezu, who was the *responsable* for Gako *cellule* in 1994. She told him that Nsengimana had asked her, Phénéas Munyarubuga and Simon Kalinda about Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze, who had sought refuge at Saint Antoine's orphanage. They responded that the gendarmerie commander had prohibited attacks against this location. Nsengimana replied: "Leave, and then we shall see what we shall do."[670]

Prosecution Witness BSV

598. Witness BSV, a Tutsi working at the *Collège Christ-Roi*, testified that three Nyanza parish priests, who he did not identify, died. The witness did not know the circumstances surrounding their deaths, but noted that he never saw them at *Christ-Roi*, and that they did not have good relations with Nsengimana.[671]

Nsengimana

599. Nsengimana knew Fathers Yirirwahandi, Nyangezi and Uwitonze, the last of whom was visiting from Gikongoro. He had a good relationship with these priests. They fled the Nyanza presbytery after Father Mathieu Ngirumpatse was killed. The priests never contacted Nsengimana, and he did not learn where they had gone. He did not pay an orphan 30,000 Rwandan francs for information concerning their whereabouts. Nsengimana denied that his subordinates killed the priests and referred to testimony that soldiers took them to Mpanga.[672]

Defence Witness EMI2

600. Witness EMI2 worked at Saint Antoine's orphanage in Nyanza, which was located approximately 800 to 900 metres from the *Collège Christ-Roi*. On the evening of 21 April 1994, Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze sought refuge at the orphanage. The witness believed that "people knew" that the priests were there, since Fathers Nyangezi and Yirirwahandi travelled to and from the orphanage the next morning in a parish vehicle.[673]

---

[669] T. 25 June 2007 pp. 34-35; T. 26 June 2007 pp. 10-13, 15, 50.
[670] T. 28 January 2008 pp. 53-54; T. 29 January 2008 pp. 1-2, 3 (quoted), 4-5, 8-9, 17; Prosecution Exhibit 20 (personal identification sheet). Witness CBC did not mention Father Jean-Bosco Yirirwahandi's first name, and could not recall Father Innocent Nyangezi's first name or Father Callixte Uwitonze's family name. T. 29 January 2008 p. 2.
[671] T. 25 January 2008 pp. 2-4, 31; T. 28 January 2008 pp. 2-3; Prosecution Exhibit 19 (personal identification sheet). Father Furaha was not one of these three unidentified priests. T. 25 January 2008 p. 31.
[672] T. 8 July 2008 pp. 35-36; T. 9 July 2008 p. 26; T. 10 July 2008 pp. 60, 69; T. 11 July 2008 p. 4 (French).
[673] T. 10 June 2008 pp. 4, 7, 10, 12-13, 21 (quoted); Defence Exhibit 45 (personal identification sheet). In some instances, the French version appears to have more correct time references than the English interpretation. See, for instance, T. 10 June 2008 p. 12 (English: Yirirwahandi returned from the parish "about 8 p.m."); *id.* p. 14 (French: "*vers 8 heures*").

601. Around 5.00 p.m. on 24 April, armed and intoxicated civilians gathered at the orphanage's fence, demanding to know whether Father Yirirwahandi was hiding there. The witness said no because the orphanage had an agreement with commander Birikunzira of the gendarmerie, prohibiting civilians from entering the place. The assailants laughed, and their leader told the witness that they would return for Father Yirirwahandi. An hour later, a neighbour informed an Italian priest at the orphanage that he heard *Interahamwe* saying that they planned to attack and kill Father Yirirwahandi that evening. The witness then called commander Birikunzira, who arrived around 8.00 p.m. and deployed three soldiers to guard the orphanage at night.[674]

602. Around 29 April, the witness noticed persons spying on the orphanage. He heard from some of the older boys there that the priests were wanted. The witness learned that a man entered the orphanage around 30 April or 1 May and asked one of the boys if the priests were there. The child pointed to their room. As a consequence, the priests were moved to another location. The witness asked them to leave since people knew they were there and wanted to kill them. The priests stayed there because they would be stopped at a roadblock if they did. On 3 May, commander Birikunzira told the witness that he knew the priests were there. He could not continue to protect the orphanage if the priests remained, since they were suspected of being affiliated with the RPF. The witness asked if the priests could be evacuated. The commander said no and indicated that soldiers would be coming to search the orphanage.[675]

603. Around 4.00 p.m. on 4 May, six "soldiers" searched the orphanage. Led by a gendarmerie lieutenant, the assailants included gendarmes from Nyanza and, according to what the witness heard, two members of the Presidential Guard. The soldiers located Fathers Yirirwahandi, Nyangezi and Uwitonze and left with them on a truck toward Nyanza town. The next morning, the soldiers guarding the orphanage as well as the civilians with them told the witness that the priests had been handed over and killed by civilians at a roadblock in Murama four kilometres from Nyanza. Their bodies were found there in 1995. The witness speculated that the military, including commander Birikunzira, were involved in killing the priests. He did not believe that Nsengimana played a direct role in this.[676]

Defence Witnesses IMR5, JMR1, RFCD6, JMM1 and EMR95

604. Witnesses IMR5, JMR1, RFCD6 and JMM1, all Hutus, testified that they did not hear that Nsengimana was involved in the death of the three Tutsi priests. Furthermore, Witnesses IMR5, JMR1 and EMR95, also a Hutu, provided varying degrees of evidence about

---

[674] T. 10 June 2008 pp. 8, 16-19, 22. It is unclear whether the soldiers guarding the orphanage were from the armed forces, in part because Witness EMI2 included the gendarmerie when discussing "military" personnel. T. 11 June 2008 p. 2.

[675] T. 10 June 2008 pp. 8-9, 22-25.

[676] *Id.* pp. 25 (quoted), 26-27; T. 11 June 2008 pp. 2-4. See also T. 10 June 2008 pp. 26 ("Q. To your knowledge, was Father Hormisdas involved in the death of the priests? A. I believe that Father Hormisdas did not play a direct role in the death of the priests in the sense that the events as we saw them stated that there were other persons responsible for it."), 27 ("Mr. President: … Mr. Witness, we have in both languages the following sentence: 'I believe that Father Hormisdas did not play a direct role in the death of the priests.' What did you mean by that sentence? The witness: From what I know, there are persons who were involved in the death of the priests, and I don't know whether those persons who were directly involved were soldiers who came to take them and who were involved with their presence at the centre. They told us that they were taking them to evacuate them, whereas they took them to the roadblock to kill them. Who wanted those priests in Nyanza? Who wanted them killed with such relentlessness? I don't know. Thank you.").

Nsengimana's good relations with them. Witness JMR1 mentioned the rumours that the priests were affiliated with the RPF.[677]

15.3 Deliberations

605. There is no dispute that three Tutsi priests, Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze, sought refuge at Saint Antoine's orphanage in Nyanza, after fleeing the Nyanza parish church. They were removed from the orphanage in early May 1994, and then killed. It also clearly follows from the evidence that military personnel were involved. The main question is whether Nsengimana played any role in connection with the incident.

606. The Chamber heard eye-witness accounts from Witnesses BXM and EMI2 about the removal of the priests from the orphanage. Both said that in early May, an individual obtained information before the attack from a boy at the orphanage who confirmed the presence of the priests; and, subsequently, military personnel searched the premises and removed the priests. The two witnesses did not mention Nsengimana's presence and direct participation, as alleged in the Indictment.

607. There are, however, also significant differences in their respective accounts. Witness BXM suggested that he confirmed the presence of the Tutsi priests immediately before the attack. He also stated that, in addition to the two soldiers he brought to the orphanage, the assailants who searched the premises included around 20 armed and mostly masked members of the Death Squad, notably Simon Kalinda, Phénéas Munyarubuga, Nyamulinda's son, and Tubirimo's two sons. He further saw commander Birikunzira and *Conseiller* Mutaganda arrive during the operation. This stands in stark contrast to the testimony of Witness EMI2. He explained that the priests were identified several days before the attack, and that the assailants only included six military personnel from various units. The witness did not mention the presence of a large group of armed civilians, commander Birikunzira or *Conseiller* Mutaganda. In the Chamber's view, the discrepancies, in particular concerning the identity of the assailants who removed the priests, are not easily reconciled.

608. The Chamber considers the testimony of Witness EMI2 more credible and reliable than that of Witness BXM. Witness EMI2 provided a convincing, detailed and mostly first-hand account of what transpired at the orphanage after the arrival of the priests, which the Chamber accepts. He was in a unique position to closely observe the events, actively followed the welfare and safety of the priests at the orphanage, and regularly interacted with local officials, such as commander Birikunzira. The witness was not specifically asked whether civilian assailants were also present when the priests were abducted.[678] Given his description of the events immediately surrounding the removal, the Chamber is satisfied that,

---

[677] Witness IMR5, T. 16 June 2008 pp. 43, 46, 50; Defence Exhibit 51 (personal identification sheet). Witness JMR1, T. 17 June 2008 pp. 2, 14, 29; Defence Exhibit 52 (personal identification sheet). Witness RFCD6, T. 8 July 2008 p. 62; Defence Exhibit 60 (personal identification sheet). Witness JMM1, T. 11 July 2008 pp. 25, 29, 32; Defence Exhibit 69 (personal identification sheet). Witness EMR95, T. 13 June 2008 pp. 15-16; Defence Exhibit 48 (personal identification sheet).

[678] The Prosecution did not cross-examine Witness EMI2. T. 11 June 2008 p. 1 ("Mr. Wallace: … having had an opportunity overnight to have read through the transcripts of yesterday's proceedings, and having been able to assess the evidence given by the witness, and having regard to the obvious trauma that this witness suffered, having regard to his show of immense bravery in saving so many young Rwandans, we have determined that there is no need to perpetuate that trauma; and, therefore, we have no cross-examination."); T. 10 June 2008 p. 25.

had a large number of masked and armed civilian assailants participated, it would have escaped neither his notice nor mention. Furthermore, he was also asked expressly about the identity of the military personnel who searched the orphanage. He answered that they were primarily gendarmes led by a lieutenant and possibly included members of the Presidential Guard.[679] In light of his interaction and familiarity with the gendarmerie commander and local officials prior to the search as well as his description of those involved, the Chamber is not persuaded that Birikunizira or Mutaganda were present at the time.

609. The Chamber's preference for Witness EMI2's version of the events is reinforced by a number of credibility issues related to Witness BXM. In particular, he was convicted for his role in this incident as well as for several murders in conjunction with other purported subordinates of Nsengimana or members of the joint criminal enterprise.[680] As an alleged accomplice, his testimony must be viewed with caution. The need to do so is strengthened because he withheld key information from Rwandan authorities concerning his involvement in crimes committed in Nyanza, notwithstanding his decision to plead guilty.

610. Specifically, Witness BXM's first confession in June 2003 fails to mention key accomplices in his various crimes, namely Simon Kalinda and Phénéas Munyarubuga.[681] More importantly, he did not mention his role in several murders, including the abduction of the priests from the orphanage, until he appeared before the Gacaca courts in 2007.[682] The omission of the priests is particularly significant because he was repeatedly asked in the interim period about their killing by Rwandan prosecutors, but feigned ignorance of the incident, despite his central role.[683]

611. The witness explained these omissions by stating that he had wanted to exculpate himself as well as his accomplices from these crimes.[684] He realised, however, that he had to tell the full truth before the Gacaca courts since it would be his last opportunity.[685] The Chamber notes that he did so, however, only after fearing that others would implicate him

---

[679] T. 10 June 2008 p. 25.
[680] T. 7 February 2008 pp. 35-43.
[681] *Id.* p. 39 (explaining that he did not make a full confession until he "realised that those who confessed were given certain advantages").
[682] *Id.* pp. 41, 43.
[683] *Id.* p. 43 (Mr. President: Does this mean that it was on the 9th of January that you first ever mentioned this, Mr. Witness? The witness: In fact, it was not the first time that I was speaking about the priests. The prosecutor's office had asked me to talk about the circumstances surrounding the death of the priests, but on each occasion, I told them that I did not know anything about the circumstances in which they had died.").
[684] *Id.* pp. 39 ("Q. Now, I'm asking you about your written confession made in 2003, and I want to ask you this: Did you name, in that confession, either Phénéas or Simon Kalinda? A. In my first confession, I did not mention those names because, at that time, we wanted to exculpate ourselves and we did not tell the whole truth. However, subsequently, when we realised that the first batch of detainees had been released, we went on to make complete confessions, because we knew that those confessions would be read in front of the members of the public in the *secteurs* or *cellules* where the crimes had been perpetrated … Q. … So, the 3rd of June 2003, you made a confession that was not full, you tell us, because you wanted to exculpate yourself, rather than incriminate yourself. A. That is correct. In our confessions, we admitted only to some of our crimes. But when we realised that those who confessed were given certain advantages, we decided to make complete confessions."), 41 ("In my first confession, I had not wanted to mention any neighbours, because we did not want to continue in prison while adding to our problems by having our neighbours imprisoned. That is why we omitted the names of our accomplices. It was in front of the Gacaca courts that we decided to tell the whole truth and mention the names of all our accomplices.").
[685] *Id.* p. 43.

and being warned that he would be sent back to prison if he did not admit everything.[686] While it is certainly understandable that the witness would want to distance himself from his crimes, it nonetheless leaves the impression that his willingness to cooperate with judicial or investigative authorities is based on self-interest. This alone is not enough to wholly discredit his testimony. However, in the present circumstances, it does raise considerable questions about his credibility when his testimony is weighed against the convincing and distinctly different account provided by Witness EMI2. Accordingly, while the Chamber accepts that Witness BXM played an important role in the abduction of the priests from the orphanage, it cannot rely on the specific details of his account.[687]

612. In reaching this conclusion, the Chamber has also considered that Witness BXM's assertion that civilian assailants participated in the removal of the priests is corroborated by Witness CAW, who saw Tubirimo's red Toyota loaded with civilian assailants driving toward the orphanage on the day of the abduction. His key claim that Nsengimana was among the assailants on the vehicle is inconsistent with the eye-witness accounts of Witnesses BXM and EMI2. This raises concerns about Witness CAW's credibility.

613. Witness CAW's testimony that Nsengimana denied the priests refuge at the *Collège Christ-Roi* and payed an orphan for information about their whereabouts also suggests that Nsengimana played a more direct role in their death. This evidence is uncorroborated. Furthermore, the witness's evidence appears incomplete. According to him, the orphan identified the priests' location as "upstairs in the orphanage building", but did not specify the building in question.[688] The Chamber accepts that the orphanage consisted of many structures that were capable of housing a total of 150 individuals on a regular basis.[689] This raises questions as to why Nsengimana would have paid an orphan a significant sum for information that would prove insufficient to find the priests, especially where the evidence of Witnesses CAW and EMI2 suggested that it was already known that the priests were somewhere in the orphanage.[690] The Chamber also declines to rely on this aspect of Witness CAW's testimony. Finally, it recalls that it has also questioned Witness CAW's credibility in several other respects.[691]

614. Witness CBC's account of Nsengimana summoning *Responsable* Mujwayezu, Phénéas Munyarubuga and Simon Kalinda to *Christ-Roi* to discuss the three Tutsi priests is

---

[686] *Id.* pp. 41 ("But I had not talked about my role in the arrest of the priests and in the death of one other person whose name I no longer remember. I was afraid to do so. But when I appeared before the Gacaca court, I realised that the people who were under me in my group were going to accuse me of that crime, and therefore I decided to mention it before the Gacaca court."), 42 ("But when I arrived before the Gacaca court, the judges told me that I had to make complete confessions; otherwise I would be sent back to prison. That is why I decided to make complete confessions in respect of my role in the deaths of those people.").

[687] In so finding, the Chamber has also considered all testimony presented about Gacaca proceedings in Nyanza about this specific event.

[688] T. 25 June 2007 p. 33 (French: "*à l'étage du bâtiment de l'orphelinat*").

[689] See Witness EMI2, T. 10 June 2008 pp. 10, 15.

[690] The Defence submits that 30,000 Rwandan francs "is a very large sum", and that the orphan's alleged information would not be "worth the payment". Defence Closing Brief Addendum p. 32. In the Chamber's view, the value that someone would place on such information might vary according to that individual's motivation and resources.

[691] See, for instance, roadblocks (II.6) and the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), six Tutsi women (II.19), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

uncorroborated hearsay. Even if the meeting occurred, the second-hand evidence is at best ambiguous concerning Nsengimana's intentions and involvement in the death of the priests.

615. Other witnesses testified about Nsengimana's relations with the priests. Witness BSV said that they were bad, whereas Witnesses IMR5, JMR1 and EMR95 stated that they were normal. This evidence essentially goes to Nsengimana's possible motive for participating in the attack. The Chamber is mindful of the limited probative value that such evidence has in relation to participation in a crime.[692] Furthermore, the evidence on both sides for the most part amounts to hearsay or speculation. Accordingly, the Chamber has accorded it very little weight.

616. In sum, based primarily on the evidence of Witness EMI2, the Chamber finds beyond reasonable doubt that, on or around 4 May 1994, six soldiers, amongst whom the witness could only identify gendarmes, removed Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze from their hiding place at Saint Antoine's orphanage in Nyanza. This followed shortly after the gendarmerie commander informed the witness that the premises would be searched and the priests removed. The Prosecution did not prove beyond reasonable doubt that Nsengimana, commander Birikunzira or other civilian assailants were present during the search. Although there is no direct evidence with respect to the death of these priests, it is undisputed that they were killed shortly after leaving the orphanage several kilometres from Nyanza when handed over to civilian assailants. The Chamber will assess in its legal findings whether Nsengimana bears any responsibility for their death based on the role played by the gendarmes, who allegedly formed part of this joint criminal enterprise.

[692] See *Haraqija and Morina* Appeal Judgement para. 53.

16. KILLING OF CALLIXTE KAYITSINGA, EARLY MAY

16.1 Introduction

617. The Indictment alleges that, around 20 May 1994, Callixte Kayitsinga, a former Tutsi student at the *Collège Christ-Roi*, visited Nsengimana at the school. There, Nsengimana ordered and instigated his employees, including Simon Kalinda and Phénéas Munyarubuga, to kill him. They went to Kayitsinga's room, beat him and led him to the students' dormitory where he was killed. The Prosecution relies on Witnesses CBF, BVI and CBG.[693]

618. The Defence submits that the Prosecution evidence is inconsistent and unreliable. Nsengimana was not involved. Reference is made to Witnesses JMR1, EMR33, JMF2 and PMR31.[694]

16.2 Evidence

Prosecution Witness CBF

619. Witness CBF worked for the *Collège Christ-Roi* but was staying at the Don Bosco orphanage in Cyotamakara in April 1994. About a week after the crash of the President's plane, he was present when Nsengimana asked *Christ-Roi*'s bursar to take Callixte Kayitsinga, a Tutsi and sixth-year *Christ-Roi* student, to the orphanage in Cyotamakara for his safety.[695]

620. Two or three weeks after arriving at the orphanage, in early May, Kayitsinga, over the warnings of Witness CBF and others, decided to leave for Nyanza to seek refuge with Nsengimana, whom he considered his spiritual adviser. He left between noon and 1.00 p.m. and was driven away by the Ruyenzi parish priest, who later informed the witness that he had left Kayitisinga in Nyanza. The witness never saw Kayitsinga alive again.[696]

621. In August or September 1994, Jean de Dieu Ndereye, a Hutu and former student at the *Collège Christ-Roi*, told the witness that he saw Kayitsinga arrive at the school around 3.00 p.m., and that Nsengimana escorted him to the teachers' building. Nsengimana then excused himself, saying that he had to go to town. Shortly after he left, a group including Phénéas Munyarubuga, Simon Kalinda, Kalinda's nephew Marcel, and Cyprien Gasatsi entered the building.[697]

622. Ndereye said that group members led Kayitsinga down the long corridor of the teachers' house towards the students' dormitory, killed him close to the pit latrines on the left

---

[693] Indictment paras. 37 (arguing that Nsengimana ordered, instigated and aided and abetted the killing), 40; Prosecution Closing Brief Chapter 5 pp. 176-179, Chapters 6-8 paras. 82, 110, 116, 131, 150, 167, 173, 187, 206, 223, 229, 243, Chapter 9 paras. 85, 89 (d); T. 12 February 2009 pp. 9, 12; T. 13 February 2009 p. 1.

[694] Defence Closing Brief paras. 715-722, 1092, 1098, 1128, 1171-1175, 1225, 1588, 2171-2202, 2381-2383, 2402-2403; T. 12 February 2009 pp. 39, 44; T. 13 February 2009 pp. 24-25. The Defence also presented several witnesses who, in its view, suggest that the RPF may have deposited the bodies into the *Collège Christ-Roi*'s pit latrines after taking over Nyanza. Defence Closing Brief paras. 2220-2257. This evidence is summarised elsewhere (II.12) but considered here.

[695] T. 26 June 2007 pp. 59, 61; T. 27 June 2007 pp. 1-2, 8, 10, 15-16, 20, 22, 54, 60; Prosecution Exhibit 3 (personal identification sheet).

[696] T. 27 June 2007 pp. 2, 11, 54-55. Witness CBF and others warned Callixte Kayitsinga that he should not feel safe just because he had a Hutu identity card. *Id.* pp. 2, 10, 60.

[697] *Id.* pp. 2-6, 22, 56-57.

of the carpentry workshop, and threw his body into them. Nsengimana returned around 5.00 p.m. When he met Ndereye, he said, "What are you doing here? Go away". According to the witness, Nsengimana never took action against his employees regarding any of the killings.[698]

623. In 1995 or early 1996, Witness CBG, who then worked at the *Collège Christ-Roi*, found a number of corpses buried in latrines near the carpentry workshop. They were exhumed and, prior to reburial, Witness CBF and a co-worker believed that they recognised the body of Kayitsinga by the black trousers that he was wearing at the time when he left the orphanage.[699]

624. Witness CBF knew that soldiers occupied the *Collège Christ-Roi* at one point. Towards the end of May 1994, the RPF captured Nyanza. When he visited Nyanza on 6 June 1994, he was asked to explain to the new authorities why an arms cache had been discovered in the dormitories. In November 1994, the witness noticed significant amounts of blood in a room inside the teachers' building.[700]

Prosecution Witness BVI

625. Witness BVI, a Tutsi, was a boarding student at the *Collège Christ-Roi* in 1994. On Friday 22 April 1994 at 9.00 or 10.00 a.m., he was going to his family home from a visit to Nyanza when he met a *Christ-Roi* student called Callixte Kayitsinga. He had been a choir boy for Nsengimana, and the witness knew that they were quite close. Kayitsinga was carrying a small bag, and the witness believed that he was coming from the house of a family member in Rwesero. Kayitsinga stated that he would ask Nsengimana to give him refuge.[701]

626. In June 1994, the witness returned to school and saw blood on the carpentry workshop wall and in nearby toilets. During the following December, he went to *Christ-Roi* again, and other students told him that Kayitsinga had been killed there.[702]

Prosecution Witness CBG

627. Witness CBG, a Tutsi, worked at the *Collège Christ-Roi* from 1995. In 1996, bodies were exhumed from pit latrines near the school's carpentry shed, after a student had told him that people killed within the compound were deposited there. Witness CBF informed him that one of the victims found in the toilets was Callixte Kayitsinga.[703]

Nsengimana

628. Nsengimana testified that he gave Callixte Kayitsinga more attention than other students because he intended to become a priest. Between 14 and 21 April 1994, the student

---

[698] *Id.* pp. 1-4, 5 (estimating that Kayitsinga spent less than half an hour at the *Collège Christ-Roi* before being killed), 7 (quoted; Witness CBF believed that Nsengimana sent Ndereye away because the director was not happy to see the former student at the school that day), 8, 56.
[699] *Id.* pp. 2, 11. The bodies in the pit latrines are also considered in connection with the killing of three Tutsi refugees (II.12).
[700] T. 27 June 2007 pp. 9-10, 57.
[701] T. 24 January 2008 pp. 3-4, 24, 26-29, 66; Prosecution Exhibit 18 (personal identification sheet).
[702] T. 24 January 2008 pp. 24-25, 29.
[703] T. 29 June 2007 pp. 19-20, 23-26, 28, 30-32; Prosecution Exhibit 6 (personal identification sheet). Witness CBG's evidence concerning the recovery and reburial of the bodies found within the *Collège Christ-Roi* is set forth in greater detail elsewhere (II.12).

came to the *Collège Christ-Roi*. As the killings were already starting in Gikongoro, Nsengimana asked the *Christ-Roi* bursar to take care of Kayitsinga at a nearby orphanage.[704]

629. While travelling to Butare in early May for the funeral of three young relatives, Nsengimana met Callixte Kayitsinga at a roadblock near the Nyanza main market. He drove Kayitsinga back to the priests' house at the *Collège Christ-Roi*, informing him that he had to go to Butare and would return in the evening. Nsengimana told Kayitsinga to meet only with the seminarian at the school. At about 5.30 or 6.00 p.m., Nsengimana returned to Nyanza and was told by the young seminarian that students from the *Ecole normale primaire* and the *Ecole des sciences*, after observing his departure, had abducted Kayitsinga, taken him outside *Christ-Roi* and killed him. He did not say that Phénéas Munyarubuga or Simon Kalinda were involved. Nsengimana testified that it was his worst day during that period.[705]

630. Nsengimana did not take any measures. In the context of widespread killing, he was "resigned" that there was nothing that he could do. Under normal circumstances, if he had known that Phénéas Munyarubuga or Simon Kalinda had been responsible for the murder of Kayitsinga, he would have immediately handed them over to the police. However, he also believed that the police were themselves behind the murders and therefore did not think that they would have assisted. He added that the school was the best equipped materially, and that there was a high risk that it would be looted if the police were involved.[706]

Defence Witness JMR1

631. Witness JMR1, a Hutu, lived and worked at the *Collège Christ-Roi* from late 1993 until he fled near the end of May 1994. He considered himself a very good friend of Callixte Kayitsinga, who was a sixth-year student at the school. Kayitsinga arrived between 15 and 20 May 1994 at 9.00 a.m. at the witness's room, where the witness was conversing with a teacher called Emmanuel Itangishaka. The witness stated that Nsengimana could not have been present at *Christ-Roi* then because, at 7.00 a.m., he had told the witness that he was going to Butare.[707]

632. Kayitsinga started explaining that some Tutsis who were living at the orphanage had been killed the previous day, and that he had escaped to Nyanza. He was quickly interrupted by a young man, a student from the *Ecole normale primaire* or *Ecole des sciences*, who had entered the room and demanded to see Kayitsinga. Itangishaka and the witness forcibly removed the intruder.[708]

633. The young man returned a short time later with a group of six to 10 young persons and Phénéas Munyarubuga. They arrested Kayitsinga, and led him in front of the

[704] T. 9 July 2008 p. 30; T. 10 July 2008 p. 73.
[705] T. 9 July 2008 pp. 30-31, 45; T. 10 July 2008 pp. 75-77. Nsengimana said that he did not take Callixte Kayitsinga with him to Butare because this would have exposed the Tutsi student to 40 kilometres of roadblocks. T. 10 July 2008 p. 75.
[706] T. 9 July 2008 pp. 31-32; T. 10 July 2008 p. 77 (quoted).
[707] T. 17 June 2008 pp. 2-8, 31-35, 47-48, 54; Defence Exhibit 52 (personal identification sheet). Witness JMR1 did not believe that Nsengimana brought Kayitsinga to the school, because, if he had, the priest would have left the Tutsi student in the witness's room. T. 17 June 2008 p. 54.
[708] T. 17 June 2008 pp. 32-33, 48.

administration office, behind the kitchen and out of the *Collège Christ-Roi* compound. The witness testified that Kayitsinga was killed that day, but did not provide further details.[709]

Defence Witness EMR33

634. Witness EMR33, a Hutu student at the *Collège Christ-Roi* from the mid-1980s to 1993, lived near Kigali in 1994. While he was in Zaïre after the genocide he did not hear anything negative about Nsengimana. When he returned to Rwanda, some former students at *Christ-Roi*, survivors of the genocide, stated that Nsengimana had failed to save Callixte Kayitsinga, who had been killed at *Christ-Roi*. However, a former *Christ-Roi* employee, who remained at the school during the genocide, told the witness that Kayitsinga was arrested there by Phénéas and handed over to *Ecole normale primaire* students from Byumba. They killed him on the "playing field", and Nsengimana was not implicated.[710]

Defence Witnesses JMF2 and PMR31

635. Witnesses JMF2 and PMR31 were Hutu students at the *Collège Christ-Roi* in 1994. Witness JMF2 testified that although Callixte Kayitsinga did not receive special treatment, he probably was closer to Nsengimana because he helped organise Mass. Witness PMR31 believed that Kayitsinga's school fees may have been paid by Nsengimana, which occurred in some cases where the students were indigent.[711]

16.3 Deliberations

636. It is uncontested that Callixte Kayitsinga was apprehended at the *Collège Christ-Roi* and subsequently killed. Moreover, Nsengimana confirmed Prosecution evidence that he was with Kayitsinga at the school prior to his murder. Prosecution and Defence witnesses indicated that Phénéas Munyarubuga was among those involved in the attack.

637. As a preliminary matter, there are differences about the date and time of Kayitsinga's arrival at the *Collège Christ-Roi*. Witness CBF credibly testified that Kayitsinga left for *Christ-Roi* in early May, and Nsengimana confirmed this.[712] The Chamber accepts this evidence. It attaches limited weight to the accounts of Witness JMR1 (between 15 and 20 May) and Witness BVI (around 22 April).[713] Consequently, the Chamber finds that Kayitsinga arrived at *Christ-Roi* in early May.

638. The Tutsi student's exact itinerary is unknown. The Chamber accepts that he left in a car between noon and 1.00 p.m., as explained by Witness CBF.[714] The witness was later told that Kayitsinga had been left in Nyanza and arrived at the *Collège Christ-Roi* around 3.00 p.m., and that Nsengimana then left for Butare.[715] This hearsay evidence has less probative value than the testimony of Witness JMR1, who saw Kayitsinga at the school around 9.00 a.m., and Witness BVI, who met him in Nyanza on his way to *Christ-Roi* around 9.00 or

[709] *Id.* pp. 17-18, 32-33, 35, 47-48.
[710] T. 2 June 2008 pp. 14-15, 18-19, 31-32, 51, 52 (quoted), 53-55.
[711] Witness JMF2, T. 9 June 2008 pp. 3-6, Defence Exhibit 43 (personal identification sheet). Witness PMR31, T. 5 June 2008 pp. 3, 13-14, Defence Exhibits 42 (personal identification sheet).
[712] Witness CBF, T. 27 June 2007 p. 2; Nsengimana, T. 9 July 2008 p. 30; T. 10 July 2008 p. 75.
[713] Witness JMR1, T. 17 June 2008 p. 31; Witness BVI, T. 24 January 2008 pp. 24, 27-28, 66.
[714] T. 27 June 2007 p. 55.
[715] *Id.* pp. 2-3, 55.

10.00 a.m.[716] The Chamber accepts these witnesses' direct evidence that Kayitsinga arrived at the school in the morning.[717] It notes that, in view of the distance between Nyanza and Butare, it is not likely that Nsengimana could have left around 3.00 p.m. and returned to *Christ-Roi* by 5.00 to 5.30 p.m.

639. The critical question is whether Nsengimana ordered or instigated *Christ-Roi* employees, including Simon Kalinda and Phénéas Munyarubuga, to kill Kayitsinga. The Prosecution did not present any direct evidence of Nsengimana giving orders or encouragement to Kayitsinga's killers. In fact, the record uniformly shows that Nsengimana was not present at the *Collège Christ-Roi* when Kayitsinga was arrested or killed.[718] Witness CBF heard from a former *Christ-Roi* student that, around 3.00 p.m., Nsengimana left Kayitsinga in a room in the "teachers' building" in the school.[719] Shortly thereafter, Phénéas Munyarubuga, Simon Kalinda, Kalinda's nephew Marcel, and Cyprien Gasatsi entered the building, led Kayitsinga away and killed him near the pit latrines adjacent to the carpentry workshop before depositing his body in them.

640. The timing of the attack – possibly within half an hour of Nsengimana's departure according to Witness CBF – and the purported involvement of several *Christ-Roi* employees create the possibility that Nsengimana alerted the assailants to Kayitisinga's presence and ordered or encouraged his killing.[720] However, differences emerge in the evidence. While Witness JMR1 testified that Kayitsinga was apprehended almost immediately after entering his room at 9.00 a.m., he estimated that Nsengimana had left for Butare approximately two hours – rather than half an hour – earlier.[721] Furthermore, Witness CBF's second-hand account that Phénéas Munyarubuga, Simon Kalinda, his cousin Marcel and Cyprien Gasatsi were the attackers is inconsistent with the eye-witness testimony of Witness JMR1, who identified six to 10 young persons as primary assailants along with Phénéas Munyarubuga, but not any other *Christ-Roi* employees. The Chamber is confident that Witness JMR1, who was working at the school then, would have been capable of identifying, for example, Simon Kalinda and Cyprien Gasatsi, had they been present. His evidence was corroborated by

[716] Witness JMR1, T. 17 June 2008 p. 31; Witness BVI, T. 24 January 2008 p. 27.
[717] It is difficult to reconcile the first-hand accounts of Kayitsinga leaving the orphanage in the afternoon but arriving in the morning at the *Collège Christ-Roi*, unless he did not go directly to the school when he left the orphanage. Witness BVI's evidence, although clearly mistaken about the date (see above), raises the possibility that when Kayitsinga left the orphanage and was dropped off in Nyanza in the afternoon, he first went to his family home in Rwesero before heading to the *Collège Christ-Roi* on a following morning.
[718] See, for instance, Witness CBF, T. 27 June 2007 pp. 3, 5; Witness JMR1, T. 17 June 2008 pp. 33-34, 48, 54; Nsengimana, T. 9 July 2008 p. 31; T. 10 July 2008 p. 75.
[719] T. 27 June 2007 p. 3 (quoted).
[720] *Id.* p. 5 ("A. … Father Hormisdas Nsengimana left, who had excused himself. And shortly after the departure of the father, the killers carried out this despicable incident. So I believe he did not spend more than half an hour at the *Collège Christ-Roi*.").
[721] T. 17 June 2008 pp. 48 (Kayitsinga was apprehended in Witness JMR1's room shortly after arriving there), 31, 33, 48 (Nsengimana left the *Collège Christ-Roi* at 7.00 a.m. while Kayitsinga arrived in the witness's room around 9.00 a.m.). The differences between Witness JMR1's testimony (Nsengimana did not bring Kayitsinga to the *Collège Christ-Roi* that day) and Nsengimana's (he drove Kayitsinga there) is noted by the Chamber, but considered immaterial. That Kayitsinga moved to the room of his close friend after Nsengimana had left him at the school, is a reasonable possibility.

Witness EMR33, who heard that Phénéas Munyarubuga arrested Kayitsinga and turned him over to *Ecole normale primaire* students that killed him.[722]

641. It is also unclear where Kayitsinga was taken and killed. Witness CBF heard that he was led through the "long corridor of the teachers' house" towards the "students' dormitory", killed near the "carpentry workshop", and placed in the "pit latrine" nearby.[723] Witness JMR1 testified that Kayitsinga was taken "in front of the offices of school management … behind the kitchen" and "out of [the *Collège Christ-Roi*]".[724] Given the diagrams presented of the *Collège Christ-Roi,* it would appear that Witnesses CBF and JMR1 described the group as headed in opposite directions, and the evidence differs as to where the killings took place.[725] Witness CBF believed that he had identified Kayitsinga as among the remains recovered from the school's pit latrine in 1995 or early 1996, offering circumstantial support that Kayitsinga was killed there.[726] However, his basis for his identification – a pair of black trousers – lacks reliability and was questioned even by the witness.[727] Witness EMR33 did not specify where Kayitsinga was killed other than testifying that it was done on a playing field.[728] The Chamber notes that a prior statement he gave to Defence counsel indicated that Kayitsinga was brought outside the *Collège Christ-Roi* towards the church to be killed.[729]

642. The Chamber has reservations about the reliability of Witness CBF's informant, Ndereye, who purportedly heard Nsengimana excuse himself from Kayitsinga in order to go to town.[730] According to Ndereye, this occurred inside a room in the teachers' building. How

---

[722] T. 2 June 2008 pp. 52, 54-55. The Chamber has also taken into account that Witness JMR1 may have provided favourable testimony for Nsengimana based on the assistance he had received from him (II.22). However, in this instance, the witness's evidence appears measured and honest, implicating an alleged subordinate of Nsengimana.

[723] T. 27 June 2007 pp. 3 (quoted), 4 (quoted).

[724] T. 17 June 2008 pp. 32, 33 (quoted).

[725] See Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K038-4323; Defence Exhibit 4 (sketches of the *Collège Christ-Roi*).

[726] It appears that Witness CBF told Witness CBG that Kayitsinga was among the dead recovered from the *Collège Christ-Roi* latrine after the genocide. See T. 29 June 2007 p. 25 ("A. … But as for any specific individual who would have been in the pit, I often went to see [Witness CBF] … and I told him about … the people that had been killed in the college and the place where the dead bodies had been thrown, and he told me that he did know someone and that that person was a Kayitsinga, Callixte … "). Witness BVI also heard that Kayitsinga had been killed at the school. T. 24 January 2008 pp. 24-25 ("A. After the war in December 1994, we returned to the school where a special end-of-the-year session had been organised, and there I met some students who were my colleagues with whom we'd gone to complete the school year, so we exchanged information, we asked one another who was still alive, who had been killed, what were the circumstances of the deaths, and the places of the deaths, and so on. So it was on that occasion that I heard that he had been killed at the *Collège Christ-Roi*.").

[727] T. 27 June 2007 p. 11 ("A. … We had already dug the mass grave where we were to bury those human remains … And I was there with one of my co-workers … And in talking together, we thought that we recognised the body of Callixte by the black trousers that he was wearing at the time when he left our centre. But you know very well, of course, I say we thought we recognised him because it is very difficult, when face-to-face with a group of human … remains of a number of people, to recognise somebody amongst them.").

[728] T. 2 June 2008 p. 52.

[729] Prosecution Exhibit 24 (statement of 28 September 2004) p. 2. Nsengimana also testified that he heard that Kayitsinga was removed from the *Collège Christ-Roi* that day. T. 10 July 2008 p. 75 ("A. The seminarian who was on internship told me that he did not follow the group. They went outside the college, they were talking, and he said he saw them leave the college.").

[730] T. 27 June 2007 p. 3 ("A. Jean de Dieu Ndereye told me that Callixte arrived at the *Collège Christ-Roi* at around 3 p.m. He saw Father Hormisdas Nsengimana. He greeted him, and … the father took him to a room in

Ndereye heard this is unexplained, particularly in light of his other evidence that Nsengimana chased him away upon returning to the school that evening. The testimonies of Witnesses BVI and EMR33 demonstrate that Kayitsinga's death was a topic of conversation after the genocide.[731] The possibility that Ndereye, who was in Nyanza after the war, conflated first-hand observations with information he had heard from others, or that his evidence relied totally on hearsay, remains unresolved and creates doubt.[732]

643. Finally, Witnesses BVI, JMR1 and JMF2 confirmed that Nsengimana had a relatively close relationship with Kayitsinga given the student's particular interest in religion.[733] Of particular relevance is that Witness CBF confirmed Nsengimana's testimony that the priest sought and found refuge for Kayitsinga based on the dangers facing Tutsis *after* the President's death. This evidence, coupled with the absence of any direct evidence of Nsengimana's involvement in Kayitsinga's killing, raises considerable doubt in the Prosecution case that Nsengimana ordered or instigated it.

644. The Chamber finds that, in early May 1994, Phénéas Munyarubuga and others abducted Callixte Kayitsinga from the *Collège Christ-Roi* and killed him. There is lack of clarity as to where Kayitsinga was killed, and whether his body was subsequently placed in a pit latrine. It has not been proved that Nsengimana ordered or instigated the killing, or that he aided and abetted it. The Chamber will consider these conclusions in connection with its legal findings.

---

the teachers' building of Nyanza. *Hormisdas excused himself, said that he was going to town but that he was coming back to see Callixte as soon as he returned*.") (emphasis added).

[731] See, for instance, Witness BVI, T. 24 January 2008 pp. 24-25; Witness EMR33, T. 2 June 2008 pp. 31, 51-52.

[732] T. 27 June 2007 p. 3 (Jean de Dieu Ndereye took care of "young people" in Nyanza after the war).

[733] Witness PMR31 raised the possibility that Kayitsinga received financial support from Nsengimana so as to keep him in the school.

17. KILLING OF XAVÉRINE AND HER SON, EARLY MAY

17.1 Introduction

645. The Indictment alleges that, around 23 April 1994, Nsengimana ordered students, members of his joint criminal enterprise, to install roadblocks around the *Collège Christ-Roi* in order to identify and kill Tutsis. Many Tutsis captured at such roadblocks were killed in April and May, including Xavérine and her son. The Prosecution relies on Witnesses CAN, BVJ and CAP.[734]

646. The Defence does not contest that Xavérine was killed. It argues that she was taken from within the premises of the *Ecole normale primaire*, rather than at a roadblock, and that the evidence fails to implicate Nsengimana. Reference is made to Witnesses Marie-Cécile Uwayezu and Marie Goretti Uwingabire.[735]

17.2 Evidence

Prosecution Witness CAN

647. Witness CAN, a Tutsi living in Mugonzi *cellule*, testified that, on 23 April 1994, gendarmes came to see him at François Gashirabake's home because the witness was on a list of Tutsis to be killed. The witness was not able to read all the names on their list, but saw his own name together with those of Zacharie Kambanda, his wife Xavérine and their son Phénel. After the witness had shown the gendarmes a fake identity card indicating that he was a Hutu, they left.[736]

648. On 3 May, an RTLM radio broadcast by a journalist named Kantano announced that the killing of Tutsis had stopped, and that those in hiding should seek protection from the authorities. Later, the witness learned that Xavérine, a Tutsi school teacher, and her son had been killed on 4 May. He recalled the dates based on testimony he overheard at Gacaca proceedings. The witness believed that this broadcast was a trap to get Tutsis to leave their hiding places. Xavérine and her son, a student at the *Ecole normale primaire*, went to headmaster Nyamulinda's house. They were arrested at a roadblock run by Phénéas Munyarubuga, situated between that school and a roadblock near the witness's house. Then they were handed over to individuals manning another roadblock, controlled by Simon Kalinda, taken to a location called Kinihira, and killed. Xavérine's killers included Simon

[734] Indictment para. 25; Prosecution Closing Brief Chapter 5 pp. 24-25, 33-36, 104, 131-136, Chapters 6-8 paras. 57, 70, 116, 141, 155-156, 173, 197, 211-212, 229. The Prosecution does not refer to Witness CAZ, but his evidence is also relevant and therefore summarised below. The two victims' names are spelled in various manners throughout the transcripts (e.g. Xavérine, Xaverine, Xaverina; Phénel, Fenel, Finesse). Unless quoting directly from the transcripts, the Chamber will use "Xavérine" and "Phénel".

[735] Defence Closing Brief paras. 488, 517, 538-545, 559, 562-563, 829, 864, 872, 909-910, 1025-1027, 1070, 1490, 1753, 1762, 1764, 1836, 1871-1872, 1874, 1876-1880, 1882-1886, 1917, 1930, 1932, 1986, 2169; T. 12 February 2009 pp. 35, 44. The Defence also refers to the testimony of Witnesses EMR95, JMR1, DFR85, VMF8 and Marie-Cécile Uwayezu to suggest that there was no roadblock in front of the *Collège Christ-Roi* until soldiers from the *Ecole supérieure militaire* arrived in mid-May 1994. Defence Closing Brief paras. 1910-1913, 1918. This evidence is summarised in II.6, but taken into account here.

[736] T. 27 June 2007 pp. 67-68; T. 28 June 2007 pp. 4, 6, 8-9, 29-30, 43, 48-49; Prosecution Exhibit 4 (personal identification sheet). Witness CAN's evidence about a meeting on 21 April 1994, where this list was allegedly drawn up, is set forth elsewhere (II.2).

Kalinda, Phénéas Munyarubuga, Cyprien Gasatsi, François Sebukayire, Appolinaire Tubirimo's sons, Barihuta, Cyumbati and students from roadblocks at the *Collège Christ-Roi* and the *Ecole normale primaire*. The bodies of Xavérine and her son were never found.[737]

Prosecution Witness BVJ

649. Witness BVJ, a Hutu, lived in Mugonzi *cellule*. Around 9.00 a.m. in early May 1994, he was walking with a neighbour, who manned a roadblock with him approximately 100 metres from Simon Kalinda's home.[738] When the two reached another roadblock near Kalinda's home, they heard shouts coming from the entrance of the *Collège Christ-Roi* and went there. The witness observed that Xavérine, a teacher at the Nyanza primary school, and her son Phénel, a second-year student at the *Ecole normale primaire*, had been stopped by students and *Interahamwe* at the roadblock near the entrance of *Christ-Roi*. Simon Kalinda, Cyprien Gasatsi, Phénéas and Mugemana (a *Christ-Roi* employee and *Interahamwe* member) also arrived because of the shouting. Kalinda grabbed Xavérine and her son, both Tutsis, by their shirts. Together with Gasatsi, Phénéas, Mugemana and some students, he led them in the direction of Kinihira, a wooded area that belonged to the *Ecole normale primaire*, about a 15 minutes' walk from *Christ-Roi*. Nsengimana was inside the school's campus, about 30 metres from the entrance. He observed Xavérine and her son being taken away but did nothing.[739]

650. The witness returned to his home and then to the roadblock about 100 metres from Simon Kalinda's home. Later that day, Kalinda and Phénéas passed by that roadblock, said that they had killed Xavérine, and returned to *Christ-Roi*.[740] The witness had followed the Gacaca proceedings about Xavérine's death, but was not aware of testimony alleging that Simon Kalinda had taken Xavérine from the *Ecole normale primaire*. In particular, he did not hear François Gashirabake, the former *bourgmestre* for Nyabisindu commune, testify about this.[741]

Prosecution Witness CAP

651. Witness CAP, a Hutu, worked at the *Ecole normale primaire*. Sometime after roadblocks had been set up in the period between 23 and 25 April 1994, he saw *Conseiller* Corneille Mutaganda arrive at the school with Xavérine and her son Phénel. The witness was behind the school's kitchen, next to the chimney. He observed Xavérine exit the *conseiller*'s

[737] T. 28 June 2007 pp. 7, 12-13. Earlier in his testimony, Witness CAN describes "Appolinaire Barihuta" as a former director of the Kavumu steel works who became a businessman and CDR party chairman (T. 27 June 2007 p. 78). It is unclear whether this is the same "Barihuta" that the witness identifies here. As for Cyumbati, Witness CAN said that he manned the roadblock near Simon Kalinda's home (II.6).

[738] Witness BVJ's testimony suggests that the roadblock was 100 metres from Kalinda's home when coming from the entrance of the *Collège Christ-Roi*. It was situated near the homes of Kibaya, Gashibirake and Kabihira. T. 21 January 2008 pp. 15, 51.

[739] T. 21 January 2008 pp. 4, 8, 13, 16-19, 23-24, 35, 38, 46, 51-56, 59, 65, 67-68; Prosecution Exhibit 13 (personal identification sheet).

[740] Witness BVJ only described the perpetrators as having killed Xavérine. T. 21 January 2008 pp. 18, 49, 53-54. However, his testimony suggested that her son was also murdered. *Id.* pp. 19 ("Q. And when you were informed of these persons having killed Xaverina and her son, was that on the same day as the killing or later? The witness: On the same day when they were taken away to be killed."), 46 ("… she was the only person whom together with her son I saw being taken away to be killed").

[741] *Id.* pp. 15, 18-19, 35, 47-50, 53-54, 56. Witness BVJ was told that bodies were picked up from Kinihira, transported to Mwogo river and thrown into it. *Id.* pp. 19, 55-56.

vehicle near the flagpole inside the premises and in front of the sixth-year classrooms. She went to collect her luggage, and Simon Kalinda and Cyprien Gasatsi, who had left the roadblock in front of the *Collège Christ-Roi* near Jean Muberuka's home, dragged her outside the *Ecole normale primaire*.[742] Simon was armed with a grenade and a club. Nyamulinda's son(s)[743] and students masked by banana leaves took Xavérine away. The witness did not follow them. He later heard that the assailants had taken her to Kinihira, a forest close to the school, and that Cyprien killed her there with a club. He was also told that, after her son had been clubbed, his foot was pierced with a spear.[744]

Prosecution Witness CAZ

652. Witness CAZ, a Tutsi and former employee of the *Ecole normale primaire*, hid there during the genocide. He testified that a man named Corneille had come to the school with a woman named Xavérine. Simon Kalinda and other attackers arrived later and took Xavérine and her son away. The witness heard that she was killed.[745]

Nsengimana

653. Nsengimana did not see Xavérine and her son being taken away and denied that he knew of, ordered or instigated her killing. He noted that evidence suggested that she was taken from the *Ecole normale primaire*, and that no one had seen him there.[746]

Defence Witness Marie-Cécile Uwayezu

654. Marie-Cécile Uwayezu, a Hutu and headmaster Augustin Nyamulinda's daughter, testified that Xavérine was the godmother of her younger sister, Bernadette. One morning, about two weeks after Father Mathieu Ngirumpatse had been killed, the witness was at her parents' home, which was located above the classrooms inside the *Ecole normale primaire* compound. A person knocked on the door and told her father that Xavérine was sitting in

---

[742] There is a discrepancy between the English and French versions as to whether Simon Kalinda arrived at the *Ecole normale primaire* with "Phénéas" or "Cyprien", or both. Compare T. 30 January 2008 p. 51 (English), which refers to "Phénéas", and *id.* p. 60 (French), which mentions "Cyprien". The Chamber relies on the French transcripts, as Witness CAP later stated that Cyprien killed Xavérine with a club. It is noted, however, that when Prosecution Counsel repeated the witness's evidence that Simon Kalinda and Phénéas had come, the witness did not correct him. See *id.* p. 51 ("Q. And did you see where Simon and Phénéas and the others came from when they came to take Xaverine? A. They were coming from the place where the roadblock that was in front of *Christ-Roi* college was, next to a house where one Jean Muberuka lived.") and *id.* p. 61 ("*Q. Avez-vous vu d'où venaient Phénéas et les autres au moment où ils ont pris Xavérine? R. Ils sont venus de l'endroit où se trouvait le barrage routier en face du collège du Christ-Roi, près d'une maison qu'occupait un certain Jean Muberuka*.").

[743] The French and English versions are inconsistent as to whether Witness CAP referred to one or both sons of Nyamulinda. Compare *id.* p. 60 ("*Et il y a eu un autre groupe d'élèves qui s'étaient masqués le visage avec des feuilles de bananier, ainsi que les fils de Nyamulinda* …") and *id.* p. 51 ("A. … There was another group of students who were wearing – or, rather, who had masked their faces with banana leaves, and the son of Nyamulinda …").

[744] *Id.* pp. 43-45, 48, 50-53, 67; Prosecution Exhibit 22 (personal identification sheet). Witness CAP believed that Xavérine's son was in his third year of primary school. T. 30 January 2008 pp. 50-51.

[745] T. 29 January 2008 pp. 51-53, 62; Prosecution Exhibit 21 (personal identification sheet). Witness CAZ stated that Corneille had come to "Namulinda's". T. 29 January 2008 p. 62. Based on his testimony, it is clear that he was referring to the *Ecole normale primaire*.

[746] T. 9 July 2008 p. 29; T. 11 July 2008 p. 4.

front of the classrooms.[747] Nyamulinda left and returned, stating that Xavérine and her son were there, and that people were chasing her. After insisting that his family stay inside, he exited the house again. The witness observed Xavérine sitting with her son in front of a classroom and assailants inside the school's yard. The attackers told Xavérine to stand up. One of them was wearing a red overcoat and carrying a spear. The witness later learned during a Gacaca proceeding that he was named "Gasatsi" or "Rusatsi". Nyamulinda pleaded with the assailant, standing between him and Xavérine. The assailant threatened to kill the witness's father if he continued to prevent them from killing Xavérine. Another attacker tried to shoot Xavérine and her son, but Nyamulinda fought with him.[748]

655. Shortly thereafter, gendarmes arrived in a Daihatsu pick-up that belonged to the prison. They parked about three metres from the entrance of the *Ecole normale primaire*, and entered the compound. The witness believed that they were collaborating with the *Interahamwe*. One of them wore a uniform and red beret. When Nyamulinda pleaded with them, they told him that they had come to look for persons hiding in the house, and that if he continued to oppose them and protect Xavérine, then they would kill his wife, who they said was an accomplice. Xavérine and her son were arrested, and the man with the spear and another shorter man brought them to the vehicle outside the compound. Nyamulinda followed everyone as they left. At this point, the witness moved to the entrance of the school. Nyamulinda attempted to grab Xavérine's son, but he was loaded onto the vehicle. Her father also tried to keep Xavérine from being taken into the truck, and a gendarme hit him with the butt of his gun. The vehicle left in the direction of Mugonzi *cellule*, on a road that passes next to the *Collège Christ-Roi*, but not through it. The witness later learned that Xavérine was killed. She never heard her father mention that Nsengimana had been involved.[749]

Defence Witness Marie Goretti Uwingabire

656. Marie Goretti Uwingabire, a Hutu and the daughter of headmaster Nyamulinda, explained that Xavérine was the godmother of the witness's younger sister, Bernadette. The witness had heard that Xavérine came to seek refuge at her family's home inside the premises of the *Ecole normale primaire* behind the classrooms. Xavérine was pursued, and as people began to shout, Xavérine headed towards the school buildings. Nyamulinda went outside to negotiate with one of the abductors to save her. A red vehicle arrived, which the witness believed belonged to the prison, and Xavérine was forced onboard. Nyamulinda also climbed onto the vehicle, but a gendarme knocked him off. The witness believed that Xavérine was killed. Her testimony was mostly based on what her sister told her.[750]

---

[747] The English version at T. 7 July 2008 p. 26 (cross-examination) incorrectly states that Witness Marie-Cécile Uwayezu – not Xavérine – was seated outside in front of the classrooms. This is inconsistent with the French version at *id.* p. 31 ("*J'ai déjà déclaré qu'elle était assise devant les nouvelles salles de classe* …") and her testimony during examination-in-chief.

[748] T. 1 July 2008 pp. 14-15, 25-26; T. 7 July 2008 pp. 26-29; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was formerly identified as Defence Witness RFR58.

[749] T. 1 July 2008 pp. 25-26, 35-36; T. 7 July 2008 pp. 12, 25-28. Marie-Cécile Uwayezu recognised the vehicle because she had previously done an internship at the prison. T. 7 July 2008 p. 26.

[750] T. 30 June 2008 pp. 24-25, 35 ("Let me mention this because this is something which I was told about."), 36; T. 2 July 2008 p. 21 ("Q. Much of what you testified about the day before yesterday is not based on what you remember. It's based on what your sister remembers and told you; isn't that fair? A. You are right. … I thought I was coming here to confirm my father's written statement, particularly as I was at the safe house with my sister, and it's only normal that we talked about the events that took place in the country. ..."); Defence Exhibit

17.3 Deliberations

657. There is no direct evidence about the killing of Xavérine and her son, but it appears undisputed that they were both Tutsis, apprehended together, and killed in early May 1994. No witness testified that Nsengimana participated directly in the incident. Witness BVJ stated that Nsengimana watched the arrest of Xavérine and her son from about 30 metres inside the gates of the *Collège Christ-Roi*. Similarly, Witnesses CAN and BVJ said that Xavérine and her son were arrested at a roadblock in front of the entrance of *Christ-Roi* before being led to their death.[751] On the other hand, Witnesses CAP and CAZ as well as Marie-Cécile Uwayezu and Marie Goretti Uwingabire testified that Xavérine was abducted from within the premises of *Ecole normale primaire*. The Chamber will consider the accounts about these two locations separately before concluding based on the totality of the evidence.

17.3.1 Arrest at the *Christ-Roi* Roadblock

658. The testimonies of Witnesses CAN and BVJ have some common features. Both said that Xavérine and her son were detained at a roadblock in front of the *Collège Christ-Roi*. According to Witness CAN, she was killed on 4 May 1994, and Witness BVJ indicated early May. Both stated that Simon Kalinda, Phénéas Munyarubuga, Cyprien Gasatsi and students from the roadblock in front of *Christ-Roi*, among others, were involved. They also said that the victims were led to Kinihira and learned that they had been killed there.

659. The Chamber has some doubts about the evidence of these witnesses. Witness CAN's account about the abduction of Xavérine and her son is relatively imprecise. It is not clear to what extent he actually observed the event.[752] Moreover, he had listened to testimony about this incident during Gacaca proceedings, and acknowledged that this is how he recalled its date. Assuming that the witness observed the event, it is not clear where his vantage point was. This makes it difficult for the Chamber to evaluate the strength of his evidence.[753]

660. Witness CAN's account that Xavérine and her family were on a list of Tutsis to be killed was not entirely consistent. First, he stated that the gendarmes came to his home and showed him a list, allegedly created at a meeting attended by Nsengimana (II.2.2), which contained the names of Xavérine, her husband and son. At one point during cross-examination, the witness testified that the gendarmes found him at François Gashirabake's home, and that he was not shown the list on this occasion.[754]

---

56 (personal identification sheet). Marie Goretti Uwingabire was previously referred to as Defence Witness GFR99.

[751] While Witness CAN testified that the roadblock was situated between a roadblock near his home and the *Ecole normale primaire*, a broader examination of both witnesses' accounts demonstrates that they are referring to the same location. Compare Witness CAN, T. 28 June 2007 pp. 9-10, 12, 17-19, 51-52; Prosecution Exhibit 5 (four photographs) pp. K038-4097 and -4137, and Witness BVJ, T. 21 January 2008 pp. 8-9, 28-29, 33-34; Defence Exhibit 18 (photographs of Nyanza) p. 29; Defence Exhibit 19 (photograph of the *Collège Christ-Roi* entrance).

[752] See T. 28 June 2007 pp. 12-13.

[753] As pointed out in Defence Closing Brief para. 1874, Witness CAN initially testified that Xavérine was arrested at the *Ecole normale primaire*. While the Chamber recognises that the witness testified that Xavérine was arrested at "Nyamulinda's place", he immediately clarified that she was arrested at a roadblock and explained its location. T. 28 June 2007 p. 12. The Chamber finds this discrepancy immaterial.

[754] T. 28 June 2007 p. 49 ("A. It is not different because the first time when they came I was at Gashirabake's house, and all he did was show them my identity card. They did not show that list to me. The list that was shown to me was the second list that had been established for the mopping-up operation."). See also *id.* p. 48

661. Moreover, the witness made no mention of this incident in his statement to Tribunal investigators in June 2000 since he did not consider it significant.[755] The Chamber accepts that he may have failed to mention that he observed the names of Xavérine and her family on a list of Tutsis to be killed. However, it is questionable whether he would have omitted, or an investigator would not have recorded, an event where the witness himself was threatened based on a list prepared at a meeting allegedly attended by Nsengimana (II.2.3.2). Consequently, the Chamber is reluctant to rely on Witness CAN's evidence without corroboration. It is also recalled that the Chamber has raised concerns about the reliability of Witness CAN elsewhere (II.2).

662. Witness BVJ's account evolved during the course of his testimony. He first stated that he was seated at a roadblock around 100 metres from Simon Kalinda's house when he heard shouts coming from a roadblock in front of the *Collège Christ-Roi*.[756] When it was suggested to him that this roadblock and the school would have been around 400 metres apart, he said that he was not seated at this distant roadblock, but was walking with a companion and was near the roadblock in front of Kalinda's home when he heard the shouting.[757] This raises questions about the reliability of his testimony that Xavérine was apprehended at *Christ-Roi*.

17.3.2 Abduction From the *Ecole normale primaire*

663. Witnesses CAP, CAZ, Marie-Cécile Uwayezu and Marie Goretti Uwingabire testified that Xavérine was abducted from within the *Ecole normale primaire*. Some of them also mentioned her son. The Chamber places little weight on the accounts of Witnesses CAZ and Uwingabire. Witness CAZ's evidence about this incident was brief and imprecise, arising only as an aside in his testimony that otherwise focused on roadblocks.[758] It is also unclear whether his evidence is first-hand. The Prosecution did not seek further clarification about this incident, and he was not cross-examined on it. With respect to Uwingabire, her knowledge of this incident relies mostly on hearsay.

(explaining that he began living at Gashirabake's residence from 21 April 1994 onwards and that the gendarmes found him there). The relationship between the first and the second list is not clear, but the Chamber attaches limited significance to this.

[755] *Id.* p. 49 ("Q. You see, there is no mention in your statement of seven years ago of any visit being paid to you by gendarmes, and you having to negotiate, really, your life with them. And instead we have Phénéas at a roadblock showing you a list. Do you see the difference? A. In my written statement I did not mention the visit of the gendarmes. I, instead, mentioned the list that Phénéas showed me. I did not think that it was necessary to mention the list of the gendarmes, because they did not do anything. They left immediately and that is why I did not include it in my written statement.").

[756] T. 21 January 2008 p. 18 ("A. I was sitting next to the fourth roadblock and we heard shouts coming from the roadblock that was at the entrance to the college. …").

[757] *Id.* pp. 51-52 ("Q. The first that you, yourself, became aware of the Xaverina incident, on your account, is when you heard shouts coming from the front – where you say the barrier was at *Christ-Roi*, to your barrier. Is that right? … Now, that's quite a distance, isn't it, from where you say Xaverina had been arrested, to your roadblock. That must be, what? Almost 400 metres, isn't it? A. I was already going toward the entrance of *Christ-Roi* college, and I had reached the level of Simon Kalinda's house, and it is when I was there that we heard shouts … We were going up towards the church. And when we got at the level of Simon's house, we heard screams. …").

[758] T. 29 January 2008 p. 62 ("Q. Mr. Witness, what about the roadblock at Simon's place, how did you know about the existence of that roadblock? A. … I also heard about that roadblock when Simon came to get – take a lady called Xavérine. Corneille came to [Nyamulinda's] with that lady. And then Simon came with attackers and they took away – they took away that lady and her son. They later killed them. By Mr. Ntukamazina: Q. Mr. Witness, what was the purpose of those roadblocks, if you know?").

664. Witnesses CAP and Uwayezu gave detailed, first-hand accounts that were largely consistent. Both discussed Xavérine and her son being forcibly removed from within the premises of the *Ecole normale primaire*. They also each identified Cyprien Gasatsi as one of the assailants.

665. The Chamber notes that there are inconsistencies between their accounts. For example, Uwayezu only mentioned the presence of two civilian assailants, who were not identified as her relatives. She also described the arrival of gendarmes, who played a central role in the abduction of Xavérine and her son, as well as her father, Nyamulinda, fighting with the assailants to protect them. Witness CAP, on the other hand, said that Simon Kalinda and Cyprien Gasatsi abducted Xavérine and her son, and that they handed them over outside the school to Nyamulinda's son(s) and students masked in banana leaves.[759] He made no reference to gendarmes arriving or Nyamulinda trying to fend off the assailants. In addition, the witnesses also differed with respect to the presence of *Conseiller* Mutaganda. Witness CAP stated that Xavérine arrived in his vehicle, whereas Uwayezu did not mention him.

666. Given the centrality of gendarmes and Nyamulinda in the incident, as described by Uwayezu, it may be asked why Witness CAP did not mention their presence if they had played a role. However, he was not asked questions about these specific points. Likewise, had Uwayezu's relatives participated in the attack, it would probably not have escaped her notice, although she might understandably have sought to minimize their involvement.[760] In the Chamber's view, the differences between these two eye-witness accounts are noteworthy, but they do not undermine the reliability of their observations, particularly when they corroborate one another. As both witnesses provided convincing first-hand accounts of the attack, the Chamber has no doubt that the fundamental features of their evidence establish that Xavérine and her son were abducted from the *Ecole normale primaire* by assailants, including Cyprien Gasatsi, and subsequently killed.

17.3.3 Conclusions

667. According to paragraph 24 of the Indictment, Xavérine was captured at a roadblock and then killed, following Nsengimana's alleged order to mount roadblocks around the *Collège Christ-Roi*. As discussed above (II.17.3.1), the Chamber has doubts that she was apprehended at the *Christ-Roi* roadblock, as explained by Witnesses BVJ and CAN. It finds the testimony of Witnesses CAP and Uwayezu about Xavérine's abduction from the *Ecole normale primaire* to be the more convincing account. This said, the Chamber notes that the two narratives are not necessarily inconsistent. For example, Witness BVJ may have

[759] Witness Marie-Cécile Uwayezu's brother Louis Gonzague Uwimana and cousin Bosco lived at her home, were close and were present during the genocide. See T. 7 July 2008 pp. 17, 22, 25. Some appear to have mistakenly identified Bosco as one of Nyamulinda's sons. See, for instance, Witness CAN, T. 28 June 2007 p. 63; Witness CAY, T. 16 January 2008 p. 66; T. 17 January 2008 pp. 6, 9; Witness BVX, T. 22 January 2008 p. 2; Witness CAZ, T. 29 January 2008 p. 29. See also Nsengimana, T. 8 July 2008 p. 45 ("I have the impression that when we talk of the two sons of Nyamulinda, the person who was mentioned as a cousin, whose name is Bosco, is included in these two sons that have been referred to.").

[760] The Chamber notes, however, that the relative(s) seemed to play a secondary role, leading Xavérine away after Kalinda and Gasatsi had dragged her out of the school. See Witness CAP, T. 30 January 2008 p. 51 ("She took her luggage, Simon and [Cyprien] arrived, took her, and dragged her outside of the school. There was another group of students who were wearing – or, rather, who had masked their faces with banana leaves, and the son of Nyamulinda, and the group took Xavérine to Kinihira.").

observed Xavérine and her son at the entrance of the *Collège Christ-Roi* after they had been abducted from the school and were being escorted to Kinihira to be killed.

668. Leaving aside whether the two narratives are competing or can be reconciled, it is significant that no witness implicated Nsengimana directly in the attack, and that only Witness BVJ testified about Nsengimana's presence – inside the school's compound about 30 metres away from the entrance – during the arrest at the roadblock. As detailed above, the Chamber has concerns with the reliability of this witness's evidence. But even if his account were accepted, it does not portray Nsengimana as giving orders or encouraging the assailants at the roadblock to capture Xavérine, and it does not even demonstrate that the attackers were aware of his presence.

669. The Chamber recalls that it has not found it established that Nsengimana gave any order to establish roadblocks (II.6.3.8). The evidence concerning the abduction and killing of Xavérine and her son does not affect that conclusion. Moreover, the Prosecution has not proved beyond reasonable doubt that she was captured at a roadblock close to the *Collège Christ-Roi* and then killed, as alleged in the Indictment.

670. Turning to Nsengimana's alleged subordinates, the Chamber finds it established, based on the accounts of Witnesses CAP and Uwayezu, that Cyprien Gasatsi played an important role when Xavérine was abducted from the *Ecole normale primaire*. In its legal findings, the Chamber will consider whether Nsengimana bears any responsibility based on Gasatsi's involvement.

671. Witnesses CAP and Uwayezu identified multiple assailants, but Phénéas Munyarubuga was not amongst them, and the Chamber cannot conclude that he was at the *Ecole normale primaire*. As for Simon Kalinda, Witness CAP testified that he participated in the abduction there. Witness CAZ also mentioned him, but this account was imprecise and does not provide convincing corroboration. Uwayezu's observation of a second civilian assailant at the school is also insufficient to find that Kalinda was present there.[761] Consequently, the Chamber does not find it proved beyond reasonable doubt that Phénéas Munyarubuga or Simon Kalinda were involved in the capture or killing of Xavérine and her son.[762]

672. Finally, the Chamber accepts Uwayezu's testimony that gendarmes provided substantial assistance to the civilian assailants when Xavérine and her son were abducted from the *Ecole normale primaire*. On this point, her account was detailed. She stated that a gendarme was in uniform and wore a red beret, convincingly explained how she recognised the pick-up truck they arrived in as belonging to the prison, and described gendarmes hitting her father with the butt of his gun. She was well-placed to observe what was going on.[763]

---

[761] Marie-Cecile Uwayezu was not asked if she knew Simon Kalinda.

[762] Witnesses CAN and BVJ testified that Simon Kalinda and Phéneas Munyarubuga were involved in the killing of Xavérine and her son after their arrest at the *Christ-Roi* roadblock. This evidence, which does not relate to the abduction at the *Ecole normale primaire*, carries limited weight in view of the credibility concerns mentioned above (II.17.3.1).

[763] T. 1 July 2008 p. 26 ("We could follow what was going on well because it was all taking place just below our house."); T. 7 July 2008 p. 27 ("As I testified before, those gendarmes had come to search the school. … And I only saw them later on when I went out of the house. And they had parked their vehicle on the road that runs alongside of the football pitch of the ENP school. And when Xavérine was made to leave the school, we followed them towards the place where the gate had to be constructed. … The distance between where we were and where the scene was taking place was about 3 metres. So we could see what was taking place very well.").

Witness CAP, however, was not asked whether he saw gendarmes. Even though Uwayezu was the only witness to include gendarmes, her evidence appears solid. Whether Nsengimana is responsible for the conduct of the gendarmes at the school is discussed in the legal findings.

18. KILLING OF JUDGE JEAN-BAPTISTE TWAGIRAYEZU, EARLY MAY

18.1 Introduction

673. The Indictment alleges that, in May 1994, Nsengimana refused to admit to the *Collège Christ-Roi* a judge named Jean and instead handed him over to a soldier forming part of Nsengimana's joint criminal enterprise so that he would be killed. He thereby ordered, instigated, or aided and abetted the killing of the judge. The Prosecution relies on the testimonies of Witnesses CAZ and CAN.[764]

674. The Defence does not dispute that Nsengimana met Judge Jean-Baptiste Twagirayezu and that he was subsequently killed, but questions the credibility of the Prosecution evidence implicating Nsengimana. It relies on Witnesses Marie-Cécile Uwayezu, DFR85, JMR1, AMC1 and XFR38.[765]

18.2 Evidence

Prosecution Witness CAZ

675. Witness CAZ, a Tutsi and former employee at the *Ecole normale primaire* (ENP), testified that, in late April or early May 1994, he observed Nsengimana exit the *Collège Christ-Roi* with Judge Jean, who was from the court of first instance and a native of Gikongoro prefecture.[766] The witness, who was near the goalposts just outside of the ENP's entrance, saw Nsengimana accompany the judge on a road between *Christ-Roi* and the Nyanza parish church, approximately 70 to 80 metres away. Nsengimana bid farewell to the judge near the roadblock manned by the ENP students close to the Nyanza parish church (II.6.2, 6.3.5), who did not stop him. Gendarmes, coming from the direction of the church approximately 20 to 25 metres away, arrested the judge around the canteen near the church. Nsengimana saw this as he had not yet reached a roadblock three metres from the entrance of *Christ-Roi*. It appeared to the witness as if Nsengimana had handed the judge over to the gendarmes. The gendarmes, who had firearms, led the judge behind the canteen. The witness heard gunshots. A woman named Eugénie, who worked at the canteen, told him that the judge had been killed. The witness did not know his ethnicity.[767]

---

[764] Indictment para. 32; Prosecution Closing Brief Chapter 5 pp. 162-166, Chapters 6-8 paras. 75-76, 106, 116, 136, 146, 161, 173, 192, 202, 217, 229, 248; T. 12 February 2009 pp. 8-9, 11-12.

[765] Defence Closing Brief paras. 9, 11, 31, 305-306, 849-859, 982-986, 1020-1024, 1069, 1159, 1163-1164, 1229, 1273, 1873, 1904, 2027-2060, 2274, 2278; T. 12 February 2009 pp. 35, 43-44. The Brief also refers to the testimony of Defence Witness EMR95 (para. 1194), but the witness did not testify about this incident. Furthermore, the Defence highlights that Prosecution Witness CAP did not mention Judge Jean's death (para. 873), although it is not disputing that he was murdered.

[766] Witness CAZ could not give a precise date for the event, but estimated that it occurred one week after he sought refuge at the ENP. T. 30 January 2008 p. 29. He believed that the genocide started in Nyanza on a Friday, around 20 or 22 April, and that he arrived at the ENP the following Monday morning. T. 29 January 2008 pp. 53-54, 56; T. 30 January 2008 pp. 7-8. The Chamber notes that 25 April 1994 was on a Monday, which would place this event around 2 May 1994.

[767] T. 29 January 2008 pp. 51, 53, 59, 64-65, 67; T. 30 January 2008 pp. 29-33, 38-39; Prosecution Exhibit 21 (personal identification sheet).

Prosecution Witness CAN

676. Witness CAN, a Tutsi, lived in the vicinity of the *Collège Christ-Roi*. This incident occurred in early May 1994. The witness did not see the killing, but he had seen Jean Twagirayezu, a native of Gikongoro and a judge in the court of first instance in Nyabisindu, on his way to the *Collège Christ-Roi*. The judge had crossed a roadblock near Simon Kalinda's home, where the witness was positioned. He also saw the judge when he left *Christ-Roi*, appearing crestfallen. However, on this occasion, the judge followed the main path from the school leading in the direction of the Nyanza parish church.[768]

677. He stated that one of the *Collège Christ-Roi* employees, Phénéas Munyarubuga, told him that Judge Jean had come from his home in Rwesero sector to the school to see Nsengimana. Phénéas and Simon Kalinda told the witness that they had allowed the judge to cross a roadblock because of his identity card, which indicated that he was a Hutu. Nsengimana knew that the judge was a Tutsi and, according to Phénéas and Simon, sent a messenger to the roadblock at the Nyanza parish church manned by students, informing them of this fact. When the judge arrived at the roadblock next to the church, the students beat him. Gendarmes subsequently arrived and shot him in the temple, killing him.[769]

Nsengimana

678. Nsengimana testified that Judge Jean, the vice-president of the court of first instance in Nyabisindu, arrived at the *Collège Christ-Roi* by foot around 2.00 p.m. in early May 1994. He received the judge in his office. They discussed the war and people who had died, and he also heard the judge's confession. There was no discussion about whether the judge was seeking refuge. Nsengimana accompanied him out, as is customary in Rwanda. He learned that evening that the judge had been arrested, shot and killed. Nsengimana denied any involvement in this. He did not know Witnesses CAN or CAZ.[770]

Defence Witness Marie-Cécile Uwayezu

679. Marie-Cécile Uwayezu, a Hutu, is the daughter of the deceased Augustin Nyamulinda, the headmaster of the *Ecole normale primaire*. During a lull in the killings, approximately two to three weeks after they had started in Nyanza on 21 April 1994, the witness was accompanying her father to the Nyanza parish church around 3.00 p.m.[771] From her position on the football pitch, she saw Nsengimana and Judge Jean Twagirayezu, approximately 200 metres away, as they were coming from the *Collège Christ-Roi*. They were talking calmly to each other. When the two arrived near the hostel, they parted ways.[772]

---

[768] T. 27 June 2007 pp. 67-68; T. 28 June 2007 pp. 10-11, 53-54; Prosecution Exhibit 4 (personal identification sheet). A detailed description of the roadblock near Simon Kalinda's home and the Nyanza parish church are set forth elsewhere (II.6).

[769] T. 28 June 2007 pp. 9-11, 14, 53; T. 29 June 2007 p. 9.

[770] T. 9 July 2008 pp. 29-30, 33-34; T. 10 July 2008 pp. 70-72; T. 11 July 2008 pp. 3-4. Based on his obligation to keep confessions confidential, Nsengimana refused to answer whether Judge Jean had informed him that he feared for his life.

[771] Marie-Cécile Uwayezu thought this event occurred around the same time as her trip to the hospital to see a woman named Françoise (II.10). T. 1 July 2008 pp. 20-21, 28-30; T. 7 July 2008 pp. 7-8.

[772] T. 1 July 2008 pp. 14, 30-34; T. 7 July 2008 pp. 10-11; Defence Exhibit 57 (personal identification sheet). Marie-Cécile Uwayezu was formerly identified as Defence Witness RFR58. The witness states that this was a

680. The witness and her father joined Judge Jean on the road from *Christ-Roi*, about five metres from the church. She overheard the judge inform her father that he had confessed to Nsengimana because he felt he could be killed at any point. Minutes after the judge joined them, a motorcycle carrying two gendarmes arrived. The witness did not recognise them. The gendarmes, in uniforms and red berets, had come from the direction of the hospital on a road leading to the church. Nsengimana was not in sight at this point. Without saying a word, a gendarme took the judge by the arm, leading him towards the parish's grinding mill. The witness lost sight of them. The other gendarme remained, leaning on a church pillar. She did not see anyone else. The witness heard a gunshot, and her father instructed her to go home. When she arrived there, she told people that the judge had been killed.[773]

681. The next day, the witness's father went to see Judge Jean's body, which was in the bushes behind the mill. He told her that dogs were devouring it, and that it should be buried. The witness never heard Nsengimana's name mentioned in connection with the killing.[774]

Defence Witness DFR85

682. Witness DFR85, a Hutu, worked at a primary school and lived in the vicinity of the Nyanza parish church. She testified that, sometime in May 1994, she stood in front of the gates of a women's hostel and saw Nsengimana and Judge Jean-Baptiste, whom she thought was a Tutsi. The witness believed that they hailed from Gikongoro prefecture and knew each other well. The two were walking in her direction. Based on her general observations, neither of them appeared to hold a negative attitude towards the other. Nsengimana said goodbye to the judge not far from her position and returned towards the *Collège Christ-Roi*. No soldier or roadblock was at the location where the two parted. The judge passed the witness and greeted her on his way.[775]

683. Five to 10 minutes later, the witness observed, from about 50 metres away, a gendarme from the Nyanza gendarmerie leading Judge Jean. The gendarme, who had a pistol, led him behind the church in the vicinity of a building utilised by members of the church youth group.[776] Moments thereafter the witness heard a gunshot. She believed the judge had been killed. Nsengimana had returned to *Christ-Roi* by this point.[777]

684. After hearing the gunshot, the witness went inside the hostel's compound. Around 15 minutes later, the same gendarme arrived at the hostel. He asked the witness for a drink of water and became upset when a Tutsi woman named Médiatrice, who was in the room, did

---

location where "gendarmes had tried to set up a roadblock". T. 1 July 2008 p. 31. She denied that a roadblock was in place when this incident occurred. T. 7 July 2008 p. 10. Based on her other descriptions concerning a roadblock in the vicinity of the hostel, she appears to be referring to a roadblock that was established by students from the *Ecole normale primaire* – not gendarmes – which was later dismantled by her father T. 1 July 2008 p. 27.

[773] T. 1 July 2008 pp. 31-34; T. 7 July 2008 pp. 9-14.

[774] T. 1 July 2008 pp. 35-36; T. 7 July 2008 p. 14.

[775] T. 27 June 2008 pp. 3-4, 15, 18, 27-29, 46-48; T. 30 June 2008 p. 9; Defence Exhibit 55 (personal identification sheet).

[776] The building, which was located between the church and the hostel, housed a shop run by women from the hostel and was used for choir practice by members of the Catholic youth group and for prayer. T. 27 June 2008 pp. 15, 18-20; T. 30 June 2008 p. 5.

[777] T. 27 June 2008 pp. 15-16, 18-20, 27-29, 46, 48; T. 30 June 2008 p. 2. Witness DFR85 did not know the name of the gendarme, had not seen him in the company of Nsengimana, and did not see the gendarme again. T. 27 June 2008 pp. 20-21; T. 30 June 2008 pp. 6-7.

not offer him milk, as she worked in the dairy. The gendarme then grabbed Médiatrice by the arm and told her to accompany him. It was around sundown at this point, possibly between 5.30 and 6.00 p.m. The next morning, Nyamulinda's wife informed the witness that Médiatrice and the judge had been killed. The witness saw Médiatrice's body, which dogs had begun to eat, behind the church near the Catholic youth building.[778]

Defence Witness JMR1

685. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi* until May 1994. On 12 May, around 5.30 or 6.00 p.m., he heard a gunshot from behind the Nyanza parish church. At the time, he was sitting near the entrance of the hostel across from *Christ-Roi* speaking with a Tutsi girl, Médiatrice Muhongerwa. Gendarmes arrived minutes later and asked them to present identity cards. The witness complied. Médiatrice walked down the corridor to a room, emptied a clothes basket and did not recover her identification. The gendarmes took her away.[779]

686. The next day, the witness learned that Médiatrice had been killed, and that a judge from the court of first instance, Jean, had been shot in the head. The witness speculated that the gendarmes, who arrived shortly after he heard the gunshots, had killed the judge. Based on their accents, the witness believed that they had come from Ruhengeri or Gisenyi. He did not see the judge's body, but heard that it was found in a bush behind the Nyanza parish church. Two other bodies, including Médiatrice's, were also found nearby, but they had not been shot. Nsengimana was not mentioned as playing a role in the judge's death when the witness overheard people discussing it the next day.[780]

Defence Witness AMC1

687. Witness AMC1, a Hutu living in the vicinity of the *Collège Christ-Roi* and the Nyanza parish church, knew Jean Twagirayezu, a judge in the court of first instance. On an unspecified day, the witness heard two gunshots while he was in his home. He went outside and observed two gendarmes carrying guns coming from the direction of the gunshots. The witness heard that the judge had been killed by them. He did not know where Nsengimana was at the time.[781]

Defence Witness XFR38

688. Witness XFR38, a Tutsi who lived in Nyanza town within Nyabisindu commune, was in hiding after the killing of President Habyarimana until she fled near the end of May or early June 1994. She knew that Judge Jean was a native of Gikongoro and the vice-president of the court of first instance. The witness heard that he had been shot, and she believed that he had been killed by soldiers, gendarmes or *Interahamwe*. She did not provide a specific

[778] T. 27 June 2008 pp. 15-16, 19-20, 22; T. 30 June 2008 pp. 2-3, 8-9, 14.
[779] T. 17 June 2008 pp. 2, 4-7, 19-27, 46; Defence Exhibit 52 (personal identification sheet). Witness JMR1 learned that Médiatrice's body was devoured by dogs. He believed that members of the population killed her as he did not hear gunshots after the gendarmes took her away. T. 17 June 2008 pp. 23-24, 46-47.
[780] T. 17 June 2008 pp. 24-26, 46. Witness JMR1 estimated that the Nyanza parish church was at least 500 metres from the *Collège Christ-Roi*. *Id.* p. 26.
[781] T. 3 June 2008 pp. 3, 7, 25, 28, 60; Defence Exhibit 40 (personal identification sheet).

time for the event, but noted that *Interahamwe* were armed during that period. The judge's ethnicity was unknown to her, and it could not be determined based on his appearance.[782]

18.3 Deliberations

689. It follows from the evidence that, on an afternoon in early May 1994, Nsengimana spoke with Judge Jean-Baptiste Twagirayezu and heard his confession at the *Collège Christ-Roi*. Shortly after the two parted ways outside of *Christ-Roi*, the judge was arrested by gendarmes, shot and killed close to the Nyanza parish church.

690. The Chamber notes differences in the Prosecution evidence, as well as more generally. For example, Witness CAZ expressly denied that the judge was stopped by students at a roadblock.[783] Witness CAN, however, testified that the judge was stopped at a roadblock when he left *Christ-Roi* and that students beat him before gendarmes arrived.[784] Moreover, while Witness CAZ testified that Nsengimana accompanied the judge when he departed from *Christ-Roi*, Witness CAN only noted the judge's crestfallen appearance, making no mention of Nsengimana accompanying him.[785] The Prosecution witnesses' evidence that the judge passed a roadblock when leaving the school was rejected by the first-hand accounts of Defence witnesses, who denied that a roadblock was in place where Nsengimana and the judge left each other.[786] In the Chamber's view, these inconsistencies are significant.

691. Witness CAN's testimony that Nsengimana sent a messenger, identifying the judge as a Tutsi to the students who attacked him, is both uncorroborated and second-hand. Furthermore, given his position at a roadblock near Simon Kalinda's home, it is highly unlikely that the witness could have seen the purported roadblock near the Nyanza parish church, where Twagirayezu was allegedly abducted.[787] The Chamber will not rely on these aspects of his testimony without corroboration.

---

[782] T. 15 September 2008 pp. 10, 12, 14-16, 18, 26; Defence Exhibit 72 (personal identification sheet).

[783] T. 30 January 2008 p. 38 ("[Nsengimana] left [the judge] below the roadblock that was manned by the students, a few metres away from that roadblock. And let me add that the students who were manning that roadblock did not stop him.").

[784] T. 28 June 2007 pp. 10-11 ("Yes, many people were intercepted at those roadblocks. I can mention a certain Jean, who was a judge at the court of first instance … Afterwards, the gendarmes arrived while the students were beating him up.").

[785] Nsengimana as well as Witnesses Marie-Cécile Uwayezu and DFR85 corroborated Witness CAZ's testimony that Nsengimana accompanied the judge for a short period as he departed from the *Collège Christ-Roi*.

[786] See, for example, Marie-Cécile Uwayezu, T. 7 July 2008 p. 10 ("Q. Were there other people there? A. I didn't see anyone else. I have explained to you that when one saw gendarmes, one would feel threatened because it was mostly the gendarmes who were committing the killings in Nyanza. I didn't see anyone else. All I saw was my father who was with me in that place. Q. See, I'm going to suggest to you that there was a roadblock not far from the Nyanza parish church on that road that the gendarmes were coming from. That's true, isn't it? A. I'm not aware of that roadblock that you are speaking about. Q. I'm going to suggest to you that it is from that roadblock that the gendarmes went and took Judge Jean from Father Nsengimana. A. No, what you're saying is not true. That's not what I saw."); Witness DFR85, T. 27 June 2008 p. 46 ("Q. … In other words, you're saying that Father Hormisdas left Judge Jean at the location where the war-displaced students had attempted to erect the roadblock. Is that what you are trying to say? A. I don't know why you are insisting on the presence of that roadblock. I have told you that they left one another just before they reached our hostel and Father Hormisdas went back in to the compound of Christ the King college. I don't see why you are insisting on the presence of that roadblock whereas it was not there when they separated from one another.").

[787] See T. 28 June 2007 p. 54. Witness CAN's statements that he only saw Twagirayezu "when he was going to [*Christ-Roi*] and when he left" it (*id.* p. 11) and that he later learned "that [Twagirayezu] was killed by the

692. With respect to Witness CAZ, the Defence suggests that he would not have left the safety of the *Ecole normale primaire*'s compound because he was a Tutsi, thus preventing him from witnessing the event.[788] He acknowledged that Tutsis faced grave risks during this period.[789] His explanation that he received protection from Nyamulinda's son and could stay next to students at a roadblock or near the entrance of the *Ecole normale primaire* is not entirely convincing.[790] The Chamber has some reservations that the witness would have left the confines of the *Ecole normale primaire*. He testified that he was given express orders not to leave it, and that it would have been dangerous for him to have gone far outside of it.[791] Marie-Cécile Uwayezu confirmed that apart from Médiatrice, no one else who had sought refuge at the school left.[792] The credible evidence that a roadblock which the judge allegedly passed through no longer existed at that time (II.6.3.5) also raises questions about Witness CAZ's purported eyewitness account.

693. Even if the Chamber accepted that Witness CAZ accurately reported what he saw, there is no direct evidence of Nsengimana handing Judge Jean over to gendarmes to be killed.[793] Neither the Indictment nor the testimony of the Prosecution witnesses have specified what particular acts should be indicative of "handing over the Judge." The only reason for Witness CAZ to think so was the sequence of events. The arrest of Judge Jean by unidentified gendarmes took place shortly after he and Nsengimana had parted, leading him to believe the accused was involved. However, alternative inferences can be drawn from Witness CAZ's testimony. In the Chamber's view, the Prosecution has not eliminated the reasonable possibility that the judge's murder resulted from the independent action of attackers operating outside of Nsengimana's knowledge, encouragement or control.

694. The testimonies of Witnesses Marie-Cécile Uwayezu and DFR85 confirm that Nsengimana escorted Judge Jean from *Christ-Roi*. However, they contradict the proposition that he was beaten at a roadblock, and that Nsengimana was present when the judge was arrested by gendarmes. Both witnesses were in a position to follow the event closely and purportedly interacted with the judge shortly after he left Nsengimana's company. In particular, Uwayezu and her father were with the judge at the time of his abduction. Notably, Witness DFR85 did not mention the presence of Uwayezu or Nyamulinda at the time of the judge's arrest. However, she was not specifically questioned about whether other persons were with the judge. Moreover, according to her testimony, it was five to 10 minutes later that she observed a gendarme from the Nyanza gendarmerie leading Judge Jean away. This

---

students and the gendarmes" (*id.* p. 53) implicitly support the conclusion that he could not see this roadblock, or Twagirayezu's abduction at it, from his position at the barrier near Simon Kalinda's home.

[788] See Defence Closing Brief paras. 850-851, 855, 2051-2052.

[789] T. 30 January 2008 p. 9.

[790] *Id.* pp. 29-30.

[791] *Id.* pp. 11 ("[the director of the *Ecole normale primaire*] forbade me to go to the roadblocks or go outside of the school premises."), 30 ("Q. All right. So you used to go to the entrance, but now you're telling us you actually went outside the school. … A. I would not go very far. I would remain close to the gate. Sometimes I would be with those students, the ones that had remained at the school. Q. But wasn't going outside very dangerous for you? A. It would have been dangerous for me to go far. But since I would only remain at the gate, I don't think there was really any danger. When I would see that there was no one on the football pitch, I could go out and stay next to the gate.").

[792] Witness Marie-Cécile Uwayezu, T. 1 July 2008 p. 35.

[793] Witness CAN's second-hand account only suggests Nsengimana identified the judge as a Tutsi to the *students* at the roadblock, and makes no mention of him communicating with the *gendarmes* who killed the judge.

means that she made her observations some time after the judge had been apprehended in the presence of Uwayezu and Nyamulinda. In the Chamber's view, these two eye-witness accounts raise additional doubt about the Prosecution case. The Chamber notes that the Defence evidence also lacks some clarity.[794]

695. The other evidence from Witnesses JMR1, AMC1 and XFR38 concerning Nsengimana's alleged role in the crime is primarily hearsay. While it does lend further support for the fact that the judge was killed by gendarmes behind Nyanza parish church, the Chamber gives no weight to the witnesses' evidence that they did not hear about Nsengimana's involvement.

696. In sum, the Chamber is convinced that, in early May 1994, gendarmes arrested Judge Jean-Baptiste Twagirayezu, shortly after he had left Nsengimana's company outside of the *Collège Christ-Roi,* and then killed him behind the Nyanza parish church. It has not been established that Nsengimana was present when this occurred, or that he played a direct role in Twagirayezu's arrest or killing by handing him over to a gendarme. The evidence has also not shown that Nsengimana refused to give him refuge. The Chamber will nonetheless consider in its legal findings whether Nsengimana can be held liable for his death at the hands of the gendarmes.

[794] For example, Marie-Cécile Uwayezu's testimony as to the amount of time she and her father accompanied the judge fluctuated between "not more than five minutes" and up to 25 minutes. Compare T. 1 July 2008 p. 32 (quoted) and T. 7 July 2008 pp. 11-13. She explained that the time between the incident and her testimony as well as memory lapses caused from having received anesthetics during surgeries made it difficult for her to provide a precise time. T. 7 July 2008 pp. 11-13. The testimonies of Witnesses JMR1 and DFR85 about Médiatrice's abduction vary considerably. Compare Witness JMR1, T. 17 June 2008 pp. 23-24 (stating that he was with Médiatrice when the gendarmes arrived and that they asked for them to present identification before abducting Médiatrice) and Witness DFR85, T. 27 June 2008 pp. 15-16 (describing the gendarme asking the witness for water, criticising Médiatrice for not providing him with milk, and taking Médiatrice from the hostel).

19. KILLING OF SIX TUTSI WOMEN, EARLY MAY

19.1 Introduction

697. The Indictment alleges that, between late April and mid-May 1994, Nsengimana went to a hostel near the Nyanza parish church where he ordered his students and the *Collège Christ-Roi* employees to separate Hutu and Tutsi women. Nsengimana, using a traditional sword, cut the hair of six Tutsi women and then stabbed them to death. Students and employees assisted in the killings. Nsengimana ordered that the bodies be thrown into a pit latrine behind the church. The Prosecution relies on Witness CAW.[795]

698. The Defence accepts that an attack occurred at this hostel. However, many of the victims were Hutus, and Nsengimana was not involved. The Prosecution evidence is not reliable. Reference is made to Witness DFR85.[796]

19.2 Evidence

Prosecution Witness CAW

699. Witness CAW, a Hutu, worked at the Nyanza parish church. Around 8 May 1994, he saw Nsengimana, employees from the *Collège Christ-Roi*, students and soldiers go to the hostel "at the parish". Nine women were staying there, including six Tutsis: Assumpta, from the Nyanza hospital; Gracia, who worked at the dairy plant; Marie, from the Commercial Bank of Rwanda; as well as three who had recently arrived at the hostel, whose names the witness did not know. There were also three Hutus there: Bonifrida, a secretary at the Court of Appeal; Eugenie, from the Commercial Bank of Rwanda; and Liberata, a teacher from a primary school in Nyanza.[797]

700. The witness saw Nsengimana and those accompanying him take the nine women out of the hostel to the canteen opposite the church. Once there, they were asked to sit and hand over their identity cards. Nsengimana kept the six Tutsi documents, but gave the Hutu women their cards back. He then separated the Tutsi and Hutu women. The witness observed Nsengimana, who was armed with a sword, cut the hair off the three unidentified women. He said that he was going to kill them with his sword because he did not have bullets to waste. Then he stabbed them to death. Their bodies were thrown into a pit behind the Nyanza parish buildings. The witness observed *Christ-Roi* employees Phénéas, Simon, Sebukayire and Vincent using clubs in order to kill Assumpta, Gracia and Marie. Afterwards, they threw the bodies into the pit with the other corpses.[798]

---

[795] Indictment para. 42; Prosecution Closing Brief Chapter 5 pp. 180-181, Chapters 6-8 paras. 84, 112, 116, 133, 152, 169, 173, 189, 208, 225, 229, 245, Chapter 9 para. 89 (e); T. 12 February 2009 p. 9; T. 13 February 2009 p. 1.
[796] Defence Closing Brief paras. 9, 2271-2280, 2282, 2301, 2335, 2387, 2391, 2407 and Addendum pp. 22-26; T. 12 February 2009 pp. 33-34; T. 13 February 2009 pp. 22-23.
[797] T. 25 June 2007 pp. 4-5, 14, 30 (quoted), 31-33; T. 26 June 2007 pp. 30-31; Prosecution Exhibit 2 (personal identification sheet).
[798] T. 25 June 2007 pp. 14, 30, 32; T. 26 June 2007 pp. 30-31, 41, 46.

Nsengimana

701. Nsengimana denied removing Tutsi women from the hostel and killing them with a sword. He referred to a witness staying at the hostel, who did not place him there during the event or at any time during the war.[799]

Defence Witness DFR85

702. Three days after the killing of Judge Jean-Baptiste Twagirayezu in 1994, Witness DFR85, a Hutu who worked at a primary school in Nyanza, was at the hostel near the Nyanza parish church. Others present included Jacqueline, a Hutu, her son Papy and her baby, her Hutu younger sister Goretti, and her maid Josepha. Berthe, a Hutu, was also there, as were Devotha, a Tutsi, and Aloysie, of unknown ethnicity.[800]

703. That day, three persons with hoods and dark cloaks entered the hostel. The witness was asked to go to her room. One of the individuals, who carried a firearm and a sword, followed her there and asked for her identity card. He then raped her. The two others entered Jacqueline's room and asked to see her identification document. Jacqueline protested that she was not a Tutsi, but was brought out of the hostel with her two children, along with Goretti and Josepha.[801]

704. The witness left the hostel, walked along the building's "enclosure", and hid in the nearby bushes. When leaving, she saw Jacqueline and the others as well as about 15 *Interahamwe* and a red pickup truck belonging to the government foundry. A masked *Interahamwe* was holding the baby, which had begun to cry. Because they were hooded, the witness found it difficult to recognise anyone, but she identified Jacques Mudacumura as one of the attackers. She did not see Nsengimana, François Sebukayire, Simon Kalinda or any students there, and doubted that Nsengimana was there in disguise because "he was a priest" and this "was an activity carried out by thugs".[802]

705. Jacqueline and the others were led by the *Interahamwe* into the wooded area behind the Nyanza parish church. Later that day, the witness saw Phénéas, who was not hooded, leaving from that area carrying Jacqueline's shoes. She believed that Jacqueline and the four others were killed. The witness did not see the corpses of the victims, but heard from students that Nyamulinda, the headmaster of the *Ecole normale primaire*, had ordered them to bury the victims the following day. After the red vehicle with *Interahamwe* had left, the witness fled to the *Collège Christ-Roi*.[803]

---

[799] T. 9 July 2008 p. 27; T. 11 July 2008 p. 4.

[800] T. 27 June 2008 pp. 3-4, 21-26, 30; T. 30 June 2008 pp. 9, 15; Defence Exhibit 55 (personal identification sheet). Witness DFR85 gave several estimations regarding the timing of this incident. She testified that the attack and the day she fled and sought refuge at the *Collège Christ-Roi* were in the "beginning of May". T. 27 June 2008 p. 26. Later, she stated that she sought refuge at the school at the end of May or early June. *Id.* p. 30; T. 30 June 2008 p. 9. However, the witness noted that she had memory lapses (T. 27 June 2008 p. 30) and problems recalling precise dates (T. 30 June 2008 p. 9). She was firm, however, that the attack at the hostel took place three days after the killing of Judge Jean-Baptiste Twagirayezu. T. 27 June 2008 pp. 22, 24, 27; T. 30 June 2008 pp. 8-9.

[801] T. 27 June 2008 pp. 21-22, 24-25, 53-54; T. 30 June 2008 pp. 9-10.

[802] T. 27 June 2008 pp. 22, 24, 25 (quoted), 34, 38, 40; T. 30 June 2008 pp. 9-10, 12, 13 (quoted).

[803] T. 27 June 2008 pp. 21-22, 25-26, 53-54; T. 30 June 2008 pp. 9, 12-13.

19.3 Deliberations

706. The Indictment alleges that Nsengimana, with the assistance of students and employees from the *Collège Christ-Roi*, abducted six Tutsi women from a hostel and killed them using a sword. Witnesses CAW and DFR85 provided first-hand accounts about the killing of persons living in the hostel close to the Nyanza parish church. Some of the fundamental features of each witness's testimony are consistent. For example, Witness CAW placed this event around 8 May 1994.[804] Witness DFR85 said that this event occurred three days after the killing of Judge Jean-Baptiste Twagirayezu, which the Chamber has found took place in early May 1994 (II.18).[805] Both stated that the victims were removed from the hostel and killed in the immediate vicinity of the Nyanza parish church before their bodies were deposited in a pit.[806] Each implicated Phénéas Munyarubuga in the attack and observed an attacker carrying a sword.

707. There are also several differences between the two testimonies. Witness CAW mentioned nine women – three Hutus and six Tutsis – being taken from the hostel before six Tutsis were separated and slaughtered by sword or club. Witness DFR85 testified that three women, a young boy and a baby were removed from the hostel and killed. The two accounts provide different names of the victims.[807] Witness CAW identified soldiers as accompanying the civilian assailants.[808] Witness DFR85 described the assailants as "*Interahamwe*".[809] Witness CAW did not mention that the attackers were wearing hoods or dark coats, which featured prominently in Witness DFR85's description of the attackers. Finally, Witness CAW stated that Nsengimana carried a sword. Witness DFR85 said that an individual with a firearm and a sword raped her in the hostel, but she did not believe Nsengimana was among the attackers.[810]

708. In view of these differences, it may be asked whether the witnesses described the same attack. Leaving this question aside, the Chamber will now consider the individual testimonies. Remarkably, Witness CAW did not mention the killing of the six women in a statement provided to Tribunal investigators in June 2000.[811] He explained that "one can provide information at the time when one remembers it", and stated that he had advised investigators that he might provide additional information to the Trial Chamber during his

---

[804] During cross-examination, the Defence put to Witness CAW that the 8 May date of this attack was wrong, to which he responded that it occurred "during that month". T. 26 June 2007 p. 30.
[805] As mentioned above, Witness DFR85 had problems estimating the timing of the event.
[806] Witness CAW described the women being brought to the "canteen that was opposite the [Nyanza parish] church" (T. 25 June 2007 p. 30), while Witness DFR85 suggested that they were brought to a wooded area (T. 30 June 2008 p. 12).
[807] Witness CAW testified that Assumpta (hospital employee), Gracia (dairy plant employee), Marie (bank employee) and three other unidentified women (recent arrivals in Nyanza), all of whom were Tutsis, were killed. Witness DFR85 identified the female victims as Jacqueline and her sister Goretti, both Hutus, and Josepha whose ethnicity was not specified.
[808] T. 25 June 2007 p. 30.
[809] See, for instance, T. 27 June 2008 pp. 21 (the *Interahamwe* attacked the hostel), 25 (other *Interahamwe* were with a red vehicle outside the hostel); T. 30 June 2008 pp. 9 (the three *Interahamwe* who entered the hostel were masked), 13 (Witness DFR85 could not identify particular individuals among the *Interahamwe*).
[810] There are other differences, which, in the Chamber's view, do not necessarily reflect inconsistencies. For example, the red truck featured prominently in Witness DFR85's account, but was not mentioned by Witness CAW. An explanation may be that they had different vantage points.
[811] T. 26 June 2007 p. 30.

testimony.[812] The witness also said that he had discussed this event with the organisation African Rights a year before he was interviewed by Tribunal investigators. However, there is no reference to these killings in the organisation's report.[813]

709. The first-hand observation of a priest slaughtering three women with a sword is a significant event, and the Chamber finds it difficult to believe that the witness would overlook it when first giving information about Nsengimana's role in the genocide. The evolving nature of the witness's testimony raises serious doubts. His credibility has also been questioned elsewhere, and the Chamber will not rely on him here without adequate corroboration.[814]

710. To the extent that Witnesses CAW and DFR85 referred to the same attack, the latter's testimony does not corroborate Witness CAW's in significant respects. Witness CAW portrayed a targeted slaughter of Tutsi women, while Witness DFR85's testimony suggested opportunistic rape and killing of Hutus.[815] While Nsengimana played a prominent role in separating Tutsis from Hutus and killing them in Witness CAW's account, Witness DFR85 did not see him among the assailants that led the women and children into the woods. The Chamber notes that both witnesses implicated Phénéas Munyarubuga in the attack. However, given the other differences between the two accounts mentioned above, this is also insufficient to corroborate Witness CAW's evidence, which places Nsengimana at the centre of targeted killings of Tutsi women. Finally, the Chamber notes that according to Witness CAW, Nsengimana cut the hair of three women and killed them, whereas the Indictment states that he stabbed six Tutsi women.

711. Consequently, it has not been proved beyond reasonable doubt that Nsengimana removed six Tutsi women from a woman's hostel, stabbed them with a sword and killed them, as alleged in the Indictment, with the assistance of students and employees. Although there is sufficient evidence to show that Phénéas Munyarubuga, Nsengimana's alleged subordinate, participated in the killing, the Indictment clearly identifies Nsengimana's role in this crime as being both physically present and personally perpetrating the killing.

---

[812] *Id.* p. 30 (quoted). Witness CAW also said that, around the time of the victims' reburial in 1998 or 1999, he gave a statement to the Rwandan prosecution authorities about the incident and showed the Nyanza *conseiller* the location of the killings. The witness said that he was not asked many questions because the authorities knew that he would be testifying before the Tribunal. *Id.* p. 31. The record contains no evidence that confirms this account.

[813] *Id.* pp. 31, 41, 46; Defence Exhibit 2 (extracts from a publication of African Rights: *Witness to Genocide*, issue no. 14, November 2001).

[814] See, for instance, Nsengimana's involvement in roadblocks (II.6), the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), Egide Ngenzi (II.20) and Father Justin Furaha (II.22).

[815] See T. 30 June 2008 p. 15 ("Mr. President: Do you have any comment on the fact that in this particular situation, in this hostel, the *Interahamwe* attacked or humiliated quite a few Hutus? [Witness DFR85]: During the war, the *Interahamwe* did more than killing. They did other things. They raped people. They killed the people that they wanted to kill. And I believe that they even killed some people not for reasons of ethnicity but for other reasons. For example, we knew that Jacqueline was a Hutu, just like her little sister, so we did not understand why they killed her. When the *Interahamwe* came, they looted anything that they could see, for example, radio sets and so on. The *Interahamwe* thought that there were Tutsi girls in that hostel – they thought that there were only Tutsi girls in that hostel. Everyone was afraid. They looted. For example, I had a motorbike and they took it away. They did not say that since I was a Hutu, they were going to respect me and they would not take my bike. They did not respect anyone. I knew that subsequently we could also be killed ourselves.").

Accordingly, even if it were established that Munyarubuga was Nsengimana's subordinate,[816] the significant variance between the Indictment and what was ultimately proved at trial in terms of the identity of the principal perpetrator and the form of responsibility would greatly expand the charges, thereby raising serious questions of fair notice.[817]

[816] In its legal findings, the Chamber has not found that there was a superior-subordinate relationship between Phénéas Munyarubuga and Nsengimana.
[817] See *Muvunyi* Appeal Judgement paras. 26, 28, 32; *Muhimana* Appeal Judgement para. 218, 226.

20. KILLING OF EGIDE NGENZI, EARLY MAY

20.1 Introduction

712. The Indictment alleges that, between late April and mid-May 1994, students and workers of the *Collège Christ-Roi*, including Phénéas Munyarubuga, on the orders of Nsengimana arrested Egide Ngenzi, the Tutsi *préfet des études*, and brought him to Nsengimana's house where he was beaten to death and then thrown into a pit latrine. Nsengimana was present, holding a sword covered with blood. Reference is made to Witness CAW.[818]

713. The Defence disputes the allegation and refers to evidence that Egide Ngenzi was a Hutu who survived the killings in Nyanza. It relies on Witnesses DFR85, EMR33, PMR31, AMC1 and JMF2.[819]

20.2 Evidence

Prosecution Witness CAW

714. Witness CAW, a Hutu, worked at the Nyanza parish church. At about 12.30 p.m. in the first part of May 1994, he was with Nsengimana in front of the canteen when Nsengimana ordered some of the school's students to arrest Egide Ngenzi because he was a Tutsi. They handed him over to Phénéas Munyarubuga, Simon Kalinda and Sebukayire who took Ngenzi into the "building where the priests' rooms were".[820]

715. Subsequently, the witness saw, from about five or six metres away, these three persons remove a body from the building and throw it in a nearby pit latrine. The three assailants then told him that they had killed Egide Ngenzi. On a different occasion, some students informed the witness that they had handed Ngenzi over to Phénéas Munyarubuga, Simon Kalinda and Sebukayire, who then took him to Nsengimana's room.[821]

---

[818] Indictment para. 41 (referring to Egide Ngenzi as the Head of Academic Affairs of the *Collège Christ-Roi*); Prosecution Closing Brief Chapter 5 pp. 69-70, 72, 77, 89, 99, 114, 179-180, Chapters 6-8, paras. 83, 111, 116, 132, 151, 168, 173, 188, 207, 224, 229, 244. The Indictment and several witnesses refer to the victim only as Egide. However, it follows from the totality of the evidence that his full name was Egide Ngenzi. He is often identified as the *préfet des études*. The Prosecution Brief summarises relevant aspects of the evidence of Witnesses CBF and BSV, but without linking it to the killing of Egide Ngenzi. The Chamber notes that Witness BVI also provided pertinent testimony.

[819] Defence Closing Brief paras. 176, 733-735, 763, 988-989, 1061, 1105, 1222, 1244, 1246, 1261, 1365, 1410, 1537, 1623, 1630, 1702, 2258-2270, 2304, 2385-2386, 2406 and Addendum pp. 26-30; T. 12 February 2009 pp. 33-34.

[820] T. 25 June 2007 pp. 4, 28, 29 ("took [Ngenzi] to the building in which Father Hormisdas was. … He was killed in the building where the priests' rooms were."), 30, 49, 57; T. 26 June 2007 pp. 21-24 (referring to "Hormisdas's room" and "Hormisdas's accommodation"); Prosecution Exhibit 2 (personal identification sheet). Witness CAW first identified the three persons aiding in the arrest as Phénéas Munyarubuga, *Cyprien Gasatsi* and Sebukayire (T. 25 June 2007 p. 28), but afterwards, he consistently referred to them as Phénéas, *Simon Kalinda* and Sebukayire (*id.* p. 29; T. 26 June 2007 pp. 23-24).

[821] T. 25 June 2007 pp. 28-29; T. 26 June 2007 pp. 23-25. Witness CAW did not recognise the body as Egide Ngenzi's when it was carried out "subsequently". T. 26 June 2007 p. 23 ("Q. You definitely saw [Egide Ngenzi] dead, did you? A. And I saw them coming out with a dead body ... Q. And was the body they [brought] out that of Egide? A. I saw them carrying his body and throwing it in a pit ... Mr. President: How do you know that the

716. The witness did not know Egide Ngenzi very well and was not aware of his family or his commune of origin. He heard from Simon Kalinda and Phénéas Munyarubuga, when they were drinking at the canteen on one occasion, that Ngenzi was a Tutsi.[822]

Prosecution Witnesses BVI, CBF and BSV

717. Witness BVI, a former Tutsi student at the *Collège Christ-Roi*, and Witness CBF, a former employee of the school, testified that Egide Ngenzi held the position of *préfet des études*. Witness BVI added that Ngenzi was a Hutu. Witness BSV, a former Tutsi employee at *Christ-Roi*, said that Nsengimana favoured Egide Ngenzi. According to the witness, Ngenzi participated in meetings with Nsengimana to plan the genocide (II.2.2).[823]

Nsengimana

718. Nsengimana testified that when he arrived at the *Collège Christ-Roi*, Egide Ngenzi was working as a linguistics teacher. Referring to a school staff list from 1992, he said that Ngenzi was a Hutu. From 6 April 1994, Ngenzi remained at *Christ-Roi* in a small apartment, near Phénéas Munyarubuga's house. Nsengimana saw him only once or twice during this time. However, he observed Ngenzi again in 1995, when visiting the Bideka refugee camp in Zaïre.[824]

Defence Witness DFR85

719. Witness DFR85, a Hutu, worked at a primary school in Nyanza. In May 1994, Nsengimana allowed her to stay in the dormitory of the *Collège Christ-Roi* with her two children and niece, as well as Aloysie and Berthe, with whom she had lived at the hostel (II.19). About a week later, some soldiers from the *Ecole supérieure militaire* asked her to leave because they wanted their personnel to stay at *Christ-Roi*.[825]

720. At this time, Egide Ngenzi, the *préfet des études*, helped her to find a new place to stay, close to the garage near the entrance to *Christ-Roi*. It was next to a room where firewood was kept. Ngenzi had a house at the school, because of his position there. She thought that he was a Hutu because at that time many Tutsis had already fled. He left later on

---

body belonged to Egide? The witness: When Phénéas, Simon and Sebukayire came back, they told us that they had just killed Egide ...").

[822] T. 26 June 2007 pp. 23-24.

[823] Witness BVI, T. 24 January 2008 pp. 3, 50; Prosecution Exhibit 18 (personal identification sheet). Witness CBF, T. 26 June 2007 p. 59; T. 27 June 2007 pp. 21, 24, 60; Prosecution Exhibit 3 (personal identification sheet). Witness BSV, T. 25 January 2008 pp. 2-4, 19-21; T. 28 January 2008 pp. 2, 7; Prosecution Exhibit 19 (personal identification sheet). Witness BVI referred to Egide Ngenzi's surname as "Mugenzi". However, it is clear from the context that he meant Ngenzi.

[824] T. 8 July 2008 pp. 30-31; T. 9 July 2008 pp. 16, 58; Defence Exhibit 41 (*Collège Christ-Roi* staff list for school year 1991-1992 (*Rapport de rentrée*) from the Ministry of Education).

[825] T. 27 June 2008 pp. 3-4, 8, 11-12, 23, 25-26; Defence Exhibit 55 (personal identification sheet). Witness DFR85 testified that she arrived at the *Collége Christ-Roi* about three days after the killing of Judge Jean-Baptiste Twagirayezu (T. 27 June 2008 pp. 26-27), which occurred in early May (see II.18). She gave different estimations regarding the date she took refuge there, first saying in the "beginning of May" (T. 27 June 2008 p. 26) and subsequently indicating "the end of May, early June" (*id.* p. 30). As noted elsewhere (II.19.2), the witness explained that she had difficulties remembering dates. In this context, the Chamber finds the variances insignificant.

with Aloysie, and the witness never heard about them since. After their departure, the witness remained at the school until around 20 May.[826]

Defence Witnesses EMR33 and PMR31

721. Witnesses EMR33 and PMR31, both Hutu former students at the *Collège Christ-Roi*, stated that Egide Ngenzi was the *préfet des études* at the school. While in Zaïre after June 1994, both witnesses were told that he was alive and also had sought refuge there. Witness EMR33 heard in Zaïre that Ngenzi was a Hutu, although he had the features of a Tutsi.[827]

Defence Witnesses AMC1 and JMF2

722. Witness AMC1, a Hutu employee of the *Collège Christ-Roi* until 1993, and Witness JMF2, a former Hutu student there, testified that Egide Ngenzi was the *préfet des études* at the school. According to Witness AMC1, Ngenzi was a Hutu.[828]

20.3 Deliberations

723. It follows from the evidence that Egide Ngenzi, *préfet des études* at the *Collège Christ-Roi*, was living within the school's compound in April and May 1994. There is disagreement whether he was killed and about his ethnicity.

724. Witness CAW provided the only account of Ngenzi's killing and his identity as a Tutsi. He was a purported eye-witness of Nsengimana issuing the order to arrest Ngenzi. Allegedly, he also saw Phénéas Munyarubuga, Simon Kalinda and Sebukayire bring Ngenzi to the priests' building which included Nsengimana's room,[829] and later dispose of a body. The witness then gave hearsay testimony about these three assailants and *Christ-Roi* students confirming their role in the arrest and killing. There is no evidence that Nsengimana held a sword covered with blood, as alleged in the Indictment.

725. The witness's first statement to Tribunal investigators in June 2000 does not mention the killing of Egide Ngenzi. The witness explained that he remembered the incident later and included it in his second statement to the investigators in March 2003.[830] The Chamber cannot exclude this explanation. However, it remains surprising that he might forget to

[826] T. 27 June 2008 pp. 25-26. Witness DFR85 did not explicitly state whether she saw Egide leave the *Collège Christ-Roi*, or simply heard about it. *Id.* p. 26.
[827] Witness EMR33, T. 2 June 2008 pp. 13-14, 30, 34. Witness PMR31, T. 5 June 2008 pp. 3-4, 11; Defence Exhibit 42 (personal identification sheet).
[828] Witness AMC1, T. 3 June 2008 pp. 2, 8, 21, 28; Defence Exhibit 40 (personal identification sheet). Witness JMF2, T. 9 June 2008 pp. 3-5, 7; Defence Exhibit 43 (personal identification sheet). The Defence Closing Brief claims (para. 1222) that Witness JMF2 met Egide Ngenze in Zaïre in July 1994. This has no basis in the witness's testimony. T. 9 June 2008 p. 7 (Q. … When did you last see or speak to [Egide Ngenze] or hear of him? A. Ever since I left on holiday [in March 1994]. We left and I believe the teachers also left. Later on, I did not hear anything about him.").
[829] The Indictment, at para. 41, alleges that Egide was taken "to Hormisdas Nsengimana's house within the college". This is more specific than the account offered by Witness CAW, who testified to observing Egide and his abductors enter the building where many priests had their quarters.
[830] T. 26 June 2007 p. 21. Witness CAW gave two statements to Tribunal investigators on 1 June 2000 and 6 March 2003. See T. 25 June 2007 p. 46. They were put to him during cross-examination, but not tendered as exhibits.

mention such a significant event where Nsengimana was allegedly directly involved in the killing of the *préfet des études* of *Christ-Roi* on the school's premises.

726. Other aspects of the witness's evidence also raise questions about his reliability. In particular, he had problems with respect to when the killing occurred.[831] During his cross-examination, he could not recall the exact time he had given in court the previous day about Nsengimana's order to arrest Egide Ngenzi.[832] Although it is certainly understandable that the witness might not, several years after the genocide, recall specific dates or times, his willingness to offer them absent an adequate basis of knowledge, and to forget the specifics of his testimony from one day to the next, create doubt.

727. Other evidence suggests that Egide Ngenzi survived the events in Nyanza and sought refuge in Zaïre. In particular, Witness DFR85 provided a first-hand account of Egide Ngenzi assisting her with housing at the *Collège Christ-Roi* as late as the second half of May 1994. She also testified that, sometime later, he left the school with Aloysie. Nsengimana stated that he saw Ngenzi in Zaïre in 1995, which is supported to a very limited degree by the second-hand accounts of Witnesses EMR33 and PMR31. This evidence is not definitive. In particular, Witness CAW was not entirely certain about dates, and the evidence of Ngenzi's presence in Zaïre is either self-interested, in the case of Nsengimana, or second-hand. It nonetheless raises additional concern about Witness CAW's uncorroborated account. Finally, it is recalled that Witness CAW could not, at a distance of five to six metres, recognise the body that was brought out.

728. Witness CAW's hearsay evidence that Egide Ngenzi was a Tutsi is contradicted by the testimony of Prosecution Witness BVI and Defence Witnesses EMR33, AMC1 and Nsengimana. Also, records from the Ministry of Education reflect that he was Hutu.[833] This runs counter to the entire reason offered by Witness CAW for Nsengimana's order to arrest

---

[831] In his examination-in-chief, Witness CAW placed the killing on 3 May 1994. T. 25 June 2007 p. 28. He later acknowledged that he could not recall specific dates and placed the event around two days after the death of Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze, which the Chamber has found occurred around 4 May 1994 (II.15). T. 26 June 2007 pp. 21-22 ("Q. Yesterday, you gave us a specific date for [the killing of Egide Ngenzi], the 3rd of May. But again, that date is all nonsense, is it? A. I agree with you, I already mentioned to you that I did not have a calendar, so I agree with you. … Q. Just dealing with Egide, how long after the priests were killed was Egide killed, that you witnessed? A. I just stated that after the three priests were killed, Egide was also killed a while after. Mr. President: You don't really remember for how long after, do you, Mr. Witness, isn't that simply the situation? The witness: Perhaps around two days afterwards."). His testimony also suggests that the incident occurred while soldiers from the *Ecole supérieure militaire* were stationed at *Christ-Roi*, which occurred around mid-May. T. 25 June 2007 p. 29; T. 26 June 2007 p. 22.

[832] T. 26 June 2007 pp. 22-23 ("Q. Let me ask you this though: You were able to tell us yesterday that it was at half past 12-12:30 that it happened, or is that nonsense as well? A. If you refer to the transcripts, you'll find the time I indicated. I cannot recall everything I stated during my testimony yesterday; this would be asking too much of me. I told you about the events I was an eyewitness to and all the information is contained in my testimony as in my written statement. I cannot remember everything; I only have one head. Q. Well, we were not helped by dates or times in your statement, but you were capable of telling these Judges yesterday a time. Now, is that time correct or not correct? Do we forget about any time you've given, or is it still part of your evidence? You help us. A. I will ask you to refer to my written statement as well as to the transcripts of my testimony. I confirm what I stated in my written statement as well as the contents of my testimony before this Trial Chamber.").

[833] Defence Exhibit 41 (*Collège Christ-Roi* staff list for school year 1991-1992 (*Rapport de rentrée*) from the Ministry of Education).

Ngenzi. In a similar vein, Prosecution Witness BSV stated that Egide Ngenzi was particularly close to Nsengimana.[834]

729. Based on the considerations above, the Chamber does not find Witness CAW's account credible. It is recalled that other aspects of his testimony have raised similar concerns.[835] Consequently, the Prosecution has not proved beyond reasonable doubt that Nsengimana participated in the killing of Egide Ngenzi.[836]

[834] This proposition is undercut somewhat by Nsengimana's own testimony that he saw him only twice after 6 April 1994.
[835] See, for instance, roadblocks (II.6), Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), six Tutsi women (II.19) and Father Justin Furaha (II.22).
[836] There was no evidence that Nsengimana "was present holding a sword covered with blood", as alleged in the Indictment.

21. KILLINGS AT DON BOSCO ORPHANAGE, 22 MAY

21.1 Introduction

730. The Indictment alleges that, around 22 May 1994, about 30 armed and masked members of *Les Dragons* left Nyanza and attacked the Don Bosco orphanage in Cyotamakara in Ntyazo commune, Butare prefecture. The assailants included Cyubahiro, the sons of Augustin Nyamulinda and Appolinaire Tubirimo, and soldiers. Using a list of persons who had fled from Nyanza, they identified the six children of Sebahungu, Gilbert Mudanganya, his five brothers, and Professor Mudanganya's two daughters. These victims were taken to Nyanza and killed. Nsengimana contributed to the killings through his leadership and direction of *Les Dragons.* Reference is made to Prosecution Witness CBF.[837]

731. The Defence does not contest Witness CBF's testimony concerning the attack at Don Bosco. However, it disputes that Nsengimana played any role in the attack.[838]

21.2 Evidence

Prosecution Witness CBF

732. Witness CBF worked at the *Collége Christ-Roi* and at Don Bosco orphanage about 20 kilometres away in Cyotamakara, Ntyazo commune in 1994. Around 80 orphans lived at the Don Bosco Orphanage in Cyotamakara in late April and May 1994. Six sons of Sebahungu, a Nyanza trader, had also sought refuge there. Around 15 May 1994, a soldier told the witness that the *Interahamwe* knew that Sebahungu's children were at the orphanage. The witness then warned Gilbert, the oldest of the six, to flee with his brothers to Burundi, only 10 to 15 kilometres away. Gilbert rejected this proposal because roadblocks had been established every two to three kilometres along the way.[839]

733. On 22 May 1994, around 30 hooded *Interahamwe* and two soldiers arrived at the orphanage in a Toyota Hilux belonging to the foundry in Nyanza. Notwithstanding the hoods, the witness recognised the two sons of Augustin Nyamulinda. Later, some of the orphans, who had studied in Nyanza, identified Cyubahiro, Mugabo, Ngombwa, Naftar, Segema and Jean de Dieu (the son of Appolinaire Tubirimo).[840]

734. The assailants ordered the children to assemble in front of the orphanage. They had already separated Sebahungu's sons and two daughters of Mudanganya, who was a teacher from Nyanza. The witness ran toward the soldiers and told one of them that it was Pentecost,

---

[837] Indictment paras. 38-39; Prosecution Closing Brief Chapter 5 pp. 181-183, Chapters 6-8 paras. 85, 113, 116-117, 134, 153-154, 170, 173-174, 190, 209-210, 226, 229-230, 246, Chapter 9 para. 88; T. 12 February 2009 p. 17. The Chamber notes that the Indictment (at any rate the English version) alleges that there were 14 victims, whereas Witness CBF's testimony shows that "Gilbert Mudanganya and his [five] brothers" are the same persons as the "six children of Sebahungu". Furthermore, there is no evidence confirming that Gilbert – the son of Sebahungu – had Mudanganya as his last name.

[838] Defence Closing Brief paras. 2203-2219; T. 26 June 2007 pp. 63-64; T. 12 February 2009 p. 39.

[839] T. 26 June 2007 pp. 59-64; T. 27 June 2007 p. 20; Prosecution Exhibit 3 (personal identification sheet).

[840] T. 26 June 2007 pp. 64, 68-70; T. 27 June 2007 p. 38. The Chamber recalls that Appolinaire Tubirimo was the director of the Nyanza foundry (II.2). According to Witness CBF, Segema was driving the foundry vehicle, Nafter taught at the CERAI in Rwesero, Nyanza, and Ngombwa was the son of Leta. The witness did not provide additional information about Mugabo. T. 26 June 2007 pp. 68-70.

which appeared to startle him. The soldier then stopped the civilian assailants from identifying more Tutsi children by telling them that their mission was limited to Sebahungu's children.[841]

735. The eight children were then taken to Ruyenzi, four kilometres away from Cyotamakara, where the assailants beat up a former government official[842] of that area and killed the women there, including the Sebahungu children's grandmother. Afterwards, these killers returned to Cyotamakara with the children. At the orphanage, Gilbert, who was accompanied by a soldier, asked the witness for 40,000 Rwandan francs which had been left there by his mother. Gilbert explained that, if he paid the money, the children would be shot rather than killed with clubs and machetes. The soldier told the witness that he would do everything possible to save the children. The witness heard later that the eight children were killed near a bus and taxi stop on the asphalt road known as Kamulimbo, about 12 kilometres away from Nyanza, in the direction of Butare town. Witness CBF stated that he was unaware of any link between Nsengimana and the killing of Sebahungu's sons.[843]

Nsengimana

736. Nsengimana denied that he knew, encouraged or instructed members of *Les Dragons* to abduct or kill those seeking refuge at the orphanage in Cyotamakara.[844]

21.3 Deliberations

737. There is no dispute that, on 22 May 1994, two soldiers and hooded civilian assailants abducted Sebahungu's six sons and Mudanganya's two daughters from the Don Bosco orphanage and killed them about 12 kilometres away from Nyanza. This follows primarily from Witness CBF's mostly first-hand evidence, which the Chamber accepts. Although the witness was not asked about the ethnicity of the victims, it is clear from the context that they were Tutsis. The principal question for the Chamber is whether Nsengimana played a role in their killing.

738. There is no direct evidence that Nsengimana was present during the attack on the orphanage or that he played a role in planning, ordering or condoning it. His responsibility, if any, must be based on his leadership and direction of this group of killers and his failure to prevent or punish them for perpetrating these acts, or on proof that the attack was in furtherance of the common plan of the joint criminal enterprise to eliminate Tutsis.

---

[841] T. 26 June 2007 pp. 64-65. The assailants also took away two persons who had been injured in a previous attack. They killed those two about 200 metres from the orphanage.

[842] Witness CBF twice referred to the person who was beaten up in Ruyenzi as "the former *conseiller*", and one time as "the former *responsable*". *Id.* p. 66.

[843] *Id.* pp. 65-67; T. 27 June 2007 pp. 12 (Witness CBF recalling a conversation in 2007 – before his testimony – with a person visiting him where he confirmed that "if there is any link between the death of the sons of Sebahungu and Father Hormisdas, it is not I who can tell you that"), 60 ("And that [Nsengimana being responsible for the killing of Sebahungu's children] is something which I never claimed. I could not have said that. That was said by witnesses of Nyanza. And if they had any evidence to that effect, then they could – would and could have made such comments."). The witness also described several attacks against Tutsis at the orphanage which occurred before the event on 22 May 1994. He was not able to identify the assailants involved in these earlier attacks, which are not mentioned in the Indictment. T. 26 June 2007 pp. 70-71, 73.

[844] T. 11 July 2008 p. 5.

739. Witness CBF testified that, among the assailants, he personally recognised the two "sons" of Augustin Nyamulinda. Other evidence in the case (II.17.3.2) suggests that this was likely a reference to a son operating with his cousin. Based on this first-hand account, the Chamber finds that two relatives of Nyamulinda participated during the attack. The witness also offered uncorroborated hearsay evidence implicating others[845] in the incident, but this does not establish their involvement beyond a reasonable doubt.

740. In sum, the Prosecution has proved that alleged members of the joint criminal enterprise abducted and killed eight Tutsi refugees from the Don Bosco orphanage on 22 May 1994. The Chamber will consider in its legal findings whether Nsengimana can be held liable for these killings.

[845] As mentioned above, Witness CBF was told by the orphans that the other assailants included Cyubahiro, Mugabo, Ngombwa, Naftar, Segema and Appolinaire Tubirimo's son Jean de Dieu.

22. KILLING OF FATHER JUSTIN FURAHA, MAY

22.1 Introduction

741. The Indictment alleges that, in March 1994, Nsengimana quarreled with a Tutsi priest named Justin Furaha, telling him that he hated Tutsis and publicly stating that he "would see his fate". Around the same time, Nsengimana also stated in public that parishes and churches would no longer be sites of refuge during crisis. Then, in May, Nsengimana purportedly said that he would not leave Nyanza without seeing Furaha's head, and he ordered his employees, co-perpetrators in the joint criminal enterprise, to search for him. Furaha was killed around the end of May. The Prosecution refers to Witnesses CAW, CAN, CBF, BSV, BVI and BVW.[846]

742. The Defence does not dispute that Furaha was murdered in late May 1994. It argues, however, that much of the Prosecution evidence falls outside the temporal jurisdiction of the Tribunal. Moreover, it contests the evidence implicating Nsengimana as unreliable, and maintains that the statement concerning religious institutions as places of refuge, if made, had no sinister meaning. Reference is made to Witnesses FMR92, IMR5, FMCD5, JMR1, VMB17 and EMR33.[847]

22.2 Evidence

Prosecution Witness CAW

743. Witness CAW, a Hutu, worked at the Nyanza parish church. At some point in 1992 or 1993, Father Furaha, the parish's priest, sent the witness to ask Nsengimana to give mass at the church. At the time, Father Furaha's secretary was sick and the telephone was not operating. Nsengimana refused and told the witness that he would not celebrate mass for Tutsis. When he heard this, Father Furaha decided not to pursue the matter. Later, a man named Munezero told the witness that, instead of celebrating the mass, Nsengimana had attended a CDR party flag raising ceremony with Munezero's uncle Ngiruwonsanga.[848]

744. Around 4 May 1994, Nsengimana asked the witness, who was in the company of Simon Kalinda and Phénéas Munyarubuga, if he had heard from Father Furaha. The witness had not, and Nsengimana responded that he would not flee the area until he found Furaha.

---

[846] Indictment paras. 10, 16-17, 36; Prosecution Closing Brief Chapter 5 pp. 68, 71-72, 78, 166-176, Chapters 6-8 paras. 80-81, 108-109, 116, 130, 148-149, 163-166, 173, 186, 204-205, 219-222, 229-230, 242; T. 12 February 2009 pp. 3, 7-8, 13, 16-17; T. 13 February 2009 p. 1.

[847] Defence Closing Brief paras. 31, 42, 115-116, 225-232, 261-268, 305-306, 598-599, 601-629, 1107, 1111-1112, 1115-1117, 1119-1120, 1122-1124, 1170, 1254-1258, 1323, 1339, 1341, 1344-1348, 1386, 1408-1447, 1604, 1609, 1614 n. 1235, 2274, 2335, 2336 (abetting is not a crime under the Statute, only aiding *and* abetting), 2337-2338, 2379-2380, 2391-2393, 2401, 2409-2410, 2432-2433 and Addendum pp. 7-10; T. 12 February 2009 pp. 31-32, 34, 43, 45; T. 13 February 2009 pp. 15-16. The Chamber notes that Witness XFR38 did not testify about Father Furaha although the Defence had referred to her evidence in relation to his death. See T. 12 February 2009 p. 45. The Chamber has considered, however, that she did not believe Nsengimana was anti-Tutsi, that he had led Mass at the Nyanza parish church and that she had not heard negative things about him. T. 15 September 2008 pp. 11-12, 18.

[848] T. 25 June 2007 pp. 4-5, 7, 11-12, 39, 49, 54, 60-61; Prosecution Exhibit 2 (personal identification sheet).

The witness had heard that the RPF was advancing. Later that day, Simon Kalinda told the witness that Father Furaha had been killed and thrown in the Karubanda prison's latrine.[849]

Prosecution Witness CAN

745. Witness CAN, a Tutsi living in Nyanza sector, stated that, about a month before the genocide, he heard Nsengimana tell Father Furaha to leave the premises of the *Collège Christ-Roi*, because he was Tutsi and the fate of the Tutsi had been decided. At the time, the witness was standing about 20 to 25 metres away.[850]

746. At the end of May 1994, Phénéas Munyarubuga, Simon Kalinda, Cyprien Gasatsi, François Sebukayire, Cyumbati, Jacques Mugatumura and others told the witness at a roadblock that they had killed Father Furaha in Save on Nsengimana's instructions. The assailants, some of whom were *Christ-Roi* employees, were relieved that they had found and killed Furaha because they were worried that Nsengimana would have otherwise dismissed them.[851]

Prosecution Witness CBF

747. Witness CBF worked at the *Collège Christ-Roi*, but only visited twice after 6 April 1994. He said that in 1990, after the RPF invaded Rwanda and the implementation of multi-party politics, Nsengimana was perceived to be a political hardliner who demonstrated an ostensible dislike for persons belonging to other parties and for Tutsis. Furthermore, this dislike for Tutsis sometimes turned to hatred, one example of which was the animosity between Nsengimana and Father Furaha, a parish priest. The witness believed that the two priests did not have good relations in seminary as a result of their ethnicity.[852]

748. In his testimony, Witness CBF also said that he and Nsengimana occasionally discussed current affairs in Rwanda. At some point between January and March 1994, they shared a meal at *Christ-Roi*. Nsengimana mentioned that, in the past when there were disturbances in Rwanda, churches and parishes frequently became safe places of refuge, but that those days were over. The witness did not recall what else they discussed at the time or whether anyone else was present, nor did he understand the full significance of the comments until the genocide later unfolded.[853]

---

[849] T. 25 June 2007 pp. 14, 21-22, 35-37; T. 26 June 2007 pp. 14-19, 21.
[850] T. 27 June 2007 pp. 67-68, 77-78; T. 28 June 2007 pp. 37-38; T. 29 June 2007 p. 2; Prosecution Exhibit 4 (personal identification sheet).
[851] T. 28 June 2007 pp. 20, 52-53.
[852] T. 26 June 2007 pp. 59, 61, 73-74; T. 27 June 2007 pp. 43-44; Prosecution Exhibit 3 (personal identification sheet). Witness CBF also testified that Nsengimana did not get along with Raymond Muyango, a teacher at the *Collège Christ-Roi* who belonged to another political party, even though Muyango was an able and serious teacher. The witness did not know Muyango's ethnicity, but was presented with a document entitled *Rapport de rentrée*, which indicated Muyango was a Hutu. T. 26 June 2007 p. 73; T. 27 June 2007 pp. 23-24; Defence Exhibit 41 (*Collège Christ-Roi* staff list for school year 1991-1992 (*Rapport de rentrée*) from the Ministry of Education).
[853] T. 26 June 2007 p. 74; T. 27 June 2007 pp. 41, 43-44, 46-48, 50-53. Witness CBF said that Nsengimana's comments were made to him "two or three months" or "a few weeks" before the events, and explained that he "was uncertain of the period". T. 27 June 2007 p. 52.

Prosecution Witness BSV

749. Witness BSV, a Tutsi, worked at the *Collège Christ-Roi* until he fled Nyanza around 22 April 1994. Sometime in 1992 or 1993, the witness heard Nsengimana say to Father Furaha: "Furaha, I no longer trust you, and I don't trust your Tutsi brothers, either." A kitchen employee at *Christ-Roi* also heard the comments and later said to the witness: "Even priests have such problems."[854]

Prosecution Witness BVI

750. Witness BVI, a Tutsi, was a student at the *Collège Christ-Roi* in 1994. He believed that Father Furaha and Nsengimana did not have a good relationship after the RPF's invasion of Rwanda in October 1990. From that point on, there were concerns throughout the country that Tutsis were meeting among themselves and with the *Inkotanyi*. Nsengimana often said that Father Furaha was paying for and attending such meetings with Tutsi students. Father Furaha was transferred at some point from Nyanza but the witness did not explain why.[855]

Prosecution Witness BVW

751. Witness BVW, a Tutsi, lived in the vicinity of the *Collège Christ-Roi*. In August or September 1993, Phénéas Munyarubuga, who was a teacher at the school and Nsengimana's godson, distributed leaflets written at *Christ-Roi*. They stated that Father Furaha was an accomplice of the *Inkotanyi* and even travelled to Europe to assist the group. The witness heard that Phénéas would use Nsengimana's vehicle to distribute the leaflets, but did not see him doing so.[856]

752. A few days after the leaflets had been circulating, Father Furaha returned from a trip to Europe with a cheque for the Neocatechumen group.[857] The witness met with Father Furaha at the Nyanza parish church to receive the cheque and deposit it. Commander Birikunzira arrived with gendarmes and asked Father Furaha when the *Inyenzi-Inkotanyi* would come. Father Furaha answered that his travels related to Neocatechumen training. The commander asked him to provide an explanation at the gendarmerie and led both the witness and Father Furaha away. Nsengimana was in the church's garden. After discussion on the way, the witness was allowed to go. Father Furaha was released and returned to the church 30 minutes later.[858]

753. Approximately one month later, the witness met Phénéas at *Christ-Roi* to pick up some eggs and asked him about the leaflets she had seen and heard people talking about in Nyanza. Phénéas denied her suggestion that the leaflets came from the school. While looking

---

[854] T. 25 January 2008 pp. 2, 4-7, 26, 31 (quoted), 32; T. 28 January 2008 pp. 2-3, 25-26, 28, 40; Prosecution Exhibit 19 (personal identification sheet).
[855] T. 24 January 2008 pp. 3, 20-21; Prosecution Exhibit 18 (personal identification sheet).
[856] T. 22 January 2008 pp. 45-46, 48-49, 60, 65, 67-68; Prosecution Exhibit 15 (personal identification sheet). Those discussing the vehicle referred to it as a "beetle". T. 22 January 2008 pp. 67-68.
[857] Witness BVW described the Neocatechumen as an association within the Catholic Church, which did not involve all priests and was not found in all parishes. This association in Nyanza parish held prayer sessions together. T. 22 January 2008 pp. 52-53, 63-64.
[858] *Id.* pp. 51-52, 60, 63, 65; T. 23 January 2008 pp. 1-3. Witness BVW later testified that she was unsure if this event occurred before or after Father Furaha was transferred to Save but maintained that it occurred in the end of 1993. T. 22 January 2008 pp. 62-63, 65; T. 23 January 2008 pp. 1-2.

in Phénéas's drawer for packaging for the eggs, the witness found a leaflet. Phénéas begged her not to tell Nsengimana. The witness gave the leaflet to Father Furaha, who handed it over to Bishop Jean-Baptiste Gahamanyi. Two weeks later, the bishop asked to speak with the witness and she explained how she obtained it. Phénéas subsequently informed the witness that Nsengimana had heard that she had given the leaflet to Father Furaha. She also learned that Nsengimana then went to her place of work where he hit one of her friends. She also stated that Simon Kalinda paid individuals to kill her at some point before the genocide.[859]

754. Father Furaha was transferred to Save parish around November 1993 because his safety could not be guaranteed in Nyanza. He returned two times a week to attend Neocatechumen prayer sessions, and the witness last saw him at an Easter meal. She heard that he was killed in May 1994 by attackers from Nyanza who killed him as he led mass.[860]

Nsengimana

755. Nsengimana first met Father Justin Furaha in 1967 at minor seminary. They remained colleagues through major seminary and until 1980.[861] The two priests did not have much contact between 1980 and December 1991, as Furaha was appointed vicar in Muganza, some distance from Butare prefecture. During this period, however, Nsengimana received a visit from Furaha while in Rome. Nsengimana did not recall any negative exchange with Furaha.[862]

756. Once Father Furaha was appointed to the Butare school complex in December 1991, he and Nsengimana would frequently meet in the evening with the bishop, taking meals together, resting and playing cards. Furaha was transferred from Nyanza parish to Save parish in July or August 1993.[863]

757. Nsengimana denied that he adopted a discriminatory attitude towards Tutsis after the RPF invasion. He did not hate Tutsis, including Father Furaha. Rather, he had normal relations with the Nyanza parish priests, and he had never shouted at Furaha. Nsengimana rejected allegations regarding Furaha's arrest and never heard of the alleged leaflets concerning him. If leaflets had come from the *Collège Christ-Roi*, then the bishop would have punished him.[864]

758. According to Nsengimana, he did not order or play any role in the killing of Father Furaha, who died after Nsengimana left for Gikongoro prefecture. After leaving Rwanda, Nsengimana read that Furaha had been imprisoned about eight kilometres from Save parish and was killed there.[865]

---

[859] T. 22 January 2008 pp. 48-50, 60-61, 65-70.
[860] *Id.* pp. 53-54, 61, 63-65; T. 23 January 2008 pp. 3, 7.
[861] Minor seminary is the religious schooling that precedes major seminary. See, for example, T. 8 July 2008 pp. 7-8, 36.
[862] *Id.* pp. 36-37. Nsengimana lived in Rome between 1983 and 1989. *Id.* p. 12. He did not specify when Furaha visited.
[863] *Id.* p. 37; T. 9 July 2008 p. 5; Defence Exhibit 22 (*Unis dans la charité periodique du diocese de Butare*), p. 31, which lists Furaha as a Save parish priest in its July – August 1993 issue.
[864] T. 8 July 2008 pp. 37-39; T. 10 July 2008 pp. 54, 59; T. 11 July 2008 p. 2. Nsengimana testified that once the Arusha Accords had been signed in August 1993, the transitional government was going to be set up. Under the circumstances, it would have been strange, for instance, to circulate leaflets that persecuted someone on the basis of being an *Inkotanyi* or linked with the RPF.
[865] T. 9 July 2008 p. 5; T. 11 July 2008 p. 3.

759. Furthermore, Nsengimana confirmed that he had previously shared meals and spoken freely with Witness CBF, but did not recall making the specific statement attributed to him about persons seeking refuge in churches and parishes. Nsengimana said that, if he had made the statement, it should be viewed in the context of newspaper articles after the RPF invasion in 1990, saying that because the Rwandan clergy was dominated by the Tutsis, all presbyteries were hiding weapons for the RPF. For this reason, some presbyteries were searched. Furthermore, after 1990, people lost respect for priests whom they considered as accomplices. However, he also testified that he was surprised when he heard about the murder of priests such as Father Mathieu Ngirumpatse. Before April 1994, he had never imagined that churches and presbyteries would be attacked, or that anyone would kill a priest.[866]

Defence Witness FMR92

760. Witness FMR92, a Hutu, worked at the Butare prison in Karubanda *cellule*, more than 30 kilometres from the *Collège Christ-Roi*. In early May 1994, members of the prosecutor's office imprisoned Fathers Justin Furaha and Firmin Butera for violating state security. The witness was not aware of the specific basis for the arrest. The priests were safe while in prison and did not report having any problems.[867]

761. Around the end of May or early June 1994, the witness received a writ for the release of the two Tutsi priests. They were held an additional night due to safety concerns since a prior Tutsi prisoner was killed shortly after his release. In the interim, the witness had several exchanges with the prosecutor, who was in contact with Bishop Jean-Baptiste Gahamanyi, to determine where to safely relocate the priests. As the bishop could not take any more refugees, they decided to transport the priests to Karubanda minor seminary, between 200 and 300 metres from the prison.[868]

762. Around 9.00 a.m. on the morning of their release, documents were prepared for the priests' discharge, and the prison's deputy supervisor, Claver Nsabimana, was asked to escort them. The priests were discharged around 10.00 or 11.00 a.m., but the witness did not see them leave or know who in fact ultimately escorted them. He assumed that the release and transfer went smoothly and did not know that killers were waiting outside the prison.[869]

763. The following day, the witness went to the minor seminary and learned that the priests were not there. Investigations showed that they were killed in front of the seminary, but their bodies were not recovered. The witness did not know how the priests were killed. He believed that prison workers collaborated with inmates working outside to kill the priests. During Gacaca proceedings, the witness heard a woman and a detainee report seeing another prisoner, Jean-Baptiste Uwimana, returning to the prison wearing one of the priests' jackets. The witness did not know whether anyone from Nyanza participated in the killings, and he had not then heard of Nsengimana.[870]

---

[866] T. 8 July 2008 p. 14; T. 9 July 2008 pp. 22-23; T. 10 July 2008 pp. 53-54, 59-60.
[867] T. 20 June 2008 pp. 2-4, 13, 15-17, 19, 21; Defence Exhibit 53 (personal identification sheet).
[868] T. 20 June 2008 pp. 4-9, 12-13, 15-16, 19, 21-23, 25.
[869] *Id.* pp. 5-6, 12-13, 16-17, 19, 21-25.
[870] *Id.* pp. 5-6, 8-11, 14, 19, 21, 24-26. See also Defence Exhibit 54B (French translation of guilty plea of 26 April 2002), p. 1, indicating that a prisoner in Karubanda named Ntahobavukira had said that Claver Nsabimana

Defence Witness IMR5

764. Witness IMR5, a Hutu, passed his holiday from July to September 1993 at Nyanza parish. He knew Father Justin Furaha and his family well. The witness never heard that he supported the RPF or complained about Nsengimana. In 1993, Nsengimana did favours for Furaha by leading the second mass at Nyanza parish on Sundays.[871]

765. Father Furaha was in Nyanza when Witness IMR5 arrived in July 1993, but that month was appointed the *curé* at Save parish. In the witness's view, this was a promotion since Save was the oldest parish in Rwanda. He did not suspect that the move was based on ethnic tension between Nsengimana and Furaha. Furthermore, Father Furaha's successor at the Nyanza parish, Father Jean-Bosco Yirirwahandi, was also a Tutsi.[872]

766. The witness heard that Furaha and Father Firmin Butera had been taken to Butare prison and killed by prisoners around 31 May 1994.[873]

Defence Witness FMCD5

767. Witness FMCD5, a Hutu, was a priest who worked for the diocese of Butare in 1994. He was very close to Nsengimana and had worked together with Father Furaha for about 18 months from 1988 to 1990. The witness had a good working relationship with Father Furaha, having "had different opinions". At the time, he neither observed nor heard about any tension between Father Furaha and Nsengimana. The two had played basketball together when they studied at the major seminary. During Nsengimana's subsequent studies in Rome, Father Furaha visited him there for a week.[874]

Defence Witness JMR1

768. Witness JMR1, a Hutu, worked at the *Collège Christ-Roi* until May 1994. When he first arrived at the *Collège Christ-Roi* in 1992, Father Furaha was working at the Nyanza parish church. Father Furaha was later replaced by Father Jean-Bosco Yirirwahandi. The witness never saw Father Furaha visit *Christ-Roi* and thus inferred that he was not friends with Nsengimana. The witness also heard that Father Furaha supported the RPF and later died in Butare prefecture.[875]

---

and Jean-Baptiste Uwimana were involved in the killing, which occurred in front of the Karubanda minor seminary.

[871] T. 16 June 2008 pp. 42-44, 51, 54-57; Defence Exhibit 51 (personal identification sheet).

[872] T. 16 June 2008 pp. 43-44, 49-51, 58.

[873] *Id.* pp. 44-46, 53, 55-56. Witness IMR5 confirmed that a book written by Joseph Ngomanzungu, a priest living in Rwanda, reads that Furaha and Fermin were killed in Butare on 31 May 1994. It relies on census figures tallying deaths provided by the Rwandan government in 2002 and a publication called *Imvaho*, published in 2001. *Id.* pp. 45, 57. He said the information in this book was generally consistent with what he had heard. The Prosecution objected to the witness's ability to authenticate the book and it was not exhibited. *Id.* pp. 53, 56.

[874] *Id.* pp. 18-19, 27, 29-30, 32, 33 (quoted), 34; Defence Exhibit 50 (personal identification sheet).

[875] T. 17 June 2008 pp. 4-7, 14, 31, 43-44; Defence Exhibit 52 (personal identification sheet). See also Prosecution Exhibit 29 (Statement of 12 May 2008 to Defence Investigators), para. 20.

Defence Witness VMB17

769. Witness VMB17, a Hutu, worked at Kabgayi major seminary in 1994. Father Justin Furaha studied at Nyakibanda major seminary with Nsengimana and, from 1974 to 1976, the witness observed them participate in the same cultural activities at the seminary. In his view, they had a sound relationship. During this period, the witness did not hear about any conflict between them. Later, when Nsengimana was at the *Collège Christ-Roi* and Father Furaha worked for the Nyanza parish church, the witness did not think they had much contact. He also had not heard any rumors about disagreements between the two.[876]

Defence Witness EMR33

770. Witness EMR33, a Hutu, was a student at the *Collège Christ-Roi* from 1987 to June 1993. From what he observed, Nsengimana and Father Furaha had normal relations, and he was unaware of any rift between them.[877]

22.3 Deliberations

771. There is no dispute that Father Justin Furaha, a Tutsi priest, was killed in May 1994. To establish Nsengimana's responsibility in relation to this incident, the Prosecution presented evidence to link him directly to Furaha's death as well as background evidence demonstrating Nsengimana's enmity towards Furaha, including testimony about statements made by Nsengimana prior to the genocide.

772. In assessing this evidence, the Chamber will also consider the allegation that in February or March 1994, Nsengimana publicly stated that churches and parishes would no longer serve as sites of refuge during crisis, and thereby instigated and abetted the later killing of Tutsis. Although this statement is not explicitly linked to Furaha's killing, Nsengimana allegedly uttered it around the same time – in March – as he said to Furaha that the latter "would see his fate", and the Indictment indicates that these two allegations are related, placing them in paragraphs 16 and 17, respectively. Because the statement about the possibility to seek refuge can be seen to throw light on the Prosecution claim that Nsengimana is responsible for Furaha's killing, the Chamber will consider them together.

22.3.1 Nsengimana's Direct Role in Father Furaha's Death

773. The testimonies of Witnesses CAW, CAN and BVW directly implicated Nsengimana in Father Furaha's death. However, none of them heard Nsengimana issue an explicit order for the killing or witnessed the priest's death.

774. Witness CAW gave the only first-hand account of Nsengimana saying that he would not flee until he found Father Furaha. This statement is not clear but could, if believed, be reasonably construed as an implicit order or encouragement to kill Father Furaha. However, there are discrepancies between the witness's testimony and his statement to Tribunal investigators in June 2000, in which he did not mention that Simon Kalinda informed him of Furaha's death on the same day Nsengimana said that he should be found. The witness explained the omission by saying that he only answered questions posed by the

[876] T. 16 June 2008 pp. 4, 6, 8-9; Defence Exhibit 49 (personal identification sheet).
[877] T. 2 June 2008 pp. 14-15, 26, 50-51.

investigators.[878] This may be the case, but the difference is significant since Kalinda's conversation with the witness is a key element in connecting Nsengimana's otherwise ambiguous comment to the killing.

775. More significantly, Witness CAW testified that Nsengimana's statement and the killing of Father Furaha occurred around 4 May 1994.[879] Other evidence suggests that this occurred on 31 May 1994, after Nsengimana had fled Nyanza around 27 or 28 May.[880] For example, Witness FMR92, who was involved in Father Furaha's release from prison and purportedly investigated his death, placed the killing towards the end of May or early June. This is corroborated to some extent by the evidence of Witnesses IMR5 and CAN, who learned that the killing took place at the end of May.

776. In the Chamber's view, these concerns raise questions about the reliability of Witness CAW's account of Father Furaha's death. The Chamber has also expressed doubts about the credibility of several other aspects of his testimony elsewhere.[881] Accordingly, it declines to accept his evidence about this event absent corroboration.

777. The Chamber does not consider the evidence of Witnesses CAN and BVW sufficiently reliable to corroborate Witness CAW's account. Witness CAN's account that Simon Kalinda, Phénéas Munyarubuga and others had killed Father Furaha on Nsengimana's instructions is hearsay. Witness BVW's testimony identifying the killers as assailants from Nyanza is also hearsay and lacking in detail.

778. The Defence presented evidence from Witnesses FMR92 and IMR5 that Father Furaha was killed by prisoners and prison workers from Karubanda prison, 30 kilometres from the *Collège Christ-Roi*. Their evidence, like the Prosecution case, was second-hand. However, given the nature of the Prosecution evidence, it raises some additional concern about the involvement of Nsengimana or of assailants purportedly connected to him.

---

[878] T. 25 June 2007 p. 46; T. 26 June 2007 pp. 15-16, 19. The Defence did not tender the statement but referred to disclosure page number K0242200.

[879] The Chamber further observes an internal inconsistency in Witness CAW's testimony concerning the timing of this incident. He first said that it occurred on 11 May 1994, the day after he learned that some other Tutsi priests were killed. T. 25 June 2007 p. 35. When confronted with his prior statement given to Tribunal investigators in June 2000, which indicated that the event occurred on 4 May, and that on the same day he learned about the killing of the Tutsi priests, the witness affirmed his statement and explained that he could only provide estimates. T. 26 June 2007 pp. 15-17, 21.

[880] During Witness CAW's cross-examination, the Defence put to him that Father Furaha had died on 31 May 1994. T. 26 June 2007 p. 19 citing Prosecution Exhibit 1 (Maps, Sketches and Photographs) p. K0383473, which is a resume for Abbé Justin Furaha. It bears the stamp of the Butare Diocese of Rwanda and says in the lower right hand corner that he died on "31/05/1994". The Chamber observes that other evidence suggests that Nsengimana would have left before this date. Nsengimana, T. 8 July 2008 pp. 8, 47; T. 9 July 2008 pp. 36-37, 53; T. 10 July 2008 pp. 58, 78 (prompted by the RPF shelling, Nsengimana left on 27 or 28 May); Witness CAN, T. 27 June 2007 p. 75 ("[Nsengimana left] towards the end of May"); Witness JMR1, T. 17 June 2008 p. 48 ("we left the college on the 28th of May"); Witness BVX, T. 22 January 2008 pp. 16, 37-38 (Nsengimana fled when the RPF arrived in Nyanza). See also Prosecution Closing Brief Chapter 9 para. 79 ("Father Hormisdas Nsengimana remained at *Collège Christ-Roi* from March 1989 to the end of May 1994 when he fled Rwanda"). The date of any RPF shelling is unclear, but Prosecution witnesses place the RPF in Nyanza in late May or earlier. See, for instance, Witness CBF, T. 27 June 2007 p. 57 (" … the RPF took Nyanza towards the end of May …"); Witness CAO, T. 15 January 2008 pp. 5-6 (fleeing Nyanza on 19 May because of RPF fighting in his area). See also Witness EMI2, T. 10 June 2008 p. 28 (the RPF arrived on 30 May).

[881] See, for instance, roadblocks (II.6) and the killings of Father Mathieu Ngirumpatse (II.9), a Tutsi woman (II.10), three Tutsi refugees (II.12), three Tutsi priests (II.15), six Tutsi women (II.19) and Egide Ngenzi (II.20).

22.3.2 Nsengimana's Enmity Towards Father Furaha

779. To support the evidence about Nsengimana's direct role in Father Furaha's death, the Prosecution presented a number of witnesses who testified about Nsengimana's hostility towards the Tutsi priest. This evidence in general suggests a long-standing animosity between the two and in particular that Nsengimana refused to lead mass at Father Furaha's request, sanctioned leaflets identifying the priest as an RPF accomplice, played a role in his brief arrest by the gendarmerie commander, and chased him from the premises of the *Collège Christ-Roi*, making threatening comments related to Tutsis. Even Defence Witness JMR1 inferred that Furaha and Nsengimana were not friends because Furaha never visited *Christ-Roi* and confirmed that there were suspicions that he had alliances with the RPF. This evidence is of varying reliability.

780. The Defence referred to the testimonies of Witnesses IMR5, FMCD5, VMB17 and EMR33 as well as Nsengimana, according to which Father Furaha and Nsengimana had a good working relationship. This was illustrated by Father Furaha visiting Nsengimana in Rome, and Nsengimana leading the second mass at the Nyanza parish church on Sundays. This evidence, like that of the Prosecution, is somewhat equivocal.

781. Witness CBF, whose testimony appeared measured and without exaggeration, concluded that after the RPF's invasion in 1990, Nsengimana took an anti-moderate and anti-Tutsi attitude. In his view, this contributed to the hatred between Nsengimana and Furaha. This evidence, however, is too general to link Nsengimana to Furaha's subsequent killing in May 1994.

782. Turning to some of the Prosecution's more specific allegations concerning their relationship, the Chamber observes that Witness CAW was alone in asserting that Nsengimana refused to give mass at the Nyanza parish church at Father Furaha's request and instead attended a CDR rally. The Chamber has already raised questions about his credibility above and declines to rely on this aspect of his evidence. The evidence of Witness IMR5 that Nsengimana regularly held mass at the church raises additional concerns.

783. Moreover, Witness BVW is the only witness to testify about the distribution of leaflets from the *Collège Christ-Roi* accusing Furaha of being an RPF accomplice, his brief arrest in Nsengimana's presence, as well as the subsequent transfer of the priest to Save for security reasons. This evidence is first-hand. Nonetheless, the Chamber has some concerns. She was close to Father Furaha and upset with the campaign against him that she perceived had been led by Nsengimana.[882] She testified that Simon Kalinda, a close associate of Nsengimana, killed members of her family, and she believed that he even tried to have her killed.[883] These circumstances raise doubts about her ability to give impartial evidence relating to Nsengimana.[884]

784. Furthermore, given the supposed wide-spread distribution of the leaflets, the Chamber is surprised that Witness BVW was alone in making this claim. Even if true, her exchange

---

[882] See, for instance, T. 22 January 2008 p. 68 ("… whereas I was defending the interests of Father Furaha because that was something important. He was important for me; he was the head of our association and he helped me."). Witness BVW, however, denied that she was partial. *Id.* pp. 54-55.

[883] *Id.* pp. 50-51, 54-57, 70; T. 23 January 2008 pp. 5. The killings are not discussed in the Prosecution Closing Brief and are not pleaded in the Indictment.

[884] When asked to describe Nsengimana, the first characteristic of Nsengimana that Witness BVW, a Tutsi, provided was that he "hated the Tutsi". T. 22 January 2008 p. 46.

with Phénéas Munyarubuga can equally be interpreted to suggest that Nsengimana was unaware of their production rather than her belief that he wanted to hide his connection to them. The brief arrest of the witness and Father Furaha by the gendarmerie commander does not invariably implicate Nsengimana. Although she testified that Nsengimana remained in the church's garden, the Chamber views this testimony with caution in view of the circumstances and the concerns noted above. Even if the Chamber were to accept this evidence, Nsengimana's mere presence in the garden is insufficient to conclude that he had given the gendarmerie commander an order to arrest Furaha. Finally, the Chamber also observes that Father Furaha's transfer was viewed by some as a promotion and that he was replaced by a Tutsi, which undermines to some extent Witness BVW's claim that the move was based on security concerns.

785. Witnesses BSV and CAN testified that Nsengimana chased Father Furaha off the premises of *Christ-Roi*. There are, however, differences between the accounts. Witness BSV said that the incident occurred *after* Father Furaha's transfer to Save, whereas Witness CAN indicated that it happened *before*. Witness BSV's specific date range for the event, 1992 or 1993, is very imprecise.[885] On the other hand, Witness CAN's evidence evolved from sometime between 1990 and 1994, to the end of 1993, to a month before the genocide.[886]

786. There are some differences between the two accounts about what Nsengimana said to Furaha. In the Chamber's view, it is possible that an incident similar to the one described by them occurred. However, the lack of precision about its timing and its temporal distance from Furaha's killing reduce the weight of this evidence when assessed in relation to that crime.

787. In sum, while there is some evidence to suggest that there was animosity between Nsengimana and Father Furaha, it is inconclusive. Even if such enmity were clearly established, it would at most suggest a possible motive for participating in the crime. It would not, however, alter the Chamber's conclusions above concerning the lack of reliable evidence directly linking Nsengimana to the killing of Father Furaha.

788. The Chamber also considers that, according to Witness CBF, Nsengimana told him that churches and parishes had been safe places of refuge in the past, but that those days were now over. This took place between January and March 1994, and was during a private conversation.[887] Nsengimana did not recall making this statement, but explained that, if he did, it would have been about the diminishing respect for priests throughout Rwanda.[888]

789. The Chamber accepts that Nsengimana commented to Witness CBF on churches or parishes no longer being safe places of refuge, but notes that the witness did not attach any particular significance to it when the remark was made. In the Chamber's view, the statement is open to possible interpretations, such as an observation of waning church authority in

---

[885] T. 25 January 2008 pp. 31-32; T. 28 January 2008 p. 25.
[886] T. 27 June 2007 p. 78; T. 28 June 2007 pp. 37-38; T. 29 June 2007 p. 2.
[887] Witness CBF, T. 27 June 2007 p. 48 ("Q. … This was a private conversation. It's capable, I think, of an answer 'yes' or 'no.' A. Yes. It was private, if you wish, because this was a dinner conversation when we were having a meal together.").
[888] Nsengimana, T. 9 July 2008 pp. 22-23 ("In 1990 priests were arrested and imprisoned. Since that time, small newspapers … published many articles saying that the Rwandan clergy was dominated by Tutsis, and consequently, all presbyteries were being controlled by the RPF, were hiding weapons belonging to the RPF. So some presbyteries were searched. … Since 1990, priests were dragged into the mud. People no longer trusted them … because of the lack of respect that people had for priests at the time whom they considered as RPF accomplices and people said they were hiding weapons for the RPF … ").

Rwanda, other than the inference that Nsengimana was aware of or condoned the eventual killing of Tutsis in these traditional places of refuge.[889]

790. Furthermore, the Indictment alleges that Nsengimana made this statement "publicly". However, he uttered these words when sharing a meal with Furaha at the *Collège Christ-Roi*, and there is no evidence that anyone else was present. It has therefore not been established that the utterance was made publicly.[890] In the same vein, the Prosecution did not adduce evidence that there was any causal link between this statement and later killings in Nyanza.

22.3.3 Conclusions

791. The Chamber concludes that the Prosecution has not proved beyond reasonable doubt that Nsengimana or any of his alleged subordinates or co-perpetrators participated in the death of Father Furaha. The Prosecution has also not established that Nsengimana's remark – that the time was over when churches and parishes would be sites of refuge – instigated or abetted later killings of Tutsis.[891]

[889] Witness CBF, T. 26 June 2007 p. 74 ("[Nsengimana] told me what follows: In the past, when there were disturbances in Rwanda, people had a tendency to seek refuge in the churches and the parishes, and once they were in such locations they were safe. And he added that those days were over. And I must say that it was only subsequently, when I heard that there had been killings in churches and in parishes, that I understood what he meant. Q. Tell us what your understanding now is. A. Well, I can deduce that the terrible events were planned and were discussed beforehand. And I can also reach the conclusion that this issue of the places of refuge, or sanctuaries for those who felt in danger, and the fact that they would go to parishes and churches would happen again if disturbances were to occur again in Rwanda. That was what I was able to understand with hindsight. But I must admit that when he said so, I did not understand what he meant.").

[890] As mentioned above, Witness CBF agreed that the statement was not made publicly. T. 27 June 2007 p. 48.

[891] In light of these findings, it is unnecessary to assess Defence arguments about improperly pleaded charges in the Indictment, and about Prosecution evidence of Nsengimana's relationship with Father Furaha before 1994.

CHAPTER III: LEGAL FINDINGS

792. The Prosecution has charged Nsengimana with genocide and with murder and extermination as crimes against humanity based on Articles 6 (1) and 6 (3) of the Statute.[892]

793. In its factual findings, the Chamber decided to consider several events in its legal findings to determine whether Nsengimana is criminally responsible for them, namely the killings in Mugonzi *cellule* (II.14) as well as of Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze (II.15), Callixte Kayitsinga (II.16), Xavérine and her son (II.17), Judge Jean-Baptiste Twagirayezu (II.18) and near the Don Bosco orphanage (II.21). These events involve proven criminal conduct on the part of an individual or category of assailants allegedly connected with Nsengimana.[893]

794. The Chamber will not return specifically to its findings on the other events because, as discussed in its factual findings, the evidence was either insufficient to show that the incident occurred, or failed to prove that Nsengimana or an individual allegedly connected with him perpetrated the crime. Nonetheless, the Chamber has generally taken into account any reliable evidence about these events as relevant background and context in making its legal findings below.

1. CRIMINAL RESPONSIBILITY

1.1 Article 6 (1) of the Statute

795. Article 6 (1) of the Statute sets out several forms of individual criminal responsibility applicable to the crimes falling within the Tribunal's jurisdiction, namely planning, instigating, ordering, committing and aiding and abetting. The Prosecution seeks to hold Nsengimana accountable for the crimes alleged in the Indictment based on each of these forms of liability.

1.1.1 Planning, Instigating, Committing, Ordering, Aiding and Abetting

796. "Planning" requires that one or more persons design the criminal conduct constituting a statutory crime that is later perpetrated. It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct. The *mens rea* entails the intent to plan the commission of a crime or, at a minimum, the awareness of the substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.[894]

797. "Instigating" implies prompting another person to commit an offence. It is not necessary to prove that the crime would not have been perpetrated without the involvement of the accused. It is sufficient to demonstrate that the instigation was a factor substantially contributing to the conduct of another person committing the crime. The *mens rea* is the intent to instigate another person to commit a crime or, at a minimum, the awareness of the

[892] Indictment paras. 1, 8-14.
[893] The Chamber observes that the perpetrators involved in the killings of Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze (II.15) and Judge Jean-Baptiste Twagirayezu (II.18) are materially different than those pleaded in the Indictment. This variance raises significant concerns with respect to notice. The Chamber nonetheless considers these events on their merits in its legal findings for the sake of completeness.
[894] *Dragomir Milosević* Appeal Judgement para. 268; *Nahimana et al.* Appeal Judgement para. 479.

substantial likelihood that a crime will be committed in the execution of the act or omission instigated.[895]

798. The Appeals Chamber has held that commission covers, primarily, the physical perpetration of a crime (with criminal intent) or a culpable omission of an act that is mandated by a rule of criminal law.[896] "Committing" has also been interpreted to contain three forms of joint criminal enterprise: basic, systemic, and extended.[897] The Chamber discusses below Nsengimana's alleged participation in a joint criminal enterprise.

799. "Ordering" requires that a person in a position of authority instruct another person to commit an offence. No formal superior-subordinate relationship between the accused and the perpetrator is required. It is sufficient that there is proof of some position of authority on the part of the accused that would compel another to commit a crime in following the accused's order. The authority creating the kind of relationship envisaged under Article 6 (1) of the Statute for ordering may be informal or of a purely temporary nature.[898]

800. The Appeals Chamber has explained that an aider and abetter carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on its commission.[899] The *actus reus* need not serve as condition precedent for the crime and may occur before, during, or after the principal crime has been perpetrated.[900] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.[901] In cases of specific intent crimes, such as persecution or genocide, the aider and abetter must know of the principal perpetrator's specific intent.[902]

801. The Chamber has considered each of these forms generally in its factual findings and will discuss them in greater detail where relevant in its legal findings.

1.1.2 Joint Criminal Enterprise

802. The Prosecution is pursuing the basic and extended forms of joint criminal enterprise.[903] According to settled jurisprudence, the required *actus reus* for each form of

---

[895] *Nahimana et al.* Appeal Judgement para. 480.
[896] *Id.* para. 478. See also *Seromba* Appeal Judgement para. 161; *Gacumbitsi* Appeal Judgement para. 60.
[897] *Simba* Trial Judgement para. 386, citing *Kvočka et al.* Appeal Judgement paras. 82-83; *Ntakirutimana* Appeal Judgement paras. 463-465; *Vasiljević* Appeal Judgement paras. 96-99; *Krnojelac* Appeal Judgement para. 30. See also *Nahimana et al.* Appeal Judgement para. 478.
[898] *Bagosora et al.* Trial Judgement para. 2008, citing *Semanza* Appeal Judgement paras. 361, 363.
[899] *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 85; *Blaškić* Appeal Judgement paras. 45-46; *Vasiljević* Appeal Judgement para. 102; *Ntagerura et al.* Appeal Judgement para. 370.
[900] *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Blaškić* Appeal Judgement para. 48; *Simić* Appeal Judgement para. 85; *Ntagerura et al.* Appeal Judgement para. 372.
[901] *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 86; *Vasiljević* Appeal Judgement para. 102; *Blaškić* Appeal Judgement para. 46; *Ntagerura et al.* Appeal Judgement para. 370.
[902] *Bagosora et al.* Trial Judgement para. 2009, citing *Blagojević and Jokić* Appeal Judgement para. 127; *Simić* Appeal Judgement para. 86; *Krstić* Appeal Judgement paras. 140-141.
[903] Prosecution Closing Brief Chapter 4 para. 36. See also *Nsengimana*, Decision on Prosecution Motion for Leave to File an Amended Indictment (TC), 29 March 2007, para. 54.

joint criminal enterprise comprises three elements.[904] First, a plurality of persons is required. They need not be organised in a military, political or administrative structure. Second, there must be a common purpose which amounts to or involves the commission of a crime provided for in the Statute. There is no necessity for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is necessary, which involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime under one of the provisions (for example, murder, extermination, torture, or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose. The Appeals Chamber in *Kvočka et al.* provided guidance on distinguishing between joint criminal enterprise and other forms of liability, such as aiding and abetting.[905]

803. The required *mens rea* for each form of joint criminal enterprise varies. The basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co-perpetrators.[906] Under the extended form of joint criminal enterprise an accused can only be held responsible for a crime outside the common purpose if, under the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group and (ii) the accused willingly took that risk.[907] Where the underlying crime requires a special intent, such as discriminatory intent, the accused, as a member of the joint criminal enterprise, must share the special intent.[908]

804. Paragraph 9 of the Indictment alleges that "[t]he purpose of the joint criminal enterprise was the destruction of the Tutsi racial or ethnic group in Butare Prefecture through the commission of the crimes of genocide, murder as a crime against humanity, and extermination as a crime against humanity". With respect to the participants, paragraph 10 of the Indictment lists a number of local governmental, security, political and business leaders, employees of the *Collège Christ-Roi*, members of *Les Dragons* or *Escadrons de la Mort* and more generally soldiers and other unknown extremists.[909] Neither the Indictment nor Pre-

---

[904] *Brđanin* Appeal Judgement, para. 364. See also *Simba* Trial Judgement para. 387, citing *Kvočka et al.* Appeal Judgement para. 96; *Ntakirutimana* Appeal Judgement para. 466; *Vasiljević* Appeal Judgement para. 100; *Krnojelac* Appeal Judgement para. 31.

[905] *Simba* Trial Judgement para. 387, citing *Kvočka et al.* Appeal Judgement para. 90 ("Where the aider and abettor only knows that his assistance is helping a single person to commit a single crime, he is only liable for aiding and abetting that crime. This is so even if the principal perpetrator is part of a joint criminal enterprise involving the commission of further crimes. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for the crimes committed in furtherance of that common purpose as a co-perpetrator."); *Vasiljević* Appeal Judgement para. 102; *Tadić* Appeal Judgement para. 229.

[906] *Brđanin* Appeal Judgement para. 365. See also *Simba* Trial Judgement para. 388, citing *Ntakirutimana* Appeal Judgement para. 467; *Vasiljević* Appeal Judgement para. 101; *Krnojelac* Appeal Judgement para. 32.

[907] *Brđanin* Appeal Judgement para. 365.

[908] *Simba* Trial Judgement para. 388, citing *Kvočka et al.* Appeal Judgement paras. 109-110.

[909] Paragraph 10 of the Indictment reads: "Horsmisdas Nsengimana and the other members of the joint criminal enterprise shared the same intent to effect the common purpose. To fulfill the common purpose, the accused acted in concert with Birikunzira, a captain of the Gendarmerie at Nyanza, Gaetan Kayitani, *Sous-préfet* in Nyanza, Appollinaire Tibirimo, director of Nyabisindu Iron Foundry, Nyanza and his two sons; Celestin Higiro, doctor at the hospital of Nyanza and local leader of the CDR party; Mbanzamihigo, coordinator of MDR-Power; Karege, deputy president of the CDR party; Ngiruwonsanga bourgmestre, some employees of the college, the group of killers called *Les Dragons* or *Escadrons de la Mort*, including among others the two sons of Nyamulinda, the Director of *Ecole normale primaire* (ENP); Cyubuhiro, Simon Kalinda, and Phénéas, *Préfet de*

Trial Brief refer specifically to rank and file gendarmes as members of the joint criminal enterprise. In view of the fact that the gendarmerie commander is clearly identified as a co-perpetrator, the Chamber considers that the crimes committed by gendarmes fall within the joint criminal enterprise and are thus potentially attributable to Nsengimana. The Prosecution argues that Nsengimana contributed to the joint criminal enterprise through his acts as alleged in the Indictment.[910]

805. The Chamber will discuss this form of responsibility in making its legal findings on the crimes alleged against Nsengimana (III.2.2).

1.2 Article 6 (3) of the Statute

1.2.1 Legal Principles

806. The following three elements must be proven to hold a civilian or a military superior criminally responsible pursuant to Article 6 (3) of the Statute for crimes committed by subordinates: (a) the existence of a superior-subordinate relationship; (b) the superior's knowledge or reason to know that the criminal acts were about to be or had been committed by his subordinates; and (c) the superior's failure to take necessary and reasonable measures to prevent such criminal acts or to punish the perpetrators.[911]

807. A superior-subordinate relationship is established by showing a formal or informal hierarchical relationship. The superior must have possessed the power or the authority, *de jure* or *de facto*, to prevent or punish an offence committed by his subordinates. The superior must have had effective control over the subordinates at the time the offence was committed. Effective control means the material ability to prevent the commission of the offence or to punish the principal offenders. This requirement is not satisfied by a showing of general influence on the part of the accused.[912]

1.2.2 Superior – Subordinate Relationship

808. The Indictment clearly pleads that, Nsengimana, as Rector of the *Collége Christ-Roi*, exercised effective control over the school's employees and students.[913] However, in its Pre-

---

discipline of the college [Cesar Munyarubuga], who were employees of Hormisdas Nsengimana, François Sebukahire; Cyprien Gasatsi; soldiers of the *Forces armées Rwandaises* (FAR); members of the Presidential Guard and *Ecole supérieur militaire* (ESM); and other extremists not known to the Prosecution, to kill or 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, all such actions being taken either directly or through co-perpetrators, for at least the period of 6 April 1994 through 17 July 1994."

[910] Prosecution Pre-Trial Brief para. 56 ("It is one facet of the Prosecutor's case that the Accused's actions as outlined under Counts 1, 2, and 3 in the Amended Indictment were carried out in furtherance of a joint criminal enterprise …").

[911] *Bagosora et al.* Trial Judgement para. 2011, citing *Orić* Appeal Judgement para. 18; *Nahimana et al.* Appeal Judgement para. 484; *Gacumbitsi* Appeal Judgement para. 143; *Ntagerura et al.* Trial Judgement para. 627; *Semanza* Trial Judgement para. 400.

[912] *Bagosora et al.* Trial Judgement para. 2012, citing *Halilović* Appeal Judgement para. 59; *Gacumbitsi* Appeal Judgement para. 143; *Kajelijeli* Appeal Judgement para. 85; *Ntagerura et al.* Appeal Judgement paras. 341-342; *Ntagerura et al.* Trial Judgement para. 628; *Semanza* Trial Judgement paras. 402, 415.

[913] Indictment paras. 4 ("By virtue of his position as Rector, [Nsengimana] was the chief executive of [the] *Collège Christ-Roi*. Hormisdas Nsengimana thus had effective control over the employees and students of the college, in that he had the power to prevent or punish their acts."), 13 ("Pursuant to Article 6 (3) of the Statute, the accused, Hormisdas Nsengimana, is responsible for the crime of Genocide, Murder as a crime against

Trial and Closing Briefs, the Prosecution expanded the list of Nsengimana's alleged subordinates to all purported members of the joint criminal enterprise listed in paragraph 10 of the Indictment, by adding local governmental, security, political and business leaders, members of *Les Dragons* or *Escadrons de la Mort* and more generally soldiers, gendarmes and other unknown extremists.[914] The Chamber will therefore first consider whether there is notice for this expanded list of potential subordinates before turning to the merits of its assessment.

(i) Notice

809. Where the Prosecution intends to rely on the theory of superior responsibility to hold an accused criminally responsible for a crime under Article 6 (3) of the Statute, the Indictment should sufficiently identify the subordinates over whom the accused had effective control.[915] Here, the Indictment describes quite precisely Nsengimana's subordinates only as *Christ-Roi* employees and students in all relevant paragraphs dedicated to this purpose.[916] Accordingly, based on the Indictment alone, Nsengimana would not have known that he was being pursued as a superior for any individuals other than his employees and students.

810. The Chamber is mindful that paragraph 5 of the Indictment refers to his authority over the citizens of Nyanza as a spiritual leader. A proper reading of this paragraph more appropriately supports Nsengimana's general authority to issue orders that would be obeyed. Notably, "ordering" does not require proof of a superior-subordinate relationship (III.1.1.1). The reference to Nsengimana's spiritual authority must also be read in context with paragraph 19 of the Indictment, identifying him as the "spiritual leader" of *Les Dragons* or *Escadrons de la Mort*, which suggests that this role only "aided and abetted" the killings perpetrated by the group.[917] The Chamber is not convinced that these paragraphs were intended to broaden the category of Nsengimana's subordinates which are clearly pleaded in the relevant paragraphs referring to Article 6 (3) of the Statute.

811. Although the omission of material facts can be cured in some contexts through timely, clear and consistent notice, the Chamber does not find that it would be fair to do so in the circumstances of this case. First, this is not a simple matter of adding greater specificity to a more general category of subordinates, but a significant expansion well beyond the scope of the rather limited allegations which plead the superior-subordinate relationship. Second, the Prosecution was well aware in at least October 2006 of the identity of these individuals and categories of perpetrators at the time it sought to amend the Indictment to add superior responsibility, since they are listed as members of the joint criminal enterprise. However, it chose not to clearly identify them as subordinates until the filing of the Pre-Trial Brief on 11

---

humanity, and Extermination as a crime against humanity, because specific criminal acts were committed by subordinates of the accused … These subordinates included employees and students of the *Collège Christ-Roi*, as to whom he had the power to prevent and punish their acts."), 43 ("Hormisdas Nsengimana as Rector of the *Collège Christ-Roi*, was the superior of Phénéas, Simon Kalinda, and other college workers, as well as the students of the college.").

[914] Prosecution Pre-Trial Brief paras. 87, 150-172, 214-227, 261-274; Prosecution Closing Brief, Chapters 6-8, paras. 114-136, 171-192, 227-248. Paragraph 10 of the Indictment is quoted above at footnote 909.

[915] *Muvunyi* Appeal Judgement para. 19.

[916] Indictment paras. 4, 13, 43 (quoted above).

[917] The Chamber is also mindful that paragraph 38 of the Indictment simply refers to Nsengimana as the "leader" of *Les Dragons* without any qualification. Paragraph 39 goes on to indicate, however, that, in his leadership role, he simply instigated, and aided and abetted the alleged crimes.

May 2007, just a little over one month before the trial began on 22 June 2007. Although the Prosecution's identification of these expanded subordinates in its Pre-Trial Brief is certainly clear, the Chamber is not satisfied that this notice is consistent with the Indictment or is sufficiently timely.

812. Accordingly, the Chamber finds that the Prosecution has only provided sufficient notice that it intended to hold Nsengimana responsible as a superior for crimes committed by *Christ-Roi* employees and students.[918]

(ii) Authority over Christ-Roi Employees and Students

813. The Prosecution seeks to hold Nsengimana responsible as a civilian superior of the employees and students of the *Collège Christ-Roi*. It is well established that civilians can be held accountable as superiors under Article 6 (3) of the Statute. However, beyond pointing to Nsengimana's position as rector, the Prosecution did not offer any expert testimony delineating the contours of his actual powers at *Christ-Roi*. The Defence, on the other hand, presented an expert witness, Augustin Karera, a former official within the Rwandan Ministry of Education, as well as his report to show the limited nature of Nsengimana's official authority.[919]

814. The Chamber has identified three of Nsengimana's potential subordinates, Phénéas Munyarubuga, Simon Kalinda and Cyprien Gasatsi, who were involved in the perpetration of crimes charged in the Indictment. None were members of the teaching staff, or students. Phénéas Munyarubuga, the school's *préfet de discipline*, participated in the killings in Mugonzi *cellule* (II.14) as well as of Callixte Kayitsinga (II.15). Simon Kalinda, a handyman, participated in the killings in Mugonzi *cellule* (II.14) as well as of Callixte Kayitsinga (II.16). Finally, Cyprien Gasatsi, a watchman, was involved in the killing of Xavérine and her son (II.17). The Chamber cannot exclude that other *Chirst-Roi* employees participated in the various attacks. However, there is not sufficient evidence demonstrating this.

815. During the relevant period, many students remained in Nyanza and possibly participated in crimes charged in the Indictment. The evidence is equivocal as to whether any of these individuals were *Christ-Roi* students, and thus potentially Nsengimana's subordinates. There were a number of other educational institutions in the area. As discussed elsewhere (II.6), the Chamber also has doubt that war-displaced students who had remained at the school during prior holiday periods had done so in April 1994.

816. In assessing whether Nsengimana had effective control over these purported subordinates, the Chamber will first assess his *de jure* relationship with them before proceeding to other issues which might demonstrate his *de facto* control over the assailants, such as his purported spiritual leadership and his various interactions with them.

817. According to Expert Witness Karera, Nsengimana as rector was the superior of the *préfet de discipline* as well as all other *Christ-Roi* employees, such as handymen and

[918] As discussed below, the Chamber is also not satisfied that there is sufficient evidence to demonstrate that Nsengimana had effective control over the expanded list of possible subordinates.
[919] Augustin Karera, T. 17 September 2008 pp. 4-5, 29-30. Defence Exhibit 74 (expert report of Augustin Karera).

watchmen.[920] He further confirmed that this authority continued even during school holidays where the rector remained responsible for administrative activities as opposed to pedagogical issues.[921] As rector, Nsengimana had the obligation to ensure the proper administration of the school and to reprimand or to institute disciplinary proceedings in the case of any act contrary to the governing laws or regulations.[922] Karera also emphasised that, according to the law, the rector could not be held responsible for serious crimes committed by staff in particular outside of the school's premises.[923] However, with respect to serious crimes committed by employees at or away from the school, the rector had the obligation to immediately report the matter to the relevant local authorities for a criminal investigation.[924] In the context of this case, the Chamber is mindful that Kayitsinga was killed at the school, and that the assailants at times appeared to use the premises as a basis of operation and for the disposal of bodies.

818. With respect to personnel, such as handymen and watchmen, Karera testified that the Rector initiated their recruitment by submitting proposals to the school council, which approved a short list of candidates before submitting the matter to the Ministry of Education. Their dismissal followed a similar procedure.[925] The *préfet de discipline*, like the rector himself, was hired on the proposal of the Butare Diocese subject to the agreement of the Ministry of Education.[926] Karera did not specifically address the procedures for the discipline of a person holding this post. However, beyond the authority to reprimand, the disciplinary procedures related to other categories of persons affiliated with the school, such as teachers or students, reasonably suggests that a similar multi-tiered process existed.[927]

---

[920] Augustin Karera, T. 17 September 2008 p. 51.("Q. … In terms of the hierarchy and the structure of the school itself, it's true, isn't it, that the *préfet* of discipline would be a subordinate of the principal? A. The principal was the superior of the discipline *préfet*. Q. And, obviously, the same would apply for a cook and a watchman; isn't that true? A. All the workers worked in the college in which he was principal.").

[921] *Id.* p. 52.

[922] Defence Exhibit 74A (expert report of Augustin Karera) p. 16, quoting Rwandan legislation: " *... les agents placés à la tête d'un service administratif ou d'un établissement scolaire sont responsables auprès de leurs supérieurs hiérarchiques du bon fonctionnement de ce service ou de cet établissement. Ils sont rigoureusement tenus, de ce fait, de réprimer ou de provoquer la répression des abus, des négligences ou des infractions aux lois ou règlements appelés à constater dans l'exercice de leurs fonctions*".

[923] Augustin Karera, T. 17 September 2008 p. 43.

[924] *Id.* pp. 47-49.

[925] *Id.* p. 44 ("Mr. President: … Can you briefly let us know what the position is, for example, for an ordinary worker; it might be a cook or a night watchman. Are those people recruited on contract? Are they subject to a procedure that involves the director? The witness: The initiative of recruitment rests with the head of the school, and submits his proposals to the school council. And where the school council approves the short-listed candidates, the list is forwarded to the minister for appointment. And this same procedure obtained for dismissal. The head of the school was not empowered to dismiss a staff member. He had to go through the school council, and, finally, through the minister, before dismissal could be effected.").

[926] Defence Exhibit 74A (expert report of Augustin Karera) p. 9. According to the report, the "*propriétaire de l'Establissement*" proposes the candidate, which appears to be a reference to the Diocese of Butare. *Id.* p. 4 (" … *le Collège du Christ-Roi de Nyanza était donc un Etablissement libre subsidié appartenant au Diocèse de Butare, administré par l'Evêque catholique de Butare …* ").

[927] For example, with respect to teachers, a disciplinary matter, depending on its gravity, was referred to either the council of teachers or the school council. The school council was composed of a representative of the Ministry of Education, a sub-prefect, the *bourgmestre*, the rector, a teacher and a student. Again, depending on the gravity, the ultimate sanction was issued by either a representative of the Ministry of Education, the Minister or the President. *Id.* pp. 12-13, 19. In suspending students, the decision was taken by the council of teachers and confirmed by the Minister. Augustin Karera, T. 17 September 2008 p. 53.

819. Karera's evidence suggests that, although a rector had no unilateral authority to impose disciplinary sanctions against an employee beyond a reprimand, he did have the ability to trigger the administrative mechanisms leading to more serious measures.[928] The evidence also uniformly establishes that, before the events, Nsengimana emphasised discipline within the school.[929] His resolve in this regard is illustrated by his suspension of five students when machetes were found under their mattresses (II.3). He also acknowledged that he had the authority to suspend a contract worker, such as a watchman, pending approval from the Ministry of Education for termination.[930] In the Chamber's view, the foregoing clearly reflects that Nsengimana had *de jure* authority over *Christ-Roi* employees, such as Phénéas Munyarubuga, Simon Kalinda and Cyprien Gasatsi.

820. The Chamber recalls, however, that the main question is whether Nsengimana exercised effective control over his alleged subordinates. In this respect, the Appeals Chamber has stated the possession of *de jure* authority, without more, provides only some evidence of effective control.[931] Accordingly, the Chamber has not considered evidence about *de jure* authority as decisive in its assessment of Nsengimana's authority.

821. The Defence evidence indicates that, once the killings began in Nyanza, no structure remained in place to allow for any remedial measures to be implemented.[932] Nsengimana suggested that any attempts to curtail crime might have brought danger onto him and his institution.[933] The Chamber observes that many of the same local authorities to whom

---

[928] Defence Exhibit 74A (expert report of Augustin Karera) p. 19.

[929] See, for example, Nsengimana, T. 9 July 2008 p. 57 ("A. I took my responsibility seriously. I told you that the college had a reputation, that it was training good students who were disciplined. So I went along with the tradition. Q. So discipline was very high on your agenda for the students at the school; right? A. Yes."); Prosecution Witness CAP, T. 30 January 2008 p. 43 ("A. When I was sent to the college, I would see [Nsengimana]. Q. And what was your impression of him? A. He was someone who was very strict. And I used to see him in his capacity as director of *Collège Christ-Roi*."); Defence Witness EMI2, T. 10 June 2008 p. 6 (heard that Nsengimana was a "competent and efficient principal"); Defence Witness DFR85 (a local resident), T. 27 June 2008 p. 42 (the principal imposed strict discipline on the students of *Christ-Roi*, and monitored people leaving and entering the school); Defence Witness Jean-Marie Vianney Mushi (a *Christ-Roi* student), T. 1 July 2008 pp. 40, 49 (Nsengimana was perceived as strict among pupils); Defence Witness PMR31 (a *Christ-Roi* student), T. 5 June 2008 pp. 5-6 (the witness observed that during a climate of tension, Nsengimana "was very energetic in meting out discipline"); Defence Witness EMR33, T. 2 June 2008 pp. 15, 26, 46-47 (although not certain, the witness, a *Christ-Roi* student until 1993, felt Nsengimana was perceived as strict even among members of the community).

[930] Nsengimana, T. 9 July 2008 pp. 58-60.

[931] *Orić* Appeal Judgement paras. 91-92. See also *Renzaho* Trial Judgement para. 752.

[932] Defence Exhibit 74A (expert report of Augustin Karera) p. 22, which reads: "*Dans le contexte de guerre, des massacres et des tueries qui sévissaient en avril-juillet 1994 dans tout le pays, la situation était tellement chaotique que le Directeur ne pouvait même pas enclencher le processus d'instruire ou d'infliger une sanction à un agent fauteur de trouble ou en infraction dans la mesure où cette procédure supposait l'existence du fonctionnement normal des institutions et la présence des membres des organes devant prendre les décisions qui s'imposaient.*"

[933] Nsengimana, T. 9 July 2008 pp. 31-32 ("Q. Would you have handed them over to the police in May during the genocide? A. Well, things were more complicated at that time. I did not personally witness this, but I learned that the police were instead the ones behind the massacres. If I had called the police, would they have come to my assistance? Furthermore, I do not know whether this is true, but our school was known to be the best equipped materially, and during those difficult moments, people were looking for the slightest opportunity to come to our school and to loot everything, foodstuff for students and so on and so forth. So I was very afraid, and so I did not know what I could have done at that time, given the context. Would I have tried to fight against people who were said were killers? The others might have immediately attacked the school. I do not know. This

Nsengimana might have reported the conduct of his alleged subordinates are in fact named in the Indictment as co-perpetrators. It is further noted that a *bourgmestre*, who was seen to have opposed the extremists, appears to have been killed during the genocide.[934] This suggests the limited value of *de jure* powers during this period.[935]

822. The Prosecution argues that Nsengimana's spiritual authority contributed to his effective control. It is unclear, however, what the Prosecution means by this, for example, whether it refers to some sort of active spiritual guidance or instruction of the assailants, or rather the respect he may have garnered simply by virtue his position as a priest. Beyond his position as a prominent priest in the area, there is limited reliable evidence of Nsengimana's spiritual role with respect to any of the perpetrators of the crimes let alone his alleged subordinates. The Chamber notes that Phénéas Munyarubuga converted to Catholicism after Nsengimana proposed it to him, although Nsengimana denied that he was his spiritual adviser.[936] Nsengimana's attendance at a baptism celebration in March 1994 (II.2.3.2), which did not necessarily include his alleged subordinates, does not suggest that he held any particular authority over the other attendees.

823. While it is conceivable that Nsengimana's position as a priest might have had some impact on whether his orders or instructions were followed, the Chamber cannot say that this status alone is indicative of authority. Notably, many priests were being killed, notwithstanding, or even because of, their positions as priests (II.9, 15 and 22). Religious and social institutions certainly were not immune to attack even when under the protection of priests (II.15 and 21). The evidence of the authority that Nsengimana derived from being a priest is inconclusive, in particular in the absence of any concrete examples of its exercise. In sum, there is no evidence of Nsengimana offering any spiritual guidance to the assailants during the course of genocide, or that his position as a priest offered him any particular authority over them.

824. The Chamber therefore must closely examine the situation on the ground to determine whether Nsengimana exercised effective control in other capacities. Credible, corroborated evidence showed that in the period leading up to the killings in Nyanza, Nsengimana "closely collaborated" and got along well with employees such as Phénéas Munyarubuga and Simon Kalinda.[937] Moreover, Nsengimana was instrumental in the hiring of Cyprien Gasatsi, the

---

is a hypothetical issue. Maybe I would have waited for things to calm down in order to denounce those responsible.").

[934] See Witness CBF, T. 27 June 2007 p. 37 (the witness heard that *Bourgmestre* Jean-Marie Vianny Gisagara was killed); Witness CAR, T. 15 January 2008 pp. 60 (quoted), 61-62; T. 16 January 2008 p. 34 (*Bourgmestre* Gisagara did not share the views of the extremists and "[e]veryone was against" him); Witness CAY, T. 16 Janauary 2008 pp. 57-58 (*Bourgmestre* Gisagara was "persecuted" and replaced).

[935] *Ntagerura et al.* Appeal Judgement para. 345 ("In the view of the Appeals Chamber, the theoretical possibility of submitting reports of crimes committed against Tutsi refugees to the same authorities who, as the Prosecution argues in other cases, were actively organizing and ordering massacres of Tutsi throughout Rwanda is not sufficient to establish Bagambiki's criminal responsibility.").

[936] Nsengimana, T. 10 July 2008 pp. 56-57.

[937] Prosecution Witness CBF, T. 27 June 2007 pp. 4,5 (quoted); Witness EMR33, T. 2 June 2008 p. 55 (Nsengimana and Phénéas Munyarubuga worked hand in hand, although the witness, a student, did not know the particular relations between the two).

replacement for the watchman who had been killed in February 1994.[938] These three employees were later implicated in a number of killings (II.14, 16–17).

825. However, the Chamber has identified no reliable evidence demonstrating that Nsengimana issued any orders or instructions or gave any encouragement to his alleged subordinates after the killings began in Nyanza. In fact, there is limited credible evidence of him even being seen in their company. For example, the Chamber found that Nsengimana was seen in the presence of Simon Kalinda and Phénéas Munyarubuga in the vicinity of the roadblock at *Christ-Roi* after the killings began in Nyanza (II.6.2). Witness CAP testified that Nsengimana conducted rounds of roadblocks with individuals including gendarmerie commander Birikunzira and sub-prefect Gaëtan Kayitana (II.6.2). However, as the Chamber concluded, such evidence is equivocal at best and fails to demonstrate that he had effective control over his alleged subordinates.

826. The nature and extent of Nsengimana's authority over his alleged subordinates in the perpetration of crimes rely largely on evidence suggesting that Nsengimana met regularly with them and other local administrative or security officials in clandestine meetings from 1990 and through the killings in Nyanza (II.2 and 14). Many were allegedly held at the *Collège Christ-Roi*'s compound. The Chamber, however, has questioned the reliability of most of these accounts and found that Nsengimana's involvement in these gatherings, if any, remains obscured largely due to an absence of direct evidence.

827. The limited reliable evidence in this case concerning Nsengimana's interactions with his alleged subordinates around the time of the criminal conduct stands in marked contrast to the findings in other cases where a civilian superior has been held responsible for the conduct of a principal perpetrator.[939] Significantly, in the *Nahimana et al.* case, the Appeals Chamber found the existence of continued *de jure* authority insufficient to demonstrate effective control in the absence of proof of any affirmative acts demonstrating such control and where the record, like here, is lacking in any evidence relating to it.[940]

---

[938] Witness CBF, T. 26 June 2007 pp. 74-75; T. 27 June 2007 pp. 5-6; Witness CBE, T. 14 January 2008 pp. 6, 15-16, 29-30, 53 (Nsengimana was a godfather to Gasatsi, who was hired on the priest's initiative in February 2004 after the previous guard had been killed at the school); Prosecution Witness BVI, T. 24 January 2008 pp. 22-23; Nsengimana T. 10 July 2008 pp. 55-56. See also Augustin Karera, T. 17 September 2008 p. 44 ("The initiative of recruitment rests with the head of the school, and submits his proposals to the school council. And where the school council approves the short listed candidates, the list is forwarded to the minister for appointment.").

[939] For example, in the *Kajelijeli* case, "the Trial Chamber found *inter alia* that the assailants in the attacks in Nkuli and Mukingo Communes reported back daily to the Appellant on what had been achieved; the Appellant instructed the *Interahamwe* to kill and exterminate Tutsis and ordered them to dress up and start the work; the Appellant directed the *Interahamwe* from Byangabo Market to Rwankeri *Cellule* to join that attack; the Appellant transported armed assailants; the Appellant ordered and supervised attacks; the Appellant bought beers for the *Interahamwe* while telling them that he hoped they had not spared anyone; and the Appellant played a vital role in organising and facilitating the *Interahamwe* in the massacre at Ruhengeri Court of Appeal by procuring weapons, rounding up the *Interahamwe* and facilitating their transportation." *Kajelijeli* Appeal Judgement para. 90. In the *Kayishema and Ruzindana* case, "[Prefect Clément Kayishema] was … found to have effective control over the communal police and the *gendarmerie*, as evidenced by legislative provisions, and the actual control he wielded over all the assailants including the *gendarmes*, soldiers, prison wardens, armed civilians and members of the *Interahamwe* as demonstrated by the identification of Kayishema as leading, directing, ordering, instructing, rewarding and transporting them to carry out the attacks". *Kayishema and Ruzindana* Appeal Judgement para. 299.

[940] *Nahimana et al.* Appeal Judgement para. 635.

828. Moreover, many witnesses directly implicated local administrative and security forces as committing crimes and monitoring the population in the hunt for Tutsis. Witnesses CAO, BXM and BVJ suggested that civilian and military authorities had a hand in establishing or monitoring roadblocks, including those allegedly supervised by *Christ-Roi* employees (II.6).[941] While Witness CAY blamed Nsengimana for the killings in Mugonzi *cellule*, he suggested that responsibility for his criminal conduct in his neighborhood was the responsibility of the local authorities who ordered that he commit crimes.[942] In the absence of more direct evidence of Nsengimana's involvement in the crimes committed by his alleged subordinates, this evidence raises additional doubts about his general ability to exercise effective control over perpetrators of crimes who reasonably can be seen as working in conjunction with or under local administrative and security forces.[943]

829. Accordingly, the Prosecution has not proved beyond reasonable doubt that Nsengimana exercised effective control over the employees and students of the *Collège Christ-Roi* during the course of the attacks. The Chamber further observes that, even if there had been proper notice, there is no credible legal or factual basis to conclude beyond reasonable doubt that Nsengimana was the superior of any member of the expanded list of potential subordinates mentioned above.

[941] Nsengimana, T. 10 July 2008 pp. 79-80 ("You know this very well, and this was an order that was issued by the civilian authority. We had circulars issued by the prime minister, Kambanda; we had circulars issued by the *préfet* of Butare asking all people to go to the roadblocks. Who am I, Mr. Prosecutor, to oppose an order issued by the prime minister? Who am I to oppose an order given by the *préfet*, the *sous préfet*, or the *bourgmestre*? If Simon Kalinda or any other employees of the school – there were more than 50 staff members and workers put together. If they were found at roadblocks, it was because they were following the orders issued by the government, and out of respect for these instructions. But I had no business with the civilian authority or administration of the neighbourhoods.").

[942] T. 17 January 2008 pp. 27-28 ("A. I participated in other attacks that were conducted in our locality, but I cannot say for those that Father Nsengimana should be held accountable for those other attacks that followed orders by local authorities.").

[943] See *Blagojević and Jokić* Appeal Judgement paras. 300-304 (upholding the Trial Chamber's conclusion that the superior's continued *de jure* authority did not translate into effective control where other evidence demonstrated the subordinate was following orders from another chain of command).

2. GENOCIDE

830. Count 1 of the Indictment charges Nsengimana with genocide under Article 2 (3)(a) of the Statute. In support of this count, the Prosecution points to the killings of Tutsis in Mugonzi *cellule* (II.14), Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze (II.15), Callixte Kayitsinga (II.16), Xavérine and her son (II.17), Judge Jean-Baptiste Twagirayezu (II.18), and of several Tutsi refugees at Don Bosco orphanage (II.21).

2.1 Law

831. To find an accused guilty of the crime of genocide, it must be established that the accused committed any of the enumerated acts in Article 2 (2) with the specific intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories of nationality, race, ethnicity, or religion.[944] Although there is no numeric threshold, the perpetrator must act with the intent to destroy at least a substantial part of the group.[945] The perpetrator need not be solely motivated by a criminal intent to commit genocide, nor does the existence of personal motive preclude him from having the specific intent to commit genocide.[946]

832. In the absence of direct evidence, a perpetrator's intent to commit genocide may be inferred from relevant facts and circumstances that lead beyond any reasonable doubt to the existence of the intent. Factors that may establish the specific intent include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a protected group, or the repetition of destructive and discriminatory acts.[947]

833. The Indictment charges Nsengimana with killing or causing serious bodily or mental harm to members of the Tutsi ethnic group.[948] It is firmly established that the Tutsi ethnicity is a protected group.[949] The relevant events considered by the Chamber in its legal findings concern only killings. Killing members of the group requires a showing that the principal perpetrator intentionally killed one or more members of the group.[950]

---

[944] *Bagosora et al.* Trial Judgement para. 2115, citing *Nahimana et al.* Appeal Judgement paras. 492, 496, 522-523; *Niyitegeka* Appeal Judgement para. 48; *Gacumbitsi* Appeal Judgement para. 39; *Brđanin* Trial Judgement paras. 681, 695.

[945] *Bagosora et al.* Trial Judgement para. 2115, citing *Seromba* Appeal Judgement para. 175; *Gacumbitsi* Appeal Judgement para. 44; *Simba* Trial Judgement para. 412; *Semanza* Trial Judgement para. 316.

[946] *Bagosora et al.* Trial Judgement para. 2115, citing *Simba* Appeal Judgement para. 269, *Ntakirutimana* Appeal Judgement paras. 302-304; *Niyitegeka* Appeal Judgement paras. 48-54; *Krnojelac* Appeal Judgement para. 102, citing *Jelisić* Appeal Judgement para. 49.

[947] *Bagosora et al.* Trial Judgement para. 2116, citing *Seromba* Appeal Judgement para. 176, referring to *Seromba* Trial Judgement para. 320; *Nahimana et al*. Appeal Judgement paras. 524-525; *Simba* Appeal Judgement para. 264; *Gacumbitsi* Appeal Judgement paras. 40-41; *Rutaganda* Appeal Judgement para. 525; *Semanza* Appeal Judgement para. 262, citing *Jelisić* Appeal Judgement para. 47; *Kayishema and Ruzindana* Appeal Judgement paras. 147-148.

[948] Indictment para. 15.

[949] *Nsengimana*, Decision on Judicial Notice of Facts of Common Knowledge (TC), 16 January 2008, p. 5.

[950] *Bagosora et al.* Trial Judgement para. 2117, citing *Kayishema and Ruzindana* Appeal Judgement para. 151, *Simba* Trial Judgement para. 414.

2.2 Application

834. On the morning of 3 May 1994, Phénéas Munyarubuga, Simon Kalinda, Segema, Bosco and other assailants attacked Mugonzi *cellule* and brutally killed a number of Tutsi civilians there, likely following a meeting held at or near the *Collège Christ-Roi* (II.14). Around 4 May 1994, gendarmes and soldiers removed three Tutsi priests, Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze, from Saint Antoine's orphanage in Nyanza. The priests were then killed by civilian assailants at a roadblock several kilometres from Nyanza (II.15).

835. The Chamber made findings concerning several killings which occurred in early May involving assailants allegedly connected with Nsengimana. Specifically, Cyprien Gasatsi and other assailants, including gendarmes, abducted Xavérine and her son from the *Ecole normale primaire* and killed them (II.17). Phénéas Munyarubuga, an employee of the *Collège Christ-Roi*, as well as other assailants abducted and then killed Callixte Kayitsinga, a Tutsi, who had sought refuge at the school (II.16). Gendarmes arrested Judge Jean-Baptiste Twagirayezu after he left *Christ-Roi* and then killed him behind Nyanza parish church (II.18). On 22 May 1994, two of Nyamulinda's relatives and Cyubahiro abducted eight Tutsis from Don Bosco orphanage and killed them about 12 kilometres from Nyanza (II.21).

836. Considering the nature of how the attacks unfolded, the Chamber finds that the gendarmes, soldiers or civilian assailants intentionally killed Tutsis during these events. Furthermore, the selection of the victims was not by chance. In each instance the perpetrators singled out Tutsi victims for death in areas where Hutus were also present. The Chamber heard extensive evidence about the targeting of Tutsi civilians in Nyanza and its surrounding areas around this time.[951] In this context, the only reasonable conclusion is that the assailants who perpetrated these killings possessed the intent to destroy, in whole or in substantial part, the Tutsi group. Accordingly, the Chamber is convinced that the specific killings identified above amounted to the crime of genocide.

837. Turning to Nsengimana's responsibility for these crimes, the Prosecution's contention that he played a role in the planning of these crimes rests principally on his alleged participation in a number of meetings from 1990 through 1994. The Chamber has questioned the reliability of this evidence (II.2 and 14), and any other conduct on his part related to the crimes which suggests planning remains unproven. With respect to ordering and instigating, the Chamber also has no reliable evidence that Nsengimana instructed or prompted any of the assailants to commit the crimes. The evidence about these killings also does not clearly identify any assistance or encouragement offered by Nsengimana to the attackers. Specifically, the Chamber recalls that Nsengimana was not present when the crimes occurred, and it did not find that he provided the assailants with weapons or other logistical or moral support related to the attacks.

838. As for committing, there is no credible evidence that Nsengimana physically perpetrated any of the crimes or that any of his proven conduct could be described as an integral part of the crime of genocide as the killing of the Tutsis.

---

[951] The Chamber also took judicial notice that a genocide occurred in Rwanda and that there were widespread and systematic attacks throughout Rwanda against Tutsis. See *Nsengimana*, Decision on Judicial Notice of Facts of Common Knowledge (TC), 16 January 2008, pp. 2, 5.

839. The principal basis for asserting that Nsengimana was a member of the joint criminal enterprise follows from the Prosecution evidence of his extensive meetings with its other members as well as his alleged active participation in the criminal events alongside them. As the Chamber's factual findings demonstrate, there is limited convincing evidence of his role in meetings, in particular which could reasonably be connected with the killings (II.2). There is also no credible evidence that he actively participated alongside the alleged co-perpetrators in the execution of the crimes as set forth in the Indictment. While he was seen on occasion in the company of local government or security officials at roadblocks, these sightings do not compel the conclusion that he invariably supported any of the killings charged against him (II.6).[952] Accordingly, the Chamber is not satisfied that Nsengimana was a member of the joint criminal enterprise. Similarly, it has not been established that he contributed to the crimes through any act of planning, instigation, committing, ordering or aiding and abetting.

840. Finally, the Chamber has already concluded that Nsengimana does not bear superior responsibility for the crimes committed by *Christ-Roi* employees (III.1.2.2).

2.3 Conclusion

841. The Prosecution has not proved beyond reasonable doubt that Nsengimana was responsible either directly or as a superior for any of the crimes alleged against him in the Indictment. Accordingly, the Chamber acquits Nsengimana of genocide (Count 1).

[952] In the Chamber's view, the various sightings of Nsengimana at roadblocks with local officials are insufficient to establish his liability for aiding and abetting as an approving spectator. As discussed in the section concerning roadblocks (II.6.3.8), the Prosecution did not prove that many Tutsis were killed at the roadblocks around the *Collège Christ-Roi*. Furthermore, there is no credible evidence connecting his presence at them to other crimes alleged in the Indictment.

3. CRIMES AGAINST HUMANITY (MURDER AND EXTERMINATION)

842. Counts 2 and 3 of the Indictment charge Nsengimana with murder and extermination as crimes against humanity, respectively, under Article 3(a) and (b) of the Statute. In support of the count of murder, the Prosecution refers to the killings of Tutsis in Mugonzi *cellule* (II.14), Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze (II.15), Callixte Kayitsinga (II.16), Judge Jean-Baptiste Twagirayezu (II.18), and of Tutsi children at Don Bosco orphanage (II.21).[953] In addition, it relies on the killings of Tutsis in Mugonzi *cellule* (II.14), Xavérine and her son (II.17), and of Tutsi children at Don Bosco orphanage (II.21) as proof of extermination.[954]

3.1 Widespread and Systematic Attack

843. For an enumerated crime under Article 3 to qualify as a crime against humanity, the Prosecution must prove that there was a widespread or systematic attack against the civilian population on national, political, ethnic, racial or religious grounds.[955] An attack against a civilian population means the perpetration against that population of a series of acts of violence, or of the kind of mistreatment referred to in sub-paragraph (a) to (i) of Article 3.[956] Intended to be read as disjunctive elements, "widespread" refers to the large-scale nature of the attack and the number of targeted persons, while "systematic" describes the organised nature of the acts of violence and the improbability of their random occurrence.[957]

844. With respect to the *mens rea*, the perpetrator must have acted with knowledge of the broader context and knowledge that his acts formed part of the attack, but need not share the purpose or goals of the broader attack.[958] The additional requirement that crimes against

---

[953] The Prosecution requests the Chamber to consider the evidence concerning the deaths of Xavérine and her son as well as others killed at roadblocks in support of the charge of murder as a crime against humanity (Count 2). See Prosecution Pre-Trial Brief paras. 182-184, 199-200, 214-216; Prosecution Closing Brief, Chapter 7 paras. 141, 155-156, 173, 175-178. However, it would be impermissible to do so because the Indictment clearly charges these allegations (paras. 25-26) as extermination as a crime against humanity (Count 3). See Indictment paras. 25-26, 45, 47.

[954] The Prosecution also seeks a conviction based on the killings of Callixte Kayitsinga, Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze, and Judge Jean-Baptiste Twagirayezu for extermination as a crime against humanity (Count 3). Prosecution Pre-Trial Brief paras. 239-240, 243, 254-255, 257, 267, 269; Prosecution Closing Brief Chapter 8, paras. 202-203, 206, 217-218, 223, 241, 243, 248. The Chamber observes that the Indictment only pleads these allegations in support of murder as a crime against humanity (Count 2). See Indictment paras. 32, 34, 37, 45, 47.

[955] *Bagosora et al.* Trial Judgement para. 2165.

[956] *Id.*, citing *Nahimana et al.* Appeal Judgement paras. 915-918; *Kordić and Čerkez* Appeal Judgement para. 666; *Kunarac et al.* Appeal Judgement para. 89; *Kunarac et al.* Trial Judgement para. 415.

[957] *Bagosora et al.* Trial Judgement para. 2165, citing *Nahimana et al.* Appeal Judgement para. 920, quoting *Kordić and Čerkez* Appeal Judgement para. 94; *Ntakirutimana* Appeal Judgement para. 516; *Mpambara* Trial Judgement para. 11; *Semanza* Trial Judgement paras. 328-329; *Kunarac et al.* Trial Judgement para. 429; *Kunarac et al.* Appeal Judgement para. 94; *Gacumbitsi* Appeal Judgement para. 101, citing *Gacumbitsi* Trial Judgement para. 299; *Stakić* Appeal Judgement para. 246; *Blaškić* Appeal Judgement para. 101, *Limaj et al.* Trial Judgement para. 180; *Brđanin* Trial Judgement para. 133.

[958] *Bagosora et al.* Trial Judgement para. 2166, citing *Gacumbitsi* Appeal Judgement paras. 86, 103, referring to *Tadić* Appeal Judgement para. 252; *Galić* Appeal Judgement para. 142; *Semanza* Appeal Judgement paras. 268-269; *Simba* Trial Judgement para. 421; *Kordić and Čerkez* Appeal Judgement para. 99; *Kunarac et al.* Trial Judgement para. 434; *Kunarac et al.* Appeal Judgement para. 102; *Blaškić* Appeal Judgement paras. 124-127.

humanity have to be committed "on national, political, ethnic, racial or religious grounds" does not mean that a discriminatory *mens rea* must be established.[959]

845. The Chamber has considered the totality of the evidence, in particular concerning the ethnic composition of the individuals who were killed during the course of the attacks at issue in this case. The killings were notably concentrated in a relatively short span of time, largely at the beginning of May 1994. The Tutsi victims were singled out and targeted in areas where Hutus were present, in many cases being abducted from places of refuge and killed elsewhere. Finally, the Chamber has also taken judicial notice that there were widespread and systematic attacks throughout Rwanda against Tutsis.[960] The Chamber is convinced that there was a widespread and systematic attack against the civilian population on ethnic and political grounds. Bearing in mind the specific nature of the killings, it is inconceivable that the principal perpetrators of these killings did not know that their actions formed part of this attack.

3.2 Murder

846. Murder is the intentional killing of a person without any lawful justification or excuse or the intentional infliction of grievous bodily harm leading to death with knowledge that such harm will likely cause the victim's death.[961]

847. The Chamber has already determined that the killings of Tutsis in Mugonzi *cellule* (II.14), Fathers Jean-Bosco Yirirwahandi, Innocent Nyangezi and Callixte Uwitonze (II.15), Callixte Kayitsinga (II.16), Judge Jean-Baptiste Twagirayezu (II.18), and of Tutsi children at Don Bosco orphanage (II.21) amounted to genocide. On the same basis, the Chamber is satisfied that these intentional murders were conducted on ethnic grounds.

848. The assailants were aware that these events formed part of a widespread and systematic attack against the civilian population on ethnic and political grounds (III.3.1). Accordingly, the Chamber is convinced that these killings amounted to murder as a crime against humanity. However, as discussed above, the Chamber has concluded that the evidence is insufficient to find that Nsengimana is criminally responsible for these attacks (III.2.2).

3.3 Extermination

849. The crime of extermination is the act of killing on a large scale. The *actus reus* consists of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals. Although extermination is the act of killing a large number of people, such a designation does not suggest that a numerical minimum must be reached. The *mens rea* of extermination requires that the accused intend to kill persons on

---

[959] *Bagosora et al.* Trial Judgement para. 2166, citing *Akayesu* Trial Judgement paras. 464-469, 595; *Bagilishema* Trial Judgement para. 81.

[960] See *Nsengimana*, Decision on Judicial Notice of Facts of Common Knowledge (TC), 16 January 2008, pp. 2, 5.

[961] *Bagosora et al.* Trial Judgement para. 2169, citing *Bagosora et al.*, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005, para. 25; *Karera* Trial Judgement para. 558. The Chamber notes that some Trial Chambers have held that murder requires an element of pre-meditation, not only intent. See, for instance, *Bagilishema* Trial Judgement para. 86; *Ntagerura et al.* Trial Judgement para. 700; *Semanza* Trial Judgement para. 339. In the present case, the Chamber is satisfied that the killings at issue would constitute murder as a crime against humanity under both standards.

a massive scale or to subject a large number of people to conditions of living that would lead to their death in a widespread or systematic manner.[962]

850. The Chamber has already determined that the killings of Tutsis in Mugonzi *cellule* (II.14), Xavérine and her son (II.17), and of Tutsi children at Don Bosco orphanage (II.21) constituted genocide. The killings in Mugonzi *cellule* and those related to the Don Bosco orphanage also amount to murder as a crime against humanity. On the same basis, it is clear that these killings were conducted on ethnic grounds.

851. There were eight victims identified by the Chamber in connection with the killings in Mugonzi *cellule*, eight in connection with the Don Bosco orphanage, and two in relation to Xavérine and her son, totalling 18 deaths. These deaths were certainly part of a larger pattern of widespread killings throughout the prefecture and Rwanda, which was conducted on a massive scale. However, as discussed above, the Prosecution has not proved that Nsengimana participated in them.

3.4 Conclusion

852. The Prosecution did not prove beyond reasonable doubt that Nsengimana was responsible either directly or as a superior for any of the crimes alleged against him in the Indictment. Accordingly, the Chamber acquits Nsengimana of murder (Count 2) and extermination (Count 3) as crimes against humanity.

CHAPTER IV: VERDICT

853. For the reasons set out in this Judgement, having considered all evidence and arguments, the Chamber finds Hormisdas Nsengimana:

Count 1: NOT GUILTY of Genocide

Count 2: NOT GUILTY of Crimes Against Humanity (Murder)

Count 3: NOT GUILTY of Crimes Against Humanity (Extermination)

854. The Chamber has acquitted Hormisdas Nsengimana of all counts against him and orders his immediate release. It requests the Registry to make the necessary arrangements.

[962] *Bagosora et al.* Trial Judgement para. 2191, citing *Seromba* Appeal Judgement para. 189, *Ntakirutimana* Appeal Judgement paras. 516, 522, *Ndindabahizi* Appeal Judgement para. 123, *Brđanin* Appeal Judgement para. 470, 476, *Gacumbitsi* Appeal Judgement para 86, *Semanza* Appeal Judgement paras. 268-269, *Stakić* Appeal Judgement paras. 259-260, *Simba* Trial Judgement para. 422.

Arusha, 17 November 2009

Erik Møse	Sergei Alekseevich Egorov	Florence Rita Arrey
Presiding Judge	Judge	Judge

(Seal of the Tribunal)

ANNEX A: PROCEDURAL HISTORY

1. PRE-TRIAL PROCEEDINGS

855. On 21 June 2001, the Prosecution filed its original indictment against Hormisdas Nsengimana, charging him with five counts: genocide, complicity in genocide, conspiracy to commit genocide, murder as a crime against humanity and extermination as a crime against humanity.[963] Following a hearing held on 5 July 2001, Judge Pavel Dolenc from Trial Chamber III confirmed all counts except for complicity in genocide, and excluded superior responsibility as a mode of criminal responsibility.[964] He confirmed an arrest warrant against Nsengimana on the same day.[965] An amended indictment, reflecting the modifications which Judge Dolenc had ordered, was filed by the Prosecution on 10 August 2001.[966]

856. Nsengimana was arrested in Cameroon on 19 March 2002 and transferred to the United Nations Detention Facility on 10 April.[967] At his initial appearance on 16 April 2002, he pleaded not guilty to all counts in the amended indictment.[968] On 2 September 2002, after the transfer of the case to Trial Chamber II, that Chamber authorised protective measures for Prosecution witnesses.[969]

857. On 11 July 2005, Trial Chamber II decided that it was not in a position to set a date for trial, bearing in mind the overall judicial calendar for the Tribunal. In the same ruling, it denied a Defence request for Nsengimana's provisional release.[970] The Appeals Chamber rejected the Defence's application to appeal this decision, noting that Nsengimana's pre-trial detention was not disproportionate in view of the gravity of the crimes with which he was charged.[971]

858. On 29 March 2007, the Trial Chamber granted the Prosecution leave to amend the Indictment.[972] The amendments included the withdrawal of the conspiracy to commit genocide count, and the inclusion of joint criminal enterprise and superior responsibility as modes of individual criminal liability. The Indictment reflecting these changes was filed on 4 April 2007. Nsengimana made a further appearance on 27 April 2007, in which he pleaded not guilty to all counts in the Indictment: genocide, murder and extermination as crimes against humanity.[973]

---

[963] Indictment, 21 June 2001.
[964] Decision Confirming the Indictment (TC), 5 July 2001. During the confirmation hearing, the Chamber requested some minor corrections to the draft indictment, which were reflected in a preliminary draft filed by the Prosecutor on 8 July 2001. See Minutes of Confirmation Hearing (TC), 6 July 2001.
[965] Arrest Warrant (TC), 5 July 2001.
[966] Amended Indictment, 10 August 2001.
[967] See Defence Motion for Setting Pre-Trial Conference, Commencement of Trial and Provisional Release Dates (TC), 20 June 2005, p. 2, and the Prosecution Response, 27 June 2005, para. 3.
[968] T. 16 April 2002 pp. 38-41.
[969] Decision on Protective Measures for Prosecution Witnesses (TC), 2 September 2002.
[970] Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release (TC), 11 July 2005, paras. 14-15, 19.
[971] Decision on Application by Hormisdas Nsengimana for Leave to Appeal the Trial Chamber's Decision on Provisional Release (AC), 24 August 2005, pp. 5-6.
[972] Decision on Amendments to the Indictment (TC), 29 March 2007. See also Decision on Motion to Appeal Decision of 29 March 2007 (TC), 26 April 2007; Decision on Motion to Reconsider Decision of 26 April 2007 (TC), 12 June 2007 (rendered by Trial Chamber I, see below).
[973] T. 27 April 2007 pp. 19-20.

859. On 30 April 2007, the case was transferred to Trial Chamber I.[974] The Prosecution filed its Pre-Trial Brief on 11 May.[975] On 12 June 2007, the Chamber denied a Defence motion alleging defects in the Indictment.[976]

2. PROSECUTION CASE

860. The Prosecution case commenced on 22 June 2007. The first session lasted until 29 June 2007. The second session began on 14 January and concluded on 7 February 2008. Over the course of 20 trial days, the Prosecution called 19 witnesses and tendered 31 exhibits. On 15 January 2008, the Chamber granted a Prosecution motion to add one witness and remove four others.[977]

861. On 16 January 2008, the Chamber took judicial notice of a number of facts of common knowledge, including the occurrence of a genocide in Rwanda in 1994.[978] It ordered the transfer of detained Witness BXM to Arusha on 17 January 2008.[979] In its oral decision on 24 January 2008, the Chamber directed the Registry to investigate allegations that a Defence investigator had breached witness protection orders.[980]

3. DEFENCE CASE

862. On 28 February 2008, the Chamber granted protective measures for Defence witnesses.[981] The Pre-Defence Brief was filed on 12 May 2008.[982] The Defence case commenced on 2 June 2008 and concluded on 17 September 2008. During the course of 22 trial days, the Defence called 24 witnesses, including Nsengimana, and tendered 74 exhibits. The Chamber authorised the use of video-link to hear four Defence witnesses on 10 June 2008,[983] and also ordered the transfer of detained Witness FMR92 to Arusha.[984] On 13 June 2008, the Chamber granted the Defence request to hear Witness GFR99.[985] It allowed, on 20 June, the Defence to add Witness JMM1 to its witness list.[986]

863. On 11 July 2008, the Chamber adjourned proceedings, subject to the hearing of an expert and a witness to be heard via video-link. On the same day, it set 24 October 2008 as

---

[974] Memorandum from the President to the Court Management Section, 30 April 2007.
[975] Prosecution Pre-Trial Brief, 11 May 2007.
[976] Decision on Defence Motion Alleging Defects in the Indictment (TC), 12 June 2007.
[977] The oral decision added Witness BXM and allowed the withdrawal Witnesses CAU, BVU, BSW and Ms. Rakhiya Omaar from the Prosecution witness list. T. 15 January 2008 p. 1. The Chamber issued its written reasons later. Decision to Vary the Prosecution Witness List (TC), 4 February 2008.
[978] Decision on Judicial Notice (TC), 16 January 2008.
[979] Decision on Prosecution Urgent Motion for the Transfer of Detained Witness BXM (TC), 17 January 2008.
[980] T. 24 January 2008 p. 14. The Registry submitted its reports on 21 April and 2 May 2008 pursuant to Rule 33 (B) of the Rules of Procedure and Evidence. The Registry's Report to the Chamber on Alleged Interference with Prosecution Witnesses, 21 April 2008; The Registry's Further Submission to the Chamber on Alleged Interference with Prosecution Witnesses, 2 May 2008. Defence motions related to the Chamber's order to initiate the Registry investigation were denied. Confidential Decision on Prosecution and Defence Requests Concerning Improper Contact with Prosecution Witnesses (TC), 18 January 2010.
[981] Decision on Protective Measures for Defence Witnesses (TC), 28 February 2008.
[982] Pre-Defence Brief, 12 May 2008.
[983] Decision on Defence Request for Video-Link Testimony (TC), 10 June 2008.
[984] Decision on Defence Motion to Transfer Detained Witness FMR92 (TC), 12 June 2008.
[985] T. 13 June 2008 p. 30. The written reasons were provided later. Decision to Hear Witness GFR99 (TC), 16 June 2008.
[986] T. 20 June 2008 p. 28. The written reasons followed after. Decision on Defence Motion to Present a Second Additional Witness (TC), 25 June 2008.

the deadline for filing Closing Briefs, and scheduled oral arguments to be heard on 20 and 21 November 2008.[987]

864. The Defence case resumed on 15 September 2008, with Witness XFR38's testimony being taken by video-link.[988] On the same day, the Chamber denied a Defence motion to admit a written statement by Defence Witness LFR68, but admitted another statement about Nsengimana's stay in Cameroon.[989] Defence Expert Augustin Karera testified by video-link on 17 September 2008. He was the last witness to testify for the Defence.

4. FURTHER PROCEEDINGS

865. From 14 to 16 July 2008, the Chamber went to Rwanda on a site visit.[990] In October and November 2008, the Chamber extended the time for the Prosecution and Defence to submit Closing Briefs, which were filed on 5 December 2008.[991] On 12 and 13 February 2009, the Chamber heard closing arguments by both parties. It denied Defence motions seeking to admit new evidence on 31 August 2009.[992]

866. The Chamber delivered the oral summary of its judgement on 17 November 2009. It acquitted Nsengimana of all counts and ordered his immediate release.[993] On 24 November 2009, the Chamber ordered that he inform the Tribunal and his counsel of his whereabouts if they were to change before the expiration of the period to file a notice of appeal.[994] The written version of the judgement was filed on 18 January 2010 after the completion of the editorial process.[995] On the same day, the Chamber issued a confidential decision denying the Prosecution motion to initiate contempt proceedings.[996]

---

[987] T. 11 July 2008 pp. 50-53.
[988] Decision to Hear Witness XFR38 by Video-Link (TC), 5 September 2008.
[989] Decision on Admission of Written Statements (TC), 15 September 2008.
[990] The site visit had been authorised earlier. Decision on Site Visit to Rwanda (TC), 27 February 2008; President's Authorisation of the Site Visit to Rwanda (TC), 12 March 2008.
[991] See Memorandum from the Presiding Judge to the Court Management Section, 5 November 2008. The Chamber accepted the late filing of an addendum to the Defence Brief in an oral decision. T. 12 February 2009 p. 1.
[992] Decision on Defence Requests Concerning New Evidence (TC), 31 August 2009.
[993] T. 17 January 2009 p. 6.
[994] Decision on the Prosecution Motion to Impose Restrictions on Nsengimana's Liberty (TC), 24 November 2009.
[995] Two Defence motions were denied as moot in the Judgement: Defence Urgent Motion for the Disclosure of the Un-redacted Statements of Prosecution Witness CAY, 8 January 2008 and *Requête de la Defense aux fins de divulgation en vertu de l'article 68 du règlement de procédure et de preuve*, 29 May 2008. See I.2.3 paras. 57-58.
[996] Confidential Decision on Prosecution and Defence Requests Concerning Improper Contact with Prosecution Witnesses (TC), 18 January 2010.

ANNEX B: CITED MATERIALS AND DEFINED TERMS

1. JURISPRUDENCE

1.1 ICTR

Akayesu

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998 ("*Akayesu* Trial Judgement")

The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001 ("*Akayesu* Appeal Judgement")

Bagilishema

The Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-T, Judgement (TC), 7 June 2001 ("*Bagilishema* Trial Judgement")

Bagosora et al.

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Aloys Ntabakuze's Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence (AC), 18 September 2006

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR-98-41-T, Decision on Motions for Judgement of Acquittal (TC), 2 February 2005

The Prosecutor v. Théoneste Bagosora et al., Case No. ICTR 98-41-T, Judgement (TC), 18 December 2008 ("*Bagosora et al.* Trial Judgement")

Gacumbitsi

The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004 ("*Gacumbitsi* Trial Judgement")

Sylvestre Gacumbitsi v. The Prosecutor, Case No. ICTR-2001-64-A, Judgement (AC), 7 July 2006 ("*Gacumbitsi* Appeal Judgement")

Kajelijeli

Juvénal Kajelijeli v. The Prosecutor, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005 ("*Kajelijeli* Appeal Judgement")

Karera

François Karera v. The Prosecutor, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009 ("*Karera* Appeal Judgement")

Kayishema and Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-I-A, Judgement (AC), 1 June 2001 ("*Kayishema and Ruzindana* Appeal Judgement")

Mpambara

The Prosecutor v. Jean Mpambara, Case No. ICTR-01-65-T, Judgement (TC), 11 September 2006 ("*Mpambara* Trial Judgement")

Mugiraneza

The Prosecutor v. Prosper Mugiraneza, Case No. ICTR-99-50-AR73, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004

Muhimana

Mikaeli Muhimana v. The Prosecutor, Case No. ICTR-95-1B-A, Judgement (AC), 21 May 2007 ("*Muhimana* Appeal Judgement")

Muvunyi

Tharcisse Muvunyi v. The Prosecutor, Case No. ICTR-2000-55A-A, Judgement (AC), 29 August 2008 ("*Muvunyi* Appeal Judgement")

Nahimana et al.

Ferdinand Nahimana et al. v. The Prosecutor, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007 ("*Nahimana et al.* Appeal Judgement")

Ndindabahizi

Emmanuel Ndindabahizi v. The Prosecutor, Case No. ICTR-01-71-A, Judgement (AC), 16 January 2007 ("*Ndindabahizi* Appeal Judgement")

Niyitegeka

Eliézer Niyitegeka v. The Prosecutor, Case No. ICTR-96-14-A, Judgement (AC), 9 July 2004 ("*Niyitegeka* Appeal Judgement")

Ntagerura et al.

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-T, Judgement and Sentence (TC), 25 February 2004 ("*Ntagerura et al.* Trial Judgement")

The Prosecutor v. André Ntagerura et al., Case No. ICTR-99-46-A, Judgement (AC), 7 July 2006 ("*Ntagerura et al.* Appeal Judgement")

Ntahobali and Nyiramasuhuko

The Prosecutor v. Arsène Shalom Ntahobali and Pauline Nyiramasuhuko, Case No ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004 ("*Butare* Admissibility Decision")

Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004 ("*Ntakirutimana* Appeal Judgement")

Renzaho

The Prosecutor v. Tharcisse Renzaho, Case No. ICTR-97-31-T, Judgement (TC), 14 July 2009 ("*Renzaho* Trial Judgement")

Rutaganda

Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003 ("*Rutaganda* Appeal Judgement")

Semanza

The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20-T, Judgement and Sentence (TC), 15 May 2003 ("*Semanza* Trial Judgement")

Laurent Semanza v. The Prosecutor, Case No. ICTR-97-20-A, Judgement (AC), 20 May 2005 ("*Semanza* Appeal Judgement")

Seromba

The Prosecutor v. Athanase Seromba, Case No. ICTR-2001-66-A, Judgement (AC), 12 March 2008 ("*Seromba* Appeal Judgement")

Simba

The Prosecutor v. Aloys Simba, Case No. ICTR-01-76-T, Judgement and Sentence (TC), 13 December 2005 ("*Simba* Trial Judgement")

Aloys Simba v. The Prosecutor, Case No. ICTR-01-76-A, Judgement (AC), 27 November 2007 ("*Simba* Appeal Judgement")

1.2 ICTY

Blagojević and Jokić

Prosecutor v. Vidoje Blagojević and Dragan Jokić, Case No. IT-02-60-A, Judgement (AC), 9 May 2007 ("*Blagojević and Jokić* Appeal Judgement")

Blaškić

Prosecutor v. Tihomir Blaškić, Case No. IT-95-14-A, Judgement (AC), 29 July 2004 ("*Blaškić* Appeal Judgement")

Brđanin

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-T, Judgement (TC), 1 September 2004 ("*Brđanin* Trial Judgement")

Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, Judgement (AC), 3 April 2007 ("*Brđanin* Appeal Judgement")

Galić

Prosecutor v. Stanislav Galić, Case No. IT-98-29-A, Judgement (AC), 30 November 2006 ("*Galić* Appeal Judgement")

Halilović

The Prosecutor v. Sefer Halilović, Case No. IT-01-48-A, Judgement (AC), 16 October 2007 (*Halilović* Appeal Judgement)

Jelisić

The Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement (AC), 5 July 2001 ("*Jelisić* Appeal Judgement")

Kordić and Čerkez

The Prosecutor v. Dario Kordić and Mario Čerkez, Case No. IT-95-14/2-A*,* Judgement (AC)*,* 17 December 2004 ("*Kordić and Čerkez* Appeal Judgement")

Krnojelac

The Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-A, Judgement (AC), 17 September 2003 ("*Krnojelac* Appeal Judgement")

Krstić

The Prosecutor v. Radoslav Krstić, Case No. IT-98-33-A*,* Judgement (AC)*,* 19 April 2004 ("*Krstić* Appeal Judgement")

Kunarac et al.

The *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T and IT-96-23/1-T*,* Judgement (TC), 22 February 2001 ("*Kunarac et al.* Trial Judgement")

The Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-A and IT-96-23/1-A, Judgement (AC), 12 June 2002 ("*Kunarac et al.* Appeal Judgement")

Kupreškić et al.

Prosecutor v. Zoran Kupreškić et al., Case No. IT-95-16-A, Judgement (AC), 23 October 2001 ("*Kupreškić et al.* Appeal Judgement")

Kvočka et al.

The Prosecutor v. Miroslav Kvočka et al., Case No. IT-98-30/1-A, Judgement (AC), 28 February 2005 ("*Kvočka et al*. Appeal Judgement")

Limaj et al.

The Prosecutor v. Fatmir Limaj et al., Case No. IT-03-66-T, Judgement (TC), 30 November 2005 ("*Limaj et al.* Trial Judgement")

Dragomir Miloševic

Prosecutor v. Dragomir Milošević, Case No. IT-98-29/1-A, Judgement (AC), 12 November 2009 ("*Dragomir Milošević* Appeal Judgement")

Naletilić and Martinović

Prosecutor v. Mladen Naletilić, a.k.a. "TUTA" and Vinko Martinović, a.k.a. "ŠTELA", Case No. IT-98-34-A, Judgement (AC), 3 May 2006 ("*Naletilić and Martinović* Appeal Judgement")

Orić

The Prosecutor v. Naser Orić, Case No. IT-03-68-A, Judgement (AC), 3 July 2008 ("*Orić* Appeal Judgement")

Simić

The Prosecutor v. Blagoje Simić, Case No. IT-95-9-A, Judgement (AC), 28 November 2006 ("*Simić* Appeal Judgement")

Stakić

The Prosecutor v. Milomir Stakić, Case No. IT-97-24-A, Judgement (AC), 22 March 2006 ("*Stakić* Appeal Judgement")

Tadić

The *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A*,* Judgement (AC), 15 July 1999 ("*Tadić* Appeal Judgement")

Vasiljević

The Prosecutor v. Mitar Vasiljević, Case No. IT-98-32-A, Judgement (AC), 25 February 2004 ("*Vasiljević* Appeal Judgement")

2. DEFINED TERMS AND ABBREVIATIONS

Addendum

Addendum to the Defence Closing Brief, admitted on 12 February 2009

CDR

Coalition pour la Défense de la République

Christ-Roi

The *Collège Christ-Roi* of Nyanza

Defence Closing Brief

The Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-2001-69-T, *Mémoire finale présente par l'équipe de défense d'Hormisdas Nsengimana*, 5 December 2008

ENP or Ecole normale primaire

Ecole normale primaire de Nyanza, which is currently referred to as the *Ecole sécondaire de saint esprit*

ESM or Ecole supérieure militaire

Ecole supérieure militaire of Kigali

ESN or Ecole des sciences

Ecole des sciences Louis Mont Fort de Nyanza

ETF or Ecole technique féminine

Ecole technique féminine de Nyanza, which is currently referred to as the Mater Dei school

ICTR or Tribunal

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994

ICTY

International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Indictment

The Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-2001-69-I, Amended Indictment, 4 April 2007

MDR

Mouvement Démocratique Républicain

MRND

Mouvement Révolutionnaire National pour la Démocratie et le Développement

n.

footnote

p. (pp.)

page (pages)

para. (paras.)

paragraph (paragraphs)

Prosecution Pre-Trial Brief

The Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-2001-69-T, The Prosecutor's Pre-Trial Brief, 11 May 2007

Prosecution Closing Brief

The Prosecutor v. Hormisdas Nsengimana, Case No. ICTR-2001-69-T, The Prosecutor's Closing Brief, 5 December 2008

RPF

Rwandan (also Rwandese) Patriotic Front

RTLM

Radio Télévision Libre des Mille Collines

Rules

Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

Statute

Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955

T.

Transcript