

JUDGEMENT - CASE NO. RP0002/12/HCCI

THE HIGH COURT SPECIALISED CHAMBER FOR INTERNATIONAL AND CROSS-BORDER CRIMES SITTING IN KIGALI IN CRIMINAL CASE NO. RP0002/12/HCCI HEREBY RENDERS IN A PUBLIC HEARING ON 30 DECEMBER 2015 THE FOLLOWING TRIAL JUDGEMENT:

CASE:

THE NATIONAL PUBLIC PROSECUTION AUTHORITY  
V.  
JEAN UWINKINDI

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**THE ACCUSED:**

Jean Uwinkindi, son of Subwanone and Ntizisigwa, was born in 1951 in Rutsiro, the former Kibuye prefecture, in the Republic of Rwanda. Until 1994, he lived in Gatare *cellule*, Kayumba sector, Kanzenze commune in the former Kigali-Rural prefecture. He is married to Rose Kabagwira with whom he has eight children. He is a pastor of Rwandan nationality and is being held in detention in the Kigali Central Prison following his transfer to Rwanda by the International Criminal Tribunal for Rwanda to stand trial for crimes he allegedly committed in Rwanda. He is represented by Counsel Gatera Gashabana, Baptiste Niyibizi and Joseph Ngabonziza.

**THE COUNTS:**

- Murder, as a crime of genocide, provided for and punishable under Articles 114 and 115 of the Rwandan Code of Criminal Procedure and Articles 1 and 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>1</sup>

- Extermination, as a crime against humanity, provided for and punishable under Article 120, paragraph 2, and Article 121 of the Rwandan Code of Criminal Procedure.

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<sup>1</sup> Resolution no. 206 (iii) of the United Nations General Assembly of 9 December 1948, ratified by Rwanda in Decree-Law no. 08/75 of 12 February 1975, *Official Gazette* of Rwanda (1975), p. 230.

## I. FACTUAL BACKGROUND

1. A policy of discrimination had been pursued in Rwanda since 1959. The Rwandan people were divided into what have been called ethnic groups: Hutu, Tutsi and Twa.<sup>2</sup> Some Rwandan people from the Tutsi ethnic group were killed, others fled the country.<sup>3</sup> This policy of discrimination among the Rwandan people was pursued<sup>4</sup> until the 1990s, when the Government which was then in power in Rwanda began exterminating the Tutsi, as demonstrated by Dr Jean Damascène Bizimana, an expert on the history of Rwanda.<sup>5</sup>

2. The plan to kill the Tutsi was carried out openly in 1994,<sup>6</sup> as Jean Kambanda, the Prime Minister in the Abatabazi Government, admitted at his trial before the

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<sup>2</sup> “During this period, the Hutu, Tutsi and Twa were given different amoko [clan] labels indicating that they could be divided into three different ‘races’ and ‘ethnic groups’. But the word race, formerly used to designate the Hutu, Tutsi and Twa - prior to the 1960s - has not been in usage since independence.” Antoine MUGESERA, “Les conditions de vie des Tutsi au Rwanda de 1959 à 1990, Persécution et massacres antérieures au génocide de 1990 à 1994” [*The Living Conditions of the Tutsi in Rwanda from 1959-1990, Persecution and Massacres Before the 1990 to 1994 Genocide*], Dialogue Editions, Kigali & Izuba Editions, Mielan, September 2014, p. 234.

<sup>3</sup> “The revolution of 1959 marked the beginning of a period of ethnic clashes between the Hutu and Tutsi in Rwanda causing hundreds of Tutsis to die and thousands more to flee the country in the years immediately following.” Case no. ICTR-99-52-T, *The Prosecutor v. Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze*, para. 105.

<sup>4</sup> “On the fourth anniversary of independence on 1 July 1966, President Kayibanda went back over the problem of the Inyenzi and of the UNAR [Rwandan National Union] party, made caustic remarks and expressed the view that the Tutsi were the cause of all the problems facing Rwanda. He again declaimed that the country and its heritage belonged exclusively to the Hutu, but he also added that the Tutsi and the Twa could claim the right to them provided they submitted to the principles of democracy.” Dr Jean Damascène Bizimana, “L’itinéraire du génocide commis contre les Tutsi” [*The Itinerary of the Genocide Committed against the Tutsi*], Imprimerie Muhima, April 2014, p. 37.

<sup>5</sup> “Between October 1990 and April 1994, the Government of Rwanda, its army and militias committed large-scale massacres in various regions of the country. These massacres had been planned by high-ranking political and military authorities.” Dr Jean Damascène Bizimana, *idem*, p. 145.

<sup>6</sup> “On April 6, the plane carrying President Habyarimana was shot down, a crime for which the responsibility has never been established. A small group of his associates - who may or may not have been involved in killing him - decided to execute the planned extermination. The Presidential Guard and other troops commanded by Colonel Bagosora, backed by militia, murdered [Hutu] government officials and leaders of the political opposition, creating a vacuum in which Bagosora and his supporters could take control. Soldiers and militia also began systematically slaughtering Tutsi. Within hours, military officers and administrators far from the capital dispatched soldiers and militia to kill Tutsi and Hutu political leaders in their local areas.” A. Desforges et al., *Leave None to Tell the Story*, Karthala Editions, p. 11.

International Criminal Tribunal for Rwanda (ICTR).<sup>7</sup> Measures were taken at both the regional and national level with the aim of killing the Tutsi.

3. Measures were taken to kill the Tutsi and political opponents in the former Kigali-Rural prefecture as well as in other parts of the country. The Bugesera region, in which Kanzenze commune is located, was inhabited by numerous Tutsi who had been transferred there following the slaughter committed in various regions of the country before 1990.<sup>8</sup> Attempting to escape the killings, the Tutsi took refuge in the communal office, in schools and in churches, where most of them were killed, as was the case in a number of regions in the country.<sup>9</sup>

4. The Accused in this case, Jean Uwinkindi, is known in Rwanda for his religious work. He was a member of the ADEPR [APCR, Association of Pentecostal Churches in Rwanda] and, at the time of the genocide, Pastor of the Kayenzi church, which is where he was when the crimes with which he has been charged were committed.

5. He has been charged with the crimes of genocide and extermination, as crimes against humanity, perpetrated against the Tutsi between April and May 1994 at

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<sup>7</sup> “Jean Kambanda acknowledges that before 6 April 1994, political parties in concert with the Rwandan Armed Forces, organized and began the military training of youth wings of the MRND and CDR political parties (Interahamwe and Impuzamugambi respectively) with the intent to use them in the massacres that ensued. Furthermore, Jean Kambanda acknowledges that the Government headed by him distributed arms and ammunition to these groups. Additionally, Jean Kambanda confirms that roadblocks manned by mixed patrols of the Rwandan Armed Forces and Interahamwe were set up in Kigali and elsewhere as soon as the death of President J. B. Habyarimana was announced on the radio.” Case no. ICTR-97-23-S, 4 September 1998, *The Prosecutor v. Jean Kambanda*, para. 39 (vi, xi).

<sup>8</sup> “The Bugesera Tutsi, many of whom were ‘internal refugees’, were massacred on three occasions between 1963 and 1964” ... Antoine Mugesera, “Les conditions de vie des Tutsi au Rwanda de 1959 à 1990, Persécution et massacres antérieures au génocide de 1990 à 1994”, Dialogue Editions, Kigali & Izuba, Mielan, September 2014, p. 135.

<sup>9</sup> “By the middle of the first week of the genocide, organizers began implementing a different strategy: driving Tutsi out of their homes to government offices, churches, schools or other public sites where they would subsequently be massacred in large-scale operations.” Desforges et al., p. 15.

various locations, in particular, at the Kayenzi church, the Kanzenze communal office, Rwankeri *cellule* and the Cyugaro swamps, where, according to the Prosecutor, he attended meetings to plan the massacres and issued instructions on setting up roadblocks, taking part in the massacres and on the direction of the attacks. He is also being prosecuted for having supported these massacres by providing the killers with accommodation and food.

6. Jean Uwinkindi, who had been in exile since 1994, was arrested in Uganda and transferred to the International Criminal Tribunal for Rwanda. Subsequently, on 16 December 2011, the ICTR decided he should be transferred to Rwanda to stand trial there.<sup>10</sup> His trial was held before this Chamber.

7. The Defence holds that Jean Uwinkindi played no role in the perpetration of the crimes with which he has been charged. It claims that the Accused had neither the means to protect all the persons who had taken refuge with him nor the authority to chair meetings the purpose of which was to plan the attacks and massacres, issue instructions and lead the assailants during the attacks. Furthermore, Jean Uwinkindi claims that he never participated in activities aimed at supporting the persons involved in the massacre of the Tutsi.

8. In this Judgement, the Chamber has not only examined the question of whether the crimes with which Jean Uwinkindi has been charged were in fact committed, but has also examined the role the Accused allegedly played in the crimes in question. In addition, the Chamber has considered whether these crimes constitute the crimes of

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<sup>10</sup> See the Decision in Case no. ICTR-01-75-AR 11 *bis* rendered by the International Criminal Tribunal for Rwanda on 16 November 2011.

genocide and extermination, as crimes against humanity. Finally, the Chamber has focused on the issue of his criminal responsibility and the sentence in the event that he should be found guilty.

## **II. ANALYSIS OF THE FACTS**

### **II.1. - On the merits of the actus reus of the crimes with which Jean Uwinkindi has been charged and his criminal responsibility**

#### II.1.1. - The roadblocks set up near the Kayenzi Pentecostal church

9. The Prosecution claims that on 7 April 1994, Jean Uwinkindi ordered members of what is known as the “security committee”, including Banguka, to set up roadblocks in Kanzenze commune, Kigali-Rural prefecture. People were singled out and arrested at these roadblocks, and subsequently killed. Following these orders, the members of the security committee led by Jean Uwinkindi set up three roadblocks on the main road to the Kayenzi Pentecostal church. In addition, acting on these same orders, the group led by Banguka - one of the members of the security committee - killed a man called Emile from Nyiramantuntu *cellule*. This event occurred near one of the roadblocks set up on the main road leading to the Kayenzi Pentecostal church.

II.1.1.1. - Prosecution Evidence

10. The Prosecutor submits that these events have been confirmed by witnesses BZI and BZJ.

11. In his testimony before the ICTR,<sup>11</sup> BZI stated that following the death of President Juvénal Habyarimana, on a date he cannot recall precisely, Bernard Gatanazi, the then *bourgmestre* of Kanzenze commune, held a meeting in Kayenzi parish. The meeting was attended by many people, including Jean Uwinkindi and BZI in his capacity of head of a *cellule*. In his speech, *bourgmestre* Gatanazi admonished the members of the Committee from Kayenzi *cellule*, and said that he did not know what they were doing since people had started working in other places. BZI explained that “working” meant “killing the Tutsi”. BZI claimed that even though Jean Uwinkindi did not speak, he had roadblocks set up on all the roads leading to the parish after the meeting on that same day. The witness explained that he had identified three of the roadblocks which were located at the following places: at the junction of the main road and the side road leading to the parish, at the entrance to the small trading centre in Kayenzi that one passes when coming from Kigali and on the road leading to Rwankeri *cellule*.

12. When testifying before the National Public Prosecution Authority on 25 January 2012<sup>12</sup> and at the hearings of 4 March 2015<sup>13</sup> and 15 October 2015,<sup>14</sup> BZI stated that Uwinkindi had three roadblocks set up at the following locations: at “Kariyeri” near

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<sup>11</sup> See p. 629 of the ICTR case-file.

<sup>12</sup> See p. 306 of the Prosecution case-file.

<sup>13</sup> See p. 1613 of the Court's case-file.

<sup>14</sup> See p. 1823 of the Court's case-file.

Azela's house, near Kayihigi's house and behind Sayinzoga's house. He stated that these roadblocks were manned by individuals sent by Jean Uwinkindi who had selected them from among the Interahamwe who were living with him and at his church. The witness remembers the following persons from among them: Bernard Banguka, who manned the roadblock set up in the vicinity of Azela's house; BZK, who manned the roadblock set up in the vicinity of Kayihigi's house; and François Uwimana, Rwabugabo and Nteziryayo, who manned the roadblock set up in the vicinity of Sayingoza's house. He added that, with the exception of Ndayishimiye, who was killed at the roadblock established “up above”, he was not aware of any other murders having been committed at these roadblocks.

13. In his testimony before the ICTR<sup>15</sup> BZJ stated that on 7 April 1994, a meeting was held from between 1300 and 1400 hours which ended at 1500 hours. He stated that he and other persons attended this meeting after having been invited by Jean Uwinkindi who had found them at “Kariyeri”. He claimed that, among other things, the security committee that Jean Uwinkindi was in charge of was established after this meeting. On that same day, the Committee immediately ordered that roadblocks be set up on all the roads leading to the church. Three roadblocks were then set up at the following locations: at the point where the main road branches off towards the church, at the entrance to the “Kariyeri” trading centre and on the road leading to Rwankeri *cellule*.

14. When testifying before the National Public Prosecution Authority on 25 January 2012<sup>16</sup> and at the hearings of 3 March 2015<sup>17</sup> and 15 October 2015,<sup>18</sup> BZJ explained

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<sup>15</sup> See p. 650 of the ICTR case-file.

<sup>16</sup> See p. 320 of the Prosecution case-file.

<sup>17</sup> See p. 1602 of the Court's case-file.

<sup>18</sup> See p. 1832 of the Court's case-file.

that the roadblocks had been set up by Jean Uwinkindi in collaboration with Mukumira after the meeting organised by *bourgmestre* Gatanazi on 8 April 1994. These roadblocks were dismantled when people started fleeing after the Inkotanyi had arrived in Nyamata. He stated that these roadblocks were only in use at night, since the individuals who manned them took part in the attacks during the day. He added that the roadblock that had been set up on the main road in front of the house of an old man called Azela was manned by Bernard Banguka and a former soldier called Nizeyimana. Rwabugabo, Uwimana and Nteziryayo manned the roadblock which had been set up near Sayinzoga's house, while he [BZJ] and Kalisa manned the roadblock set up on the road leading to Rwankeri.

II.1.1.2. - Jean Uwinkindi's submissions and evidence

15. The Defence claims that Jean Uwinkindi neither set up a roadblock near the Kayenzi church nor ordered anyone to do so. It claims that Pastor Jean Uwinkindi could not have ordered roadblocks to be set up in Kanzenze commune under any circumstances, as the commune had its proper authorities, namely, *bourgmestre* Bernard Gatanazi, his assistants, the heads of *cellules* and the Nyumbakumi (responsible for ten households).

16. With regard to the above-mentioned roadblocks, the Defence claims that a main road leading to the Kayenzi church did not exist. It claims that there was, however, a main road connecting Kigali to Nyamata, and that therefore a roadblock had not been set up in front of the Kayenzi Pentecostal church. The Defence added that when

Prosecution Witness CDF<sup>19</sup> testified before the National Public Prosecution Authority on 2 February 2012, the witness mentioned the names of persons who had set up the roadblocks and of those who had manned them, but he did not mention Jean Uwinkindi's name.

17. The Defence maintains that BZJ's testimony about the establishment of the “security committee” is false. It claims that the Prosecutor failed to produce minutes of the meeting to show that the said security committee had been established, that the *bourgmestre* and his assistants were responsible for security and that this is not a matter for which Jean Uwinkindi should be held accountable, as he was not part of the authorities. The Defence also claims that the allegations that roadblocks were set up on all the roads leading to Kanzenze commune are false.

#### II.1.1.3. - Deliberations

18. The Chamber notes that the testimonies of BZI and BZJ demonstrate that *bourgmestre* Bernard Gatanazi held a meeting at the Kayenzi Pentecostal church at which he ordered the killings to commence. The security committee was established following the *bourgmestre's* instructions and was headed by Jean Uwinkindi who not only ordered that roadblocks be set up on the roads near the church, but also oversaw their operation.

19. The Chamber therefore holds that the said roadblocks were set up in accordance with *bourgmestre* Gatanazi's instructions to “work”. Witness BZI explained that in

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<sup>19</sup> See p. 246 of the Prosecution's case-file.

that context the verb “work” meant “to kill the Tutsi”. This has been confirmed by other witnesses as well as by the ICTR in the *Ferdinand Nahimana et al.* case.<sup>20</sup>

20. The Chamber considers that the testimonies of BZI and BZJ are reliable, as they give a faithful account of the situation in Rwanda at the time of the genocide. From April 1994, roadblocks were set up in order to identify and then kill the Tutsi, as confirmed in the *Jean Kambanda* Judgement rendered by the International Criminal Tribunal for Rwanda.<sup>21</sup>

21. The Chamber finds that the Defence's argument according to which Jean Uwinkindi did not have the authority to set up roadblocks, or order that they be set up, is without substance. BZI and BZJ affirmed that these events did take place, and they described the circumstances under which Jean Uwinkindi obtained this authority. The Defence has not produced any evidence contradicting their testimonies. Even if, as a pastor, Jean Uwinkindi did not have the *de jure* authority to set up roadblocks or have them set up, the Chamber nevertheless holds that, given the irrefutable evidence adduced, these events did occur, as confirmed by the International Criminal Tribunal for Rwanda in the *Kayishema and Ruzindana* Judgement.<sup>22</sup> In this Judgement, the ICTR stated that in order to evaluate the authority that an accused exercised, the Chamber should not only examine whether he had *de jure* authority, but should also take into consideration the reality of the situation.

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<sup>20</sup> “In the instructions given to the population, killing was known as ‘work’ and machetes and firearms were described as ‘tools’ ...” Case no. ICTR-99-52-T, 3 December 2003, para. 114, p. 36.

<sup>21</sup> Case no. ICTR-97-23-S, 4 September 1998, p. 21, para. (xi).

<sup>22</sup> The Chamber must at all times bear in mind the realities of any given situation and pierce through the formalism behind which those chiefly responsible for the atrocities may be hiding ..., ICTR-95-1-T, 21 May 1995, para. 218, p. 84.

22. The Chamber notes that inconsistent dates do not affect the substance of the testimonies, provided that the testimonies are consistent with each other in relation to other facts. This was confirmed by the Supreme Court in Judgement no. RPA 0117/07/CS of 17 September 2010 in which it stated that as far as testimonies are concerned, a contradiction is not evaluated on the basis of the terms a witness has used or on the basis of inconsistencies in the witness's testimony; what is essential is that the substance of the witness's testimony remains intact.<sup>23</sup>

#### II.1.2. - Massacre of the Tutsi in Rwankeri *cellule* and on Kayenzi Hill

23. The Prosecutor claims that on 7 April 1994, Jean Uwinkindi went to see Bernard Gatanazi, the *bourgmestre* of Kanzenze commune at the time, and asked him to help with the killing of the Tutsi. The *bourgmestre* then made two *gendarmes* and three policemen available to him, including Ntambara, who left the Kanzenze communal office to take part in the killing of the Tutsi. The communal *gendarmes* and policemen took part in perpetrating crimes in Rwankeri *cellule*, in the Cyugaro swamps, on Kayenzi Hill, in the communal office and at the Kayenzi Pentecostal church.

24. According to the Prosecutor, on the night of 8 April 1994, Jean Uwinkindi instructed a large group of attackers to kill the Tutsi and promised them a reward. The following were among the people who received these instructions: Semayenzi, Kayinamura, Déo Ntaganzwa, Bosco Munyanziza, Rusatsi, Ngarukiye, the *gendarmes* who had come from the Kanzenze communal office - Ntambara in particular - as well as three other unidentified persons who launched an attack against the Tutsi in

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<sup>23</sup> See Judgement no. RPA 0117/07/CS rendered on 17 September 2010, in the case of *The Prosecutor v. Corporal Faustin Ngabonziza and Sergeant Jean-Baptiste Biziyaremye*, Vol. II, 2011, no. 9, p. 60.

Rwankeri *cellule*. During the attack, Déo Ntaganzwa and Bosco Munyanziza tore to pieces and killed a rich Tutsi by the name of Paul Kamanzi. Many other Tutsi were also killed during this period.

#### II.2.2.1. - Prosecution Evidence

25. The Prosecution relies on the testimonies of CDH, BZJ and CDF to support its allegations. When testifying before the ICTR,<sup>24</sup> the National Public Prosecution Authority<sup>25</sup> and at hearings on 5 March 2015<sup>26</sup> and 27 October 2015,<sup>27</sup> CDH stated that on 8 April 1994, at dusk, Jean Uwinkindi's group launched an attack against the Tutsi in Rwankeri *cellule*. During this attack, the assailants killed Paul Kamanzi, who was about 60 years old, with a machete. They also set fire to Antoine Mudenge's house. CDH added that he was able to see the attackers even though it was dark. Moreover, as people were bringing in Mudenge's cattle during the night, he heard Paul Kamanzi groaning, but as it was dark, he thought it was a cow. The next day, the witness and other persons went to Mudenge's home, and it is at that point that they saw Kamanzi's body. He added that the attackers were carrying traditional weapons during the attack, but he thought that some of them were carrying rifles as he heard gunshots. He was able to recognise his three neighbours among the attackers: Semanyenzi, Rusatsi and BZJ.

26. DCH stated that on 9 April 1994, BZJ shot an arrow and killed a Tutsi called Sebastien. The victim was killed when the Tutsi were trying to repel the attacks Jean

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<sup>24</sup> See pp. 669-670 of the ICTR case-file.

<sup>25</sup> See pp. 329-334 of the Prosecution case-file.

<sup>26</sup> See p. 1638 of the Court's case-file.

<sup>27</sup> See p. 1874 of the Court's case-file.

Uwinkindi's group had launched against them. This witness saw Jean Uwinkindi returning to the site with four *gendarmes* in the afternoon. The *gendarmes* joined Jean Uwinkindi's group and started looking for Tutsi. These attackers killed four persons, namely, Mutimura, Ngabo and two pupils: Xavier Ndenkezi's child and Charles Muzezayo's child. DCH added that after they had arrived in Bapfakurera's vehicle, the *gendarmes* immediately opened fire on the Tutsi, which shows that they had prepared the attack in collaboration with Jean Uwinkindi.

27. DCH stated that when the people were fleeing from the attacks, he went into hiding among the papyri until 15 April 1994. On this date, Jean Uwinkindi and a group of Interahamwe arrived in two vehicles: a Toyota pick-up truck belonging to UCG and a Daihatsu belonging to Bapfakurera. Jean Uwinkindi was sitting next to Bapfakurera's driver. Claude Nizeye, BZJ, Semanyenzi, Rusatsi and Kayinamura were among the Interahamwe. The witness added that Jean Uwinkindi was in charge of these attackers, that they were armed with bows and machetes and were chanting: "Let's exterminate them." During the attack, a boy called Evode Imaragahinda had his legs torn to pieces. Since then he has been disabled and has difficulty in walking. The Interahamwe were part of Jean Uwinkindi's group, since after the attack they returned to his home where they were staying. DCH stated that on that day, Jean Uwinkindi was wearing a dark jacket and trousers and was not armed, but was carrying a stick. He said that he saw Jean Uwinkindi giving orders and then going to a place on high ground from where he could observe how the attack was progressing. DCH remembers the following Tutsi who were killed in the attack: Nyirankangura, Nsengiyumva, Emmanuel Habarugira, Clothilde Muderu and Justin Rwibasira.

28. With regard to the request for additional soldiers and *gendarmes*, in his testimony of 27 October 2015, CDH stated that he had not been a witness to this request, as Jean Uwinkindi had gone to ask for reinforcements while the Tutsi were confronting the attackers. However, he stated that he learned about this in the course of the Gacaca trials when people who had been with Jean Uwinkindi gave an account of this event. He added that these attacks had occurred at the border between Gatare sector and Rwankeri *cellule*.

29. In his testimony before the ICTR<sup>28</sup> and the National Public Prosecution Authority on 25 January 2012,<sup>29</sup> BZJ stated that he had participated in the attack launched on 9 or 10 April 1994. The attackers left the ADEPR church led by Pastor Jean Uwinkindi, who was with soldiers he had brought in from the Kanzenze commune office. BZJ recognised Sergeant Izabiriza among these soldiers. The attackers went to Rwankeri *cellule* and killed a Tutsi called Bandora who lived there. He stated that the victim had been killed by an arrow shot by Kalisa. According to BZJ, this attack was carried out by armed members of the population and soldiers who had come from Nyamata and Gako as reinforcements. On that occasion, Jean Uwinkindi was carrying a stick with which he goaded the attackers to be more aggressive. He ordered them to march on without turning back.

30. BZJ further claimed that they also launched an attack in Rwankeri in the days that followed, but they did not kill anyone. He added that when the soldiers refused to resume the attacks without any compensation, Pastor Jean Uwinkindi immediately ordered each member of the population to make a contribution, according to their

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<sup>28</sup> See pp. 651-652 of the ICTR case-file.

<sup>29</sup> See p. 315 of the Prosecution case-file.

means, so that the soldiers could be provided with financial support. He claimed that he had given 100 FR, but that some people had made larger contributions. Finally, he stated that Mukumira had collected the contributions.

31. In his testimony on 27 January 2012 before the National Public Prosecution Authority<sup>30</sup> and at the hearings held on 4 March 2015<sup>31</sup> and 15 October 2015<sup>32</sup>, CDF stated that at around 1800 hours on 8 or 9 April 1994, he saw Jean Uwinkindi participating in the attack in which Paul Kamanzi was killed and setting fire to Antoine Mudenge's heifers in the stable. CDF added that during this attack, Jean Uwinkindi was armed with a spear, wore a jacket, and was accompanied by a large number of people, but that he [CDF] was only able to recognize Banguka, Munyazinja, Rusatsi, Kazimoto's son, Semanyenzi and Déo, Kayihigi's son. He said that he witnessed this attack while on the road that passes below Mudenge's house and that he had been with Dorothée, Paul Kamanzi's sister, Thérésie, Aurélie Idamage, Muderu and Sebastien Karekezi (all deceased). He explained that Munyanziza killed Paul Kamanzi with a machete on Mudenge's land near his house. The victim was killed on his way from his sister Dorothée's house.

#### II.1.2.2. - Jean Uwinkindi's submissions and evidence

32. The Defence claims that Jean Uwinkindi did not go to the Kanzenze communal office to ask the *bourgmestre* for assistance in killing the Tutsi at any time on 7 April 1994. The Defence stresses that, with the exception of Ntambara, the Prosecutor has not mentioned the names of other *gendarmes* and policemen who were allegedly

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<sup>30</sup> See p. 364 of the Prosecution case-file.

<sup>31</sup> See p. 1622 of the Court's case-file.

<sup>32</sup> See p. 1830 of the Court's case-file.

made available to the Accused. Furthermore, according to the Defence, there is nothing to prove that there were any *gendarmes* in Kanzenze on that date, as usually only policemen were present in the communal office. The Defence claims that Uwinkindi had neither the authority to ask for *gendarme* reinforcements - as this was the responsibility of the state authorities - nor the authority to give orders to policemen, as this was the responsibility of the *bourgmestre* and the [communal police] Brigadier.

33. The Defence claims that Jean Uwinkindi did not go anywhere on the night of 8 April 1994 and that he in fact spent the evening with people who had taken refuge in the church. It further states that the Accused had neither the authority nor the intention to instruct people to go and kill in places where he was not in charge. The Defence claims that the Prosecution case-file<sup>33</sup> contains statements made by Innocent Mukumira, Rusatsi and BZF, according to which Jean Uwinkindi never participated in the attacks and did not carry a weapon.

34. When testifying before the National Public Prosecution Authority on 18 April 2012,<sup>34</sup> Bosco Rusatsi stated that he had not seen Jean Uwinkindi taking part in the attacks. However, he added that he had neither witnessed all the attacks nor participated in any of them. He acknowledged that his role was just to cook for the attackers<sup>35</sup> and that he was not there all the time.<sup>36</sup> With regard to the meetings, Rusatsi stated that he had never seen Jean Uwinkindi holding a meeting and that he had not been a witness to any meetings allegedly organised by the Accused - if any

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<sup>33</sup> See p. 422 of the Prosecution case-file.

<sup>34</sup> See p. 411 of the Prosecution case-file.

<sup>35</sup> See p. 407 of the Prosecution case-file.

<sup>36</sup> See p. 411 of the Prosecution case-file.

were ever organised. Moreover, he stated that he had never seen the Accused carrying a weapon or killing anyone. However, he did acknowledge that some people had been killed at Jean Uwinkindi's home in the presence of policemen who did nothing to save the victims.

35. When testifying before the National Public Prosecution Authority on 18 April 2012,<sup>37</sup> Witness Innocent Mukumira stated that he had never seen Jean Uwinkindi participating in attacks or carrying a weapon.

36. In his testimony given on 26 January 2012, BZF stated that he was one of the persons being sought and that he had hidden in Jean Uwinkindi's house for two months until the Inkotanyi arrived. He added that when the attackers came to search the houses, Rusatsi would take the people hiding in Jean Uwinkindi's home, including BZF, and hide them in Appolinaire Sebuturo's house. Once the attackers had left, Rusatsi would take the people back to Jean Uwinkindi's home. He stated that he had never seen Jean Uwinkindi holding a meeting or participating in the attacks.

37. With regard to the Prosecution witnesses, the Defence claims that CDF does not know Pastor Jean Uwinkindi and does not know about the crimes the Accused has been charged with either, as he was not a witness to them. The Defence points out that when CDF was heard on 3 June 1998, he stated that the first time he saw Jean Uwinkindi was when he [the witness] was running up a hill the name of which he did not know. The Defence would therefore like to know how the witness knew that it was the Accused, given that he had never seen him before. Furthermore, the Defence

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<sup>37</sup> See p. 413 of the Prosecution case-file.

claims that the testimony CDF gave on 21 January 2012 is inconsistent with his previous testimony according to which he knew Jean Uwinkindi, who had been his neighbour in Rwankeri *cellule*. The Defence points out that this witness stated that he lived in Rwankeri *cellule*, while Uwinkindi lived at the church. The Defence thus claims that his testimony is a complete fabrication, as Rwankeri *cellule* is in Ntarama sector, whereas the church is located in Gatare *cellule*, Kayumba sector. According to the Defence, this shows that CDF changed his story at the second hearing and frequently contradicted himself when giving false testimony.

38. According to the Defence, CDF also gave false testimony when he stated that Jean Uwinkindi had five children. The Defence added that his testimony was based on hearsay. It stated that the witness contradicted himself, since when he first testified, he stated that the attack of 8 April 1994 had been launched on Rwankeri Hill where the Tutsi had gathered, whereas when testifying for the second time, he stated that this attack on 8 April 1994 had been launched against the house belonging to Mudenge who lived in a valley, not on a hill. The Defence also claims<sup>38</sup> that CDF frequently contradicted himself, since when he testified before the National Public Prosecution Authority, he stated that the attack in which Paul Kamanzi had been killed had come from Ntarama on 8 April 1994 and that Jean Uwinkindi had been among the attackers. However, in his testimony he stated that he had seen Jean Uwinkindi on 9 April 1994, the day on which Kamanzi was killed, and that it was his murder that triggered the massacres at the church.

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<sup>38</sup> See the submissions of Joseph Ngabonziza, attorney, pp. 1988-1992 of the Court's case-file.

39. The Defence further emphasises that the Prosecution case-file<sup>39</sup> contains the testimonies of Innocent Mukamira, Rusatsi and BZF, according to which Jean Uwinkindi never participated in the attacks and did not carry a weapon.

40. With regard BZJ's testimony, the Defence stresses that Pastor Jean Uwinkindi could not have given instructions to the soldiers. The Defence explained that the soldiers could not leave their barracks to launch an attack without receiving orders from their superiors. The Defence claims that Jean Uwinkindi had never been a soldier and therefore did not have the authority to be in command of two military camps. It added that BZJ did not indicate the date or time when the attackers launched the attack in which Bandora was killed. Nor did the witness explain how Jean Uwinkindi had the authority to strike the soldiers to make them participate in the attacks. In the Defence's opinion, the explanations BZJ gave in his testimony are full of lies and contradictions and are also inconsistent with the testimonies of other witnesses. The Defence submits that this provides the Chamber with proof that the Accused could not have committed the crimes alleged in this testimony and that, *ipso facto*, this witness is not credible.

41. According to the Defence, BZJ stated that Paul Kamanzi had been killed in the attack launched by the soldiers, whereas CDF stated that the victim had been killed in the attack that came from Ntarama. Furthermore, the Defence maintains that according to the transcript of his hearing before the National Public Prosecution

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<sup>39</sup> See p. 422 of the Prosecution case-file.

Authority,<sup>40</sup> BZJ stated that he had seen Jean Uwinkindi participating in various attacks, while in his statement,<sup>41</sup> he claimed that Jean Uwinkindi never went out.

42. The Defence claims that the events CDH describes in his testimony could not have happened, as he was 200 metres away and therefore did not recognise the attackers. The Defence claims that the witness lied when he said that Jean Uwinkindi had arrived at the site in a Daihatsu vehicle, although the Accused did not own a vehicle in 1994. The Defence also notes that CDH stated that Jean Uwinkindi was carrying a stick, although it is not possible to identify the weapon a person is carrying from a distance of 200 metres.

#### II.1.2.3. - Deliberations

43. The Chamber notes that BZJ was one of the people living in the Church. He manned a roadblock and participated in the attacks, including the ones launched in Rwankeri *cellule*. As for CDH and CDF, the Chamber notes that these witnesses were among the people who were being sought. The Chamber notes that the testimony of all of these witnesses establishes that on the evening of 8 April 1994, in the course of an attack led by Jean Uwinkindi, the attackers killed Paul Kamanzi on Antoine Mudenge's land and set his stable on fire.

44. The Chamber holds that the testimonies demonstrate that in the morning of 9 April 1994, the assailants killed Sebastien Mbasha in an attack led by Jean Uwinkindi. Subsequently, upon realising that the people he was looking for were defending

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<sup>40</sup> See pp. 313 - 326 of the Prosecution case-file.

<sup>41</sup> See the transcript of the hearing of 15 October 2015.

themselves, Jean Uwinkindi went to the Kanzenze communal office to ask for additional soldiers. The Accused returned with soldiers and the Interahamwe in one vehicle belonging to Bapfakurera and another, belonging to UCG. A large number of Tutsi were killed in this attack, including Ngabo, Mutimura and two pupils: Xavier Ndekezi's child and Charles Muzezayo's child. These victims were killed in Rwankeri *cellule* and on Kayenzi Hill.

45. The Chamber notes that the testimony of CDH shows that on 15 April 1994, Jean Uwinkindi led an attack in Rwankeri *cellule* in which the Interahamwe and soldiers participated. The victims of this attack were numerous and included Nyirankangura, Nsengiyumva, Emmanuel Habarugira, Clothilde Muderu and Justin Rwibasira.

46. The Chamber notes that the testimonies of Rusatsi, Mukumira and BZF, on which Jean Uwinkindi and his counsel rely, are not inconsistent with the testimonies of CDF, CDH and BZJ. Rusatsi and his comrades stated that they had never participated in the attacks and therefore did not know what role Jean Uwinkindi played in the attacks launched in Rwankeri.

47. The Chamber notes that the Defence merely states that Jean Uwinkindi had never participated in the attacks and had neither the authority nor the wish to bring in soldiers and *gendarmes* and give them instructions. The Chamber considers that the Defence has failed to produce any evidence that contradicts the testimonies of CDH, CDF and BZJ.

48. Therefore, in accordance with Article 65 of Law no. 15/2004 of 12 June 2004 relating to evidence and its production, which stipulates that “the court shall exercise its discretion in evaluating the relevance and admissibility of the facts with regard to which oral evidence has been adduced ...it shall rely primarily on their knowledge of the facts and on the impartiality and sincerity of their testimony,” the Chamber holds that the inculpatory evidence establishes that attacks occurred in which large numbers of Tutsi were killed in Rwankeri and on Kayenzi Hill. It further notes that these attacks were led by Jean Uwinkindi who was assisted by soldiers and *gendarmes*.

#### II.1.3. - Massacre of the Tutsi in the Kanzenze communal office

49. According to the Prosecution, on or around 10 April 1994, *bourgmestre* Bernard Gatanazi convened a meeting which was held in the courtyard of the Kanzenze communal office. He ordered and incited the participants at the meeting to kill the Tutsi. The meeting was attended by about 1,000 people, including Jean Uwinkindi, Colonel Phéneas Munyarugarama and UCB. Jean Uwinkindi indirectly agreed with what was said at this incendiary meeting, although he was well aware of the fact that his attitude would incite and encourage the participants. Subsequently, on 12 April 1994, the assailants launched an attack on the Kanzenze commune.

50. The Prosecution claims that on 12 April 1994, about 1,500 people carrying firearms and machetes, acting under the command of *bourgmestre* Bernard Gatanazi, launched a large-scale attack against the Tutsi who had taken refuge in the Kanzenze communal office. Jean Uwinkindi took part in this attack in which the assailants killed the Tutsi over a period of about three hours. The following also participated in

the attack: Colonel Munyarugarama, Bernard Gatanazi, Christophe Bizimana, Léonard Rwarakabije, Ndagije, Ntambara, Gratien Mwangereza, Gervais Ngombwa, CCX, Karerangabo, Wacewaseme, Martin Bakundinkwano, numerous former FAR [Rwandan Armed Forces] soldiers whose names are not known, the *gendarmes*, the Interahamwe and armed civilians. The Prosecutor claims that the assailants killed large numbers of Tutsi in the attack, including Rukara, Damascène, Ndahiro, his wife Consolata and Ntambara. In particular, Jean Uwinkindi killed Gashumba during the attack.

#### II.1.3.1. - Prosecution evidence

51. The Prosecution relies on the testimonies of CDG, Isaïe Kayibanda and CDJ to support its allegations.

52. When testifying before the ICTR on 8 April 2000,<sup>42</sup> before the National Public Prosecution Authority on 6 February 2012<sup>43</sup> and before this Chamber on 10 March 2015,<sup>44</sup> CDG stated that when the genocide commenced in April 1994, the Tutsi took refuge in Kayenzi parish, which was under the authority of Jean Uwinkindi at the time, and in the Kanzenze communal office. On 8 April 1994, CDG went to the communal office, where his wife and children had spent the night. Jean Uwinkindi said that the Tutsi of Kayenzi could not be killed while there were others staying in the Kanzenze communal office.<sup>45</sup> The Interahamwe then immediately started killing the people in the communal office and threw their bodies into big pits located below

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<sup>42</sup> See pp. 480-482 of the ICTR case-file.

<sup>43</sup> See pp. 256-266 of the Prosecution case-file.

<sup>44</sup> See pp. 1655-1658 of the Court's case-file.

<sup>45</sup> See pp. 1870-1873 of the Court's case-file.

it. The witness stated that during this attack, the assailants killed the members of his family, his wife and his four children: Tamar, Gaston, Thérèse and Pierre.

53. When testifying before the ICTR on 30 March 2000,<sup>46</sup> Witness Isaïe Kayibanda stated that he had seen Jean Uwinkindi leading the attack in the Kanzenze communal office on 12 April 1994. He claimed that on that occasion, Jean Uwinkindi was wearing two jackets - a white one and a black one - and was armed with a machete and a spear. The Accused was with Bernard Gatanazi, Gratien Mwangereza, a judge at the Court of First Instance at the time, Gervais Ngombwa, the then President of the RDM, Karerangabo and Christophe Bizimana, who was Bapfakurera's driver. The witness added that two vehicles transporting white soldiers passed by but did not stop at the communal office. The people who were with Jean Uwinkindi then attacked the refugees. Isaïe Kayibanda recognised Wacewaseme and Martin Bakundinkwano among the Interahamwe taking part in the attack. He added that Rukara and Damascène Ndahiro were among the victims he recognised.

54. When testifying before the National Public Prosecution Authority on 27 January 2012<sup>47</sup> and in his testimony given on 10 March 2015<sup>48</sup> and 22 October 2015,<sup>49</sup> Isaïe Kayibanda stated that when the killing started, he and his family members and many other people took refuge in the Kanzenze communal office. They spent the night of 11 April 1994 there, and at about six o'clock the next morning, they saw Pastor Jean Uwinkindi and Bapfakurera under the veranda of the Kanzenze communal office where alcoholic and soft drinks and many traditional weapons - machetes, bows and

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<sup>46</sup> See pp. 781-783 of the ICTR case-file.

<sup>47</sup> See pp. 383-391 of the Prosecution case-file.

<sup>48</sup> See pp. 1658-1659 of the Court's case file.

<sup>49</sup> See pp. 1862-1865 of the Court's case-file.

clubs - had been stored. Gervais Ngombwa, who was a shopkeeper in Nyamata, made three trips to transport the Interahamwe to the communal office. Each time Jean Uwinkindi and Bapfakurera arrived at the site, they gave the Interahamwe drinks and weapons. Subsequently, UNAMIR vehicles arrived and stopped in front of the communal office on the road to Ririma, but they left almost immediately.

55. Isaïe Kayibanda stated that once the Interahamwe realised that the white men were not interested in them, they all moved towards Jean Uwinkindi, Ngombwa and Bapfakurera. Jean Uwinkindi then said: “You said that when Habyarimana died, cries of joy would be heard, so cry for joy then.” Damascène Ndahiro retorted: “It's our turn today, it will be your turn tomorrow.” Uwinkindi then turned to a policeman from Kanzenze commune and said: “Shoot him,” and the policeman immediately shot Ndahiro. Isaïe Kayibanda stated that Consolata, Ndahiro's wife, tried to help her husband get up, but a policeman called Ntambara suddenly shot her. A policeman named Ndagijimana immediately shot Laurent Rukara, while Ntambara shot Uwamariya, Laurent Rukara's wife, when she tried to help her husband up. The refugees immediately ran, but the attackers pursued them and shot at them, killing some of the refugees while they were fleeing. Jean Uwinkindi was carrying a sword and a spear on this occasion.

56. When testifying before the ICTR on 9 September 2010,<sup>50</sup> Witness CDJ stated that a great number of Tutsi from Nyamata and nearby regions took refuge in the Kanzenze communal office in the town of Nyamata between 11 and 12 April 1994. Jean Uwinkindi arrived in Nyamata with Bizimana, Bapfakurera, who was a

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<sup>50</sup> See pp. 524-529 of the ICTR case-file.

shopkeeper in Nyamata, and CCX between 1200 and 1300 hours on 13 April 1994. They were all armed. Jean Uwinkindi called on the Hutu to join them in launching an attack against the Tutsi refugees who were in the Kanzenze communal office. The following authorities were in the communal office where the attack was launched: Colonel Munyarugarama, UCB, Bernard Gatanazi, Bizimana, CCX and Jean Uwinkindi. The attack which started at 1400 hours ended at 1600 hours. Jean Uwinkindi shot Gashumba to set an example for the Pentecostal Christians.

57. Moreover, when testifying before the National Public Prosecution Authority on 31 January 2012,<sup>51</sup> CDJ stated that Innocent Mukumira, Jean Uwinkindi, Karerangabo, CCX, Évariste Bapfakurera and Bernard Rwarakabije came to the town of Nyamata at 1330 hours on 13 January 1994. They gathered the Hutus who were there and asked them to go to the communal office. The presence of soldiers was also noted. When they arrived at the Kanzenze communal office, the attackers found other Hutu who had come from various neighbourhoods on the outskirts of the town. They also found other figures of authority there, in particular, Colonel Munyarugarama, the then military commander in Gako, UCB, Karerangabo, who had just been appointed assistant to the *bourgmestre* of Kanazi, Chief Warrant Officer Sebazungu, who represented the Nyamata *gendarmérie*, Froduard Bitibyishyamba, Gervais, who represented RDM Power in Nyamata, and Bernard Gatanazi.

58. CDJ stated that *bourgmestre* Gatanazi, speaking on behalf of the authorities, told the Hutu who were present to surround the communal office completely to prevent any refugees from fleeing. The Hutu, acting in concert with the policemen and

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<sup>51</sup> See pp. 274-285 of the Prosecution case-file.

soldiers, immediately surrounded the communal office. When the soldiers started shooting at the refugees, Jean Uwinkindi said he would set an example. He then shot Gashumba in the chest, killing him instantly. Many people were killed, and those who survived took refuge in the church of Nyamata, where they were killed on the following day. Jean Uwinkindi left the communal office around 1800 hours, when the killing was over. At the time, he was carrying a short-barrelled rifle with a wooden butt, but the witness does not know the make.

#### II.1.3.2. - Jean Uwinkindi's submissions and evidence

59. According to the Defence, Jean Uwinkindi did not play a role of any kind in the massacre committed in the Kanzenze communal office. The Defence further claims that it does not know the date on which these killings occurred. The Defence maintains that the Prosecution claims that the massacre was committed on or around 10 April 1994, and has not provided the minutes of the meeting to which it has referred. However, the Defence notes that Jean Uwinkindi has also been accused of launching an attack in Cyugaro on this date. It also states that Witness CDJ claimed that he attended a meeting held in the Kanzenze communal office between 1400 and 1800 hours on 10 April 1994 and that he knew Jean Uwinkindi, who had baptised him in the Pentecostal church, although he is Muslim, as his identity shows.

60. Isaïe Kayibanda stated that on that date [10 April 1994], Jean Uwinkindi launched an attack in the Cyugaro swamps that lasted from 1000 hours until the end of the day. As for CDF, he stated that Jean Uwinkindi launched an attack in Kayenzi, in Rwankeri, at 1200 hours, while CDD stated that on that date, Jean Uwinkindi

launched an attack in the bushes in Kayenzi. The Defence points out that it is difficult to understand how Jean Uwinkindi was in all these places at the same time. The Defence claims that the Prosecution's allegations are also contradicted by its own witnesses, in particular, Rusatsi, Mukumira and BZI, who claimed that Jean Uwinkindi did not participate in any attacks.

#### II.1.3.3 - Deliberations

61. The Chamber notes that all the Prosecution witnesses agree that Jean Uwinkindi took part in the attack in which the Tutsi in the Kanzenze communal office were killed. However, even though they all claim that the Accused took part in this attack, the Chamber notes the following contradictions in their testimonies:

- with regard to Jean Uwinkindi's acts during the attack, Isaïe Kayibanda stated that Jean Uwinkindi, acting in concert with Gervais Ngombwa, distributed weapons and offered soft and alcoholic drinks to the Interahamwe, who drank them on the premises. As for CDJ, he stated that Jean Uwinkindi shot Gashumba to set an example for the other killers.

- CDG claimed that during the attack, which allegedly triggered the killings, Jean Uwinkindi said that the Tutsi in Kayenzi could not be killed while there were others staying in the communal office. According to this witness, after this had been said, the Interahamwe immediately started killing the Tutsi who were in the communal office. Isaïe Kayibanda claimed that Jean Uwinkindi had said the following: “You said that cries of joy would be heard when

Habyarimana died, so cry for joy.” When Ndahiro retorted in these terms: “It's our turn today, it will be your turn tomorrow,” Jean Uwinkindi gave the order for him to be shot, which a communal policeman did immediately. When Consolata, the victim's wife, went to help her husband get up, a policeman called Ntambara immediately shot her. A policeman called Ndagijimana immediately shot Rukara, while Ntambara shot Uwamariya, the victim's wife, when she, too, tried to help her husband up.

62. The Chamber holds that the Prosecution has not shown, beyond all reasonable doubt, that Jean Uwinkindi was responsible for this massacre. How each witness was able to see or hear different things is incomprehensible, given that they were all in the same place at the same time. Thus, in accordance with Article 165 of Law no. 30/2013 of 24 May 2013 relating to the Code of Criminal Procedure, “[t]he benefit of doubt shall be given in favour of the Accused.” As a result, the Chamber notes that Uwinkindi cannot be held accountable for the massacre that was committed in the Kanzenze communal office on 12 April 1994; as the Supreme Court stated in its Decision, if an Accused is to be found guilty, beyond all reasonable doubt, the Chamber cannot rely on witnesses who provide different accounts of events that they claim to have witnessed at the same time.<sup>52</sup> This argument has been confirmed by legal expert Marie-Cécile Nagouas-Guerin according to whom a finding of guilt has to be based on facts which have been established beyond all reasonable doubt.<sup>53</sup>

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<sup>52</sup> See Judgement no. RPAA 0034/10/CS rendered on 8 November 2013, *The Prosecutor v. Nshimiyimana*. This Judgement can be found in the collection of courts' decisions, Vol. 1, Mutarama 2015, p. 139.

<sup>53</sup> When determining guilt, which marks the culmination of the search for truth, the probability of guilt must be sufficiently high to justify a conviction ... Marie Cécile Nagouas-Guerin, “Le Doute en matière pénale” */Doubt in Criminal Proceedings/*, Doctoral thesis in Law at the University of Montesquieu, 2002, Dalloz Editions, para. 19, p. 18.

II.1.4. - Massacre of the Tutsi in the Cyugaro swamps

63. According to the charges made by the Prosecution, in the morning of 10 April 1994, or around that date, Jean Uwinkindi assembled armed attackers who participated in the attacks and took them in a vehicle belonging to Bapfakurera and in another belonging to UCG to attack Tutsi civilians who were hiding among the papyri in the Cyugaro swamps. Jean Uwinkindi, CCX, Nizeye and BZJ participated in this attack in which a large number of Tutsi were killed, in particular, the wives of Mukenga and Semabumba and a person called Ruzindana. Jean Uwinkindi led this attack.

II.1.4.1. - Prosecution evidence

64. The Prosecutor relies on CDI's testimony to support its allegations. The information this witness provided in his testimony given on 27 October 2015<sup>54</sup> is consistent with that given in his testimony of 17 May 2000.<sup>55</sup> According to this testimony, when the attacks targeting the Tutsi commenced on 11 April 1994, they immediately took refuge in the Kayenzi swamps, but were subsequently attacked on a number of occasions. They remained in hiding among the papyri for one week before being attacked by the assailants, one of whom was Jean Uwinkindi. Semabumba's wife Athanasie and her children were killed in this attack. The witness saw Jean Uwinkindi walking behind the Interahamwe as they were leaving the scene. They abducted CDD's wife and another woman by the name of Mukarusanga. These two victims were taken to the church where they were killed.

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<sup>54</sup> See p. 1877 of the Court's case-file.

<sup>55</sup> See pp. 491-495 of the ICTR case-file.

65. When testifying before the National Public Prosecution Authority,<sup>56</sup> CDI stated that after they had been attacked on Kayenzi Hill, they immediately felt vulnerable and took refuge in Kingano. When the attackers arrived, they took refuge among the papyri. Once the attackers had left the scene, the refugees talked about what they had experienced. He stated that some persons claimed to have seen Pastor Jean Uwinkindi participating in the attack, and added that the Accused had abducted Marie Mukarusanga and Egidie, CCD's wife. However, he stated that he had not seen this event, but had heard about it. He also stated that he was not familiar with the circumstances in which the victims had been killed.

#### II.1.4.2. - Jean Uwinkindi's submissions and evidence

66. The Defence claims that Jean Uwinkindi neither looked for nor killed the Tutsi in the Cyugaro swamps. It maintains that the Prosecutor does not know the date on which the crimes with which the Accused has been charged were committed and points out that the wording “on or around 10 April 1994” is not clear. The Defence claims that Pastor Jean Uwinkindi remained with the people who had taken refuge in his church on 10 April 1994, as confirmed by some of the Prosecution witnesses, namely, BZI, Mukumira and Rusatsi. The Defence notes that Witness CDD acknowledged that his wife had been killed by CCX at the church and not in Cyugaro.

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<sup>56</sup> See p. 336 of the Prosecution case-file.

II.1.4.3. - Deliberations

67. The Chamber notes that although CDI testified to having seen Jean Uwinkindi participating in the attack in Cyugaro, in his testimony before the National Public Prosecution Authority, he admitted that he had not witnessed the events of which he had given an account, but that he had in fact heard about them. It is therefore not possible to rely on his testimony to determine Jean Uwinkindi's role in the attack launched in Cyugaro.

68. Therefore, in accordance with Article 3 of the Law relating to evidence and its production, "each party has the burden of proving its allegations". The Chamber notes that the Prosecutor has failed to adduce any evidence demonstrating beyond any reasonable doubt that Jean Uwinkindi committed the alleged murders in Cyugaro on 10 April 1994 or on any other date. The Chamber cannot therefore find that the Accused is responsible for the massacre allegedly committed in Cyugaro.

II.1.5. - Massacre of the Tutsi in the Kayenzi Pentecostal church

69. According to the Prosecutor, from 7 April until mid-May 1994, Jean Uwinkindi asked the Tutsi, most of whom were women and children, to take refuge in his church. Jean Uwinkindi, whose intention was to kill the Tutsi, made it clear to the Tutsi men that they should not take refuge in that church. He acted in this way so that the refugees - the women and the children - would not be able to defend themselves in the event of an attack. Throughout this entire period, Uwinkindi authorised some of the Interahamwe, including Semanyenzi, Rusatsi, Ngarukiye, BZJ, Mukumira,

Bizimungu, Bapfakurera, Karinganire and other unidentified persons to take up positions in the courtyard of the Kayenzi Pentecostal church and its surroundings.

70. The Prosecutor claims that from 7 April 1994 until mid-May 1994, the Interahamwe, including Semanyenzi, Ngarukiye, BZJ, Mukumira, UCC, Bapfakurera, Karinganire and other unidentified persons, took the Tutsi women and children out of the church on numerous occasions and killed them at a place called CND, near the Kayenzi Pentecostal church, and at other unidentified places near this church. On numerous occasions, Uwinkindi exercised control over the perpetrators of these crimes, giving them instructions and encouraging them. On other occasions, he failed to perform his duty by not taking any measures to protect the victims, although he had the means to do so.

71. Furthermore, the Prosecutor claims that on or around 14 April, Uwinkindi and BZI forced about 130 Tutsi civilians, who had taken refuge with Banguka and Bikorimana in Kanzenze commune, to go to the Kayenzi Pentecostal church. These refugees went there on foot. On Uwinkindi's orders, UCF, CCX and other assailants used firearms and machetes to kill the Tutsi civilians near the Kayenzi Pentecostal church. The following Tutsi civilians were among those killed in this attack: Mugorewera, Daphrose and Prisca Mukarwego. Jean Uwinkindi led the attack.

#### II.1.5.1 - The Prosecution Evidence

72. In support of his allegations, the Prosecutor relied on the testimony of BZI, BZJ, CDA CDI and CCX.

73. In his testimony before the ICTR given on 16 September 2010<sup>57</sup> BZI stated that on a date he did not remember clearly, but after the death of President Habyarimana, *bourgmestre* Gatanazi held a meeting in the parish of Kayenzi, in which pastor Jean Uwinkindi took part. He added that he attended the meeting himself as the head of a *cellule*, along with many others. In the words of BZI, *bourgmestre* Gatanazi reproached the participants at the meeting, asking why they had not begun to work yet. BZI explained that, on the same day, after the meeting, a “security committee” was established, headed by Uwinkindi. The latter had asked Witness BZI, in his capacity as the head of a *cellule*, to come with him to the Kanzenze communal office to request reinforcements from the communal authorities in order to ensure the security of the parish. The witness and the accused then went to the communal office, accompanied by Bapfakurera, Innocent Mukumira, Damascène Karinganire and Bernard Banguka. BZI stated that he thought their purpose was to ask for reinforcements to ensure the security of the population. The *bourgmestre* gave them two *gendarmes* and three communal police officers. The witness said that, after the planning and execution of the killings, around 100 people came as refugees to the Kayenzi parish, while others headed toward Ntarama and Cyugaro.

74. BZI also stated that in April – he does not remember the date – he witnessed an attack launched by assailants coming from Musenyi and commanded by UCF (who was armed with a rifle) against the Tutsi who had found refuge in the Kayenzi parish. During this attack, around 100 refugees were killed. He explained that from his home he could observe all that was going on in the parish, given that between these two places there were no woods or walls or any other obstacle that could obstruct the

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<sup>57</sup> See pp. 630-634 of the ICTR case-file.

view. He said that after this massacre, the bodies of the victims were buried in mass graves.

75. Furthermore, BZI stated that the killers settled in the compound of the church and its surroundings by permission of Pastor Jean Uwinkindi, who supported them. He said that the attackers, who took part in all the attacks launched in the sectors of Ntarama and Kanzenze, started from the Kayenzi parish and that Jean Uwinkindi knew perfectly well what they were going to do. At the end of the attacks, the attackers returned with the cows belonging to the Tutsi, which they then slaughtered and ate the meat.

76. BZI also stated that in April 1994, Jean Uwinkindi's group made death threats against him because he was trying to help the people that Banguka had detained as they were trying to flee. Banguka had locked all of them up in his home, intending to kill them. The witness said that he rescued Marie-Claire Uwamurera, Séraphine Mukamuganga, Marie and his son, as well as Claude Nshimirimana.

77. BZI also maintained that, on a date he does not recall well, a Tutsi named Haguma, who hailed from the Musenyi sector, found refuge in Kayenzi parish, in the house which was the official residence of Jean Uwinkindi. Upon learning of this, Uwinkindi called a communal policeman by the name of Ntambara, who was armed with a rifle, to force Haguma to leave the house. As Haguma had locked himself inside and refused to leave, the policeman opened fire. Seeing that he could be shot, Haguma tried to flee through one of the windows. In the meantime, a crowd of Hutu had gathered outside and they captured him and killed him as Jean Uwinkindi looked on, doing nothing to prevent them. The witness testified that he had never seen Jean Uwinkindi commit a murder. He said, however, that in his area, the attacks were directed and supervised by the accused. He added that Jean Uwinkindi brought the

militaries who joined in with and supported the Hutu in the attacks mounted at Ntarama.

78. During his appearance before the National Public Prosecution Authority on 25 January 2012,<sup>58</sup> BZI added to his account information regarding the murder of a young man called Emile, who was a native of Kanazi. This young man had come running to find shelter in the church. Unfortunately, the Interahamwe who were there killed him in the church yard. Regarding the persons detained by Bernard Banguka in the house of Bikerimana, the witness said that the victims were killed by the *gendarmes* that Jean Uwinkindi had mobilised from the Kanzenze communal office. Among the persons killed on this occasion, the witness recognised four children who had come to the church from Paul Kamanzi's house. Two of them were Paul Kamanzi's children, while the other two were the children of his elder brother [Paul Kamanzi]. Among the victims, the witness also recognised many other people, including the brother-in-law of pastor Rurangirwa, whose name he didn't know. He remembered that Jean Uwinkindi ordered the populace to collect contributions for the needs of the *gendarmes* and the policemen. As a result, goods and money, including fresh bananas and chickens, were handed over at Mukumira.

79. In his testimony of 4 March 2015,<sup>59</sup> BZI said that UCF killed three other women, namely, Kamanzi's wife Mukarwego, who was an evangelist, as well as Daphrose Mukawera. He stated that these victims had come out of the house of Jean Uwinkindi where they had found refuge and that the accused had organised their burial. Also, according to BZI, other women were killed by CCX in the presence of

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<sup>58</sup> See pp. 298-312 of the Prosecution's case file.

<sup>59</sup> See p. 1613 of the Court's case-file.

Jean Uwinkindi. He explained that the assailants had killed these women after the call for help made by Jean Uwinkindi, who was the only person in charge of the church.

80. In his testimony on 15 September 2010,<sup>60</sup> BZJ stated that, between 1300 and 1400 hours on 7 April 1994, he and other persons took part in a meeting where they had been invited by Jean Uwinkindi. This meeting was chaired by the *bourgmestre* of the Kanzenze commune who, on this occasion, incited and encouraged the Hutu to kill the Tutsi. Jean Uwinkindi was present at the meeting but did not speak. After the meeting, the assailants led by Banguka killed a taxi driver called Emile around 1600 hours. These attackers had been at the meeting. That same evening, Déo Ntanganzwa and Bosco Munyanziza killed another Tutsi called Paul Kamanzi. A “security committee” was also established and Jean Uwinkindi was named its president.

81. BZJ further stated that the first Tutsi refugees arrived at the church on 7 April 1994. In the same period, Hutu also went there, but with the purpose of setting up a camp of killers from which attackers set out to launch attacks in the sectors of Cyugaro and Ntarama, as well as in localities near the camp. The witness explained that Pastor Jean Uwinkindi had given the killers permission to settle in this area and availed himself of their presence to use them in the attacks. The witness also added that he had witnessed, from the beginning to the end, the attack on the Kayenzi church that morning, between 0900 and 1000 hours. He described that the attackers had come from Musenyi and were led by UCF. He added that, at that moment, he had been sitting at the roadblock at Rwankeri. He claimed that more than 100 women were

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<sup>60</sup> See pp. 650-652 of the ICTR case-file.

killed in the attack in the presence of Jean Uwinkindi, who did nothing to stop the assailants from killing the Tutsi sheltering in his church.

82. BZJ further stated that Jean Uwinkindi should be held responsible for the murder of one Tutsi named Haguma, who had sought refuge in his [the accused's] official residence, at the church. When Jean Uwinkindi learned that Haguma was in his home, he asked him to leave but the latter refused and bolted the doors and windows from the inside. Jean Uwinkindi then called in a communal policeman by the name of Ntambara to bring Haguma out by force. When he came to the house, the policeman fired three rounds into the house, Haguma immediately came out and was killed by a crowd of Hutu who had gathered there. BZJ provided the same information in his interview with police investigators on 2 January 2012.<sup>61</sup>

83. In his testimony of 3 March 2015<sup>62</sup> and 15 October 2015,<sup>63</sup> BZJ said that he was a member of the security committee headed by Jean Uwinkindi. He explained that the members of this committee met every evening in the house of "Compassion" at Kayenzi in which Jean Uwinkindi's office was located. The witness stated that, at one of the meetings, Jean Uwinkindi raised an issue related to the fact that there were not enough forces, to which the other members replied that there were not enough means. Jean Uwinkindi then decided to invite the army to intervene.

84. BZJ said that the entire population of Kayenzi (Hutu and Tutsi alike) sought refuge in the church in the belief that they would be safe there. In the beginning, these refugees did not experience any problems, but later, Jean Uwinkindi proceeded to sort

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<sup>61</sup> See pp. 313-326 of the Prosecution's case-file.

<sup>62</sup> See pp. 1602-1609 of the Court's case-file.

<sup>63</sup> See pp. 1834 of the Court's case-file.

the refugees, separating the women and saying that one cannot win a war in which a woman is killed. He then asked the attackers to spare these women and to go commit their killings elsewhere. Nevertheless, the Tutsi who were in the church were later killed and those who managed to escape were killed in other places.

85. BZJ stated that, upon learning of the murder of Paul Kamanzi, the Tutsi became furious and headed for the church. When Jean Uwinkindi saw them coming, he grabbed a stick with which he started to goad people into launching an attack. He accompanied these attackers to the place where Bandora had been killed. BZJ specified that Jean Uwinkindi did not participate in other attacks, but instead gave instructions to the attackers at the church and accompanied them to the limits of the church grounds before returning inside.

86. BZJ further stated that Jean Uwinkindi was supplying the killers inside the church with basic necessities. According to BZJ, the accused issued orders to kill the cows rounded up during the looting, saying that only those who actually took part in the attacks had the right to eat the meat. Jean Uwinkindi also ordered the people to supply contributions to encourage the *gendarmes* to continue supporting the attackers in their killing of the Tutsi.

87. In his testimony on 11 April 2002,<sup>64</sup> witness CDA stated that he had sought refuge in the Kayenzi church because a merchant named Bapfakurera had encouraged people to do so. He explained that this merchant had sent out messengers to tell people that the Hutu had to move to the church so that they could not hide any Tutsi

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<sup>64</sup> See pp. 510-511 of the ICTR case-file.

and that anyone who refused to go would be considered as a Tutsi accomplice. When CDA arrived at the church, he found Jean Uwinkindi there, armed with a spear, a bow and arrows. The following day, Jean Uwinkindi and Bapfakurera gave them the order to go and attend a meeting led by *bourgmestre* Gatanazi. This meeting took place very close to the road that leads to Kigali. During the meeting, the *bourgmestre* gave two men the order to go and kill the Tutsi assembled at Ntarama. He warned them that if they did not kill those Tutsi, the Tutsi were going to kill them. CDA said that, in the two weeks he spent in that church, he saw Jean Uwinkindi and Bapfakurera on numerous occasions giving people orders to look for Tutsi who were hiding in the woods. He explained that in the church, these two men had the power of life or death over people.

88. CDA further testified that he saw Jean Uwinkindi and Bapfakurera holding meetings with the members of what was called “Power”. He explains that he was not entitled to take part in these meetings because they were often held by night, in one of the offices inside the “Compassion” compound, adjacent to the Jean Uwinkindi’s house. At the end of these meetings, the members of this gang called “Power” went to select some persons from among the refugees, took them to a place called “CND” and killed them. CDA said that he witnessed these killings because he and others from his group of refugees followed the members of this gang and were always present when the latter committed these murders. Of the persons killed in his presence, he remembers Christine Mugorewera and Daphrose, who was a native of Gitarama. He added, however, that he had never seen Jean Uwinkindi commit a murder.

89. When he testified before the National Public Prosecution Authority on 2 February 2012,<sup>65</sup> CDA said that over 150 persons had sought refuge at the church in the belief that the situation would be the same as in 1992. Nonetheless, when they arrived, the refugees were sorted with the Hutu being separated from and Tutsi, and the latter were taken to Kigarama, next to the house of Jean Uwinkindi. A group was organised to guard them, bring them water and prepare their food. The witness said that Jean Uwinkindi would say to the people that a person who seeks refuge at your place is not an enemy. To those who wanted to kill the women and the children, he said that they should go and launch their attacks somewhere else, explaining that one cannot win a war if in that war one kills a woman. CDA said that one could see that the Hutu who were there had no problem with the Tutsi whatsoever because Jean Uwinkindi had forbidden them to do them harm. The witness added that the meeting at which it was decided to kill these people may have been held at the office of Jean Uwinkindi during the night and that it was a meeting between the *gendarmes*, the military, members of the communal police force, as well as Jean Uwinkindi's assistants - Mukumira, Azera, Karinganire and Banguka. He stated that these meetings were held daily, from 2100 to 2300 hours and that only a few persons were authorised to attend. The communal policemen and the military arrived at these meetings in a vehicle of the Kazenze commune or one belonging to Bapfakurera.

90. CDA also testified that the communal policemen, including Ntambara, who was at the church, said that they were there to provide security. He added that the order to separate the Tutsi from the Hutu had been given by Jean Uwinkindi, Mukumira, Azera, Karinganire and Banguka. Before that, some people were killed in

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<sup>65</sup> See pp. 232a-247a of the Prosecution's case-file.

Banguka's house. Among the victims, the witness recognised Mupfasoni, Ruterana's daughter, and two of Paul Kamanzi's sons.

91. CDA added that, every morning after counting the people in the church, he often heard Jean Uwinkindi tell people to go out and kill the Tutsi instead of just looting their property. He explained to them that they could not enjoy these goods as long as the Tutsi were still alive. He then divided the attackers into two groups, one of which was deployed in the locality from the Sayinzoga place to Kayumba, and the other to Nyiramatuntu. On their return, these attackers would find their meals ready and would leave the looted goods either in Jean Uwinkindi's office or in the house of "Compassion". Rusatsi was responsible for killing the cows and preparing the food for the attackers who were involved. As for Witness CDA, he was part of the group tasked with transporting firewood needed to cook food for the killers.

92. CDA said that some people were killed at the church, on the grounds overlooking the church and just outside it, in a place called "CND", which is where Banguka and Yuka killed Spéciose Kantarama and her three children, as well as Rutabagisha. He says the latter was killed by Banguka alone. When the attackers discovered Haguma hidden in Jean Uwinkindi's house, the victim tried to run away, but these attackers pursued him and killed him in Rwanza. The witness recalled that Thérèse Uzanyinzoga was killed by CCX, who shot her outside the church. This victim did not immediately succumb to the gunshot wound and Jean Uwinkindi said to the attackers not to finish her off there, but that she should be killed farther away from the church. The attackers then took her in a wheelbarrow to Kigarama, outside

the home of Mukumira, and killed her there. They also killed two other women who were natives of Kayumba, and the wife of CDD.

93. Furthermore, according to CDA, the attackers did not commit any crimes without first consulting Jean Uwinkindi and Bapfakurera. He claimed that certain persons were spared after Jean Uwinkindi interceded. Among such persons, the witness cited the spouse of Pastor Rurangirwa and three daughters of Gaturusu, namely Uwera, CDL and Elina.

94. When he appeared before the ICTR on 20 April 2000,<sup>66</sup> Witness CCX said that he was in Kayenzi in early May 1994, where he had gone to look for his nieces, who were inside the church. He first went to see Jean Uwinkindi to ask his permission to enter the church. Before giving him permission, Jean Uwinkindi warned him to be careful because, as he said, there could be spies among the refugees. Once inside the church, CCX asked the people there to show him their identity cards. He took outside three women who did not have an ID to a place between the pastor's house and the church and killed them. The witness subsequently learned that one of these women had been Ngirente's wife. Meanwhile, an ex-FAR soldier who was there stopped him, confiscated his rifle and asked him why he had killed those women. In reply, CCX asked the man why other people had been killed. The soldier held him until Jean Uwinkindi emerged from his house and ordered the army man to release CCX. Jean Uwinkindi explained to the soldier that CCX was only obeying his orders because he [the accused] was in charge of the Kayenzi church. CCX repeated exactly the same

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<sup>66</sup> See pp. 726-730 of the ICTR case-file.

thing in his testimony before the National Public Prosecution Authority on 19 April 2012<sup>67</sup> and in his statement of 10 March 2015.<sup>68</sup>

#### II.1.5.2 - Jean Uwinkindi's submissions and evidence

95. The Defence submits that Jean Uwinkindi was not involved in the massacre of Tutsi at the Kayenzi Pentecostal church from 7 April to the month of May 1994. It maintains that the period “from 7 April to the month of May 1994” is vague because the Prosecutor does not specify the dates. The Defence submits there was not a single refugee at the Kayenzi Pentecostal church on 7 April 1994 and that the first refugees arrived on 8 April, so that the Interahamwe could not have come to take these refugees away from the church since they were not yet there. The Defence further maintains that the Prosecutor did not name a single household that Pastor Jean Uwinkindi visited to ask the women and children to go and seek refuge at the ADEPR Kayenzi church.

96. The Defence submits that the Prosecutor contradicts himself in his allegations against Jean Uwinkindi when, on the one hand, he accuses him of committing a genocide against the Tutsi and, on the other, of asking Tutsi men not to come to the church, all the while alleging that Jean Uwinkindi put up in that church the Interahamwe, whose mission was to kill Tutsi. It also maintains that Jean Uwinkindi did not give the Interahamwe permission to take up position in the church, that the eight persons cited by the Prosecutor - Semanyenzi, Rusatsi, BZJ, Mukumira, Bizimungu, Bapfakurera, Karinganire and Ngarukiye – lived either in their own

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<sup>67</sup> See pp. 392-405 of the Prosecution's case-file.

<sup>68</sup> See pp. 1651-1652 of the Court's case-file.

homes or with family or friends. Moreover, the Defence submits that the Prosecutor failed to produce a single piece of information on the identity or the names of the women and children who had allegedly been abducted from the church, taken to a place called “CND” and allegedly killed. Consequently, the Defence submits that Jean Uwinkindi has no case to answer with respect to these allegations because he has not been sufficiently informed of the factual background of the charges levelled against him.

97. The Defence also claims that the Prosecutor did not present any minutes of the meeting at which the security committee was supposedly established. It maintains that the accused could not have been appointed head of the security committee as he was a pastor. In support of its argument, the Defence relies on Articles 100, 104, 105, 108 and 109 of the Law of 23 November 1963 on the organisation and functioning of communes. It submits that these articles provide that matters relating to security at the level of a commune come under the remit of the *bourgmestre* and his assistants.

98. Further, the Defence submits that the Prosecutor has failed to show how a pastor could have given instructions to persons who were not under his authority. It adds that these instructions are mentioned nowhere in the case-file. According to the Defence, the Prosecutor has failed to demonstrate how Jean Uwinkindi could have encouraged people who were not under his authority to do anything. It explains that arresting wrongdoers and protecting victims were not the job of Pastor Jean Uwinkindi, that these were the responsibilities of the organs of public security, such as the police and the *gendarmes*. The Defence further argues that the accused is one of the people against whom crimes were committed. It maintains that the only power

that Jean Uwinkindi had was to ask security organs to intervene, which power he did use since he called upon the communal authorities to help but, unfortunately, they did not intervene.

99. The Defence rejects the allegations of the Prosecution witnesses for the following reasons:

- As regards Witness BZI, the Defence submits that, in his statement, this witness affirmed clearly that he did not know of anyone who was killed by the accused. He explained that Jean Uwinkindi was a member of his community (the witness was the head of a *cellule*) and that he lived quite close to the church overseen by the accused. Concerning the death of Paul Kamanzi, the Defence refers to the words of BZI in his statement, where he says that the victim was killed by soldiers and the Interahamwe in the evening. After killing Paul Kamanzi, these soldiers killed their cows and ate the meat, which made the people go and seek refuge in the church. The witness added that some time afterwards, assailants coming from Musenyi arrived at the scene and killed everyone there, including the people inside the church. Mukarwego, Daphrose, as well as Paul Kamanzi's wife were among those killed in this attack. The Defence stresses that this witness does not say that Jean Uwinkindi ever committed a murder.
  
- As for the testimony of BZJ, the Defence observes that he said that persons were killed before the eyes of the accused who did nothing to save them. He adds that the accused gave instructions to the killers and accompanied them to

the entrance to the church. The Defence emphasises, however, that this witness said in his statement that Jean Uwinkindi never killed anyone. The allegation that the accused failed to intervene when massacres were being committed before his very eyes was also made by Witness CCZ in his testimony before the National Public Prosecution Authority. At this hearing, CCZ said that he had seen Jean Uwinkindi participate in two attacks, armed with a rifle, which he did not use, however, to commit a murder. Isaïe Kayibanda and CDL corroborate this claim in their testimonies on pages 429 to 439 of the case-file. On the question of whether they knew of persons that Jean Uwinkindi had allegedly killed, BZJ answered that, when he came to the church, the refugees had already been killed and he was unable to find out who had committed those massacres.

- Regarding Witness CDA, the Defence remarks that he had stated that many people had been killed at the church. He stated that, in one single day, assailants coming from Musenyi and led by UCF and CCX killed more than 150 people. The witness also stated that Hutu were separated from Tutsi, that the latter were taken to Kigarama, next door to Jean Uwinkindi's house, and that the accused designated a group of people who were to bring them water and prepare food for them. The witness added that the accused used to say that someone who came to seek refuge with you is not your enemy. He said that Jean Uwinkindi used to say to the attackers to go and launch attacks somewhere else. The Defence stresses that the evidence of this Prosecution witness clearly shows that Jean Uwinkindi did not participate in the attacks,

did not kill anyone, and that, quite the contrary, he treated well the people who had sought shelter at his place.

100. Concerning the events at the Kayenzi Pentecostal church of between 7 April and May 1994, the Defence witnesses testified as follows:

- At the hearing of 28 October 2015,<sup>69</sup> Witness UCB stated that he had known Jean Uwinkindi before the events in question, but did not see him often. He says that he met him once at a meeting of the communal development council. He added that, even if the accused did not have the power to request a military intervention, he was able to ask the *bourgmestre* to assign a communal policeman to act as his personal security guard.
  
- In his statement of 28 October 2015,<sup>70</sup> Witness UCD admitted that crimes had been committed at the Kayenzi Pentecostal church between 11 and 14 April 1994. Still, he said that he never saw Jean Uwinkindi take part in meetings or commit a murder. He explained that he had taken shelter in the church like other people, and added that in his time at the church, he did not live in the makeshift shelter called “*Blindé*” as other refugees. Instead, he occupied one of the houses that probably used to serve as classrooms and were called “*Yuda*”. He admitted to having killed Tutsi at the church and added that he had been among the assailants who had killed Haguma after a communal policeman by the name of Ntambara had fired shots into the house where the victim was hiding. Haguma then ran out of the house, armed with a bow and

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<sup>69</sup> See p. 1910 of the Court’s case-file.

<sup>70</sup> See pp. 1922-1928 of the Court’s case-file.

arrows. CDA also admitted to having killed Michel and added that he participated with other assailants in the attacks alongside the soldiers, and that the church was their point of departure.

- In his statement of 28 October 2015,<sup>71</sup> Witness UCE said that he resided very close to the church and that he saw UCD kill a person at that church. He also claimed to have witnessed the attack in which the assailants killed the people at the church. He specified that the assailants had come from Musenyi and that he had seen them because they passed right by his house. He added that he has never seen Jean Uwinkindi take part in any attacks.
- Witness UCF stated that he was a reservist since he had been demobilised from the army in 1986. In his testimony of 28 October 2015,<sup>72</sup> he stated that, in the morning of 10 April 1994, he and other assailants left Musenyi to launch an attack against Cyugaro. On route, they passed by the church where they found Jean Uwinkindi asking people to take away the bodies of three people who had been killed. Some of the assailants in his group helped the accused take these corpses away, while others continued on their way.

### II.1.5.3 - Deliberations

101. The Chamber finds that the Prosecution witnesses BZI, BZJ and CDA maintained that, on 7 and 8 April 1994, Hutu and Tutsi had taken refuge at the church. Bapfakurera, who was part of Jean Uwinkindi's gang, forced the Hutu to go to that

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<sup>71</sup> See pp. 1929-1933 of the Court's case-file.

<sup>72</sup> See pp. 1934-1938 of the Court's case-file.

church so that they could not hide Tutsi in their homes. Later, these Hutu were used to commit killings at the church and in the attacks mounted in the surrounding area. As regards the Tutsi refugees, the Chamber notes that they took shelter in the church in the hope of escaping the killings, as had been the case in 1992. The stories of these witnesses are corroborated by the testimony of Defence Witness UCD. The Chamber finds these testimonies to be truthful and reliable because the same has been confirmed by Prosecution and Defence witnesses alike. The Chamber also finds that their testimonies on these events are coherent and clear.

102. The Chamber notes that Jean Uwinkindi admitted that people had come to him to seek refuge, but denied the existence of a camp of killers at that church. He explained that the killings at the church were committed by assailants who had come from other localities and that he had no means of stopping them. Nevertheless, he has not produced any evidence to counter the testimonies of the abovementioned persons who had found refuge at the church, or the testimonies of the co-perpetrators of the massacres. Therefore, pursuant to Article 3 of the law relating to evidence and its production, which stipulates that each party bears the burden of proving its own allegations, the Chamber finds that the defence arguments of Jean Uwinkindi have not been substantiated.

103. Regarding what is called the “security committee”, the Chamber finds that the evidence given by BZI, BZJ and CDA is reliable and coherent. In fact, these witnesses provide clear information on the establishment of this committee and state that it was created following a meeting convened by *bourgmestre* Gatanazi. They say that this committee was headed by Jean Uwinkindi who was assisted, among others,

by Bapfakurera, BZJ, Mukumira, Banguka and Rusatsi. They added that the members of this committee met every night and that it was at these meetings that decisions were taken to kill the Tutsi at the church or in the attacks launched in the surrounding area. For all these reasons, the Chamber finds these testimonies to be reliable.

104. The Chamber notes that the Defence cannot take advantage of the fact that the Prosecutor did not produce any record of the meeting of the security committee. The fact is that a record of such a meeting is not the only proof of the existence of the said security committee. The Chamber recalls that, in criminal cases, evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present adversary arguments.<sup>73</sup>

105. As regards the allegations that decision-making on the lives of persons who were at the church, whether Hutu or Tutsi, rested with Jean Uwinkindi, and that the accused had the power of life or death over people, as well as the power to decide how and where the persons killed would be buried, the Chamber notes that witnesses CDA, BZJ, CCX and Uwera Clarisse provided the following information:

- During the early days, Jean Uwinkindi gave the order to provide security to the Tutsi who were in the church and who numbered between 100 and 150, to provide them with food, to bring them water and not to kill them. These orders were followed until the moment when he gave the order to kill those Tutsi.

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<sup>73</sup> Article 119 of Law no. 2 15/2004 of 12 June 2004 relating to evidence and its production.

- Jean Uwinkindi ordered the eviction and killing of Haguma who had found shelter in his [the accused's] house. This order was followed.
  
- Jean Uwinkindi authorised CCX, who was armed with a rifle, to enter the church where the Tutsi who were being sought were housed. CCX made three women get out, including Uzanyinzoga, whom he killed right outside the church. The other two women were taken to Kigarama, where they were killed on the orders of Jean Uwinkindi.
  
- A soldier stopped CCX to ask him why he had killed those three women, but Jean Uwinkindi prevented this army man from punishing CCX and the army man obeyed his order.
  
- Jean Uwinkindi gave instructions relating to the preparation of food for the assailants who were carrying out the attacks. Specifically, he gave the order to slaughter the cows of the Tutsi that the assailants had brought back from their looting sprees and said that only those who had taken part in the attacks had the right to eat that meat.

106. The Chamber finds the above testimonies to be truthful and coherent regarding the power that Jean Uwinkindi wielded over the lives of the persons who were in the church, whether Tutsi or Hutu. The Chamber also finds that these testimonies establish beyond all doubt that the events described by the witnesses did in effect take place. Therefore, Jean Uwinkindi is not right when he says that, as a pastor, he had no authority to give any instructions to kill or to spare anyone. In fact, it follows from the

testimonies of BZI, BZJ, CDA, UCD and CCX that, in April and May 1994, the accused did wield such power. The Chamber notes that Jean Uwinkindi limits himself to denying these allegations without, however, producing any evidence to refute them.

107. The Chamber notes that, concerning the power that Jean Uwinkindi had over the public organs in charge of security (the army, the *gendarmerie* and the communal police), witnesses BZI, BZJ, CDA, CCX and UCD maintain as follows:

- The soldiers, the *gendarmes* and the communal policemen frequently participated in the meetings of the security committee. These meetings were held by night and were led by Jean Uwinkindi.
- During the attacks launched against the Tutsi around the church, Jean Uwinkindi designated the different places where these security organs were to go and assist the assailants.
- In order to force a Tutsi named Haguma, who was hiding in the house of the accused, to come out, Jean Uwinkindi ordered a communal policeman called Ntambara to fire shots into the house, and the policeman obeyed.
- After CCX had killed certain Tutsi who were inside the church, Jean Uwinkindi prevented a military man from punishing CCX and the military man obeyed his order.

108. Jean Uwinkindi submits that he had no authority whatsoever to issue orders to public security organs. The Chamber notes, nevertheless, that the aforesaid testimonies establish beyond all reasonable doubt that, in April and May 1994, he did act as the chief of security forces (soldiers, *gendarmes* and the communal police). In fact, as the aforesaid testimonies show, he gave instructions to these forces and they followed them. The Chamber notes that Jean Uwinkindi only claims that it was impossible for him to commit the acts of which he is accused, but he does not provide a single piece of evidence capable of refuting these testimonies. For all these reasons, the Chamber finds these testimonies to be reliable.

109. After examining all the evidence on the acts that the Prosecutor charges Jean Uwinkindi with having committed in different places between 7 April and May 1994, the Chamber notes that it has been established beyond any reasonable doubt that the accused has perpetrated the following acts:

- Belonging to a gang which forced Hutu to take refuge at the church under his leadership with the intention of preventing them from hiding Tutsi, and using these Hutu later in the massacres committed at the church and in other localities.
- Participating in a meeting chaired by *bourgmestre* Gatanazi in which Hutu were incited to kill Tutsi. Also, Jean Uwinkindi implemented the instructions given at this meeting by establishing a “security committee” that he himself led. It was decided at the meetings of this security committee to put up roadblocks at which Tutsi were killed. Moreover, these meetings also planned

the massacres that were committed during the attacks launched at the church and elsewhere.

- Inciting Hutu to kill, giving them assistance by providing accommodation and food, asking the public security organs to intervene on their behalf by lending assistance to the assailants in the perpetration of killings, and asking members of the population to make contributions to boost the morale of the *gendarmes* who were no longer motivated.
  
- Having the power to decide who should be killed and who should be spared, the power to prevent the attackers from being held responsible for their acts, as well as the power to decide how and where the persons who were killed would be buried.
  
- Participating in the attacks and leading them.

**II.2. - Whether the acts with which Jean Uwinkindi is charged constitute a crime of genocide and extermination as a crime against humanity, and determining his criminal liability**

II.2.1. - On the crime of genocide

II.2.1.1. - The Submissions of the Prosecutor

110. The Prosecutor relies on paragraph 1 of Article 114 of Organic Law No.01/2012/OL of 2 May 2012 instituting the Penal Code to charge Jean Uwinkindi with the crime of genocide, also provided for under Articles 1 and 3 (c) of the international Convention on the Prevention and Punishment of the Crime of

Genocide,<sup>74</sup> on the ground that between 6 April and mid-May 1994, Jean Uwinkindi, as offender or co-perpetrator, took part in the massacre of Tutsi with the intent of committing genocide in the former commune of Kanzenze, Kigali–Rural prefecture, in the Republic of Rwanda.

111. With respect to the elements of the crime of genocide, the Prosecutor argues that the aforementioned acts establish the existence of the intent to commit the crime of genocide. He submits that, as has been noted in several cases tried before the ICTR, the intent to commit genocide is characterised by the perpetration of massacres when they are committed for the purpose of destroying, in whole or in part, a national, ethnic, racial or religious group as such, as provided for under the international Convention on the Prevention and Punishment of the Crime of Genocide.<sup>75</sup>

112. In the present case, the Prosecutor argues that Jean Uwinkindi had the intent to commit genocide and that he shared it with many other people. The Prosecutor quotes, as an example, the statements of Witness CDF who said that when he had been with many other people who had taken refuge on Rwankeri hill, he saw Uwinkindi and Witness BZI arrive in the company of soldiers from the Presidential Guard and open fire at a hundred or so people who were on this hill. The shooting of civilians who had escaped the massacres attests to specific intent and to the existence of an extermination plan aimed at destroying, in whole or in part, an ethnic group (the Tutsi), as described under Article 114 of the Organic Law instituting the Penal Code.

113. The elements of the crime of genocide are characterised by the acts provided for under Article 114 of the Organic Law instituting the Rwandan Penal Code, more

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<sup>74</sup> Resolution 260 (iii) of the General Assembly of 9 December 1948, ratified by Rwanda in Decree-Law no. 08/75 of 12 February 1975, published in the *Official Gazette* (1975), p. 230.

<sup>75</sup> *The Prosecutor v. Jean-Paul Akayesu*, Case no. ICTR-96-4-T, Trial Chamber I, Judgement, 2 October 1998, wherein the Trial Chamber stated that genocidal intent can be inferred from a certain number of physical acts, particularly “their massive and/or systematic nature or their atrocity”. It found that, “in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact”. The Trial Chamber considered that “it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, in their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.” The Trial Chamber considered that “it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others.”

specifically its first paragraph which provides for the “killing [of the] members of the group”. These elements are also described under Article 2 of the international Convention for the Prevention and Punishment of the Crime of Genocide,<sup>76</sup> which also provides for these acts, including “killing members of the group”. This definition is also contained in Article 2 of the ICTR Statute, which sets out that a person can be prosecuted for genocide when he commits acts such as the killing of members of a specific group. The Prosecutor adds that in the present case, the witnesses irrefutably demonstrated Jean Uwinkindi’s responsibility in the massacres of the Tutsi perpetrated in the former commune of Kanzenze, more specifically in the Kayenzi parish where the accused was the head of the Pentecostal church.

#### II.2.1.2. - The Submissions of Jean Uwinkindi

114. The Defence argues that the acts constituting the crime of genocide have not been established. It submits that Jean Uwinkindi never planned the genocide, that he never had the intent to commit this crime and, furthermore, that the Prosecutor failed to present any tangible evidence to that effect.

115. Attorney Ngabonziza submits that the Prosecutor’s claim that Uwinkindi must have killed Tutsi because he is being prosecuted for the crime of genocide is unfounded. He submits that the Prosecutor should have identified the persons that Jean Uwinkindi allegedly killed and provide irrefutable proof of this, particularly because no victims have been mentioned. Attorney Ngabonziza states that all of the persons listed, from the child named Emile, who was allegedly the first victim, to the many victims of the attack conducted by CXX, no Prosecution witness claimed that any of these persons had been killed by Jean Uwinkindi. As for the Prosecution evidence described as irrefutable by the Prosecutor, Attorney Ngabonziza argues that it is contradictory and discredits the Prosecution’s argument, as noted by the Defence in its written submission on the witnesses who testified before the Chamber.

#### II.2.1.3. - Deliberations

116. Article 114 of Organic Law no.01/2012/0L of 2 May 2012 instituting the Penal Code defines the crime of genocide as constituting “any of the following acts

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<sup>76</sup> Adopted by the United Nations General Assembly in resolution 260 (III) of 9 December 1948, ratified by the Republic of Rwanda in 1975.

committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, whether in time of peace or in time of war:

- 1) Killing members of the group;
- 2) Causing serious bodily or mental harm to members of the group;
- 3) Deliberately inflicting on the group harm calculated to bring about physical destruction in whole or in part;
- 4) Taking measures intended to prevent births within the group;
- 5) Forcibly transferring children of the group to another group.”

117. The Chamber notes that Jean Uwinkindi is being prosecuted for having committed planned genocide in time of war by killing Tutsi with the intent of exterminating all of them because of their ethnic affiliation.

118. The Chamber considers that in the present case, the acts constituting the crime of genocide with which Jean Uwinkindi has been charged, and which have been established, are as follows:

- Being a member of a group that forced the Hutu to seek refuge in the church he headed in order to prevent them from providing refuge to the Tutsi, and subsequently using them in the massacres committed in the church and at various other locations;
- Participating in a meeting organised by *bourgmestre* Gatanazi to incite the Hutu to kill Tutsi, and putting into operation the instructions given at this meeting by creating a “security committee” that he headed. This was the same committee that organised meetings which led to the erection of road blocks where Tutsi were killed. At its meetings, this committee also made preparations for the massacres committed at the church and the attacks carried out at various locations;
- Inciting the Hutu to commit massacres, assisting them by providing accommodation and food, offering them assistance of the state security organs who would lend them a hand during the massacres, and encouraging those

*gendarmes* whose morale was low by collecting financial contributions for them from the population;

- Having the power to decide who should be killed and who should be spared, the power to protect killers from any prosecution, and the power to decide how and where those people who were killed should be buried.

119. The Chamber finds that these acts, planned and committed in time of war with the aim of massacring the Tutsi who were staying at the Kayenzi Pentecostal church and in the surrounding area because of their ethnic affiliation, constitute the *actus reus* of the crime of genocide.

120. The Chamber deems that, with respect to the crime of genocide, the intent to destroy a specific group (*mens rea*) must be proven, as described under the aforementioned Article 114.

121. The Chamber notes that in various cases tried before international courts,<sup>77</sup> it was established that in the absence of a confession from the accused, it is difficult to determine whether he had the intent to commit the crime of extermination, but that this intent can be inferred from the scale of the atrocities committed, the victims of these atrocities, the circumstances and the period when they were committed, the planned nature of these atrocities, etc...

122. In the case at hand, the Chamber deems that the intent to commit genocide can be inferred from the following facts:

- The fact that Jean Uwinkindi was part of a group that forced the Hutu to seek refuge in a church he headed in order to prevent them from providing refuge to the Tutsi, and subsequently using them in the massacres committed in the church and at various other locations.

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<sup>77</sup> “On the issue of determining the offender’s specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact...” For example: – “the scale of atrocities committed; – “the general nature” of the atrocities committed “in a region or a country”; the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups; “the repetition of destructive and discriminatory acts”, *The Prosecutor v. Akayesu*, ICTR-96-4-T, 2 September 1998, paras 523 and 524; see also *The Prosecutor v. Musema*, ICTR-96-13-T, 16 November 2011, para. 166, and *The Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T.

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- The fact that he lured the Tutsi by making them believe that those who had taken refuge with him were not the enemy, and welcoming them initially and ordering that they be fed and given water with the aim of tricking them and gathering as many of them as possible before massacring them.
- The fact that he refused to provide refuge to men and only accepted women and children with the aim of preventing them from having protection at the moment of the attacks.<sup>78</sup>
- The fact that he sorted the refugees at the parish, separating the Hutu from the Tutsi.
- The fact that he chaired meetings to prepare the carrying out of the attacks against the Tutsi.
- The fact that he intervened in favour of the killers to request support from the state security organs.
- The fact that he collected financial contributions for the *gendarmes* who appeared demoralised so that they would continue to assist the assailants in massacring the Tutsi.
- The fact that he made food available to the killers for the entire period of the massacres and the fact that those who participated in the attacks were the only ones who had the right to eat beef, prepared by the group of cooks designated by Jean Uwinkindi.
- The fact that he objected to one of the killers being punished for the murder he had just committed.

123. The Chamber finds that the aforementioned facts establish that Jean Uwinkindi had the specific intent to destroy, in part, the group of Tutsi who were at the Kayenzi Pentecostal church and in the surrounding area because of their ethnicity, and used as a pretext the war that began in October 1990. This intent is inferred from the succession of events, including the fact that before beginning to take in the refugees, Jean Uwinkindi informed the worshipers of his church that the church

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<sup>78</sup> See statement of Witness CCW at the ICTR, p. 545 of ICTR case-file.

would no longer hold religious services. This shows, therefore, that Jean Uwinkindi had decided to transform a church, normally considered to be a sanctuary that teaches the word of God, into a meeting point for killers.<sup>79</sup> This intent is also inferred from the order given to all the Hutu to move out and into the church so as to prevent the Tutsi from taking refuge, and that they were used in the massacres. Lastly, it can be inferred that, after they arrived at the church, Uwinkindi persuaded them to attend a meeting organised by *bourgmestre* Gatanazi with the aim of inciting them to kill the Tutsi, as had been done elsewhere.

124. The Chamber finds that this meeting, organised by Gatanazi following the arrival of Hutu refugees to the church, shows that the plan had been prepared well in advance but that it was necessary for the members of the population to receive instructions from their usual authorities so as to allow Jean Uwinkindi and the group he led to begin organising the massacres perpetrated in and around the church.

125. The Chamber also finds that in his quality as pastor, the head of the ADEPR parish in Kayenzi, Jean Uwinkindi enjoyed the respect and trust of the Tutsi because those who had sought refuge in 1992 had been protected, and he enjoyed a certain influence, which is why he directly took over as head of the security committee from its inception. This enabled him to achieve his aim without obstacles and with the support of the authorities in place at the time, which provided him with assistance in the form of state security organs that were helping his group of killers, all the more so because he was contributing to the plan of the authorities to exterminate the Tutsi.

126. On the basis of the facts and the intent described above, the Chamber finds that Jean Uwinkindi is guilty of murder, as an element of the crime of genocide, as provided for in Article 114, paragraph 1 of the aforementioned Organic Law.

## II.2.2. - Extermination as a crime against humanity

### II.2.2.1. - The Arguments of the Prosecutor

127. The Prosecutor is charging Jean Uwinkindi with extermination, as a crime against humanity, as provided for under Article 120, paragraph 2, punishable under Article 121 of the Organic Law instituting the Penal Code, special number of 14 June

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<sup>79</sup> See statement of Witness BZI to the National Public Prosecution Authority, p. 302.

2012. He argues that from 7 April to mid-May 1994, Jean Uwinkindi, as a perpetrator or co-perpetrator, killed many Tutsi in widespread and/or systematic attacks meticulously planned against the civilian population for political reasons or because of their Tutsi ethnicity, which was targeted at that time. This crime was committed in the former commune of Kanzenze in the Kigali-Rural prefecture, Republic of Rwanda, particularly in the aforementioned locations.

128. The Prosecutor submits that criminal intent arises from the fact that the person prosecuted for the crime of extermination must be aware of the existence of such an act, committed against a civilian population on a discriminatory basis. The person in question must also have the intent to participate in the said act. The evidence based on the testimonies collected by the Office of the Prosecutor of the ICTR and the National Public Prosecution Authority of Rwanda establish that Jean Uwinkindi planned and carried out the crime of extermination as a crime against humanity. On the basis of the evidence contained in the statements about the attacks and massacres committed in the Kayenzi parish, the Prosecutor submits that Jean Uwinkindi was aware of a plan to exterminate the Tutsi, that he was present when this crime was committed and that he participated in it, and did nothing to save the people who were the targets of the massacres despite having the means to do so.

129. The Prosecutor requests that the Chamber find Jean Uwinkindi guilty of one of the acts committed in the context of widespread and systematic attacks directed against the civilian population on the basis of their national, political, ethnic or religious affiliation. The Prosecutor submits that Jean Uwinkindi committed this crime against civilians because they were Tutsi, as provided for under Article 120, para. 1, subparagraph 2.

#### II.2.2.2. - The Submissions of Jean Uwinkindi

130. The Defence submits that no reason exists to hold Jean Uwinkindi responsible for the crime of extermination because the Prosecutor failed to provide information about the scene of the crime, the victims or the dates on which the crime was committed so that the Accused could present his defence. It argues that the Prosecutor

accuses Jean Uwinkindi of having participated in large-scale massacres of Tutsi yet was unable to specify the number or the names of the victims.

131. The Defence claims to have shown that the Prosecutor based himself on Article 120, paragraph 2, to charge Jean Uwinkindi with extermination without producing the relevant evidence. The Defence submits that on the contrary, the Prosecution witnesses stated that Jean Uwinkindi was not involved in the attacks and that, to their knowledge, the Accused had not killed anyone since no one claims to have seen him committing any murders.

132. The Defence further argues that no link was established between the events and the fact that Jean Uwinkindi had influence within his church, because the assailants were not members of the said church. It adds however that even if they had been members of that church, he could not have prevented them from committing their crimes because they would not have been acting in the name of that very church. The Defence also submits that the assailants acted out of malice and because of the terrible governmental regime in place at the time. In conclusion, the Defence claims that Jean Uwinkindi did not have any means by which to prevent the attacks.

#### II.2.2.3. - Deliberations

133. The Chamber notes that the aforementioned Article 120 of Organic Law no. 01/2012/0L of 2 May 2012 instituting the Penal Code provides that extermination, committed as part of a widespread or systematic attack directed against any civilian population because of its national, political, ethnic or religious affiliation constitutes a crime against humanity.

134. The Chamber notes that Jean Uwinkindi is charged with having launched widespread and systematic attacks with the intent of exterminating Tutsi civilians because of their ethnic affiliation; the crimes were perpetrated at various locations in the former Kanzenze commune.

135. The Chamber notes that in the *Niyitegeka*<sup>80</sup> and *Tihomir Blaškić*<sup>81</sup> cases, the ICTR and the ICTY, respectively, found that the elements of the crime of extermination are characterised by one or more acts aimed at committing large-scale massacres or acts committed as part of systematic attacks.

136. The Chamber also notes that in the present case, Jean Uwinkindi is being prosecuted for the following acts constituting the crime of extermination as a crime against humanity:

- Organising meetings to prepare attacks aimed at exterminating the Tutsi, and providing food to the persons who participated in these attacks;
- Requesting assistance from state security organs to reinforce the capacity of the assailants;
- Directing attacks that killed many people, including Sebastien Bandora, Ngabo, Mutimura, the son of Ndekezi, the son of Charles Muzezayo, Nyirankangura, Nsengiyumva, Emmanuel Habarugira, Clothilde Muderu and Justin Rwibasira. He participated in these attacks.

137. The Chamber notes that by his acts, Jean Uwinkindi exterminated a large number of Tutsi during the systematic attacks launched in the surrounding area of the Kayenzi Pentecostal church.

138. The Chamber notes that the criminal intent (*mens rea*) for extermination as a crime against humanity is inferred from the willingness to commit large-scale killings or to participate in them. The perpetrator of that crime must know that these killings

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<sup>80</sup> “[T]he material element of extermination “consists of any one act or combination of acts which contributes to the killing of a large number of individuals”. ICTR-96-14, of 16 May 2003, *The Prosecutor v. Niyitegeka*, para. 450.

<sup>81</sup> “In relation to the widespread or systematic nature of the attack, the Appeals Chamber recalls the jurisprudence of the International Tribunal according to which the phrase “widespread” refers to the large-scale nature of the attack and the number of targeted persons, while the phrase “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes, in the sense of the non-accidental repetition of similar criminal conduct on a regular basis, are a common expression of such systematic occurrence. Only the attack, not the individual acts of the accused, must be widespread and systematic. The Appeals Chamber underscores that the acts of the accused need only be a part of this attack, and all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random.”, *The Prosecutor v. Tihomir Blaškić*, Case no. IT-95-14-A, 29 July 2004, para. 101.

are targeting many people, as established in various cases tried by the International Tribunals, notably the *Semanza*<sup>82</sup> and *Kayishema and Ruzindana* cases.<sup>83</sup>

139. The Chamber notes that Jean Uwinkindi participated in this plan after having learnt from *bourgmestre* Gatanazi that “work” was underway everywhere else in the country. Therefore, the accused resolved to execute this plan and therefore instructed the committee, which prepared the systematic attacks against the Tutsi who had taken refuge in various locations in the Kanzenze commune. He participated in these attacks that he himself directed and requested assistance from the state security organs to reinforce the killers’ abilities to exterminate the Tutsi on a large scale because of their ethnicity, all the while knowing that the victims were not soldiers.

140. The Chamber finds that in light of the aforementioned actions and intentions, Jean Uwinkindi is guilty of extermination as a crime against humanity pursuant to Article 120 of the aforesaid Penal Code.

### II.2.3. - Criminal Liability of Jean Uwinkindi

#### II.2.3.1. - The Arguments of the Prosecutor

141. The Prosecutor argues that Jean Uwinkindi is criminally liable for having perpetrated genocide, pursuant to Articles 114 and 115 of the Penal Code, and extermination, provided for under Article 120, paragraph 2 of the same Code, following the crimes that he committed at the ADEPR parish in Kayenzi, at the Kanzenze communal office, at the Ntarama church, at the Cyugaro swamps and in other locations listed in the Indictment.

142. The Prosecutor claims that instead of preventing the massacres committed at the Kayenzi Pentecostal church when, pursuant to the law, he had the duty to do so since he was the head of this church, Jean Uwinkindi killed the Tutsi who were taking refuge there and also allowed them to be killed. He provided assistance during these massacres, notably by bringing in the Interahamwe who were accommodated at the

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<sup>82</sup> “[T]he Chamber finds that the mental element for extermination is the intent to perpetrate or participate in a mass killing.” *The Prosecutor v. Semanza*, Case no. ICTR-97-20, 15 May 2003, para. 341.

<sup>83</sup> “The mental element for extermination requires the accused to have participated while being aware that his act(s) or omission(s) forms part of a mass killing event...” *The Prosecutor v. Kayishema and Ruzindana*, Case no. ICTR-95-1-T, 21 May 1999, para. 44.

church, and by erecting road blocks at which the Tutsi were killed. He orchestrated attacks in which he also participated, he organised meetings at which the attacks and massacres were prepared, and he attended meetings held at the communal office to plan the massacre of the Tutsi. He himself killed Tutsi and searched for them in their hiding places during various attacks directed for that purpose. Consequently, the Prosecutor submits that all of these facts establish Jean Uwinkindi's responsibility in these acts as a perpetrator and requests that the Chamber find him criminally liable for these crimes and sentence him.

143. Furthermore, Jean Uwinkindi's criminal liability rests on the fact that he aided and abetted the killers and provided them with accommodation during the massacres. He participated in the attacks and had himself carried out killings. Through his conduct, he substantially contributed to enabling these killings. He knew that these killings could be committed and his conduct could be considered as constituting major support that encouraged other individuals to participate in these massacres.

#### II.2.3.2. - The Submissions of Jean Uwinkindi

144. The Defence argues that Jean Uwinkindi is not criminally liable as a perpetrator because he did not have any power to prevent the killings committed at the Kayenzi church. Moreover, he did not expect that the church would be attacked and did not have anyone available to block these attacks. It submits that Jean Uwinkindi welcomed the refugees who came to him, that he did everything possible to help them and that, consequently, he had not forced them to take refuge at the church. The Defence maintains that Jean Uwinkindi did not incite persons to commit the crime of genocide and extermination whether on Kayenzi hill, in the Cyugaro swamps or in the Kayenzi Pentecostal church.

145. The Defence submits that Jean Uwinkindi should not be found guilty for aiding and abetting the massacres because the Prosecutor failed to establish, beyond all reasonable doubt, his role in these acts, the manner in which he encouraged the killers and the dates of the acts with which he is charged. The Defence claims that, consequently, Jean Uwinkindi was not involved in the acts aimed at massacring the Tutsi and their extermination. It adds that the Accused was not engaged in inciting the commission of the massacres and was not complicit in a criminal enterprise.

II.2.3.2. - Deliberations

146. In accordance with Article 97 of the Organic Law instituting the Penal Code, “an offender, co-offender and accomplice are criminally liable”. Paragraph 1 of Article 98 provides that “[an] offender [is] a person who commits an offence; [the] co-offender [is] a person who directly cooperates in the commission of an offence; [the] accomplice [is] a person [who] knowingly aids or abets the offender in preparing, facilitating or committing the offence, or a person who incites the offender”.

147. On the basis of these legal provisions regarding murder as one of the elements of the crime of genocide, the Chamber finds that Jean Uwinkindi was complicit in the following manner:

- Preparing and abetting: he ordered the Hutu to go and live in the church so that he could use them in to commit killings. Furthermore, he organised and held meetings to make preparations for the killings.
- Facilitating and finalising preparations for the killings: he asked for assistance, on behalf of the killers, from the state security organs, provided food, ordered the population to pay a financial contribution to the soldiers to raise their morale so that they would continue committing the killings. He also protected those who killed the Tutsi so that they would not be held responsible for their actions.

148. Likewise, concerning the crime of extermination as a crime against humanity, the Chamber notes that Jean Uwinkindi was a co-perpetrator due to his responsibility for what was called the “security committee”. He held meetings at which the attacks were prepared and the persons who were to take part in these attacks were selected. The Chamber also finds that the Accused is criminally liable as co-perpetrator as he participated in the attacks by carrying a weapon and issuing instructions on how to commit the massacres. His actions caused the massacre of Tutsi who were not soldiers, as set out above.

### **II.3. - On the Sentence**

#### II.3.1. - Closing Arguments of the Prosecutor

149. The Prosecutor requests that the Chamber finds that Jean Uwinkindi committed acts that constitute crimes of genocide and extermination against the Tutsi, crimes that were committed in an organised manner with the intent to destroy, in whole or in part, a national or ethnic group, whether in time of peace or in time of war, pursuant to Articles 114 and 120 of Organic Law no. 01/2012 of 2 May 2012 instituting the Penal Code.

150. Considering the fact that Jean Uwinkindi committed acts that, materially, can be qualified in several ways, and that a single act constitutes separate offences, the Prosecutor argues that there is an ideal concurrence pursuant to Article 82 (2) (a) of the Rwandan Penal Code. Consequently, the Prosecutor requests that the Chamber not take into account any mitigating circumstances in Jean Uwinkindi's case because he did not plead guilty nor did he ask for forgiveness, which would enable him to benefit from some sort of advantage provided for under the law.

151. Since a person who commits the crime of genocide or extermination, as a crime against humanity, is liable to be sentenced to life imprisonment with special provisions and since, amongst other guarantees, Rwanda has made a commitment before the ICTR that if Jean Uwinkindi was transferred to Rwanda to be tried, he would not be convicted to life imprisonment with special provisions if found guilty; moreover, as these two crimes carry the same sentence, namely life imprisonment with special provisions, the Prosecutor request that the Accused be sentenced to life imprisonment for the two crimes with which he is being charged.

#### II.3.2. - Closing Arguments of Jean Uwinkindi and his Defence

152. In its closing arguments, the Defence for Jean Uwinkindi submits that the Prosecutor failed to produce any tangible evidence establishing the guilt of the accused. It requests, therefore, that the Chamber finds the charges brought by the Prosecutor unfounded, to acquit the Accused and, consequently, to order his immediate release.

### II.3.3. - Deliberations

153. Before discussing matters related to sentencing, the Chamber must first determine the existence of any aggravating or mitigating circumstances.

#### II.3.3.1. - Aggravating Circumstances

154. As is apparent from the above analysis of the constitutive acts of the crimes in which Jean Uwinkindi was involved, the said crimes were committed with extreme cruelty and caused the death of many innocent victims. Consequently, the high number of Tutsi that were killed and the grave consequences of these massacres on Rwandan society constitute aggravating circumstances in regard of the crimes with which Jean Uwinkindi is charged, as the ICTR confirmed in the *Karera* case.<sup>84</sup> The same idea is set out by legal expert Beccaria in a book wherein he explains that the actual measure of the crimes is the harm that they do to the nation.<sup>85</sup>

155. The Chamber also notes that the fact that Jean Uwinkindi, who was usually in charge of teaching charity and good societal relations, took action to preach hate and murder.<sup>86</sup> The fact of having abused the trust placed in him by the Tutsi who had sought refuge with him also constitutes an aggravating circumstance, in accordance with ICTR case-law in the *Seromba* case.<sup>87</sup> In the said case, the Tribunal found that a priest's betrayal of the trust placed in him by those who relied on him as a man of God constitutes an aggravating circumstance.

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<sup>84</sup> "The large number of victims and the irreparable harm caused to them and their families also aggravate Karera's sentencing in relation to his conviction for genocide, a crime with no numeric minimum of victims." *The Prosecutor v. François Karera*, Case no. ICTR-01-74-T, 7 December 2007, p. 169.

<sup>85</sup> The real measure of the crimes... is the harm that they do to the nation and not the intention of the guilty party, Beccaria, as cited by Roger Merle & André VITU, "Traité du Droit Criminel, Problèmes Généraux de la science criminelle". General Criminal Law, 3rd Edition. JUCAS, rue de la Maison Blanche, Paris. pp. 106 and 107.

<sup>86</sup> See the statement of CDG, pp. 256-266 of the Prosecution case-file.

<sup>87</sup> "[The Chamber considers that] Athanase Seromba, a Catholic priest, was in charge of Nyange parish at the time of the events referred to in the Indictment. The Accused was known and respected in the Catholic community of Nyange. The Chamber recalls that it has been established that many Tutsi[s] from Kivumu *commune* sought refuge in Nyange church in order to escape attack. The Chamber considers as an aggravating circumstance the fact that the Accused took no concrete action whatsoever to earn the trust of those persons who believed they were safe by seeking refuge at Nyange parish. Consequently, the Chamber finds that the status of the Accused and betrayal of trust constitute aggravating circumstances." *The Prosecutor v. Athanase Seromba*, Case no. ICTR-2001-66-T, 13 December 2006, p. 85.

II.3.3.2. - Mitigating Circumstances

156. The Chamber finds that before the 1994 genocide against the Tutsi, Jean Uwinkindi had no criminal record and had exhibited good conduct, a value that generally characterises priests, to the extent that even during the period of the Tutsi massacre in Bugesera in 1992, none of the people who had taken refuge in the Kayenzi ADEPR church, of which Uwinkindi was the head, were killed.<sup>88</sup> Another mitigating circumstance relates to the fact that although Jean Uwinkindi played a major role in the preparation and carrying out of the Tutsi massacres at the Kayenzi Pentecostal church where he was the head in 1994, and in the Bugesera region in general, he did decide to protect certain people, such as Rurangirwa’s wife, and their lives were saved.<sup>89</sup>

157. The Chamber notes that, in light of the gravity and the consequences of the crimes with which he is charged, the aforementioned mitigating circumstances cannot be taken into consideration when determining the sentence. Although previously, as the pastor of a church, Jean Uwinkindi had, to his credit, contributed constructively to the country; although he had saved certain people during the killings, as set out above, this good conduct does not erase his intent or his actions aimed at killing the Tutsi because of their ethnic affiliation. His acts were not simply murder because their aim was to “destroy the human society and deny humanity”.<sup>90</sup> This is in accordance with ICTR case-law in the *Karera* case,<sup>91</sup> where the Tribunal affirmed that even assuming that the Accused had saved two Tutsi, it does not establish that he had the intention of protecting the Tutsi in general.

158. The Chamber notes that Article 115 of Organic Law no. 01/2012 of 2 May 2012 instituting the Penal Code provides that “Any person who commits, in time of peace or in time of war, the crime of genocide as provided in the preceding Article,

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<sup>88</sup> See the statement of CDH, p. 334, before the National Public Prosecution Authority.

<sup>89</sup> See the statement of CDA, p. 246, before the National Public Prosecution Authority.

<sup>90</sup> In a crime against humanity, there is more than just a threat to life because the aim and consequence of such a crime is to reduce and degrade man to a sub-human, to deny the human within a man, to deny a man his humanity. The target of this crime is not the individual, an identifiable person, but the man as a member of the human family... *Juristes sans Frontières*, Human Rights Award of the French Republic - 1996, collected works, *Le Tribunal pénal International de La Haye : le droit à l'épreuve de la purification ethnique*, Ed. L'harmattan 2000, p. 41.

<sup>91</sup> “But even assuming that Karera, for reasons unknown, saved these two Tutsis, this does not establish that he protected Tutsis in general.” *The Prosecutor v. Karera*, Case no. ICTR-01-74-T, 7 December 2007, para. 374.

shall be liable to life imprisonment with special provisions.” The first paragraph of Article 121 provides that any person who commits the crime of extermination as a crime against humanity shall be liable to life imprisonment with special provisions.

159. The Chamber finds that the guilt of Jean Uwinkindi has been established for the crime of genocide and extermination as crimes against humanity, crimes committed in ideal concurrence in accordance with Article 83 (2) (a) of the Organic Law instituting the Penal Code. Each of these crimes is punishable by life imprisonment with special provisions. Nevertheless, pursuant to Article 5 *bis* of Organic Law no. 08/2013/OL of 16 June 2013 modifying and complementing Organic Law no. 31/2007 of 25 April 2007 relating to the abolition of the death penalty, a person convicted in a case transferred to Rwanda from the International Criminal Tribunal for Rwanda or from another State shall not be subject to life imprisonment with special provision. The person must be sentenced to life imprisonment.

### **III. VERDICT**

#### **[The Chamber]**

160. **DECLARES** as admissible and founded the Prosecution case against Jean Uwinkindi, charged with murder as an element of the crime of genocide and extermination as a crime against humanity.

161. **FINDS** Jean Uwinkindi guilty of murder as an element of the crime of genocide and extermination as a crime against humanity.

162. **DECIDES** that Jean Uwinkindi has lost the trial.

163. **SENTENCES** Jean Uwinkindi to life imprisonment.

164. **ORDERS** that Jean Uwinkindi be exempt from paying legal fees since he is appearing as a detainee.

**JUDGEMENT DELIVERED IN PUBLIC SESSION ON THIS DAY 30  
December 2015.**

Alice R. Ngendakuriyo, **Presiding**

*/signed/*

Thimothée N. Kanyegezi, **Judge**

*/signed/*

Fidèle Nsanzimana, **Judge**

*/signed/*

Hyppax Nyabutama, **Registrar**

*/signed/*

Certified copy of the original

61-11C1/4-Ukik

Done in Kigali, 28 January 2016

Registrar: Patricie Mukamunana

[Seal]