



UNITED NATIONS  
NATIONS UNIES

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

---

**Before:** Judge Khalida Rachid Khan, Presiding  
Judge Lee Gacuiga Muthoga  
Judge Emile Francis Short

**Registrar:** Mr. Adama Dieng

**Date:** 28 April 2005

**TRIAL CHAMBER III**

**THE PROSECUTOR**

**v.**

**MIKAELI MUHIMANA**

*Case No. ICTR- 95-1B-T*

---

**JUDGEMENT AND SENTENCE**

---

**Office of the Prosecutor:**

Mr. Charles Adeogun-Philips

Mr. Wallace Kapaya

Ms. Renifa Madenga

Ms. Florida Kabasinga

Ms. Maymuchka Lauriston

**Counsel for the Defence:**

Professor Nyabirungu mwene Songa

Me Kazadi Kabimba

## TABLE OF CONTENTS

<b>CHAPTER I – INTRODUCTION.....</b>	<b>1</b>
A. <i>The Tribunal and its Jurisdiction.....</i>	<i>1</i>
B. <i>The Accused.....</i>	<i>1</i>
C. <i>The Charges.....</i>	<i>1</i>
D. <i>The Trial.....</i>	<i>2</i>
<b>CHAPTER II – FACTUAL FINDINGS.....</b>	<b>3</b>
A. <i>Introduction .....</i>	<i>3</i>
B. <i>Identification of Tutsi, Hutu, and Twa.....</i>	<i>3</i>
C. <i>Alibi .....</i>	<i>3</i>
D. <i>Rape and Murder of Languida Kamukina and Gorretti Mukashyaka in Gishyita Town, 7 April 1994.....</i>	<i>4</i>
E. <i>Attacks Against Tutsi in Kiziba, Nyarutovu and Ngendombi, Between 8 and 11 April 1994.....</i>	<i>8</i>
F. <i>Meeting At The Accused’s Residence in Gishyita Town, Mid-April 1994 .....</i>	<i>16</i>
G. <i>Rape and Murder of Esperance Mukagasana, Mid-April 1994 .....</i>	<i>17</i>
H. <i>Events At Mubuga Church – Looting of food, 11 to 15 April 1994.....</i>	<i>20</i>
I. <i>Attack Of Mubuga Church, 15 April 1994.....</i>	<i>24</i>
J. <i>Rape and Murder of Colette, Alphonsine and Agnes at Mubuga Parish Cemetery, 15 April 1994.....</i>	<i>30</i>
K. <i>Abduction and Subsequent Rape of Josiana, Mariana and Martha -Mugonero Complex, 13 and 14 April 1994.....</i>	<i>38</i>
L. <i>Attack Against Tutsi Refugees at the Mugonero Complex, 16 April 1994.....</i>	<i>40</i>
M. <i>Rapes and Murders at Mugonero Complex, 16 April 1994.....</i>	<i>46</i>
N. <i>Rape of Witness BG, 22 April 1994.....</i>	<i>55</i>
O. <i>Kanyinya Hill Attack, May 1994 .....</i>	<i>58</i>
P. <i>Muyira Hill Attacks, May 1994.....</i>	<i>62</i>
Q. <i>Rape of Witness AX, May 1994 .....</i>	<i>68</i>
R. <i>Rape and Murder of Pascasie Mukamera and Félicité Kankuyu, Mid-May 1994 .....</i>	<i>70</i>
S. <i>Luring and Attack Of Tutsi Refugees, June 1994.....</i>	<i>73</i>
T. <i>Attacks Against Tutsi At Uwingabo, End of June 1994.....</i>	<i>76</i>
U. <i>Murder of Assiel Kabanda In Gishyita Town, End of June 1994.....</i>	<i>77</i>
V. <i>Facts Not Pleaded in the Indictment.....</i>	<i>80</i>

<b>CHAPTER III – LEGAL FINDINGS.....</b>	<b>90</b>
A. <i>Genocide (Count 1)</i> .....	90
B. <i>Complicity in Genocide (Count 2)</i> .....	95
C. <i>Crime Against Humanity – Rape (Count 3)</i> .....	95
D. <i>Crime Against Humanity – Murder (Count 4)</i> .....	103
<b>CHAPTER IV – VERDICT .....</b>	<b>107</b>
<b>CHAPTER V – SENTENCE .....</b>	<b>108</b>
A. <i>Sentencing Principles and Practices</i> .....	108
B. <i>Individual Circumstances</i> .....	109
C. <i>Findings</i> .....	111
D. <i>Sentence</i> .....	113
<b>ANNEXES.....</b>	<b>114</b>
<i>Annex I – Revised Amended Indictment – 3 February 2004</i> .....	114
<i>Annex II – Procedural Background</i> .....	114
<i>Annex III – List of Sources and Abbreviations</i> .....	114

## CHAPTER I – INTRODUCTION

### **A. THE TRIBUNAL AND ITS JURISDICTION**

1. The Judgement in the case of *The Prosecutor v. Mikaeli Muhimana* is issued by Trial Chamber III (“the Chamber”) of the International Criminal Tribunal for Rwanda (“the Tribunal”), composed of Judges Khalida Rachid Khan, Presiding, Lee Gacuiga Muthoga, and Emile Francis Short.
2. The Tribunal is governed by the Statute annexed to the United Nations Security Council Resolution 955 (“the Statute”) and by the Rules of Procedure and Evidence of the Tribunal (“the Rules”).<sup>1</sup>
3. The Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the Republic of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States.<sup>2</sup> Its jurisdiction is limited to acts of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II, committed between 1 January 1994 and 31 December 1994.<sup>3</sup>

### **B. THE ACCUSED**

4. Mikaeli Muhimana, also known as Mika Muhimana, was born on 24 October 1961 in Kagano *Cellule*, Gishyita *Secteur*, Gishyita *Commune*, Kibuye *Préfecture*, Rwanda.<sup>4</sup> He became *conseiller* of Gishyita *Secteur* in 1990.<sup>5</sup>
5. The Accused was arrested on 8 November 1999 in Dar es Salaam, Tanzania, and transferred on the same day to the United Nations Detention Facility in Arusha, Tanzania.<sup>6</sup>

### **C. THE CHARGES**

6. The Indictment, as amended on 21 January 2004, charges the Accused with four counts: genocide; or alternatively, complicity in genocide; murder as a crime against humanity; and rape as a crime against humanity. All of the alleged events, on which these charges are based, occurred between April and June 1994, in the Bisesero area and in many locations in Gishyita *Commune*, Kibuye *Préfecture*, in Rwanda.

---

<sup>1</sup> Originally adopted by the Judges of the Tribunal on 5 July 1995, the Rules were last amended on 23-24 April 2004 during the Fourteenth Plenary Session. The Statute and the Rules are available at the Tribunal’s website: <<http://www.icttr.org>>.

<sup>2</sup> Statute, Articles 1 and 5.

<sup>3</sup> Statute, Articles 1 and 7. As stated in paragraph 2 of the Indictment, the events set out hereinafter occurred in the Republic of Rwanda between 1 January 1994 and 31 July 1994, Statute, Articles 2 and 3.

<sup>4</sup> Defence Closing Brief, para. 3.

<sup>5</sup> Defence Closing Brief, para. 3.

<sup>6</sup> Warrant of Arrest and Order for Transfer and Detention, 26 October 1999.

***D. THE TRIAL***

7. The trial of the Accused commenced on 29 March 2004. In the course of 34 trial days, the Chamber heard 52 witnesses, 19 for the Prosecution and 33 for the Defence.
8. Closing Arguments of both the Prosecution and the Defence were heard on 18, 19, and 20 January 2005.

## CHAPTER II – FACTUAL FINDINGS

### A. INTRODUCTION

#### *Allegations Dismissed for Lack of Evidence*

9. The Prosecution led no evidence in support of the allegations in Paragraphs 5 (d) (iii), 6 (c) (v), 6 (d) (i), 7 (b) (i), 7 (c) (ii), and 7 (d) of the Indictment. The Chamber therefore dismisses these allegations for lack of evidence.

### B. IDENTIFICATION OF TUTSI, HUTU, AND TWA

10. The Prosecution alleges that :

At all times referred to in this indictment, there existed in Rwanda a minority ethnic group known as *Tutsi*, officially identified as such by the government. In addition, the majority population was comprised of an ethnic group known as *Hutu*, also officially identified as such by the government.<sup>7</sup>

11. The Chamber notes that the Defence does not challenge this allegation and that several witnesses for both the Prosecution and the Defence identified people involved in the 1994 events in Rwanda as *Tutsi*, *Hutu*, or *Twa*.<sup>8</sup> Accordingly, the Chamber finds that, in 1994, persons in Rwanda were identified as *Tutsi*, *Hutu*, or *Twa*.

### C. ALIBI

12. At trial, the Accused raised an alibi to establish that he could not have committed the crimes, which occurred outside his home, for which he was indicted. The Accused called a number of witnesses to say that he remained at his home in Gishyita continuously mourning his dead son from 8 to 16 April, 1994.
13. In the *Niyitegeka* case, the Appeals Chamber stated that where a defendant raises an alibi:

"he is merely denying that he was in a position to commit the crime with which he was charged," specifically that he was elsewhere than at the scene of the crime at the time of its commission. It is settled jurisprudence before the two *ad hoc* Tribunals that in putting forward an alibi, a defendant need only produce evidence likely to raise a reasonable doubt in the Prosecution's case. The burden of proving beyond reasonable doubt the facts charged remains squarely on the shoulders of the Prosecution. Indeed, it is

---

<sup>7</sup> Indictment, para. 4.

<sup>8</sup> The Defence annexed to its Pre-Trial Brief a document entitled « Demande du Procureur relative a l'admission de faits », where it is admitted , among others, that « Entre le 1er avril et le 30 juin 1994, les Tutsi, les Hutus et les Twas etaient identifiés respectivement comme des groupes ethniques ».

incumbent on the Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.<sup>9</sup>

14. Similarly, in *Musema*, it was held that:

"[i]n raising the defence of alibi, the Accused not only denies that he committed the crimes for which he is charged but also asserts that he was elsewhere than at the scene of these crimes when they were committed. The onus is on the Prosecution to prove beyond a reasonable doubt the guilt of the Accused. In establishing its case, when an alibi defence is introduced, the Prosecution must prove, beyond any reasonable doubt, that the accused was present and committed the crimes for which he is charged and thereby discredit the alibi defence. The alibi defence does not carry a separate burden of proof. If the defence is reasonably possibly true, it must be successful."<sup>10</sup>

15. The Chamber will apply this jurisprudence in considering the alibi put forward by the Defence witnesses. The Trial Chamber is satisfied that the evidence of the Defence witnesses does not raise a reasonable doubt as to whether the Accused was present at the various locations where he is alleged to have committed or participated in the commission of crimes. This finding in no way undermines the Accused's presumption of innocence, and the Trial Chamber has made its factual findings bearing in mind that the Prosecution alone bears the burden of proving beyond reasonable doubt the allegations made against the Accused.

#### ***D. RAPE AND MURDER OF LANGUIDA KAMUKINA AND GORRETTI MUKASHYAKA IN GISHYITA TOWN, 7 APRIL 1994***

##### **Allegations**

16. The Prosecution alleges that:

On or about 7 April 1994 in Gishyita town Gishyita *Secteur*, Gishyita *Commune*, Mikaeli Muhimana brought two civilian women Gorretti Mukashyaka and Languida Kamukina into his house and raped them. Thereafter he drove them naked out of his house and invited Interahamwe and other civilians to come and see how naked *Tutsi* girls looked like. Mikaeli Muhimana then directed the Interahamwe to part the girls' legs to provide the onlookers with a clear view of the girls' vaginas.<sup>11</sup>

On or about 7 April 1994 in Gishyita town Gishyita *Secteur*, Gishyita *Commune* Mikaeli Muhimana took to his residence two women, Gorretti Mukashyaka and Languida Kamukina and directed *Interahamwe* to kill them. The *Interahamwe* killed the said Gorretti Mukashyaka and Languida Kamukina at Mikaeli Muhimana's residence and in his presence.<sup>12</sup>

---

<sup>9</sup> *Niyitegeka* Judgement (AC), para. 60.

<sup>10</sup> *Musema* Judgement (AC), para. 108.

<sup>11</sup> Indictment, para. 6 (a) (i).

<sup>12</sup> Indictment, para. 7 (a).

## Evidence

### Prosecution Evidence

17. Prosecution Witness AP, a *Tutsi* woman, testified that, on 7 April 1994, she was arrested by Ruhindura, a *commune* policeman, on the orders of *Conseiller* Muhimana and the instructions of *Bourgmestre* Sikubwabo, apparently because she had sent her cattle to Bisesero. According to Witness AP, Muhimana did nothing without receiving orders from Sikubwabo, and the two men were “always together”.<sup>13</sup> The witness was detained in a cell, and she explained to the Chamber that only *Tutsi* were so detained during this period in Rwanda. Sometime after her release, she witnessed two *Tutsi* men, agronomists Nkundiye and Murindihabi, being beaten to death with clubs by the Accused, *Bourgmestre* Sikubwabo, and some *Interahamwe*. Witness AP testified that she saw the Accused raise a club and hit one of the men over the head, saying, “This is how you kill a *Tutsi*,” after which she immediately ran home. Witness AP later learned from the people who performed the burial that the bodies also bore signs of “machete blows”.<sup>14</sup>
18. Witness AP testified that, the same day, at approximately 7.00 p.m., the Accused, who was a “very close friend of the family”, came to visit a man called Ruhigira. When the Accused left, he took away two of Ruhigira’s daughters, *Tutsi* girls named Languide, aged 18, and Immaculée, aged 21. The two girls freely followed the Accused into his house because they considered him a friend who could hide them. Witness AP followed the Accused and the two girls because she hoped that he would agree to hide her children as well. From where she was standing, approximately 15 metres from the house, the witness heard the girls scream horribly, shouting the Accused’s name and saying that they were “not expecting him to do that to them”.<sup>15</sup> Amongst the voices coming from inside the house, the witness also recognised the voice of *Bourgmestre* Sikubwabo, telling the girls to “shut up”.<sup>16</sup>
19. When the screaming stopped, the witness saw Muhimana lead the girls, who were stark naked and who walked with their “legs apart”, outside of the house. Muhimana called for the young people in the house to come out so that he could show them “what *Tutsi* girls look like”.<sup>17</sup> Witness AP testified that the area was well lit by the electricity in the Accused’s house, and that she could see when the young men commenced to attack the girls with clubs. After witnessing this beating, she understood that the war had begun, and she ran away.<sup>18</sup>

### Defence Evidence

20. **Defence Witnesses DN,<sup>19</sup> TQ14,<sup>20</sup> TQ1,<sup>21</sup> DR,<sup>22</sup> DI,<sup>23</sup> NT1,<sup>24</sup> TQ13,<sup>25</sup> and DJ<sup>26</sup>** testified that they did not hear about any rapes committed by the Accused in his house

---

<sup>13</sup> T. 30 March 2004, p. 41.

<sup>14</sup> T. 30 March 2004, pp. 22-23, 40-41, 43, 45-48.

<sup>15</sup> T. 30 March 2004, pp. 24, 27.

<sup>16</sup> T. 30 March 2004, pp. 23-27, 29; T. 31 March 2004, p. 7.

<sup>17</sup> T. 30 March 2004, pp. 24, 27.

<sup>18</sup> T. 30 March 2004, pp. 24, 29.

<sup>19</sup> T. 18 August 2004, p. 11.

<sup>20</sup> T. 25 August 2004, p. 25.

<sup>21</sup> T. 23 August 2004, pp. 5-6.

in April 1994. Defence Witnesses NT1,<sup>27</sup> DR,<sup>28</sup> and TQ13<sup>29</sup> further testified that under Rwandan culture it is not “possible” for a married man to rape someone in the matrimonial home.

21. Defence Witness DQ testified that Languida was not in Gishyita during the events of 1994. He also denied categorically that Muhimana raped Gorette, “because that would be a very tall story”. Witness DQ elaborated that Gorette sought refuge in Mubuga Church. Witness DI stated also that Languida sought refuge in Mubuga Church.<sup>30</sup>

## **Findings**

### *Findings on Rape*

22. The Prosecution relies on the testimony of Witness AP in support of the allegation of the rapes of Languida Kamukina and Gorretti Mukashyaka.
23. The Chamber finds the evidence of Witness AP to be internally consistent. Moreover, her testimony was not shaken by extensive cross-examination by the Defence. The Chamber is satisfied that the witness knew the Accused at the time of the events and accepts her explanation as to why she was in close proximity to the rapes when they occurred. The Chamber notes that, although she was visibly disturbed in recounting the events of 7 April 1994, her answers were straightforward and she did not exaggerate the evidence. Thus, the Chamber finds her evidence credible and reliable.
24. The Defence points out that Witness AP’s testimony is at odds with the “Amended Indictment” with respect to the age of the two victims.<sup>31</sup> The Chamber finds this challenge to be irrelevant, since the Revised Amended Indictment does not mention the victims’ ages.
25. The Chamber finds that the mere fact that several Defence witnesses did not hear of rapes committed by the Accused in his house on 7 April 1994 does not mean that they could not have occurred. The witnesses advanced no reason to support the implied assertion that, if the Accused had committed rapes, they would have heard of them. The Chamber does not find this argument persuasive. The Chamber does not accept the contention that under Rwandan culture it is impossible for a man to rape a woman in the matrimonial home. The Chamber accepts that in any society such behaviour would be considered unacceptable. However, this fact does not preclude the possibility that it could occur.
26. Although Witness DQ testified that Languida was not in Gishyita during the events of 1994, the Defence did not provide further evidence to substantiate this allegation. The Chamber also notes the contradiction between the evidence of Witness DQ, who stated

---

<sup>22</sup> T. 1 September 2004, pp. 5-7.

<sup>23</sup> T. 1 September 2004, pp. 42-43.

<sup>24</sup> T. 26 August 2004, pp. 10-11.

<sup>25</sup> T. 25 August 2004, pp. 5-6.

<sup>26</sup> T. 2 September 2004, p. 11.

<sup>27</sup> T. 26 August 2004, pp. 10-11.

<sup>28</sup> T. 1 September 2004, pp. 5-7.

<sup>29</sup> T. 25 August 2004, pp. 5-6.

<sup>30</sup> T. 1 September 2004, pp. 38-39, 42-43.

<sup>31</sup> Defence Closing Brief, para. 227.

that Languida was not in Gishyita during the events of 1994, and Witness DI, who stated that Languida sought refuge in Mubuga Church.

27. The Chamber has considered the Defence submission that whereas in the Indictment and the Witness Statement of Witness AP, it is alleged that the two girls who were raped are called Goretti Mukashyaka and Languida Kamukina, Witness AP in her testimony gives the names as Immaculée Mukakayiro and Languida Kamukina.<sup>32</sup> The Prosecution contends that the witness gave an adequate explanation for this discrepancy.<sup>33</sup>
28. In her statement of 30 August 1999,<sup>34</sup> Witness AP refers to the two raped girls as Languida Kamukina and Gorretti Mukashyaka, the daughters of Ruhigira. In her testimony she referred to Immaculée Mukashyaka and Languida Kamukina, the daughters of Ruhigira. However, she also stated that “I may have made a mistake about their names because it's a long time ago. When people are dead you can forget their names, but you always have an image of these people in your head”.<sup>35</sup>
29. The Chamber notes that Witness AP is related to Ruhigira by marriage and knew the victims well. The Chamber accepts the witness' explanation that the passage of time has led to some confusion as to the exact names of the two sisters, and is satisfied that, where in her testimony Witness AP referred to Immaculée Mukashyaka, or where the surname was given as Mukakayiro, she was referring to the sister of Languida Kamukina and daughter of Ruhigira, that is, Gorretti Mukashyaka.
30. The Chamber has also noted the Defence challenge to Witness AP's credibility that she is related to the current *conseiller* of Gishyita *Secteur*, who replaced the Accused, and that her testimony is therefore biased, and part of a plot against the Accused by the *conseiller* to deprive the Accused of his property.<sup>36</sup> The Chamber notes that the Defence never put this allegation of bias to the witness during cross-examination. Moreover, in assessing the credibility of Witness AP, the Chamber has taken note of this allegation of bias and is satisfied that it does not in any way discredit her testimony.
31. Consequently, the Chamber dismisses the Defence challenges to Witness AP's credibility.
32. Although Witness AP was not an eyewitness to the rape of Goretti and Languida, the Chamber infers that the Accused raped them on the basis of the following factors: the witness saw the Accused take the girls into his house; she heard the victims scream, mentioning the Accused's name and stating that they “did not expect him to do that” to them; finally the witness saw the Accused lead the victims out of his house, stark naked, and she noticed that they were walking “with their legs apart”.
33. The Chamber also finds that, following the rapes, the Accused further humiliated the girls by inviting others to come and see “what *Tutsi* girls look like”.

---

<sup>32</sup> Defence Closing Brief, paras. 226-227.

<sup>33</sup> Prosecution Closing Brief, p. 93, para. 36.

<sup>34</sup> Admitted as Defence Exhibit D2 (under seal).

<sup>35</sup> T. 31 March 2004, p. 5.

<sup>36</sup> Defence Closing Brief, para. 230.

*Findings on Murder*

34. The allegation in Paragraph 7 (a) of the Indictment that Languida Kamukina and Gorretti Mukashyaka were killed by *Interahamwe* in the presence of the Accused, flows from the chain of events alleged in Paragraph 6 (a) (i) of the Indictment, dealt with above.
35. While the Chamber has found that the two girls were taken by the Accused to his house and raped, the Prosecution presented no evidence that the girls were killed by the *Interahamwe* in the presence of the Accused, or even that they died.
36. Consequently, the Chamber dismisses the allegation in Paragraph 7 (a) of the Indictment.

***E. ATTACKS AGAINST TUTSI IN KIZIBA, NYARUTOVU AND NGENDOMBI, BETWEEN 8 AND 11 APRIL 1994***

**Allegations**

37. The Prosecution alleges that:

On or about 8 April 1994 in the morning, Mikaeli Muhimana and other persons, including Charles Sikubwabo mobilised civilians, gendarmes and commune policemen at Kiziba commercial centre and gave them arms and ammunition for purposes of killing *Tutsi* civilians. The said arms and ammunition were deployed to exterminate the *Tutsi* population in Gishyita and Gisovu *Communes*.<sup>37</sup>

The Bisesero area straddles Gishyita and Gisovu *Communes* in Kibuye Préfecture. Following attacks on *Tutsi* civilians who had gathered in enclosed places throughout Kibuye préfecture between April and June 1994, thousands of *Tutsi* survivors fled to the open but steep and undulating hills of Bisesero as their last point of refuge.<sup>38</sup>

On or around 9 April 1994 at Nyarutovu *Cellule* in Bisesero Mikaeli Muhimana along with *Interahamwe*, commune policemen and soldiers hunted for and attacked *Tutsi* civilians seeking refuge in the Nyarutovu hills.<sup>39</sup>

In April 1994 Mikaeli Muhimana, along with Clement Kayishema, Obed Ruzindana and *Interahamwe* participated in search for and attacks on *Tutsi* civilians taking refuge in Mutiti and Ngendombi hills in Bisesero.<sup>40</sup>

---

<sup>37</sup> Indictment, para. 5 (a).

<sup>38</sup> Indictment, para. 5 (d).

<sup>39</sup> Indictment, para. 5 (d) (ii).

<sup>40</sup> Indictment, para. 5 (d) (iv).

## Evidence

### Prosecution Evidence

38. **Prosecution Witnesses AW, W, BB, and BC** testified about attacks that took place in Kiziba, Nyaratovu Hill, and Ngendombi Hill, which are all sites located within the Bisesero area and are close together.
39. **Prosecution Witness AW** testified that, on 8 April 1994, he sought refuge at Nyaratovu Hill, where he arrived at about 1.00 p.m. The witness explained that from Nyaratovu Hill, which is only a 30 minute walk from Gishyita town, he could see vehicles parked in front of the Accused's house. Later on that day, the Accused launched an attack of 3000 assailants on Nyaratovu Hill. The witness saw the Accused arrive in a red minivan, a *commune* vehicle, accompanied by Sikubwabo and five *Interahamwe*. They parked the vehicle in Kiziba and launched an attack on the hill, between 11.00 a.m. and 4.00 p.m. The Accused was accompanied by several *commune* policemen, including Boniface, Rwigimba, Munyansanga, and Ruhindura, all of whom the witness knew.<sup>41</sup>
40. The Accused, Sikubwabo, and the policemen were armed with guns. Using a megaphone, the Accused announced: "You must kill them. You must exterminate them and get them out of the forests. ... The *Inyenzis* must be exterminated. They must be flushed out of all the forests".<sup>42</sup> The witness testified that among those killed in the attack were Rwagasana, Rwakayiro, Gasana, and women and children.<sup>43</sup>
41. Prosecution Witness W testified that, on the morning of 9 April 1994, *Tutsi* residents of Nyaratovu, joined by a small number of *Hutu*, were attacked by people from Musenyi centre and Gishyita *Secteur*, whom they initially mistook for looters. The residents defended themselves with stones, but were soon overpowered when *Bourgmestre* Sikubwabo, and *Conseiller* Muhirwa of Musenyi *Secteurs* arrived with three uniformed *commune* police to reinforce the attackers. Sikubwabo and the three *commune* policemen were armed. The Accused, carrying a long gun and wearing a white shirt and black trousers, participated in the attack. *Gendarmes*, who arrived in a single vehicle, also participated in the attack. According to the witness, whenever the assailants ran low on ammunition, the Accused supplied them with cartridges.<sup>44</sup>
42. Witness W testified that later that same day, at around 11.00 a.m., people from the Bisesero region came to assist the assailants. Finally, the assailants withdrew to Dukoni and the refugees went to Rurebero Hill.<sup>45</sup> The assailants remained at the base of the hill, separated from the refugees by a coffee farm.
43. According to Witness W, during the attack, the Accused shot a young *Tutsi* man named Emmanuel from a distance of 20-30 metres. Emmanuel was only 2-3 metres away from the witness when he was shot in the foot and fell. Witness W knew Emmanuel, who was the son of one Munyanshongere of Karama *Cellule*, Musenyi *Secteur*. Emmanuel was between 18-20 years old. Emmanuel was carried down the hill by some of the *Tutsi* and was later taken to Mugonero Hospital.<sup>46</sup>

---

<sup>41</sup> T. 14 April 2004, pp. 5-8.

<sup>42</sup> T. 14 April 2004, pp. 5, 7.

<sup>43</sup> T. 14 April 2004, pp. 5-8.

<sup>44</sup> T. 27 April 2004, pp. 3-7, 39; T. 29 April 2004, p. 39.

<sup>45</sup> T. 27 April 2004, p. 34.

<sup>46</sup> T. 27 April 2004, pp. 7, 34, 39-41.

44. Witness W testified that the attack, on 9 April 1994, lasted an hour and that no fatalities resulted, though four people were wounded. Witness W was of the opinion that the presence of the *Hutu* among the refugees contributed to the small number of casualties, because the assailants did not want to mistakenly kill the *Hutu*, who were intermixed with the *Tutsi*.<sup>47</sup>
45. Later, on 9 April 1994, *gendarmes* from Kibuye arrived to reinforce the assailants. The *gendarmes* called upon the *Hutu* to stop fighting the *Tutsi* and instructed the *Tutsi* to come down the hill, promising them protection. The witness testified that he and other refugees initially did not believe that they would be safe with the *gendarmes*, because there were administrative officials amongst the assailants. Eventually, the refugees descended the hill because they had no choice. The *Tutsi* were then disarmed of their traditional weapons, namely clubs, spears, and machetes.<sup>48</sup>
46. Witness W testified that, on 11 April 1994, he witnessed several attacks on *Tutsi* refugees when the *Hutu* who had been camping with them departed. The witness testified that at Kiziba, a commercial centre in Karama *Cellule*, Nyarutovu and Ngendombi Hills, the Accused, Sikubwabo, a certain Kananura, as well as other civilians, policemen, and soldiers participated in attacks against *Tutsi* refugees.<sup>49</sup>
47. Witness W stated that the attack at Kiziba, on 11 April 1994, began at 8.00 a.m. It was led by Rwigimba, a former *commune* police officer, with assailants originating from Musenyi. The second wave of the attack on Kiziba came at 10.00 a.m. and originated from Gishyita and was led by the Accused, whom the witness saw from about 15 metres armed with a gun up the road. The people defended themselves against the assailants with stones and traditional weapons.<sup>50</sup>
48. According to Witness W, when *Bourgmestre* Sikubwabo arrived with reinforcements, the refugees' defence weakened. Witness W testified that some people were killed with machetes. Others were shot and killed by the Accused or Sikubwabo, although the witness could not specify who shot whom. When it began to rain during the attack, the assailants fell back. However, when the rain subsided, the attack resumed, and several more people were killed. The *Tutsi* refugees then fled from Musenyi *Secteur* and were pursued to Nyarutovu *Cellule* in Bisesero *Secteur*.<sup>51</sup>
49. Witness W testified that, still on 11 April 1994, the refugees were attacked yet again at Nyarutovu, a *cellule* of the Bisesero *Secteur*. According to the witness, before the attack, the assailants, who numbered approximately 100, appeared to be holding a meeting at which the Accused was present. Reinforcements of assailants continued to arrive, and towards 12.00 or 1.00 p.m. the number of attackers swelled, although the witness could not give an exact count.<sup>52</sup>
50. Witness W testified that in a locality between the Nyarutovu and Gitwa *Secteurs*, four refugees died from the explosion of a grenade in an attack at Ngendombi. The witness also heard the Accused tell the *Interahamwe* that compensation would be given to whoever killed Kabanda, a *Tutsi* with a business in the Gishyita centre. The witness

---

<sup>47</sup> T. 27 April 2004, p. 4 ; See also French transcript : T. 27 avril 2004, p. 39.

<sup>48</sup> T. 27 April 2004, pp. 4, 35-36.

<sup>49</sup> T. 27 April 2004, p. 8-9.

<sup>50</sup> T. 27 April 2004, pp. 8-10, 41-42.

<sup>51</sup> T. 27 April 2004, pp. 8-9.

<sup>52</sup> T. 27 April 2004, pp. 8-10.

said that he was between 20 and 30 metres away from the Accused when he heard the reward offer. Toward evening, on 11 April 1994, the assailants left the area. The civilians among them left first, while the leaders and the soldiers continued to shoot at the refugees before leaving the site.<sup>53</sup>

51. Prosecution Witness BB testified that, on Saturday 9 April 1994, at about 11.00 a.m., he and others at Mugonero Adventist Church heard the sound of drums and jerry cans. The sound was coming from the direction of Musenyi *Secteur*, which is adjacent to Gishyita *Secteur*. According to Witness BB, the drums were signals from the people of Musenyi for help, indicating they had been attacked. Leaving the women inside the church, the men set out for Musenyi. The witness explained that Rwandan culture dictates that when someone calls for help, people go to “see what has happened”. The witness explained that Nyarutovu Hill lay between their location and Musenyi.<sup>54</sup>
52. When Witness BB and others arrived at Kiziba Hill in Musenyi, they found a crowd of about 200 people on the other side of the centre. From a distance of about 20 metres, the witness saw Rwigimba, a *commune* policeman, leading an attack. The assailants looted and destroyed *Tutsi* houses, and captured cattle and sheep. The assailants killed several people in this attack.<sup>55</sup> Witness BB was approximately 30 metres from the Accused, who arrived on a motorcycle and then abandoned it on the road to join other assailants. The Accused was armed with a grenade and a gun. The Accused and Rwigimba shot at people, who tried to defend themselves by throwing stones at the assailants. One of the people shot was a *Tutsi* man named Assiel Rwakayiro.<sup>56</sup>
53. Witness BB testified that he and Rwakayiro fled to Ngendombi Hill, about half a kilometre from Ngendombi, where they paused, at about 1.00 p.m, to assess their predicament. However, the assailants continued to pursue the refugees to Ngendombi. The witness testified that he saw the Accused, who was carrying a gun and grenades, from a distance of 16 metres. According to the witness, the Accused did not kill with a machete because he was the leader and did not wish to “soak himself in blood”.<sup>57</sup> Rather, the Accused fired his gun and threw grenades. The witness saw a grenade, thrown by the Accused, cause some refugees to fall. The grenade blast killed Camille, Ndahimana, and a young man from Musenyi whose name the witness did not know. Someone called Nguriso was also shot. From a distance of 16 to 20 metres, the witness saw the Accused shoot Musherefu, a *Tutsi* farmer, who was close to the witness when he fell.<sup>58</sup>
54. When Witness BB and the other refugees reached the summit of Ngendombi Hill, they observed the assailants backtracking. The refugees then returned to the site of the recent attack to assist survivors. According to the witness, the assailants had killed Ndahimana with machetes. He observed that Camille’s chest was torn apart and that his eyes had bled. The witness knew Camille, a resident of Kiziba, and Ndahimana, whose parents were Witness BB’s neighbours. The witness, realising that survival at Ngendombi

---

<sup>53</sup> T. 27 April 2004, pp. 8-10.

<sup>54</sup> T. 16 April 2004, pp. 3, 16, 18.

<sup>55</sup> T. 16 April 2004, pp. 3, 5, 17.

<sup>56</sup> T. 16 April 2004, pp. 4-5, 17-18.

<sup>57</sup> T. 16 April 2004, p. 6.

<sup>58</sup> T. 16 April 2004, pp. 5-6, 8-10, 19, 22.

would be difficult, fled with his wife and six children to Muyira Hill, where they arrived in the evening of 9 April 1994.<sup>59</sup>

55. **Prosecution Witness BC** testified that people from her area, both *Hutu* and *Tutsi*, initially sought refuge together on a hill because they did not know the identity and intentions of their attackers. They did not know that the assailants were targeting only *Tutsi*. The Accused addressed the refugees who had gathered on the hill, telling them that their attackers were only bandits. He cautioned them that it was unwise to fight against guns with mere machetes and stones. The Accused then disarmed them and asked Ruhindura, a *commune* policeman, to put all the collected weapons in the house of Casimir Ngendahayo, a *Hutu* in charge of the *Cellule*. According to the witness, the Accused "asked the *Hutu* to break away from the *Tutsi* [whose] fate was sealed".<sup>60</sup> The assailants waited until the *Hutu* departed and then they started shooting at the remaining *Tutsi* refugees. Witness BC testified that, after this incident, she felt that the Accused "was marking" *Tutsi*, and indeed, from that day forward, the Accused launched daily attacks against the *Tutsi* refugees.<sup>61</sup>
56. Witness BC testified that, on Friday night, 8 April 1994, a woman named Leona was killed by assailants. Consequently, Witness BC and her family fled to the Bisesero Hills region where there were many hills, and where other *Tutsi* might help them. Witness BC and her family arrived at Kigarama Hill in Bisesero on Saturday, 9 April 1994.<sup>62</sup>
57. Witness BC testified that, on Sunday, 10 April 1994, the Accused, accompanied by *commune* policemen named Ruhindura and Rwigimba, led a group of *Interahamwe* from Gisenyi and Ruhengeri in an attack against Ngendombi Hill. The witness recognised the attackers as *Interahamwe* because they were clothed only in banana leaves. According to the witness, the *Interahamwe* wore banana leaves to associate themselves with devils. At approximately 2.00 p.m., after the *Tutsi* men had repelled the attackers momentarily, Witness BC saw Muhimana throw a grenade on the road. The explosion killed many *Tutsi*. Those not killed by the explosion were subsequently "finished off" by assailants with machetes. The witness testified that, during the attacks, Muhimana and the attackers chanted: "Exterminate them. Flush them out of the forest".<sup>63</sup>
58. Witness BC testified that, close to sundown, she saw the Accused "gruesomely kill" her children. According to the witness, the Accused cut the throat of her first child and cut off the arms of both of her other children. He cut the witness' two hands and then completely cut off her left hand and cut her on the head and shoulders with a machete. The witness, who lost consciousness, was awakened by her husband at about 6.00 p.m. During testimony, Witness BC showed the Chamber the stub of her left hand and the scars on her right hand, her shoulders, and her head.<sup>64</sup>

---

<sup>59</sup> T. 16 April 2004, pp. 6-7, 19-22.

<sup>60</sup> T. 20 April 2004, p. 39.

<sup>61</sup> T. 20 April 2004, pp. 34, 36, 38-39, 51-52, 54.

<sup>62</sup> T. 20 April 2004, pp. 38-39, 57.

<sup>63</sup> T. 20 April 2004, pp. 38, 42, 55, 57-59.

<sup>64</sup> T. 20 April 2004, pp. 36-38, 59, 64.

### Defence Evidence

59. **Defence Witnesses DM,<sup>65</sup> TQ13,<sup>66</sup> TQ1,<sup>67</sup> and NT1<sup>68</sup>** testified that they never heard of any distribution of weapons at Kiziba during the events of 1994. Witness TQ1 stated that the funeral for Muhimana's son was held on 10 April 1994. From that day until the end of the mourning period, on 16 April 1994, the Accused remained at his residence.<sup>69</sup>

### Findings

#### *Mobilization and Distribution of Weapons at Kiziba Commercial Centre<sup>70</sup>*

60. In its Pre-Trial Brief, the Prosecution relies on Witness W to prove the allegations that the Accused mobilised assailants and distributed arms and ammunition at Kiziba Commercial Centre, as alleged in Paragraph 5 (a) of the Indictment.<sup>71</sup> However, in its Closing Brief, in support of this paragraph, it asserts that it relies on Witnesses W, BB, and BC, as well as the evidence of all Prosecution witnesses who testified about the factual allegations in Paragraphs 6 (a) (i)-(iii) and 7 (a) (i) of the Indictment in support of Counts III and IV, respectively.<sup>72</sup> The Chamber notes that the testimonies of these witnesses relate to attacks in Kiziba, Nyarutovu, and Ngendombi, while the instant paragraph of the Indictment mentions only the mobilisation and the distribution of arms and ammunition at Kiziba Commercial Centre. Therefore, the evidence of such attacks falls outside the scope of this paragraph.
61. The Chamber notes that no witness was called to testify that, “on or around 8 April 1994, in the morning”, in Kiziba commercial centre, the Accused gave “civilians, *gendarmes*, and *commune* policemen ... arms and ammunition for purposes of killing *Tutsi* civilians” or that the “said arms and ammunition were deployed to exterminate the *Tutsi* population in Gishyita and Gisovu *Communes*”, as alleged in Paragraph 5 (a) of the Indictment. The evidence relates to a different situation, which is the use and resupply of weapons during an attack against Kiziba.
62. Accordingly, the Chamber finds that the Prosecution has not proved the allegations in Paragraph 5 (a) of the Indictment.

#### *Attacks at Nyarutovu*

63. The Chamber finds the first-hand accounts of Witnesses W and AW about the attacks that occurred at Nyarutovu to be credible. The evidence presented by the Defence does not raise any reasonable doubt in relation to these attacks, and no Defence witness has challenged Witness W's and AW's accounts of the attacks. The Accused's alibi, that between 10 April 1994 and 16 April 1994, he did not leave his home, is not convincing. The Chamber finds that, even assuming he was mourning the death of his son between 8 and 16 April 1994, this does not exclude his participation in the attacks at Nyarutovu.

---

<sup>65</sup> T. 17 August 2004, p. 28.

<sup>66</sup> T. 25 August 2004, p. 4.

<sup>67</sup> T. 23 August 2004, p. 3.

<sup>68</sup> T. 26 August 2004, p. 8.

<sup>69</sup> T. 23 August 2004, pp. 3-4, 12, 15, 31.

<sup>70</sup> Indictment, para. 5 (a).

<sup>71</sup> Prosecution Pre-Trial Brief, Part IV *Corrigendum*, no.20 (Witness W).

<sup>72</sup> Prosecution Closing Brief, p. 19, para. 41.

The testimony of Witness TQ1 that the Accused remained at his residence from 10 April to 16 April 1994 is not convincing. Many credible Prosecution witnesses and Defence Witness DC saw the Accused in different places outside his house between 8 April 1994 and 16 April 1994.

64. On the basis of the testimonies of Witnesses W and AW, the Chamber finds that, between 8 and 11 April 1994, the Accused participated in two large-scale attacks against *Tutsi* refugees at Nyarutovu.
65. The Chamber notes the discrepancy between the testimonies of Witnesses AW and W in relation to the date of the first attack at Nyarutovu. Whereas Witness AW testified that the attack occurred on 8 April 1994, Witness W recalled the date of the attack as 9 April 1994. The Chamber is of the view that in situations where witnesses are called to testify on events which took place over a decade ago, discrepancies relating to the time and date of the event may occur.
66. The Chamber finds that in the first attack, which began in the morning of 8 or 9 April 1994, *Tutsi* residents of Nyarutovu were assailed by people from Gishyita and Musenyi. When leaders from the *commune* joined the assailants, the *Tutsi* refugees were overpowered. Based on the eyewitness account of Witness W, the Chamber finds that the Accused was armed and participated in the attack by supplying the assailants with ammunition. The Chamber further finds that the Accused shot a young *Tutsi* man called Emmanuel in the foot and that Emmanuel fell to the ground. In addition to Emmanuel, many people were injured during the attack before the assailants withdrew to Dukoni and the *Tutsi* survivors fled to Rurebero Hill.
67. The Chamber finds that, on 11 April 1994, a second attack took place at Nyarutovu Hill and in the neighbouring areas of Kiziba, Nyarutovu, and Ngendombi. These attacks were launched against *Tutsi*, after the departure of the *Hutu* refugees. The attackers at these sites included the Accused, *Bourgmestre* Sikubwabo, a certain Kananura, as well as other civilians, policemen, and soldiers.
68. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt the allegations in Paragraph 5 (d) (ii) of the Indictment, that the Accused hunted for and attacked *Tutsi* civilians seeking refuge in the Nyarutovu Hills.

#### *Attack at Ngendombi Hill*

69. The Prosecution presented the evidence of Witnesses BB, BC, and W in support of its allegation that the Accused participated in an attack at Ngendombi Hill in April 1994. The evidence of these witnesses has been summarised above.
70. In response, the Defence contends that the Accused was not provided with adequate notice in respect of the allegations contained in this paragraph. The Defence particularly alleges that “the Prosecutor’s Pre-Trial Brief gives no notice as to which Prosecution witness made this allegation”, and further, that “the vagueness of the allegation makes it impossible to determine which *actus reus* of genocide corresponds to the allegation in this paragraph of the amended Indictment”.<sup>73</sup>
71. The Chamber has reviewed the Prosecution Pre-Trial Brief and notes Paragraph 58 which states that:

---

<sup>73</sup> Defence Closing Brief, para. 188.

... witnesses AW, BU, BG, BB, BE, BP, AT, AP, BF, BC, W and C will testify to acts of genocide, murder and rape that were perpetrated by Mikaeli Muhimana in the various hills and valleys in the Bisesero area. The witnesses will testify to seeing Mikaeli Muhimana either individually or in concert with Clement Kayishema, Charles Sikubwabo, Obed Ruzindana and others, distribute arms, and took part in the attacks and sexual assault on *Tutsi* civilians.

72. The Chamber holds that the above paragraph clearly provided the Accused with sufficient notice of which witnesses would testify in support of Paragraph 5 (d) (iv) of the Indictment. The Chamber further holds that the instant paragraph of the Indictment provided sufficient information about where the alleged attack took place and that the Pre-Trial Brief provided the Accused with further particulars of the allegation.<sup>74</sup>
73. With regard to the Defence contention that the allegation is so vague as to make it impossible to determine which *actus reus* of genocide corresponds to the allegation in this paragraph of the Amended Indictment, the Chamber considers that the very allegation in Paragraph 5 (d) (iv) of the Indictment that the Accused participated in the “search for and attacks on *Tutsi* civilians” would, if proved, constitute the *actus reus* of genocide. Further allegations which could constitute the *actus reus* of genocide were also provided to the Accused in Paragraphs 54-58 of the Pre-Trial Brief as well as in the Annex of the same document detailing a summary of the anticipated testimony of Witness BC. The Defence objection in this instance is therefore unfounded.
74. The Chamber has already found Witness W to be credible with regard to the attack at Nyarutovu. The Chamber finds Prosecution Witnesses BB and BC credible. They gave a reliable and detailed account of the events at Ngendombi Hill in April 1994. Witness BB was close to the Accused and gave a comprehensive account of his actions.
75. The Chamber rejects the Defence challenge to Witness BC’s credibility.<sup>75</sup> Contrary to the Defence contention, the Chamber does not find any contradiction in the witness’ account of how her children were killed.
76. Based on the testimonies of Witnesses BB, BC, and W, the Chamber finds that the attack on *Tutsi* refugees on Ngendombi Hill took place between 9 and 11 April 1994, and that the Accused, with two *commune* policemen, including Ruzindana, led a group of *Interahamwe* in carrying out the attack. Based on the consistent and corroborative testimonies of all three witnesses, the Chamber finds that the Accused was armed with a gun and grenades and that he threw a grenade into a crowd of *Tutsi* refugees, causing many deaths. Witnesses BB and BC also testified that those who did not die from the blast of the grenade were later “finished off” using machetes. Based on the testimony of Witness BC, the Chamber accepts that the purpose of the attack was to flush the *Tutsi* out of the forest and exterminate them.
77. The Chamber further finds that, on 10 April 1994, after the attack on the refugees at Ngendombi Hill, the Accused killed Witness BC’s three children. The Accused attacked Witness BC with a machete, cutting her on the hands, shoulders, and head. He amputated her left hand.
78. The Chamber finds that, in April 1994, the Accused participated in the search for and attack on *Tutsi* civilians at Ngendombi Hill. Many *Tutsi* died or were seriously injured

---

<sup>74</sup> Prosecution Pre-Trial Brief, Part IV *Corrigendum*, No.15 (Witness BB); No.18 (Witness BC).

<sup>75</sup> Defence Closing Brief, paras. 188-189.

in the attack. However, the Chamber finds no evidence that the Accused searched for and attacked *Tutsi* civilians taking refuge at Mutiti.

79. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt the allegations in Paragraph 5 (d) (ii) in relation to the attacks at Ngendombi Hill.

#### ***F. MEETING AT THE ACCUSED'S RESIDENCE IN GISHYITA TOWN, MID-APRIL 1994***

##### **Allegations**

80. The Prosecution alleges that:

On or about 7 April 1994, Mikaeli Muhimana held a meeting at his residence in Gishyita town, Gishyita *Secteur*, Gishyita *Commune*, with, amongst others, the Gishyita Bourgmestre Charles Sikubwabo and a businessman Obed Ruzindana. Shortly thereafter killings, rape and other atrocities commenced in Gishyita *Commune*.<sup>76</sup>

##### **Evidence**

###### *Prosecution Evidence*

81. **Prosecution Witness AQ**, a *Tutsi* woman, testified that, in mid-April 1994, Muhimana, Ruzindana, and Sikubwabo convened a meeting in the courtyard in front of Muhimana's house. Witness AQ was close to the many participants, at the meeting but was not able to hear what was said. The witness testified that some time before the meeting, she overheard the Accused state that he was going to hold a meeting to encourage the *Hutu* population to go out and kill *Tutsi*.<sup>77</sup>

###### *Defence Evidence*

82. **Defence Witness TQ13** testified that he neither saw Charles Sikubwabo or Obed Ruzindana in Gishyita on 7 April 1994 nor heard that a meeting was held on 7 April 1994 in Gishyita town centre.<sup>78</sup>
83. **Defence Witnesses TQ14<sup>79</sup>, DJ<sup>80</sup> and NT1<sup>81</sup>** testified that there were no meetings held on 7 April 1994 at the Gishyita centre. Witness TQ14 specified that he did not attend, nor was aware of, any meetings held by the authorities in April, May, or June 1994.<sup>82</sup>
84. Defence Witness NT1 asserted that there were no meetings in the Gishyita centre during the months of April and June 1994. The witness added that, during the war, it was impossible for the *bourgmestre* to hold meetings, due to insecurity.<sup>83</sup>

---

<sup>76</sup> Indictment, para. 6 (a).

<sup>77</sup> T. 15 April 2004, pp. 13-14, 42-45, 47.

<sup>78</sup> T. 25 August 2004, pp. 5, 19.

<sup>79</sup> T. 25 August 2004, p. 25.

<sup>80</sup> T. 1 September 2004, pp. 73-74.

<sup>81</sup> T. 26 August 2004, pp. 4-6.

<sup>82</sup> T. 25 August 2004, p. 41.

<sup>83</sup> T. 26 August 2004, pp. 21-22, 25-26.

85. **Defence Witness DS**, who lived close to the Accused's house, testified that, on 7 April 1994, he did not hear of a citizens' meeting organised by the *commune* authorities.<sup>84</sup>
86. **Defence Witness DR** testified that, on 7 April 1994, around 11.30 a.m., he stopped by the Accused's home, where he remained for about two hours. The witness testified that, while at the Accused's home, he was neither aware of any meeting nor saw *Bourgmestre* Sikubwabo or Obed Ruzindana.<sup>85</sup>
87. **Defence Witness DI** testified that, during the war, the Accused and Sikubwabo were not on good terms because the former "was married to a *Tutsi* woman, and Sikubwabo did not like men who were married to *Tutsi* women".<sup>86</sup>

## Findings

88. The Chamber finds that there is insufficient evidence to prove the allegations contained in Paragraph 6 (a) of the Indictment and Paragraph 40 of the Pre-Trial Brief<sup>87</sup> that the Accused and others held meetings at which plans to attack *Tutsi* civilians were made. On the basis of Witness AQ's testimony, the Chamber finds that a meeting of officials was held at the Accused's residence during mid-April 1994. However, there is nothing to suggest that the meeting was held for an unlawful purpose, and the Prosecution has failed to establish a link between the meeting and the killings, rapes, and other atrocities that allegedly occurred afterwards.

## G. RAPE AND MURDER OF ESPERANCE MUKAGASANA, MID-APRIL 1994

### Allegations

89. The Prosecution alleges that:

On or about 14 April 1994 in Gishyita town Gishyita *Secteur*, Gishyita *Commune*, at his residence, Mikaeli Muhimana raped a *Tutsi* woman Esperance Mukagasana and offered her to an *Interahamwe* named Gisambo, for the same purpose. The said Gisambo raped Esperance Mukagasana at Mikaeli Muhimana's residence and within his presence.<sup>88</sup>

On or about 14 April 1994 in Gishyita town Gishyita *Secteur*, Gishyita *Commune*, at his residence, Mikaeli Muhimana directed an *Interahamwe* named Gisambo to kill a civilian woman Esperance Mukagasana. The said Gisambo executed the said woman in the presence of Mikaeli Muhimana at his residence.<sup>89</sup>

---

<sup>84</sup> T. 7 September 2004, pp. 8, 21.

<sup>85</sup> T. 31 August 2004, pp. 13-15, 76, 77.

<sup>86</sup> T. 1 September 2004, p. 46.

<sup>87</sup> See also Prosecution Pre-Trial Brief, Part IV *Corrigendum*, No.3 (Witness AQ).

<sup>88</sup> Indictment, para. 6 (a) (ii).

<sup>89</sup> Indictment, para. 7(a) (i).

## Evidence

### *Prosecution Evidence*

90. **Prosecution Witness AQ**, who lived in the Accused's house, testified that, about a week after the war erupted, she saw the Accused rape Esperance Mukagasana on four separate occasions. According to the witness, all of the rapes occurred at the home of the Accused within one or two days, usually between 5.00 and 6.00 p.m. She testified that each rape lasted between 30 minutes and one hour, during which the Accused was always completely naked.<sup>90</sup>
91. Witness AQ testified that she secretly followed the Accused when he snatched Esperance from her room and dragged her "like a goat" into his room. Witness AQ stated that, during the first rape, Esperance struggled to be released from the Accused's grip, but he was too strong for her. The Accused subsequently pushed Esperance on to the bed, stripped her naked, and raped her. According to the witness, the third rape lasted between 30 minutes and an hour, and she left the location, after watching her sister being raped repeatedly.<sup>91</sup>
92. Witness AQ testified that Esperance was also raped twice by an *Interahamwe* called Gisambo, who frequently visited the Accused's house "during the war". She witnessed Gisambo drag Esperance, who was screaming, into the Accused's house. However, the witness was not able to see the rape because Gisambo closed the door behind him.<sup>92</sup>
93. Witness AQ also testified that, around mid-April 1994, the Accused, Ruzindana, and many *Interahamwe* returned from an attack in a vehicle and stopped in front of the Accused's house. The Accused and Ruzindana sent two *Interahamwe* militiamen to bring Esperance from the Accused's house to the vehicle. The Accused returned later, at 9.00 p.m., without Esperance. After this event, Esperance was never seen again, and the witness deduced that she had been killed by the Accused.<sup>93</sup>
94. Witness AQ testified that, in April 1994, the Accused also raped her on three different occasions in his house. On the first occasion, the Accused forcefully opened the door of her bedroom while she lay in bed. The Accused then undressed and raped her. According to the witness, she was a little over 15 years of age and had never had sexual intercourse before she was raped. About two or three days following the first rape, the Accused again raped the Witness at night in her bedroom. Despite the rapes, Prosecution Witness AQ continued to stay at the Accused's home because she had no other place to hide.<sup>94</sup>

### *Defence Evidence*

95. **Defence Witness DA** testified that she never heard that Muhimana raped any woman in his house during the period that she lived there.<sup>95</sup>

---

<sup>90</sup> T. 15 April 2004, pp. 8, 15-17, 55-58.

<sup>91</sup> T. 15 April 2004, pp. 15-16, 57.

<sup>92</sup> T. 15 April 2004, p. 18.

<sup>93</sup> T. 15 April 2004, pp. 17-19.

<sup>94</sup> T. 15 April 2004, pp. 25, 28-30.

<sup>95</sup> T. 16 August 2004, pp. 19-20.

96. **Defence Witness DQ** testified that she never heard that Muhimana raped Esperance. According to Witness DQ, it was impossible for Muhimana to have raped Esperance Mukagasana.<sup>96</sup>
97. **Defence Witness NT1** testified that he never heard that Esperance Mukagasana was raped by the Accused. The witness stated that the Accused could not have raped anyone in his house on 7 April 1994, because a person who is married cannot rape someone in his own home, “especially young girls”.<sup>97</sup> He also testified that a group of persons called *Abakiga* might have abducted Esperance Mukagasana, between May and June 1994, when the Accused was not at his house.<sup>98</sup>
98. **Defence Witness DR** testified that, during the *gacaca* sessions, he never heard about any rape occurring in Gishyita *Secteur*. The witness added that he did not think it was possible for Muhimana to have raped women in his own house, where his wife resided.<sup>99</sup>
99. **Defence Witness DJ** testified that Esperance Mukagasana used to live in the Accused’s house. From a distance of 50 metres, he witnessed her being taken from inside the Accused’s home, in broad daylight, into Obed Ruzindana’s vehicle. Muhimana was not present that day since he had gone to bury his cousin. The witness did not hear that the Accused raped Mukagasana in his house before she was abducted.<sup>100</sup>
100. **Defence Witness DI** stated that, while Muhimana was away from home, attending a relative’s funeral, *Interahamwe* from Bugarama abducted Esperance from his house.<sup>101</sup>
101. **Defence Witness TQ1** testified that she did not know Esperance. Furthermore, she also testified that she never heard of any rape committed in Gishyita *Commune*. The witness further stated that she used to go to Gishyita Centre and would have heard if there had been a rape.<sup>102</sup>

## Findings

### Rape

102. The Chamber finds the testimony of Prosecution Witness AQ credible. The Chamber is satisfied that Witness AQ, who lived in the Accused’s house, was an eyewitness to the rape of Esperance. She gave a detailed description of how the Accused raped Esperance several times. The Witness did not exaggerate her evidence and was prepared to admit that she was not able to see the alleged rape of Esperance by Gisambo, because he closed the door.
103. The Chamber accepts Witness AQ’s testimony that she and the victim lived in the Accused’s house at the time of the rape, and that she saw Esperance raped several times. The witness was able to see what the Accused did to the victim because the door to the room was open, and he was always completely naked. The witness stated that, on the first occasion, “about a week after the war erupted”, she saw the victim being

---

<sup>96</sup> T. 18 August 2004, pp. 37-38.

<sup>97</sup> T. 26 August 2004, p. 11.

<sup>98</sup> T. 26 August 2004, pp. 3, 10-11.

<sup>99</sup> T. 1 September 2004, pp. 5-7.

<sup>100</sup> T. 2 September 2004, pp. 11-12, 14.

<sup>101</sup> T. 1 September 2004, pp. 40, 43-44.

<sup>102</sup> T. 23 August 2004, pp. 16-17, 23.

dragged to the room, struggling to be released. The Accused pushed her on to the bed, stripped her naked, and raped her. The Chamber also finds that the witness' approximation of the date of the first rape corresponds to the date alleged in Paragraph 6(a) (ii) of the Indictment.

104. The Chamber has already found that, even though some Defence witnesses testified that they did not hear of rapes committed by the Accused in his house on 7 April 1994, it does not follow that such rapes did not occur. The Chamber rejects the testimony of Defence witnesses who testified that it was not possible for the Accused to rape women in his own house, where his wife lived. These witnesses did not advance any convincing reason for this assertion.
105. Regarding the allegation in the Indictment that the Accused offered Esperance to an *Interahamwe* named Gisambo, who raped her in the Accused's house and in his presence, the Chamber notes that no evidence was led to support the allegation that Esperance was offered to Gisambo by the Accused or that she was raped in his presence. Furthermore, although Witness AQ testified to seeing Gisambo drag Esperance into the Accused's house as she screamed, the witness was not able to see the alleged rape because Gisambo closed the door behind him. Accordingly, the Chamber finds that the Prosecution has failed to prove the allegation that the Accused offered Esperance to Gisambo and that he raped her in the Accused's presence.
106. The Chamber is mindful of the Defence submission regarding the partiality of Witness AQ and has, accordingly, considered her testimony with the necessary caution. Nevertheless, the Chamber finds her recollection of the events credible and reliable.
107. The Chamber will address the allegation of the witness' rape by the Accused in the Facts Not Pleaded Section of this Judgement.
108. Based on the eyewitness testimony of Witness AQ, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegation in Paragraph 6 (a) (ii) of the Indictment that the Accused raped Esperance Mukagasana in his residence.

#### *Murder*

109. The allegation in Paragraph 7 (a) (i) of the Indictment that the Accused directed an *Interahamwe* named Gisambo to kill Esperance flows from the chain of events alleged Paragraph 6 (a) (ii) of the Indictment, dealt with above.
110. The Chamber accepts Witness AQ's testimony that Esperance Mukagasana was taken away in a vehicle by the Accused and others, and that the Accused returned to his home without Esperance. There is no evidence that the Accused instructed Gisambo to kill Esperance, or that Esperance was killed. Consequently, the Chamber dismisses the allegation in Paragraph 7 (a) (i) of the Indictment.

### ***H. EVENTS AT MUBUGA CHURCH – LOOTING OF FOOD, 11 TO 15 APRIL 1994***

#### **Allegations**

111. The Prosecution alleges that:

Between 8 and 14 April 1994, about five thousand six hundred *Tutsi* civilians sought refuge at Mubuga Catholic Church, Gishyita *Commune* after fleeing from attacks on *Tutsi* civilians which were occurring

throughout the Prefecture of Kibuye. After the *Tutsi* civilians had begun to congregate in the Mubuga Catholic Church between 8 and 14 April 1994, Mikaeli Muhimana acting in concert with, among others, Charles Sikubwabo and Clement Kayishema visited the church regularly and took stock of refugees in preparation for an attack.<sup>103</sup>

Between 14 and 15 April 1994, Mikaeli Muhimana acting in concert with Charles Sikubwabo, *gendarmes*, *Interahamwe* and soldiers looted Mubuga Catholic Church of food donated by humanitarian organisations including CARITAS, for consumption by refugees seeking shelter in the Mubuga Catholic Church, and thereby deprived the refugees of food during the period they were seeking shelter in the aforesaid Mubuga Catholic Church.<sup>104</sup>

## Evidence

### *Prosecution Evidence*

112. **Prosecution Witness AV** testified that she sought refuge, on 11 April 1994, at Mubuga Catholic Church. On arrival she found many men, women, and children refugees. The same day, the witness, who was outside the church, saw Mikaeli Muhimana, Ryandikayo and Vincent Rutaganira pass nearby on their way to the presbytery. The witness did not see them any other time that day.<sup>105</sup>
113. **Prosecution Witness AF** testified that he sought refuge “from the genocide” at Mubuga Catholic Church on 13 April 1994.<sup>106</sup>
114. The witness said that, on 14 April 1994, Father Gahinda was driven away “by Mika’s people”<sup>107</sup> in a vehicle and was killed. On that same day, Father Marcel, the vicar of the Parish, refused the witness’ request to distribute food brought by CARITAS to the *Tutsi* refugees. According to the witness, Charles Sikubwabo, Mikaeli Muhimana, and others came to the church and spoke with Father Marcel in the presbytery. Shortly after their meeting, the youth of Ngiyuranga left in vehicles and on motorcycles with the CARITAS food. Sikubwabo told Father Marcel that he “was going to solve the problem of the refugees in the church”.<sup>108</sup> According to the witness, the Accused said nothing.<sup>109</sup>

### *Defence Evidence*

115. **Defence Witness DA** testified that, on 12 April 1994, he sought refuge at Mubuga Church, which was reportedly safe. The witness stated that many refugees had gathered at the church, which was protected by *gendarmes*. The witness reported that the refugees in the church had water to drink and that the CARITAS organisation distributed small rations of food. According to Witness DA, this food was later looted by assailants.<sup>110</sup>

---

<sup>103</sup> Indictment, para. 5 (b).

<sup>104</sup> Indictment, para. 5 (b) (i).

<sup>105</sup> T. 1 April 2004, pp. 36-37, 54.

<sup>106</sup> T. 28 April 2004, p. 28, 50.

<sup>107</sup> T. 28 April 2004, p. 52.

<sup>108</sup> T. 28 April 2004, pp. 24-25, 27 ; T. 29 April 2004, p. 15.

<sup>109</sup> T. 28 April 2004, p. 50.

<sup>110</sup> T. 16 August 2004, pp. 23-25, 40-41; see also French version of the transcripts : T. 16 Août 2004, p. 28, 47.

116. **Defence Witness DD** testified that food was distributed to the refugees at the church by an organisation called CARITAS. Later, the witness observed that the CARITAS food was looted by, amongst others, *Bourgmestre* Sikubwabo and a trader called Ryandikayo. The witness did not see the Accused, whom he would have recognized.<sup>111</sup>
117. Witness DD testified that no authorities from Kibuye counted the number of refugees gathered at the church. However, the witness stated that one *gendarme* asked how many refugees there were.<sup>112</sup>
118. **Defence Witness DF** testified that, as of 8 April 1994, people who lived in the vicinity of the parish sought refuge at Mubuga Church.<sup>113</sup>
119. **Defence Witness DL** testified that he had heard about looting which occurred at Mubuga. According to the witness, *Bourgmestre* Sikubwabo and *Conseiller* Vincent Rutaganira were among those who stole rice, motorcycles, and other vehicles. The witness testified that during the *gacaca* sessions, Mika's name was never mentioned; it was reported that *Conseiller* Vincent Rutaganira called people to participate in the massacres at the church.<sup>114</sup>
120. **Defence Witness DC** testified that he fled alone towards Mubuga Church on the evening of 12 April 1994, where he found other refugees, whose number kept increasing. *Gendarmes*, who were supposed to be guarding the refugees, were stationed around the church. The refugees gathered at the church were given rations provided by CARITAS.<sup>115</sup>
121. Witness DC testified that the CARITAS food store was looted in his presence before nightfall on 12 or 13 April 1994. According to the witness, the Accused was present during the looting. The witness stated, "He was standing there. He was doing nothing. I didn't see him do anything. I didn't see him kill anybody, but he was present".<sup>116</sup>

## Findings

### *Events Prior to the Attack on Mubuga Church*

122. In relation to the events alleged to have occurred at Mubuga Church, the Prosecution relies primarily upon the evidence of Witnesses AV and AF.
123. The Chamber finds that Witness AF convincingly narrated a sequence of events, commencing on 14 April 1994 and culminating in an attack the following morning. Moreover, the Chamber notes that the accounts of Witnesses AV and AF were detailed and consistent regarding the sequence of events leading to the attack on Mubuga Church, and that their testimonies were corroborative regarding the incident of the attack. Accordingly, the Chamber is convinced that Witnesses AV's and AF's accounts of the attack on Mubuga Church are credible and reliable.
124. The Defence submits that there are inconsistencies between Witness AV's and AF's accounts of the events leading up to the attack on Mubuga Church. According to the

---

<sup>111</sup> T. 17 August 2004, pp. 13-14.

<sup>112</sup> T. 17 August 2004, p. 14.

<sup>113</sup> T. 30 August 2004, p. 3.

<sup>114</sup> T. 31 August 2004, pp. 67, 72.

<sup>115</sup> T. 17 August 2004, pp. 4-5.

<sup>116</sup> T. 17 August 2004, pp. 5-6.

Defence, Witness AV alleged that the Accused arrived at the church by car, while Witness AF recalled that the Accused arrived on foot. Additionally, while Witness AF claimed that the attack started at 6.00 a.m., Witness AV estimated that it commenced at 10.00 a.m. The Chamber considers these discrepancies to be minor and simply a result of the witnesses' varying perspectives in relation to the attack.

125. The Defence challenges the credibility of the evidence given by Witness AF. It submits that it is unlikely that the Accused would have confided in a *Tutsi* about the training of *Interahamwe* in Nyungwe forest. The Chamber is not persuaded by the Defence argument. The witness did not claim that the Accused personally informed him of the training. Rather, the witness testified that he "could hear him say it."<sup>117</sup>

#### *Preparation for an Attack*

126. The Chamber notes that the Defence does not dispute that many members of the civilian population sought refuge in Mubuga Church from attacks occurring in the area.
127. The Indictment states that, between 8 and 13 April 1994, "about five thousand six hundred *Tutsi* civilians sought refuge at Mubuga Catholic Church".<sup>118</sup> Upon review of all the evidence given by both Prosecution and Defence witnesses, the Chamber concludes that there is insufficient evidence to accurately determine the number of refugees who sought shelter at the church; however it is clear that many did so. Witness AF, whom the Chamber has found credible, succinctly described the situation when he testified that the refugees in the church were *Tutsis* and that the church was "full to bursting ... nobody could move".<sup>119</sup>
128. In relation to the allegation that the Accused and others visited the church regularly and "took stock of refugees in preparation for an attack", the Defence submits that the Prosecution presented insufficient evidence to substantiate this charge. According to the Defence, the witness did not testify that she saw the Accused "go to the Catholic Church regularly" or that she saw "anything that was reprehensible in Mika Muhimana's conduct" prior to 15 April 1994.<sup>120</sup>
129. Based upon the clear and consistent testimony of Witness AV, the Chamber finds that the Accused visited the premises of Mubuga Catholic Church on 11 April 1994. However, the Chamber finds that the Prosecution has not proved the allegation that the Accused visited the church regularly in order to "take stock" of refugees and prepare for an attack. Consequently, the Chamber dismisses Paragraph 5 (b) of the Indictment.

#### *Looting of the CARITAS Food Stores*

130. The Chamber finds the eyewitness testimony of Prosecution Witness AF, who observed the Accused on 14 April 1994 at the scene of the looting of the CARITAS food aid intended for the refugees, to be credible. The witness, who knew the Accused prior to the events of 1994 and identified him in court, had a clear view of the looters, as the door of the Presbytery was opposite the spot in the church where he was standing.<sup>121</sup>

---

<sup>117</sup> T. 28 April 2005, p. 23

<sup>118</sup> Indictment, para. 5 (b).

<sup>119</sup> T. 28 April 2004, p. 26.

<sup>120</sup> Defence Closing Brief, paras. 141, 143.

<sup>121</sup> T. 28 April 2004, pp.26-27.

131. The evidence provided by Defence Witness DC corroborates Witness AF's sighting of the Accused at the scene of the looting, although he testified that the looting occurred on 12 and 13 April 1994, not 14 April, as Witness AF testified. Given the time that has passed since the events, an element of uncertainty in relation to dates is understandable.
132. Based upon the testimony of Witness AF, corroborated by that of Witness DC, the Chamber finds that the Accused was physically present at the scene of the looting of the CARITAS food supply. By his continued presence, and by virtue of his position as *conseiller*, the Chamber finds that the Accused encouraged the looting of the food supplies which were intended for the refugees in the church. Consequently, the Chamber finds that the Prosecution has established beyond reasonable doubt the allegation contained in Paragraph 5 (b) (i) of the Indictment.

## ***I. ATTACK OF MUBUGA CHURCH, 15 APRIL 1994***

### **Allegations**

133. The Prosecution alleges that:

Between 14 and 15 April 1994, Mikaeli Muhimana, acting in concert with Charles Sikubwabo and soldiers distributed grenades and guns to *Interahamwe* and armed civilians at the Mubuga Catholic Church for purpose of attacking the *Tutsi* civilians seeking refuge in the aforesaid Mubuga Catholic Church.<sup>122</sup>

On or about 15 April 1994, Mikaeli Muhimana along with Clement Kayishema, Obed Ruzindana, soldiers, *Interahamwe*, armed civilians and *communal* policemen launched an attack on *Tutsi* civilians seeking refuge in Mubuga Catholic Church, using guns, grenades, machetes, pangas and other traditional weapons killing over five thousand *Tutsi* civilians who were seeking refuge in the aforesaid Mubuga Catholic Church.<sup>123</sup>

In the course of an attack on *Tutsi* civilians seeking refuge in Mubuga Catholic Church on 15 April 1994, Mikaeli Muhimana killed hundreds of people including Kaihura and injured several others.<sup>124</sup>

### **Evidence**

#### *Prosecution Evidence*

134. **Prosecution Witness AF** testified that, during the night of 14 April 1994, assailants, who had received the key to the presbytery of Mubuga Church, came to the presbytery, where they raped, tortured, and killed the *Tutsi* women and girls who were hiding there. The witness acknowledges that he did not personally see the attack, which occurred in the inner courtyard of the presbytery, because he was inside the church.<sup>125</sup>
135. The following morning, on 15 April 1994, after having disposed of the corpses of the victims from the presbytery, in the banana field, the attackers turned their attention to

---

<sup>122</sup> Indictment, para. 5 (b) (ii).

<sup>123</sup> Indictment, para. 5 (b) (iii).

<sup>124</sup> Indictment, para. 7 (b).

<sup>125</sup> T. 28 April 2004, pp. 27-31.

the refugees inside the church. The witness, observing Muhimana from a distance of 10 metres, noted that he seemed to be a leader of the assailants. According to the witness, Muhimana wore military attire. The witness testified that Muhimana and Sikubwabo “were inseparable,” and were accompanied by Vincent Rutaganira, *conseiller* of Mubuga *Secteur*, Mugwa, another *secteur conseiller*, a trader known as Ryandikayo, and several youth from the Younahonga centre. The Accused, Sikubwabo and Vincent Rutaganira were all armed with guns.<sup>126</sup>

136. Many of the refugees inside the church were still sleeping when the assailants encircled the building. Witness AF testified that the assailants whistled, waking those who were still asleep. The refugees shut and locked the iron doors of the church to prevent the attackers from entering and killing them “slowly” with their machetes, clubs, and spears. The refugees tried to fend off the attackers by throwing loose bricks from the church wall. Failing to break through the doors of the church, the attackers, who included Muhimana and Sikubwabo, shot and threw tear gas and grenades into the church, killing many refugees. Witness AF could not identify which refugees were killed by the guns or grenades used by the assailants.<sup>127</sup>
137. After the attack, the witness left the church to see where the assailants had gone, at which time he discovered a woman named Claudine amidst the corpses of other victims. Another refugee then suggested that they should flee to Burundi, by crossing Nyungwe Forest. The witness agreed, and they left. Witness AF later heard that, on 17 April 1994, the assailants succeeded in breaking down the doors of the church and exterminating the remaining refugees.<sup>128</sup>
138. Prosecution Witness AV testified that, on 15 April, at 10.00 a.m., she was inside Mubuga Church with her siblings, except one young sister who was at Mubuga dispensary with their parents. The Church had been surrounded by many *Interahamwe* when a blue Suzuki driven by Mikaeli Muhimana arrived. The Accused and the *gendarme* accompanying him, who were both dressed in army fatigues, off-loaded an “average-sized” carton of grenades from the vehicle. The Accused placed the carton on the stairs of the church in front of him, next to the gate leading to the presbytery, but he did not enter the church itself. The witness could not estimate the distance separating her from Muhimana, but she did see him hurl a grenade into the church. The grenade landed approximately five metres away from the witness, who was wounded on her head, neck, and shoulders. Many others were seriously wounded from the explosion, and were bleeding. Witness AV testified that she was afraid and unable to clearly observe all of the incidents that occurred. She did note, however, that the explosion from Muhimana’s grenade shattered the head of a *Tutsi* man named Kaihura, thus killing him.<sup>129 130</sup>

---

<sup>126</sup> T. 28 April 2004, pp. 16, 25, 30, 32, 35.

<sup>127</sup> T. 28 April 2004, pp. 30-31; T. 29 April 2004, pp. 17-18.

<sup>128</sup> T. 29 April 2004, p. 17.

<sup>129</sup> T. 1 April 2004, pp. 29, 36-39, 48-49, 53-54.

<sup>130</sup> The Chamber notes that various spellings of the name “Kaihura” (“Kayihura”, “Kayihra” etc) occur in the transcripts, both French and English. The context makes it clear that the same person is referred throughout. For consistency, the Chamber will adopt the spelling “Kaihura”.

*Defence Evidence*

139. **Defence Witness DA** testified that, around 15 April 1994 at Mubuga Church, while she was close to the steps which led up to the altar, she saw many people, including *gendarmes*, come to the church and calm the refugees. Witness DA testified that people, whom she could not identify, began firing. The witness stated that, during the first part of the attack, assailants threw grenades, and only a few people died. Then, when the doors to the church were opened and people struggled to exit, the assailants used various other weapons, including clubs, machetes, firearms, grenades, and many people died. The witness did not have time to identify any assailants, but noted that Sikubwabo was amongst them.<sup>131</sup>
140. According to Witness DA, people hid under corpses and pretended to be dead. The witness went out through the main door of the church and headed towards the rear courtyard, where she hid in a small house behind the church. The witness left her hiding place during the night at around 7.00 p.m., when it was already dark, and headed alone to Muhimana's house through the bushes. The witness could not say at what time she arrived at his home, but she found him asleep.<sup>132</sup>
141. **Defence Witness DD** testified that, on 12 April 1994, he left the hills for Mubuga Church, where he had been told it would be safe. On 14 April 1994, the witness stated that an attack against the *Tutsi* occurred at the church. According to the witness, the attack was "not ... large-scale". The assailants, mainly *gendarmes*, fired guns, killed a few people, and then left.<sup>133</sup>
142. Witness DD stated that during the night of 14 April 1994, *gendarmes* abducted and killed the *filles de Monseigneur*. The witness heard the girls screaming. According to the witness, when refugees asked a *gendarme* what had happened, the *gendarme* replied, "you yourselves will be killed the following day."<sup>134</sup>
143. Witness DD fled to Bisesero Hills on 15 April 1994, from where he heard many gunshots and observed that Mubuga Church had been attacked. Since he was not present at Mubuga Church on 15 April, Witness DD could not identify the assailants.<sup>135</sup>
144. Defence Witness DF confirmed that Mubuga Church was attacked. He stated that he neither participated in nor witnessed the attack. The witness recalled that the attack took place on the day after the girls were killed at the cemetery, but could not remember the exact date. According to the witness, the first target during the attack at the parish was the priest's residence. The witness testified that refugees who had gathered in the church were killed during the attack. The witness had not heard of any distribution of weapons at Mubuga Church, and did not know what weapons were used in this attack.<sup>136</sup>
145. **Defence Witness DL** testified that he heard about the massacre at Mubuga Church from others in the *gacaca* sessions during his imprisonment. According to the witness, the *gendarmes* who guarded the church, in collaboration with members of the population,

---

<sup>131</sup> T. 16 August 2004, pp. 23-26, 40, 59-60.

<sup>132</sup> T. 16 August 2004, pp. 17, 25-26, 57-58; Exhibit D40.

<sup>133</sup> T. 17 August 2004, pp. 13-14, 19.

<sup>134</sup> T. 17 August 2004, p.14.

<sup>135</sup> T. 17 August 2004, pp. 18-19.

<sup>136</sup> T. 30 August 2004, pp. 6, 12-13, 15-17.

killed the people in the church. According to confessions the witness heard in prison, the attacks on Mubuga Church were led by *Conseiller* Vincent Rutaganira. The witness testified that he did not hear of weapons being distributed at Mubuga Church.<sup>137</sup>

146. Witness DL testified that regarding the attacks on Mubuga Church and cemetery, the Accused's name was not mentioned during the confessions at the *gacaca* sessions in Gisovu prison. Furthermore, the Accused's name was never mentioned, during *gacaca* sessions in relation to events that occurred in Bisesero *Secteur*. Witness DL added that had the Accused been involved in, or led attacks in Bisesero, he would have known.<sup>138</sup>
147. **Defence Witness DZ** testified that, at about 10.30 a.m.,<sup>139</sup> armed *gendarmes* gathered about eight hundred *Hutu* men from the centre of Ryaruhanga *Cellule* and forced them to go to Mubuga Church, beating them along the way. On arrival at the church, the witness could hear *Tutsi* "screaming" because they "realized that people were coming to kill them".<sup>140</sup> The witness said that the men were ordered to kill all the *Tutsi* who came out of the church." However, during the four hour attack, the witness testified that he did not kill anyone because "no *Tutsi* was able to come out of that church", as all were killed inside. According to Witness DZ, "*gendarmes*, [and] the former *Bourgmestre* of Gishyita, Charles Sikubwabo, were those who were leading us".<sup>141</sup>
148. However, when questioned by the Prosecution about whether his admission to participating in the attack on Mubuga Church involved killing *Tutsi* hiding in the church, DZ responded, "You would be right in saying so".<sup>142</sup>
149. Witness DZ testified that he knew the Accused, who was not among the attackers at the church. The witness stated, during cross-examination, that the arms he used to kill *Tutsi* were in the possession of the *gendarmes* and the *conseiller* of Gishyita *Secteur*. However, when asked by the Bench to clarify this statement, the witness insisted that he had not referred to the Accused but to *Bourgmestre* Sikubwabo.<sup>143</sup>
150. **Defence Witness DAA** testified that the *Tutsi* took refuge in Mubuga Church because of the lack of security in the parish centre. According to the witness, at approximately 9.00 a.m., *gendarmes* beat and shot at refugees gathered in the church. They then called on civilians to join in. Witness DAA testified that he was recruited to participate in the attack by Vincent Rutaganira. Witness DAA recalled that *Bourgmestre* Sikubwabo was the most prominent figure among the leaders of the attack on the church. *Gendarmes*, soldiers, as well as Vincent Rutaganira, the *conseiller* of Mubuga *Secteur*, were also present. At the scene, the assailants received instructions from *Bourgmestre* Sikubwabo and Rutaganira to surround and attack the church. Defence Witness DAA denied that the Accused was among the participants in this attack.<sup>144</sup>
151. According to Witness DAA, the attack lasted two hours on that day. In Witness DAA's estimation, there were more *gendarme* assailants than civilian assailants: about 2000 *gendarmes* and about 1,500 civilians, totalling 3,500 persons. Witness DAA did not

---

<sup>137</sup> T. 31 August 2004, pp. 66.

<sup>138</sup> T. 31 August 2004, p. 68-69, 72-73 ; Exhibit D75.

<sup>139</sup> No date mentioned in the Transcripts,

<sup>140</sup> T. 31 August 2004, p. 31.

<sup>141</sup> T. 31 August 2004, pp. 27, 30, 35, 50.

<sup>142</sup> T. 31 August 2004, p. 35.

<sup>143</sup> T. 31. August 2004, pp.30, 36-37, 41.

<sup>144</sup> T. 31 August 2004, pp. 2-4, 6, 8, 17, 26.

recall a distribution of arms. The witness stated that many of the military men and the *gendarmes* carried weapons, which included grenades, chains of cartridges, cartridges of bullets and other firearms, which the witness could not identify precisely. The civilians were armed with machetes, clubs, and other weapons. Defence Witness DAA categorically denied that Mika was among the participants.<sup>145</sup>

152. **Defence Witness DC** testified that, on the Sunday following the President's death, which he thought to be 10 April 1994, he was at the centre carrying out his activities and saw members of the population, particularly women accompanied by their children, carrying mats and moving towards Mubuga Church to seek safety. The *gendarmes*, who were stationed at the church to protect the refugees, opened fire on them and threw grenades at the church, destroying it.<sup>146</sup>
153. While he was a refugee at Muguba Church, Defence Witness DC testified that he had heard about, but did not see, the "girls of the Monsignor" being brought to the cemetery to be killed. However, he did not hear of any rapes. Witness DC stated that he heard that the assailants at the cemetery were *Interahamwe* and thugs from Ryaruhanga.<sup>147</sup>
154. Witness DC testified that he left Mubuga Church the day after the looting of the CARITAS food stock, on approximately 14 April 1994, when early in the morning an attack on the church was launched. Tear gas was thrown at the refugees, and one of the *gendarmes* that had been guarding the church told the refugees that their "fate had been sealed" and advised them to flee. The witness left, as did others, to seek refuge in the houses of friends or in the bush. The witness recalled that a few people were killed.<sup>148</sup>

## Findings

155. The Prosecution relies on the evidence of Witnesses AV and AF to prove the allegations against the Accused in relation to distribution of weapons at Mubuga Church, and participation in the subsequent attack, including the murder of a *Tutsi* man called Kaihura. The Chamber recalls its previous finding that Witnesses AV and AF are credible witnesses.

### *Distribution of Weapons and Attack on the Church*

156. Based on the evidence of Witness AF, as corroborated by the evidence of Witness AV,<sup>149</sup> the Chamber finds that, on the morning of 15 April 1994, the Accused participated in an attack on Mubuga Church. The Accused, and other local leaders, such as *Bourgmestre* Sikubwabo and *Conseiller* Rutaganira, were prominent participants in the attack, and all carried guns.<sup>150</sup> The attackers surrounded the church and whistled at the refugees barricaded behind the church doors. After unsuccessfully trying to break down the church doors, the assailants, including the Accused and *Bourgmestre* Sikubwabo, threw grenades and fired their weapons into the church, killing many of the *Tutsi* refugees.

<sup>145</sup> T. 31 August 2004, pp. 4, 6-8, 17.

<sup>146</sup> T. 30 August 2004, pp. 45-46.

<sup>147</sup> T. 17 August 2004, p. 6.; see also French Transcripts : T. 17 août 2004, p. 7.

<sup>148</sup> T. 17 August 2004, pp. 6, 7.

<sup>149</sup> The Chamber deals specifically with the evidence of Witness AV under the sub-section on the Murder of Kaihura.

<sup>150</sup> T. 28 April 2004, pp. 29-30.

157. However, the Chamber is not convinced that the Accused played a leadership role in the attack on Mubuga Church, as alleged by the Prosecution. The Chamber observes that the testimonies of Witnesses AV and AF regarding the Accused's role in the attack appear to reflect personal assumptions, based on the Accused's position as *conseiller*, and are unsupported by evidence of the Accused's words or actions during the attack, demonstrating his leadership. The Chamber finds that the Accused's status as a *conseiller*, his association with important local authorities at the scene of the attack, and his action in throwing a grenade do not necessarily lead to the conclusion that the Accused was one of the leaders of the attack.
158. Furthermore, the Chamber finds that the Prosecution has failed to prove that, between 14 and 15 April 1994, the Accused, acting in concert with Charles Sikubwabo and soldiers, distributed grenades and guns to *Interahamwe* and armed civilians at Mubuga Catholic Church, as alleged in Paragraph 5 (b) (ii) of the Indictment. On the basis of Witness AV's testimony, the Chamber accepts that the Accused threw one grenade from a box, which he carried from a vehicle to the church. However, the Prosecution did not present evidence to show that the Accused, or any other individual, distributed any grenades remaining in the box to other assailants who surrounded the church. Nor did the Prosecution lead any evidence about the distribution of any other weapons at Mubuga Catholic Church. The only evidence on the record in this regard was submitted by the Defence: that the *gendarmes* who participated in the attack at the church were well-equipped and that no Defence witness, some of whom participated in the attack, saw or heard of weapons which were distributed at the church.
159. The Defence claims that the Accused was at home when the attack is alleged to have occurred. To support this contention, it adduced evidence from Witnesses TQ1, DZ, DA, and DAA.
160. Witness TQ1 claims that the Accused was mourning the death of his son during the attack. The Chamber, however, notes that the witness's testimony was internally inconsistent with regard to her own presence in the Accused's house during that time. While the witness testified that she was continuously present at the Accused's house between 6.00 a.m. and 8.00 p.m. every day, and that it was customary for the entire neighbourhood to participate in the mourning, she could not recall the names of any of the guests who were present. Further, and contrary to her own testimony, she also told the Court that she used to go to pray every day and that she returned to her house at 6.00 p.m. In response to questions from the Bench, the witness was also evasive in her answers. In light of these factors, the Chamber does not find Witness TQ1 to be a credible witness. The Chamber notes that Defence Witness DC places the Accused at Mubuga Church on 12 or 13 April 1994, during the looting of the CARITAS food stores. The Chamber further notes that Defence Witness TQ28 testified that the Accused was among those who welcomed the witness and his father on the morning of 16 April 1994, when they arrived around 8 or 9 a.m., at the CCDFP building in Gishyita. The Chamber is therefore not persuaded that the Accused was continuously present in his house during the mourning period.
161. The Chamber has considered the testimonies of Witnesses DZ and DAA, who participated in the attack but did not see the Accused. However, the Chamber finds that this evidence does not affect the reliability of the Prosecution evidence as to the Accused's presence during the attack on the church. While it is quite possible that these witnesses would have recognised the Accused if they had seen him during the attack, it is also quite possible that they could have missed seeing him. Witness DZ admitted that

he was not stationed at the church itself, but rather on the road close to the church, to prevent any *Tutsi* from escaping.

162. In its assessment of Witness DA's testimony, the Chamber has taken into consideration the close family relationship between Witness DA and the Accused. Even if the Chamber were to accept the witness' testimony that she was present during the attack and did not see the Accused, that would not preclude the Accused's presence and participation in the attack. The witness may not have been in a position where she could see the Accused, especially since she was hiding during the attack. The attack on the church commenced at around 10.00 a.m., and the witness testified that she left her hiding place in the church at 7.00 p.m. and reached the Accused's house during the night, where she found him asleep. Consequently, it is possible that the Accused may have participated in the attack and returned home long before Witness DA arrived there.
163. The Chamber finds insufficient evidence to prove the allegation that the Accused distributed weapons at the church, as alleged in Paragraph 5 (b) (ii) of the Indictment.
164. On the basis of the testimonies of Witnesses AV and AF, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegation in Paragraph 5 (b) (iii) of the Indictment that, on the morning of 15 April 1994, the Accused, along with others, launched an attack on a large number of *Tutsi* civilians who had sought refuge in Mubuga Catholic Church.

#### *Murder of Kaihura*

165. Based on the testimony of Witness AV, which the Chamber has previously found credible, the Chamber finds that, at approximately 10.00 a.m. on 15 April 1994, the Accused unloaded a box of grenades from a vehicle in which he arrived, and placed the box on the steps of Mubuga Church. The Accused then flung one of the grenades from the box into the church. Witness AV and many others were seriously injured in the blast, and a *Tutsi* man called Kaihura was killed when the blast shattered his skull.
166. The Defence claims that Witness AV did not properly identify the alleged victim of the Accused's grenade attack, the man known in the Indictment simply as "Kaihura". The Chamber notes that, in her testimony, the witness clearly identified the victim as a *Tutsi* man called Kaihura, and that the Defence was unable to demonstrate any inconsistencies in the witness' recollection on this point. The Chamber is mindful that, in such a situation, where hundreds of refugees are crammed together under stressful conditions, it may be difficult to expect clear identifying information for each victim. The Chamber is persuaded by the witness' account that the victim, whom she identified as Kaihura, is the same man mentioned in Paragraph 7 (b) of the Indictment.
167. Consequently, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegation in Paragraph 7 (b) of the Indictment, that the Accused killed a *Tutsi* civilian by the name of Kaihura by throwing a grenade into the church. Furthermore, the attack, in which the Accused participated, resulted in the deaths of hundreds of people.

#### ***J. RAPE AND MURDER OF COLETTE, ALPHONSINE AND AGNES AT MUBUGA PARISH CEMETERY, 15 APRIL 1994***

## Allegations

168. The Prosecution alleges in the Indictment that:

On or around 15 April, 1994, at Mubuga parish, Mikaeli Muhimana in concert with others, including *Interahamwe* named Kigana, Theophil and Byamwenga took *Tutsi* civilian women named Colette a girl from Mubuga, Agnes Mukagatare an employee of Mubuga dispensary and Alphonsine from Mubuga dispensary to the vicinity of a cemetery located between Mubuga parish and Mubuga dispensary where Mikaeli Muhimana raped AV-K.<sup>151</sup>

On or around 15 April 1994, at Mubuga parish, *Interahamwe* raped two women named Colette a girl from Mubuga and Alphonsine on instructions and within the presence of Mikaeli Muhimana.<sup>152</sup>

On or around 15 April, 1994 at Mubuga parish, Mikaeli Muhimana instructed *Interahamwe* to rip open the stomachs of two women named Colette, a resident of Mubuga, and Alphonsine to see how stomachs of *Tutsi* women look like. The stomachs of the two women were ripped open in the presence of Mikaeli Muhimana, thereby killing the two women in the process.<sup>153</sup>

169. In its Pre-Trial Brief, the Prosecution summarises the anticipated testimony of Witness AV as follows:

On 15 April 1994, Muhimana working in common purpose with *Interahamwe* Kigana, Theophil and Byamwenge, took away *Tutsi* women, including one Colette and a girl called Agnes Mukagatare, an employee at Mubuga dispensary to an isolated area of a cemetery located between the Parish and the dispensary. Muhimana indicated that it would not be proper to kill the girls without first raping them. Muhimana violently raped Agnes. Muhimana ordered the *Interahamwe* to rape the other girls and kill them by opening up their bellies.<sup>154</sup>

## Evidence

### *Prosecution Evidence*

170. **Prosecution Witness AV** testified that, at about midday on 15 April 1994, after the attack on Mubuga Church had subsided and while she was still inside the church, her younger sister came to inform her that their parents had been killed at the dispensary. On her way through the woods to see the bodies of her parents, the witness encountered the Accused, armed with a gun, Ryandikayo, and many other *Interahamwe*, who were armed with traditional weapons. Witness AV hid five metres from the Accused and testified that she could see everything, as she hid under a Nyakobwa tree, which does not have leafy branches that might have blocked her view. Witness AV added that she believed, that if he had been paying attention, the Accused could have seen her as well, since her view was unobstructed. The Accused and his escorts were leading six girls down the road towards the cemetery, which is about five minutes from the dispensary.

---

<sup>151</sup> Indictment, para. 6 (b).

<sup>152</sup> Indictment, para. 6 (b) (i).

<sup>153</sup> Indictment, para. 7 (b) (i).

<sup>154</sup> Prosecution Pre-Trial Brief, Part IV *Corrigendum*, No.5 (Witness AV).

The witness recognized, among the girls, three *Tutsi* girls named Collette, Alphonsine, and Agnes.<sup>155</sup>

171. According to Witness AV, the Accused announced to his cohorts that he intended to rape the girls before killing them. To demonstrate his seriousness, the Accused seized Agnes Mukagatare, who worked at Mubuga dispensary, and ordered her to undress. When she refused, the Accused then slapped her, and in a panic, Agnes unbuttoned her blouse and her skirt. The Accused then asked Agnes to lie down on her clothes, while he undressed and gave his shirt to a man standing next to him. The Accused then took off his underclothing and began to rape Agnes, causing her to scream with pain and beg the Accused to kill her without causing her to suffer. According to the witness, the *Interahamwe* accompanying Muhimana could not see what he was doing to Agnes because they had withdrawn. After raping her, the Accused dressed himself and threatened Agnes with a bayonet, causing her to plead with the Accused to kill her with the gun rather than with the bayonet. The Accused responded with laughter and pushed the still-naked Agnes towards the other girls. The Accused then told the *Interahamwe* to rape the other girls. The Accused said to the *Interahamwe*, "Now is the time. You can continue doing your work, and after killing those people you must make sure you see what they look like".<sup>156</sup> At this point, the witness could not stand to watch anymore, and crawled away on her stomach in the direction of the church. A young man named Cum, who had also sought refuge in the church, later informed the witness that the *Interahamwe*, after raping the girls, took them to the road and "cut them up into pieces".<sup>157</sup>
172. Prosecution Witness AF stated that there were many *Tutsi* refugees, mainly women and young girls, hiding in the rooms in Mubuga Parish. The witness was inside the church during the attack on the presbytery but learned of the events from a *Tutsi* girl called Claudine who survived. During the night between 14 and 15 April 1994, Father Marcel told the women and girls in the presbytery, "I have already given the key to the assailants. You have to come out. If you don't come out the assailants will open the doors and kill you."<sup>158</sup> The girls, however, were afraid and stayed where they were. During the night, assailants raped, tortured, "sacrificed in Uwagati", and killed the girls. In the morning, some of the bodies were thrown into a banana plantation.<sup>159</sup>

#### *Defence Evidence*

173. **Defence Witness DAA** stated that, prior to his imprisonment in Rwanda, he did not hear about any women who had been raped in Mubuga Cemetery. He stated that this incident could not have been kept a secret.<sup>160</sup>
174. **Defence Witness DC** testified that, on the evening of 12 April 1994, he went alone towards Mubuga Church, where refugees had gathered for days. The witness also saw at least three *gendarmes* at the church. The *gendarmes* were supposed to be guarding

---

<sup>155</sup> T. 1 April 2004, pp. 36, 39-41, 55 ; T. 5 April 2004, pp. 9-11, 20.

<sup>156</sup> T. 1 April 2004, pp. 40-41.

<sup>157</sup> T. 1 April 2004, pp. 36, 40-41.

<sup>158</sup> T. 28 April 2004, p. 27.

<sup>159</sup> T. 28 April 2004, pp. 27-31.

<sup>160</sup> T. 31 August 2004, p. 5.

- the church. The witness stated that he saw Muhimana at the Church, although he did not see him doing anything or killing anybody.<sup>161</sup>
175. Witness DC testified that, during the time he was at the church, he had heard about the “girls of the Monsignor” being brought to the cemetery to be killed but did not personally witness the incidents. He did not hear of any rapes. The witness heard that the attackers were *Interahamwe* and thugs from Ryaruhanga.<sup>162</sup>
176. **Defence Witness DL** testified that his wife was a *Tutsi* and, since there were rumours of an attack against the *Tutsi* and their accomplices, his wife and children sought refuge at Mubuga Parish Church on Sunday evening, 9 April 1994. The witness visited his wife and children at the parish on Monday and found that many refugees had gathered there. The witness then returned home with his children, while his wife stayed on at the parish until Wednesday, when she returned home, accompanied by a *gendarme* to whom the witness had paid 3,000 francs. The witness’ wife survived the events of 1994.<sup>163</sup>
177. Witness DL testified that he never heard of women being raped at Mubuga Cemetery. The witness knew a young girl called Therese, the daughter of a neighbour, who survived attacks at the cemetery. The witness stated that he visited and spoke with Therese about the events at the cemetery on two occasions. Therese said that the girls were clubbed, but did not say that the girls had been disembowelled.<sup>164</sup>
178. According to Witness DL, during the confessions which took place in the *gacaca* sessions in the Gisovu Prison, the Accused’s name was never mentioned in regard to attacks on Mubuga Church and Cemetery, or in relation to events in “that” *secteur*.<sup>165</sup>
179. **Defence Witness DF** testified to seeing girls, who had taken refuge in the presbytery of Mubuga Church, killed in the cemetery. The witness testified that he did not kill anyone himself but that he was present when they were killed. The witness could not remember the exact date or day, but recalled that there was a full moon. The witness testified that he was brought to the presbytery, where there were *gendarmes*, and knocked on the door and spoke through the door to the girls. The girls immediately opened the door, since they knew him. According to the witness, he was forced to do this because the girls trusted him, as he used to provide them with supplies. The assailants then advanced towards the girls, explaining that they were going to be moved to Kibuye, for security. The girls, as well as others, voluntarily left the presbytery, which was located close to the cemetery.<sup>166</sup>
180. According to Witness DF, when the refugees reached the cemetery, they were killed two or three at a time by the assailants with clubs. The witness testified that there were more assailants than victims present and that between 15 and 25 people were killed. The witness declared that the girls were neither raped before being killed nor disembowelled afterwards, since Sikubwabo and the *gendarmes* immediately called the

---

<sup>161</sup> T. 17 August 2004, pp. 4-6.

<sup>162</sup> T. 17 August 2004, p. 6.

<sup>163</sup> T. 31 August 2004, pp. 62-66.

<sup>164</sup> T. 31 August 2004, p. 67-70.

<sup>165</sup> T. 31 August 2004, pp. 68-73.

<sup>166</sup> T. 30 August 2004, pp. 6-8, 14-18.

assailants away from the site. The witness said that the girls' corpses were left at the cemetery.<sup>167</sup>

181. Witness DF identified the victims at the cemetery: the girls of the *Abahire*, girls from the Herman's family, girls in charge of orphans, including a certain Karege, and Herman Muzungu and his wife. The witness claimed that all of the other victims were *Tutsi* girls.<sup>168</sup>
182. **Defence Witness DG** stated that, during the night of 14 and 15 April 1994 at about 2.00 or 2.30 a.m., a young man called "Philner" came to the witness' house accompanied by two *gendarmes* and asked for his vehicle. When the witness refused, the *gendarmes* brought the witness to see their commander, who was absent from their camp. The *gendarmes* and the witness then continued along the road leading to the cemetery in search of the commander, when they met two vehicles transporting the "girls of the bishop". The commander announced that the problem had been solved and there was no longer any need to see the witness. In the opinion of the witness, Philner and the *gendarmes* had wanted to use his vehicle to transport the girls but had found an alternative vehicle.<sup>169</sup>
183. According to Witness DG, upon consultations between the *gendarme* and *bourgmestre*, the girls were taken to the cemetery, accompanied by members of the population, including the witness. The witness testified that the girls were around 25 in number, and included a man, Herman Muzungu, and his wife. The girls were transported in two vehicles for 160 metres, escorted by the *bourgmestre*, *gendarmes*, and members of the population, armed with clubs, all on foot. The witness did not know the names of the girls, but stated that they were called the "girls of the bishop".<sup>170</sup> From where the vehicles were parked, it was a short distance to the cemetery, where the civilians walked on foot. The witness stated that it took about five minutes for the group to walk to the cemetery. According to the witness, one of the vehicles belonged to a trader who was living in the centre and had been requisitioned by the *bourgmestre*. The second vehicle belonged to another trader in that centre and had been requisitioned by the *gendarmes*.<sup>171</sup>
184. Witness DG testified that at the cemetery, the girls were taken from the vehicles by youngsters and killed under the moonlight in everyone's presence. According to the witness, the girls were killed because they were *Tutsi*.<sup>172</sup>
185. Witness DG denied that the girls were raped before they were killed. According to the witness, Sikubwabo brought out the girls from the presbytery, and the *gendarmes* put them in the two vehicles. The witness considered that it was not possible that the girls had been made to alight from the cars and were raped. He had heard no one mention their rapes and stated that he witnessed only the killing of the girls.<sup>173</sup>
186. Witness DG testified that he could not identify any of the assailants, except a young man by the name of Urikumwenimana Theophile. The witness did not know the name

---

<sup>167</sup> T. 30 August 2004, pp. 7, 9-10, 17.

<sup>168</sup> T. 30 August 2004, pp. 7-8, 10, 18, 22-24.

<sup>169</sup> T. 30 August 2004, pp. 46-47.

<sup>170</sup> T. 30 August 2004, pp. 47-48

<sup>171</sup> T. 30 August 2004, pp. 50, 53

<sup>172</sup> T. 30 August 2004, pp. 47, 49; 61-62

<sup>173</sup> T. 30 August 2004, p. 49.

of other assailants, a group of about 30 young men brought by the *bourgmestre*. The witness declared that he did not see Muhimana, whom he knew, at the cemetery.<sup>174</sup>

187. **Defence Witness DD** testified that he went to Mubuga Church on 12 April 1994, because he had been told the church was safe. The witness arrived at the church at about midday on 12 April [1994], and found many people there. The witness stayed at the church until 4.30 or 5.00 a.m. on 15 April 1994.<sup>175</sup>
188. Witness DD testified that at dawn on 15 April 1994, he escaped through a window of the church, unguarded by *gendarmes*. According to the witness “[i]t was not very clear, but one could see.” He personally saw the bodies of the *filles de Monseigneur* littering the cemetery. He also testified that the bodies had not been disembowelled and that he had never heard from anyone that the girls had been raped.<sup>176</sup>
189. **Defence Witness DZ** testified that he knew Agnes Mukagatare before the war, and that she “was a young girl who had just completed CERAI”. The witness further testified that after the war Agnes sought refuge somewhere, but he never saw her again. Witness DZ did not know Alphonsine or Colette.<sup>177</sup>
190. **Defence Witness DA** testified that she never heard of any rape committed in Mubuga and its surroundings. However, the witness was told by other refugees, who arrived in Mubuga Church after her, that some girls were found dead in Mubuga Cemetery. Witness DA does not know who killed these girls and did not hear that these girls were raped or disembowelled.<sup>178</sup>

## Findings

### *Rape*

191. The Prosecution relies on the evidence of Witness AV to support its allegations that the Accused raped Agnes Mukagatare, and that two other girls were raped by the *Interahamwe* in his presence.
192. The Defence contends that the rape of Agnes Mukagatare by the Accused, to which Witness AV testified, is not alleged in the Indictment. Therefore, the Accused cannot be expected to prepare a defense against such an allegation. It submits that actual witness testimony cannot serve as an amendment to the Indictment.<sup>179</sup>
193. An analysis of Paragraph 6 (b) of the Indictment (including sub-paragraph 6(b) (i)) reveals that the Accused is charged with personally raping one *Tutsi* woman in the cemetery on 15 April 1994, Witness AV, and ordering the rape of two others. The evidence speaks to the rape not of Witness AV by the Accused, but to the rape of one of the abducted girls by the Accused.
194. The Chamber notes that on 27 February 2004, upon filing its Pre-Trial Brief, the Prosecution placed the Defence on notice that Witness AV-K (later Witness AV) was not in fact raped as alleged in Paragraph 6 (b) of the Indictment, but rather that she

---

<sup>174</sup> T. 30 August 2004, pp. 48, 54, 67.

<sup>175</sup> T. 17 August 2004, p. 13.

<sup>176</sup> T. 17 August 2004, pp. 15-18, 21.

<sup>177</sup> T. 31 August 2004, p. 31.

<sup>178</sup> T. 16 August 2004, pp. 25-26, 41, 54.

<sup>179</sup> Defence Closing Brief, para. 254.

witnessed the rape of the women mentioned in that paragraph:<sup>180</sup> Colette from Mubuga, Agnes Mukagatare and Alphonsine from Mubuga. The Chamber further notes that in the Annex to the Pre-Trial Brief, the Prosecution gives the following details in its summary of the anticipated witness testimony of Witness AV:

On 15 April 1994, Muhimana working in common purpose with *Interahamwe* Kigana, Theophil and Byamwenge, took away *Tutsi* women, including one Colette and a girl called Agnes Mukagatare, an employee at Mubuga dispensary to an isolated area of a cemetery located between the Parish and the dispensary. Muhimana indicated that it would not be proper to kill the girls without first raping them. Muhimana violently raped Agnes. Muhimana ordered the *Interahamwe* to rape the other girls and kill them by opening up their bellies.<sup>181</sup>

195. Before closing its case, the Prosecution made an oral request before the Chamber to rectify a “typographical error” in the Indictment, to amend the name of the woman allegedly raped by the Accused in Paragraph 6 (b) of the Indictment from “AV-K” to “Agnes”.<sup>182</sup> The Prosecution explained that the error had occurred in the drafting of the Indictment as Witness AV-K and “Agnes” share the same first name, which had at the time of drafting caused some confusion. However, the Prosecution submitted that the Defence had been given notice of this typographical error since the Pre-Trial Brief was filed. The Bench proceeded to enquire from the Defence whether it had any objection to the amendment, and the Defence replied that it did not see any reason to object. However the Defence made a reservation that it wished to verify the information, since it did not have the relevant document at hand.<sup>183</sup> Unfortunately, the Chamber did not return to the matter after the commencement of the Defence case.
196. The Chamber notes that the Accused was given notice, from the time of the Indictment, of the time and place where he is alleged to have raped a *Tutsi* woman. The Indictment specified the names of all three girls that the Accused and others were alleged to have abducted and taken to the cemetery. One of the three girls mentioned is Agnes Mukagatare, the girl that Witness AV alleges in her testimony to have been raped. The Chamber also notes that the Prosecution Pre-Trial Brief gave accurate details of Witness AV’s anticipated testimony in sufficient time for the Accused to prepare his defence. The Chamber concludes that the Defence suffered no prejudice in its ability to meet the Prosecution evidence on this matter, and in fact presented several witnesses to rebut the Prosecution evidence. Consequently, the Chamber finds that the defect in the Indictment was cured by timely, clear, and consistent information.
197. The Chamber has already found Witness AV to be a credible and reliable witness. Furthermore, the Chamber notes that, during the events in the cemetery, she clearly recognised the Accused and had a clear and unobstructed view of the events.
198. On the basis of Witness AV’s testimony, the Chamber finds that, on 15 April 1994, the Accused, accompanied by a group of *Interahamwe*, abducted six *Tutsi* girls and led them to a cemetery near Mubuga Church. The Accused informed the *Interahamwe* that “[n]obody should kill [these] girls before we've raped them.”<sup>184</sup> He then grabbed Agnes

---

<sup>180</sup> Prosecution Pre-Trial Brief, para. 47.

<sup>181</sup> Prosecution Pre-Trial Brief, Annex, No 5.

<sup>182</sup> T. 30 April 2004, p. 76.

<sup>183</sup> T. 30 April 2004, p. 77.

<sup>184</sup> T. 1 April 2004, p. 40.

Mukagatere, and forced her to undress and lie down. Following this, he climbed on top of her and raped her violently, while she screamed and pleaded with him to stop.

199. After raping her, the Accused pushed his naked victim towards the *Interahamwe* and told them, “Now you should kill her, but before killing her take time to see her guts, to see what she looks like”. He then ordered the *Interahamwe* to continue with their “work” on the other girls, and instructed them that they should disembowel the girls before killing them.
200. The Chamber received hearsay evidence as to what happened to the girls, but finds that this evidence lacks sufficient indicia of reliability to prove that they were raped following the Accused’s instruction.
201. The Chamber finds the Defence evidence presented in rebuttal of this allegation that the Accused raped Agnes Mukagatere to be unconvincing. Witnesses DAA, DC, DA, and DL testified that they did not hear of any rapes committed at the cemetery. In the opinion of the Chamber, this might be true, but it does not make it impossible that these events occurred. Furthermore, the Chamber recalls its finding that Witness DA is not a credible witness.
202. Witnesses DG and DF described incidents they witnessed or heard about involving girls being taken to the cemetery, where neither the Accused was present nor were any girls raped. Witness DF mentioned different names to those mentioned by Witness AV, and in any case could not remember the date on which this happened. It is difficult to conclude that the witnesses are recalling the same event.
203. The Defence presented evidence regarding the death of the Accused’s son, the mourning period, and the funeral on 10 April 1994. However, for reasons already noted, the alibi is not persuasive. It does not render the Accused’s presence elsewhere impossible. Indeed, as has already been noted, both Prosecution Witnesses AV and AF, and Defence Witness DC, place the Accused at Mubuga Church on 15 April 1994.
204. Consequently, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegation in Paragraph 6 (b) of the Indictment and the relevant sections of the Pre-Trial Brief, that, on 15 April 1994, the Accused, acting in concert with a group of *Interahamwe*, abducted a group of *Tutsi* girls, and led them to a cemetery near Mubuga Church. The Accused then raped one of the abducted girls, Agnes Mukagatere.
205. The Chamber finds insufficient evidence to establish the allegation that two *Tutsi* girls, called Alphonsine and Colette, were raped by the *Interahamwe* in the presence of and on the instructions of the Accused. Consequently, the Chamber dismisses the allegation in Paragraph 6 (b) (i) of the Indictment.

#### *Murder*

206. The Prosecution relies on the evidence of Witness AV to establish the allegation that two *Tutsi* girls, Alphonsine and Colette, were disembowelled and killed on the orders of or in the presence of the Accused.
207. The Chamber recalls its finding above that, on the basis of the credible and reliable testimony of Witness AV, the Accused ordered the *Interahamwe*, who accompanied him to the cemetery, to continue “their work” on the other girls, further suggesting that they should disembowel the girls before killing them.

208. However, Witness AV did not give any eyewitness evidence as to whether the girls were killed, since after watching the rape of Agnes, she crawled away on her stomach. The Chamber finds that Witness AV's hearsay evidence lacks sufficient indicia of reliability to prove that Alphonsine and Colette were killed.
209. The Chamber finds insufficient evidence to establish that two *Tutsi* girls called Alphonsine and Colette were disembowelled and killed on the orders of or in the presence of the Accused. Consequently, the Chamber dismisses the allegation in Paragraph 7 (b) (i) of the Indictment.

### **K. ABDUCTION AND SUBSEQUENT RAPE OF JOSIANA, MARIANA AND MARTHA - MUGONERO COMPLEX, 13 AND 14 APRIL 1994**

#### **Allegations**

210. The Prosecution alleges that:

Between 14 and 16 April 1994, Mikaeli Muhimana in concert with, amongst others, Charles Sikubwabo and an *Interahamwe* named Gisambo took three civilian *Tutsi* women Josiana, Mariana Gafurafura, and Martha Gafurafura from Mugonero complex where they had sought refuge, to Gishyita *Commune* where they continually raped them.<sup>185</sup>

#### **Evidence**

##### *Prosecution Evidence*

211. **Prosecution Witness BI** stated that, on 13 or 14 April 1994, after meeting with *gendarmes*, the Accused, together with others, including *Bourgmestre* Sikubwabo, and a man called Gisambo, went towards the residence of female hospital staff, in Mugonero Complex. According to the witness, they stayed at the residence for some time, before they came out leading three young women, Martha, Mariana, and Josiana, who were working at the hospital. The Accused asked the young women to board the vehicle, and the vehicle left, with Sikubwabo driving. The witness recalled that Martha and Mariana were sisters and that their father's name was Gafurafura.<sup>186</sup>
212. Witness BI testified that, on the following day, 14 April 1994, he saw the Accused return the young women to their residence. They arrived in a vehicle, together with two *commune* policemen, and the vehicle parked in front of the association office. The three young women descended from the vehicle, which then departed. The witness observed this from a distance of between 35 and 45 metres.<sup>187</sup>
213. Witness BI testified that the young women told him and others that they had been taken to Gishyita, where they were raped by Sikubwabo, the Accused, and Gisambo. They did not specify, however, who raped whom.<sup>188</sup>

---

<sup>185</sup> Indictment, para. 6 (c).

<sup>186</sup> T. 30 April 2004, pp. 6, 37.

<sup>187</sup> T. 30 April 2004, pp. 6-7, 35, 38.

<sup>188</sup> T. 30 April 2004, p. 7.

*Defence Evidence*

214. **Defence Witness TQ28**, who was present at Mugonero Complex, in Ngoma around 12 April 1994, denied that Muhimana raped Josiane on 16 April 1994. The witness stated that if any incident of this nature had occurred at the complex, he would have known of it, because it was his duty to patrol the complex, before he left to seek refuge in Gishyita. The witness testified that, in April 1994, Gafurafura's daughters, Marie and Martha, did not reside at Mugonero Complex.<sup>189</sup>
215. Witness TQ28 testified that he neither saw nor heard of anyone committing rape at the hospital in Mugonero Complex during this period of time. The witness stated that he saw the Accused in Gishyita on 16 April 1994. According to the witness, it was not possible for the Accused to be in Ngoma and in Gishyita on the same day. The witness acknowledged, however, that, depending on the speed of a vehicle, it could take an hour or less to travel between Gishyita and Ngoma.<sup>190</sup>
216. **Defence Witness TQ7** denied that Martha was raped in Gishyita in April 1994, since at that time, she was neither in Mugonero nor in Gishyita. Witness TQ7 testified that Martha's sister, Maria Mukeshimana, lived in Kigali in April 1994, not in Gishyita. The witness concluded that, therefore, Maria could not have been raped in Gishyita in April 1994.<sup>191</sup>
217. Witness TQ7 stated that, when she fled from Mugonero Complex, no rapes had been committed; on her return, she was not told of any rapes that had been committed at the complex. As such, the witness could not confirm that acts of rape had been committed in Mugonero Complex or that Josiane Mukeshimana was raped in April 1994.<sup>192</sup>
218. **Defence Witness ARI** testified that, in April 1994, Marthe had left the area to participate in a training course at Kabgayi, located in the Gitarama *Préfecture*. Witness ARI also testified that, in 1994, Marie Mukeshimana, one of Gafurafura's daughters, lived in Kigali.<sup>193</sup>
219. Witness ARI testified that Josiane Mukeshimana was Amos Karera's daughter. The witness stated that Josiane was the same person as Janette or Yohanita and that she had changed her name in order to enrol in school after having failed the competitive entrance exam.<sup>194</sup>
220. Witness ARI testified that he did not see Maria or Mariana at Mugonero Hospital Complex, where he remained until the evening of 12 April 1994. The witness, who was not at the hospital on 13 to 14 April 1994, could not state whether the Accused took Maria and Marianna to his residence in Gishyita. The witness conceded that he was not present at the Accused's residence to know whether the girls were there.<sup>195</sup>
221. **Defence Witness TQ8** testified that he saw Marie Mukeshimana in April 1994, among those seeking refuge from the *Inkotanyi* at Kanserege. According to the witness, on 12 April 1994, Marie, her colleague Rachele, and other persons requested protection and

---

<sup>189</sup> T. 24 August 2004, pp. 2-5, 50-51.

<sup>190</sup> T. 24 August 2004, pp. 22, 51-52.

<sup>191</sup> T. 23 August 2004, pp. 40-43.

<sup>192</sup> T. 23 August 2004, p. 45.

<sup>193</sup> T. 2 Sept. 2004, pp. 45-47.

<sup>194</sup> T. 2 Sept. 2004, pp. 47-49.

<sup>195</sup> T. 2 Sept. 2004, p. 65.

assistance from the *gendarmes* to cross the Kacyiru Valley. Consequently, several *gendarmes*, including TQ8, accompanied Marie and her friends to the Holy Family Church up to Kimicanga, where the *gendarmes* left them to return to camp.<sup>196</sup>

222. Witness TQ8 said that he and some young persons passed by the Holy Family Church on 20 April 1994, where they saw Marie and her friends again. The witness engaged them in discussion before proceeding to Nyamirambo to visit friends.<sup>197</sup>

## **Findings**

### ***Abduction and Rape***

223. The Chamber accepts the evidence that the Accused, Sikubwabo, and Gisambo took Josiana, Martha, and Mariana away in a vehicle.<sup>198</sup> However, the Chamber finds insufficient evidence to prove that the Accused raped any of the women.
224. A single witness, Witness BI, testified about the alleged rapes of the three women. He was not an eyewitness to the alleged rapes. The women told the witness that they had been raped but did not give any information as to who raped whom or provide any details as to the circumstances under which the rapes had occurred.
225. The Chamber finds that the Prosecution has failed to prove that the Accused participated in the alleged abduction and rape of three civilian *Tutsi* women from Mugonero Complex. Consequently, the Chamber dismisses the allegations in Paragraph 6 (c) of the Indictment.

## ***L. ATTACK AGAINST TUTSI REFUGEES AT THE MUGONERO COMPLEX, 16 APRIL 1994***

### **Allegations**

226. The Prosecution alleges that:

Between 9 and 16 April 1994, about six thousand civilians, predominantly *Tutsi*, congregated in the Mugonero church, hospital and nursing school in Ngoma *Secteur*, Gishyita *commune* seeking protection against attacks on *Tutsi* civilians which were occurring throughout the prefecture of Kibuye. Around 9 am on 16 April 1994, Mikaeli Muhimana, acting in concert with others, including Clement Kayishema, Charles Sikubwabo, Obed Ruzindana, soldiers, *communal* policemen and *Interahamwe* launched an attack on the civilians seeking protection at the Mugonero church, hospital and nursing school. The attackers, using guns, grenades, machetes cudgels and other traditional weapons inflicted deaths and serious injuries to the six

---

<sup>196</sup> T. 24 August 2004, pp. 59, 67 ; See French Transcript : T. 24 août 2004, pp. 57, 67.

<sup>197</sup> T. 24 August 2004, pp. 59, 67.

<sup>198</sup> The Chamber notes that the two sisters, who are the daughters of Gafurafura, are referred to by the witnesses as Mariana, Maria, Marie or Martha. The Chamber accepts that the women referred to by the witnesses are same women referred to in the Indictment.

thousand civilians who had sought refuge in the aforesaid Mugonero church, hospital and nursing school.<sup>199</sup>

## Evidence

### *Prosecution Evidence*

227. **Prosecution Witnesses BG, BI, AT, AU, BH, and BJ** all testified that they sought refuge in Mugonero Complex in Ngoma in the days immediately following the assassination of President Juvenal Habyarimana. These witnesses all stated that a multitude of *Tutsi* refugees from surrounding *secteurs* also sought shelter at Mugonero Complex. Witnesses BI and AT testified that *Tutsi* refugees gathered at the complex because in previous years it had served as a place of refuge during massacres of *Tutsi*. Witnesses BG and BI estimated that, as of 16 April 1994, 40,000 to 50,000 refugees had gathered at Mugonero Complex.<sup>200</sup>
228. Witnesses BH, BI, and AT testified that the assailants, after parking their vehicles in front of Dr. Ntakirutimana's office, threw grenades and fired at the refugees. Prosecution Witness BI testified that the refugees first tried to repel the attackers with stones. He further testified that he saw the Accused shoot at the refugees and that many people were killed in this attack.<sup>201</sup>
229. Witness BG testified that a number of "influential people", who arrived on board several vehicles at 8.00 a.m., led an attack at Mugonero Complex on the morning of 16 April 1994. Prosecution Witnesses AT, BH, and AU stated that, following a first attack by unarmed *Hutu* that lasted "about 15 minutes", a second attack was launched around 9.00 a.m. at Mugonero Complex. Assailants, who were both civilians and soldiers, arrived from Gishyita in six vehicles, some which belonged to the *commune*. The drivers of the vehicles included: Pastor Elizaphan Ntakirutimana; Obed Ruzindana; *Bourgmestre* Sikubwabo of Gishyita *Commune*; Dr. Gerard Ntakirutimana, a doctor at Mugonero Hospital; and Kayishema, the *préfet* of Kibuye *Préfecture*, whose vehicle was accompanied by a truck carrying soldiers. According to Witness AT, the Accused, who arrived in the rear of a vehicle driven by Obed Ruzindana, carried a gun slung across his shoulder. Prosecution Witness AU stated that, from inside Mugonero Church, she saw the Accused, who was armed with a gun and a knife, arrive with attackers who "came singing". According to Witness AU, the Accused, who was in the company of Ezekia Ntakirutimana, led assailants, armed with machetes, nail-studded clubs, cudgels, and spears. "They started killing at nine o'clock, and at 10 o'clock there were many bodies".<sup>202</sup>
230. Witness BG testified that, although she did not see who fired the first shot, she learned from another refugee that one of the *gendarmes*, who "came to pretend to be protecting" them, fired first. Bullets then rained on the *Tutsi* refugees. Assailants "fell on the refugees and cut them with machetes". According to the witness, "It was all very well prepared." Assailants surrounded Mugonero Hospital parking lot, where Witness

---

<sup>199</sup> Indictment, Para. 5 (c).

<sup>200</sup> T. 5 April 2004, pp. 33-34; T. 30 April 2004, pp. 3-4, 34; T. 19 April 2004, p. 6; T. 7 April 2004, p. 18; T. 8 April 2004, pp. 7, 25-26, 28; T. 6 April 2004, pp. 44-45; T. 1 April 2004, p. 37.

<sup>201</sup> T. 8 April 2004, pp. 8, 35; T. 19 April 2004, pp. 8, 10; T. 30 April 2004, pp. 7-9, 44.

<sup>202</sup> T. 5 April 2004, p. 33; T. 7 April 2004, pp. 3, 20; T. 8 April 2004, pp. 7-8; T. 19 April 2004, pp. 7-10, 47-48, 89.

BG had fled, and the witness then ran to the church, located approximately 100-150 metres from the hospital parking lot.<sup>203</sup>

231. Witness BG testified that the *Interahamwe* pursued the refugees to Mugonero Church, forced open the doors and windows, fired their guns, and threw grenades into the building, killing many refugees and wounding numerous others, including Witness BG. The witness saw the assailants pouring petrol to burn the premises but “since there was a lot of blood all over, the fire was put out”.<sup>204</sup> When the assailants finally broke down the doors of the church, Witness BG managed to escape through a small back-door and ran to Mugonero Hospital.<sup>205</sup>
232. **Prosecution Witness BI** testified that he was unable to enter the church in Mugonero Complex because it was surrounded by the Accused, Sikubwabo, Kanyabungu, Ndayisaba, and other assailants. The witness stated that the Accused “was armed with a gun” and “kept shooting at the people.” *Bourgmestre* Sikubwabo, who stood in front of the door of the church, asked *Hutu* women married to *Tutsi* men to come out. Among the women who left the church, Witness BI recognized two young women named Nyiragwiza and Nyareri, who were married to *Tutsi*. The women abandoned their children inside the church, because their children were considered to be *Tutsi*. The witness testified that, following this “incident” at the church, he took refuge in one of the rooms of the hospital.<sup>206</sup>
233. **Prosecution Witness AT** testified that, on 16 April 1994 at 8.00 a.m., a small number of *Hutu* civilians, armed only with machetes and clubs, attacked *Tutsi* refugees gathered at Mugonero Complex in an apparent attempt to steal their cows. The refugees, using stones, repelled the attack within fifteen minutes. Following this initial victory, the *gendarmes*, who were guarding the refugees, told them that they would be attacked again and should protect themselves, since the *gendarmes* could not. The *gendarmes* then left.<sup>207</sup>
234. **Prosecution Witness AU** testified that one Saturday around 9.00 a.m., “the war began”. Assailants attacked Mugonero Church where she and her family had sought shelter, killing the witness’ two children and her mother and father. According to Witness AU, the assailants “were only killing *Tutsi*.” The witness fled from the church, after the deaths of her mother and father, to hide in a small room in the surgical theatre of the hospital.<sup>208</sup>

### *Defence Evidence*

235. **Defence Witness DI** testified that *Bourgmestre* Sikubwabo forced members of the local population to take part in the massacres at Mugonero Complex in April 1994. The witness, armed with a club, left with his neighbours Keranguza, Semariza, and Nikobahoze for the complex, where, along with *Interahamwe* and soldiers from Bugarama and Mugonero, he participated in an attack, which he estimated “started at 10 o’clock and ended at 3 p.m.” The witness stated that the *Tutsi* refugees were

---

<sup>203</sup> T. 5 April 2004, p. 36; T. 6 April 2004, pp. 14-16.

<sup>204</sup> T. 5 April 2004, p. 36;

<sup>205</sup> T. 6 April 2004, p. 16.

<sup>206</sup> T. 30 April 2004, pp. 9, 45.

<sup>207</sup> T. 19 April 2004, pp. 7-8.

<sup>208</sup> T. 7 April 2004, pp. 3-4, 15-16.

successful in repelling the assailants until *Interahamwe* and military reinforcements arrived.<sup>209</sup>

236. According to Witness DI, “Mika wasn’t present” during the attack. Because Mika was in mourning for his dead son, “the *Bourgmestre* had left him in peace”. The witness also stated that he “never” saw the Accused with *Bourgmestre* Sikubwabo or “had news that a girl or a woman had been raped during an attack” in Gishyita *Commune*. Witness DI testified that the Accused never clubbed anyone to death, as only the assailants without guns or grenades killed victims in this manner.<sup>210</sup>
237. **Defence Witness ARI** stated that he worked at Mugonero Hospital until April 1994, when he left because of security problems caused by bandits coming from Mpembe, Mugonero, and Gishyita.<sup>211</sup>
238. Because of persistent rumours of an imminent attack on Mugonero Hospital, Witness ARI, his family, and the family of Pastor Jacques Ushizimpumu left their homes at 6.00 a.m. on 16 April 1994 to seek shelter at the CCDF building in Gishyita, about five to seven kilometres away from Mugonero Complex.<sup>212</sup>
239. Witness ARI testified that, on 16 April 1994, between about 10.00 a.m. and midday, while at the CCDF in Gishyita, he heard screams coming from Mugonero Complex and that later he heard about the attack on the complex from survivors. The witness was informed that the assailants were *Interahamwe* who came from Cyangugu, Rubengera, and northern Rwanda. The witness stated that he had not heard that Obed Ruzindana played a leadership role or that *Bourgmestre* Sikubwabo, Elizaphan Ntakirutimana, or Gerard Ntakirutimana participated in the attacks. In response to the Prosecution’s question about the witness’ knowledge of who bore responsibility for the attack on Mugonero Complex, the witness said that he was not aware of anyone who has admitted that the events took place.<sup>213</sup>
240. **Defence Witness TQ28** testified that the day after President Habyarimana’s death, 7 April 1994, he and his family sought refuge at his father’s working place, Mugonero Hospital Complex. As a security measure, they conducted patrols of the complex, in which the witness participated. On 12 April 1994, the witness and his family left Mugonero Complex for the nearby Kabahinyuza Market in Ngoma, where they remained until 16 April 1994, when they sought shelter at the CCDFP in Gishyita.<sup>214</sup>
241. According to Witness TQ28, on arriving at CCDFP, on 16 April 1994, he and his family were welcomed by the authorities of Gishyita, including the former *Bourgmestre* Sikubwabo and the former *Conseiller* Muhimana, who listened to their problems and showed them where to sleep. The witness reported that the Accused spent about 30 minutes with the refugees before leaving.<sup>215</sup>
242. Witness TQ28 testified that, on 16 April, he “shuttled to and from” the Gishyita market. The witness maintained that each time he visited the market, on 16 April 1994, he found the Accused there with other people, although he did not notice what the

---

<sup>209</sup> T. 1 September 2004, pp. 37-39.

<sup>210</sup> T. 1 September 2004, pp. 40, 55-56.

<sup>211</sup> T. 2 Sept. 2004, p. 44.

<sup>212</sup> T. 2 Sept. 2004, pp. 71, 75.

<sup>213</sup> T. 2 Sept. 2004, pp. 67-68, 75.

<sup>214</sup> T. 23 August 2004, pp. 72-74; T. 24 August 2004, pp. 2, 17-19, 26, 31-32, 51, 53-54.

<sup>215</sup> T. 23 August 2004, pp. 73, 75-76; T. 24 August 2004, pp. 23, 33-35, 39.

Accused was doing. Since the witness saw the Accused in Gishyita on 16 April 1994, he deduced that the Accused was not at Mugonero Hospital since “Mika could not have been at Ngoma and Gishyita at the same time.” The witness acknowledged, however, that travel by car between Gishyita to Ngoma could take less than an hour.<sup>216</sup>

243. On 17 April 1994, while he was at CCDFP, Witness TQ28 heard of the attacks at Mugonero Hospital Complex which had occurred on 16 April 1994. The witness heard that the assailants came from various, fairly distant places. In response to a question from the Defence about the Accused’s participation in the attack, the witness stated that he did not hear “Mika’s name amongst the assailants there were mentioned”.<sup>217</sup>
244. **Defence Witness DS** told the Chamber that no one had ever mentioned to him that the Accused was one of the assailants in the attacks at Mubuga, Mugonero Hospital, or Bisesero.<sup>218</sup> The witness testified that he had heard of the killings at Mugonero Hospital and in Bisesero but that he had not personally participated in the attacks.<sup>219</sup>
245. **Defence Witness DK** testified that he knew Mugonero Hospital because he had received medical treatment there. The witness stated that, although detainees during the *gacaca* sessions had discussed the large-scale massacres at Mugonero Hospital, no one had spoken of the Accused’s participation in these attacks.<sup>220</sup>

## Findings

246. The Chamber has carefully considered the evidence and the Parties’ submissions. On the basis of the corroborated evidence presented by Prosecution Witnesses BG, BI, AT, AU, BJ, and BH, the Chamber finds that the Accused participated in an attack against *Tutsi* civilians at Mugonero Complex on 16 April 1994. However, the Chamber has found significant inconsistencies in the testimony of Witness BH in relation to this attack, and, accordingly, will not rely on his testimony.
247. The Chamber finds credible and reliable the accounts of Prosecution Witnesses BG, BI, BJ, AT, and AU about attacks that occurred at Mugonero Complex on 16 April 1994.
248. The Defence submits that because of Witness BG’s conflicting prior written statements, dated 14 November 1995 and 24 October 1999, as well as inconsistencies in her testimony, the evidence of this witness should be rejected.<sup>221</sup> The Defence refers to Witness BG’s testimony that a fire set by assailants at Mugonero Church with petrol was put out because of the “blood everywhere”.<sup>222</sup> The Defence maintains that this testimony is “untrue because, according to the laws of nature and common sense, blood cannot have such an effect.”<sup>223</sup> The Chamber does not consider that this account, even if scientifically inaccurate, tarnishes the credibility of the witness.
249. According to the Defence, a discrepancy exists between Witness BG’s first written statement of 14 November 1995 and the second statement of 24 October 1999. In the

---

<sup>216</sup> T. 23 August 2004, pp. 76-77; T. 24 August 2004, pp. 39-40, 51-52.

<sup>217</sup> T. 24 August 2004, pp. 1-2, 53.

<sup>218</sup> T. 7 September 2004, pp. 7-8.

<sup>219</sup> T. 7 September 2004, pp. 7, 21.

<sup>220</sup> T. 8 September 2004, p. 35.

<sup>221</sup> Defence Closing Brief, para. 165.

<sup>222</sup> Defence Closing Brief, para. 165; T. 5 April 2004, p. 36.

<sup>223</sup> Defence Closing Brief, para. 165.

prior statement, the witness failed to mention that she first hid in the church before she sought shelter in one of the hospital toilets. The Chamber finds that the discrepancy is minor, particularly in light of the witness' acknowledgement that in 1995 she was traumatized by the recent events, including the loss of her two children, and spent much of the year in the hospital.<sup>224</sup>

250. The Chamber observes that Defence Witness DI testified to having participated in the attacks at Mugonero Complex, on orders issued by *Bourgmestre* Sikubwabo. He also stated that the *bourgmestre* did not insist that the Accused should participate in the attacks at the complex because of the recent death of his son. The Chamber does not consider credible Witness DI's testimony that the Accused could not have been present during the attacks at Mugonero Complex. Given the large number of assailants, the scale, and the duration of the attacks, it is plausible that the witness may not have been aware of the Accused's presence and participation in the attacks. Furthermore, even assuming that the Accused was mourning the death of his son, there is no evidence that he stayed at home continuously on that day. The Chamber notes that Mugonero Complex is only an hour's drive by car from the Accused's home in Gishyita.
251. The Chamber further observes that, during cross-examination, Witness DI acknowledged that he was related to Muhimana through marriage. Also, during cross-examination, the Prosecution submitted a confession by the witness before the *gacaca* court in which he admitted that he killed refugees in attacks at Mugonero Complex and in Gitovu. This confession is inconsistent with the witness' testimony, during direct examination, that, though he participated in the attacks at Mugonero Complex, he killed no one.<sup>225</sup>
252. Defence Witness AR1 testified that he was not at Mugonero Complex at the time of the attacks on 16 April 1994, but, from where he had taken shelter at CCDF, he heard screams coming from the complex at around 10.00 a.m. The witness' bare assertion that he did not hear of the participation of certain local authorities is not sufficient to undermine credible and corroborated testimonies that local authorities, including the Accused, Pastor Elizaphan Ntakirutimana, Dr. Gerald Ntakirutimana, *Préfet* Kayishema, and *Bourgmestre* Sikubwabo participated in the atrocities committed at Mugonero Complex on 16 April 1994. Accordingly, the Chamber finds that Witness AR1's testimony does not undermine the corroborated testimonies of several Prosecution witnesses about the alleged crimes committed by the Accused at Mugonero Complex on 16 April 1994.
253. Defence Witness TQ28 acknowledged that he was not at Mugonero Complex at the time of the attack on 16 April 1994. However, the witness testified that, on this day, he saw the Accused at Gishyita, the first time around 8.00 or 9.00 a.m., and then later during the day. The Chamber does not accept the witness' testimony that because he "shuttled to and from" the Gishyita centre on 16 April 1994 and saw the Accused, the Accused could not have participated in the attacks in Mugonero, located five to seven kilometres away from Gishyita, according to the witness' estimation. The Chamber notes that the witness does not state how many times, and at what times of the day, he saw the Accused. Therefore, the Chamber finds that the testimony of Witness TQ28 does not in any way affect the credible and corroborated testimonies of Prosecution

---

<sup>224</sup> T. 6 April 2004 p. 7.

<sup>225</sup> T. 1 September 2004, p. 51.

witnesses that the Accused participated in attacks at Mugonero Complex in the morning and later on during the same day.

254. Defence Witnesses DS and DK were not eyewitnesses to the crimes committed at Mugonero Complex on 16 April 1994. Both witnesses testified, however, that years later, in Gishyita Prison and during *gacaca* sessions, the Accused's name was never mentioned in relation to the attack at Mugonero Complex. The Chamber does not consider this evidence to be persuasive.
255. On the basis of evidence presented by both Prosecution and Defence witnesses, the Chamber finds that, between 9 and 16 April 1994, thousands of civilians, predominantly *Tutsi*, sought shelter from attacks in Mugonero Complex, a traditional refuge in Ngoma *Secteur*, Gishyita *Commune*.
256. On the morning of 16 April 1994, the Accused arrived at Mugonero Complex in a convoy of vehicles, together with Clement Kayishema, Charles Sikubwabo, Obed Ruzindana, Elizaphan Ntakirutimana, Gerard Ntakirutimana, and soldiers transported in a truck. Among the assailants were also civilians, *Interahamwe*, and *gendarmes*. However, the evidence does not show, as stated in Paragraph 5 (d) (i) of the Indictment, that *commune* policemen participated in the attack.
257. Based on the evidence presented by both Prosecution and Defence witnesses, the Chamber finds that a large-scale attack occurred at Mugonero Complex in which many *Tutsi* civilians were injured or killed. The assailants used guns, grenades, machetes, cudgels, and other traditional weapons, causing death and serious injuries to *Tutsi* civilians who were gathered at the complex.
258. During the attack, the church at Mugonero Complex was surrounded by the Accused, Sikubwabo, Kanyabungu, Ndayisaba, and other assailants when *Bourgmestre* Sikubwabo addressed the crowd of refugees inside, and asked *Hutu* women married to *Tutsi* men to come out. Some of the women complied, abandoning their children, considered *Tutsi*, inside the church. The Chamber finds that this directive demonstrated that the attackers targeted the *Tutsi* refugees who had gathered in the church.
259. Based on the testimony of Prosecution Witnesses BG, BI, BJ, AT, AU and AV, the Chamber finds that the Accused was among the assailants during the attack on 16 April 1994 at Mugonero Complex. He was present, along with other local authorities at Mugonero Complex, when the attack was launched, and he was in close proximity to *Bourgmestre* Sikubwabo when the latter authorized *Hutu* women to leave the church, before the assailants continued their attack against the refugees. Furthermore, during the attack, the Accused used his gun to kill and inflict injuries on *Tutsi* civilians targeted by the attackers.
260. Consequently, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegations in Paragraph 5 (c) of the Indictment.

## ***M. RAPES AND MURDERS AT MUGONERO COMPLEX, 16 APRIL 1994***

### ***Rape and Murder of Mukasine Kajongi***

#### **Allegations**

261. The Prosecution alleges that:

On 16 April 1994, at the Mugonero complex, Mikaeli Muhimana in concert with two *Interahamwe* raped civilian *Tutsi* women in one of the halls of the Mugonero medical school. Mikaeli Muhimana raped one Mukasine Kajongi while brutally assaulting her and removing her clothing so that passers by could view her sexual organs.<sup>226</sup>

On 16 April 1994, at the Mugonero church, hospital and school, Mikaeli Muhimana in concert with two *Interahamwe* killed a civilian woman named Mukasine and another, in one of the halls of the Mugonero medical school.<sup>227</sup>

## **Evidence**

### *Prosecution Evidence*

262. **Prosecution Witness AT** testified that, on 16 April 1994, he fled to Mugonero Hospital, after the attack on Ngoma Church, where he had first sought refuge. Around 11.00 a.m., he entered the surgical theatre, located in the basement of the hospital. According to the witness, in the room, where he spent the entire day, there were three beds with mattresses and 30 corpses lying on the floor. The door and windows had been broken. Witness AT hid amongst the corpses, pretending to be dead, and was located in a position where he was able to observe anyone entering the room. The bodies, which lay close to the beds, were still bleeding. Blood dripped into his mouth. When the assailants arrived in the room, he was drenched in blood amidst the corpses, and they could not distinguish him from the dead.<sup>228</sup>
263. Witness AT stated that, from his position under the dead bodies, he saw three girls burst into the surgery room, out of breath. They lay down on the three beds, located about four and a half metres from where the witness was lying. The witness recognized the girls. One was named Mukasine. She was the daughter of Isaac Kajongi, the accountant of the Adventist Association and Ntakirutimana's subordinate. Mukasine had just completed her education at the nursing school. Though he did not know their names, Witness AT recognized the other girls as the daughters of Amos Karera, an employee in the hospital laboratory. According to the witness, one of the daughters was a teacher, and the other was a student.<sup>229</sup>
264. Witness AT testified that the Accused entered the room shortly after the girls. The Accused was accompanied by Kanyabungo's sons, who, according to the witness, were soldiers just like their father. The Kanyabungos were the witness' neighbours, whom he saw during holidays. Upon entering the room, the Accused went straight to Mukasine, and Kanyabungo's sons headed for Amos Karera's daughters. The Accused took Mukasine and told her to undress quickly. Mukasine raised her hands, pleading for mercy, but the Accused rejected her pleas. When Mukasine refused to undress, the Accused threw her on the floor, undressed her forcefully, and removed her underwear.<sup>230</sup> Muhimana then hit Mukasine with the butt of his gun and parted her legs forcefully before raping her. She cried in pain. The other two girls also cried as they were raped by Kanyabungo's sons. The witness stated that he could not distinguish

---

<sup>226</sup> Indictment, para. 6 (c) (i).

<sup>227</sup> Indictment, para. 7 (c).

<sup>228</sup> T. 19 April 2004, pp. 11, 13, 18, 35, 38-39.

<sup>229</sup> T. 19 April 2004, pp. 14, 52.

<sup>230</sup> T. 19 April 2004, pp. 15-18.

between the brothers to ascertain who raped each of the girls. The witness testified that the three assailants completed their acts almost simultaneously and estimated that the rape lasted approximately five minutes. When the Accused had finished, he dressed and picked up his gun.<sup>231</sup>

265. According to Witness AT, once the assailants had finished, they said, "Those girls are Inyenzi. We are not going to abandon them here. We are not going to leave them alive." The Accused then stated, "Let us kill those two -- those Inyenzi...I'll count one to three and then open fire simultaneously."<sup>232</sup> The Accused then counted from one to three, after which the witness heard the sputter of gunfire and understood that the girls had been killed. Subsequently, the Accused took Mukasine's legs, spread them apart, and said, "Everyone passing should see what the vagina of a *Tutsi* woman looks like."<sup>233</sup>

### *Defence Evidence*

266. **Defence Witness TQ28** testified that he neither saw anyone committing acts of rape nor heard of anyone having come to Mugonero Hospital to rape people.<sup>234</sup>
267. **Defence Witness TQ7** testified that it would have been impossible to commit rape in April 1994, at Mugonero Hospital, considering the number of people who had overrun the premises with their cattle and property, right up to the entrance. The witness added that when she left the hospital there had not been any cases of rape and that when she returned, no one mentioned that any rapes had occurred.<sup>235</sup>
268. **Defence Witnesses AR1** and TQ28 both testified that Kajongi's daughter, Joy Mukasine, was a student at Butare University and was not present in Ngoma in April 1994. Witness TQ28 stated that she could not have been raped on 16 April 1994 at Mugonero Complex.<sup>236</sup>

## **Findings**

### *Findings on Rape*

269. On the basis of inconsistent information contained in Witness AT's out-of-court written statements of 1996, 1999, and 2002, in regard to the number and the identity of victims allegedly raped by the Accused, the Defence asserts that the witness is not reliable or credible. After a careful review of the written statements and the oral testimony of Witness AT, the Chamber finds that the inconsistencies relate only to minor details and do not undermine the overall credibility of Witness AT's account of the acts of rapes.
270. The Defence points out that Witness AT recollected the rape of Mukasine Kajongi for the first time in his written statement of 12 November 1999. The Defence contends that the omission of this rape in the prior 1996 statement affects the credibility of the witness' testimony. The Chamber notes the witness' explanation, during cross-examination, that the 1996 statement focused on the attack itself, not on particular incidents which occurred during the course of the attack. The Chamber further notes

---

<sup>231</sup> T. 19 April 2004, pp. 4, 14, 16.

<sup>232</sup> T. 19 April 2004, p. 16.

<sup>233</sup> T. 19 April 2004, pp. 15-18.

<sup>234</sup> T. 24 August 2004, pp. 22, 51.

<sup>235</sup> T. 23 August 2004, p. 50.

<sup>236</sup> T. 24 August 2004, pp. 6-7; T. 2 Sept. 2004, pp. 51-52.

that, in his later out-of-court statements of 1999 and 2002, as well as in his oral testimony, the witness was consistent in his description of the rape of Mukasine Kajongi. The Chamber therefore is of the view that the omission of the rape of Mukasine Kajongi in the 1996 statement does not, in and of itself, affect the witness' credibility.

271. The Defence contends that Witness AT's testimony did not provide a credible account of the location of the room in the surgical theatre in Mugonero Hospital, where he allegedly hid and witnessed rapes committed by the Accused and others. In support of its argument, the Defence refers to the testimony of its Witness AR1 that there were not many rooms in the surgical theatre and that the rooms for post-surgery patients were far from the surgery ward. The Chamber notes that Witness AT did not assert that the surgical theatre consisted of many rooms. Rather, the witness testified only that there were more than two rooms in the surgical area, located in the basement of the hospital. The Defence also points to inconsistencies between the witness' testimony before the Chamber and his evidence presented in the *Ntakirutimana* case about the location of his hiding place in the surgical theatre. In light of the trauma which the witness experienced at the time of the events, the passage of time, as well as the witness' prior lack of familiarity with the surgical theatre, the Chamber finds that the inconsistency with regard to the witness' location in Mugonero Hospital does not undermine the credibility of the witness' testimony.
272. The Chamber also accepts Witness AT's account of how he hid under corpses and that from his position he could see the Accused and the other alleged perpetrators of the crimes. The Chamber finds credible Witness AT's testimony that he was approximately four and half metres away when the Accused "took his gun, ... hit Mukasine on her body with the butt of the gun ... opened up her legs forcefully, ... took his penis and thrust it into the vagina of his victim."<sup>237</sup> On the basis of the witness' detailed description of the rapes, his proximity to the crimes, and his plausible explanation that the Accused and the other perpetrators could not see him as he lifted his head up and down from his hiding place because "they were busy raping those young girls," the Chamber finds the witness' account of the rape to be credible and reliable.
273. The Chamber has already found Witness AT to be credible. On the basis of her testimony, the Chamber finds that the Accused told Mukasine Kajongi to undress and that, upon her refusal, and notwithstanding her plea for mercy, threw her on the floor, undressed her forcefully and took off her underwear. He then hit her with the butt of his gun, parted her legs forcefully, and thrust his penis into her vagina.
274. At the same time and in the same area where the Accused raped Mukasine Kajongi in the basement of Mugonero Hospital, two soldiers, in his presence, raped the daughters of Amos Karera. By his presence during these rapes, and by his own actions in raping Mukasine, the Accused encouraged the two soldiers to rape Amos Karera's daughters.
275. The Chamber therefore finds that the Prosecution has proved beyond reasonable doubt the allegations in Paragraph 6 (c) (i) of the Indictment.

#### *Findings on Murder*

276. The Chamber finds that, in the presence of the Accused, and after having raped Mukasine Kajongi and one daughter of Amos Karera, the assailants said, "Those girls

---

<sup>237</sup> T. 19 April 2004, p. 16.

are Inyenzi. We are not going to abandon them here. We are not going to leave them alive." The Chamber finds that the Accused then stated, "Let us kill those two -- those Inyenzi...I'll count one to three and then open fire simultaneously." The Accused then counted from one to three, after which gunfire was heard by Witness AU. The Chamber accepts the witness' evidence that she inferred that the girls had been killed. The Chamber finds that Mukasine Kajongi and Amos Karera's daughter were killed on the 16 April 1994 at Mugonero Hospital by assailants, under the instructions of the Accused. The Accused was present during the killing and encouraged the killers.

277. Consequently, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegations in Paragraph 7 (c) of the Indictment.

### ***Rape of Johaneta, Teresa Mukabutera, and Eugenia at Mugonero Hospital***

#### **Allegations**

278. The Prosecution alleges that:

On 16 April 1994, in the surgical wardroom in the Mugonero hospital, Mikaeli Muhimana, in concert with two *Interahamwe* collectively raped *Tutsi* women Johaneta, Theresa Mukabutera and Eugenia, verbally insulting them in the process.<sup>238</sup>

#### *Prosecution Evidence*

279. **Prosecution Witness BH** testified that, on 16 April 1994, he fled to the basement of Mugonero Hospital during the evening, before nightfall. While in the basement, Witness BH testified to seeing three girls, Johaneta, Eugenia and Mukabutera, run into another room, which was between the surgery theatre and the pharmacy. The witness testified that he could see all that was happening in the other room because "the very large door had been broken".<sup>239</sup>

280. Witness BH testified that he saw Muhimana and Kayabungo's sons, Alphonse Kayabungo, an agronomist, and Muhayimana Kayabungo, a soldier, enter the room where the three girls were hiding. Witness BH heard the three men ask the girls to choose "between rape and death".<sup>240</sup> According to the witness, the men told the girls that "they were arrogant, and that "now we are going to do what we want to do with you because you are in our hands". The witness testified that he saw the Accused and the other men "bring down their zips and rape the girls".<sup>241</sup> According to the witness, the Accused raped Johaneta, Alphonse raped Virginie, and Muhayimana raped Mukabutera. After the men had finished their violent acts, the girls asked whether the men would take them from the hospital or leave them to die. The men deliberated, and the Accused replied, "If we take them with us, they may report us, and that might be bad for us". The witness testified to later seeing unidentified *Interahamwe* kill the girls.<sup>242</sup>

---

<sup>238</sup> Indictment, para. 6 (c) (iii).

<sup>239</sup> T. 8 April 2004, pp. 7-8, 17, 33-34, 43, 51-52.

<sup>240</sup> T. 8 April 2004, p. 9.

<sup>241</sup> T. 8 April 2004, p. 10.

<sup>242</sup> T. 8 April 2004, pp. 8-10, 18-19, 38-41, 51.

## **Findings**

281. The Prosecution relies solely on the evidence of Witness BH in support of the allegations in Paragraph 6 (c) (iii) of the Indictment. The Chamber recalls its finding in relation on the credibility of Witness BH in relation to the attack on Mugonero Complex.<sup>243</sup> Similarly, the Chamber finds that Witness BH's testimony in relation to the alleged rapes of Johaneta, Theresa Mukabutera, and Eugenia lacks credibility.
282. Consequently, the Chamber dismisses the allegation in Paragraph 6 (c) (iii) of the Indictment.

### ***Rape of Witness BJ, Mukasine, and Murekatete***

## **Allegations**

283. The Prosecution alleges that:

On 16 April 1994, at the Mugonero complex, Mikaeli Muhimana and *Interahamwe* collectively raped civilian *Tutsi* women Mukasine and Murekatete staff maids at Mugonero hospital, and a civilian *Hutu* lady BJ-K. Mikaeli Muhimana subsequently apologised to BJ-K for the "mistake" of raping her as he initially thought she was *Tutsi*.<sup>244</sup>

## **Evidence**

### *Prosecution Evidence*

284. **Prosecution Witness BJ** testified that, on 16 April 1994, at around 9.00 a.m., she was caring for her employers' children at their home. Hearing screaming and observing many refugees from various locations, including Gishyita, Rwamatamu, and Mpembe, hurrying toward Mugonero Complex, she assumed that the war had started. She left her employers' house, with their children, for Mugonero Complex, where they had already sought shelter. Witness BJ left the children with their mother in the church. Because assailants were killing refugees who had amassed in the complex, the witness ran to Mugonero Hospital, where she hid in a room, which she identified before the Chamber as Room No. 3. Two other girls, whom she identified as Murekatete and Mukasine, hid with her. The witness testified that she heard "people screaming everywhere".<sup>245</sup>
285. Witness BJ told the Chamber that the Accused entered Room No. 3, where she was sitting on a bed with Murekatete and Mukasine. The Accused was accompanied by two men. "One of them had a club, and another had a machete, and a pointed, sharpened stick".<sup>246</sup> Witness BJ testified that the Accused ordered the girls to follow the three men to another room which contained three beds.<sup>247</sup> The girls did so. In this room, which the witness identified as Room 4, the Accused instructed the girls to undress and lie on their backs so that the men could see the genitals of *Tutsi* girls. In response to questions from the Prosecution, the witness specified that "[i]t was Mika" who ordered the girls

---

<sup>243</sup> See Section L, above.

<sup>244</sup> Indictment, para. 6 (c) (ii).

<sup>245</sup> T. 6 April 2004, pp. 36-37.

<sup>246</sup> T. 6 April 2004, p. 40.

<sup>247</sup> T. 6 April 2004, p. 48.

to lie on their backs. “Everybody respected what Mika said”.<sup>248</sup> Witness BJ complied with the Accused’s demands because she thought that, if she did so, her life would be spared. The Accused, who was wearing a white shirt and jeans, undressed and had sexual intercourse with her for about three minutes, despite her pleas for mercy. Witness BJ testified that, when the Accused raped her, she was fifteen years old and a virgin, and that it was painful. Muhimana’s companions raped Murekatete and Mukasine while the Accused was raping Witness BJ.<sup>249</sup>

286. Witness BJ testified that the Accused threatened to insert sharpened sticks into the vaginas of the girls, before killing them. Before this threat materialized, however, an *Interahamwe* named Ngendahimana, who was Witness BJ’s neighbour, asked why she, a *Hutu*, would seek refuge with *Tutsi*. The Accused, hearing these words, said that he had been “unaware” that Witness BJ was a *Hutu*. She then was allowed to escape; she quickly ran home because she was told that if she remained too long on the road, the *Interahamwe* could mistake her for a *Tutsi* and kill her. Witness BJ told the Chamber that she never saw Murekatete or Mukasine again, after the girls were raped.<sup>250</sup>

### Defence Evidence

287. **Defence Witnesses AR1 and TQ7** both testified that, because Eugenia Murekatete was not present at Mugonero Complex in April 1994, she could not have been a victim of rape there. **Defence Witness AR1** stated that Eugenia Murekatete was in Kigali in April 1994.<sup>251</sup>

### Findings

288. The Prosecution relies on the evidence of Witness BJ to establish the allegation that the Accused and *Interahamwe* collectively raped her and two *Tutsi* staff maids from Mugonero Hospital, Mukasine and Murekatete.
289. The Chamber has found Witness BJ credible and reliable. This finding is based on her straightforward and detailed testimony and her demeanour in Court.
290. The Defence challenges Witness BJ’s credibility on the grounds that, when the Accused, in the hospital basement, said that he wanted to see the private parts of a *Tutsi* woman, she did not disclose her *Hutu* ethnicity. The Chamber accepts the witness’ explanation that she did not realise that only *Tutsi* were being targeted but thought, at that time, that all Rwandans were the same, as they had taken refuge in the same place. The Chamber accepts the witness’ explanation and does not find the Defence contention persuasive.
291. The Chamber finds that, on 16 April 1994, in the basement of Mugonero Hospital, at Mugonero Complex, the Accused raped Witness BJ, a young *Hutu* girl, whom he mistook for a *Tutsi*. At the same time, the two men who were accompanying the Accused raped the two other girls, named Mukasine and Murekatete, whose ethnicity is unknown.

---

<sup>248</sup> T. 6 April 2004, p. 39.

<sup>249</sup> T. 6 April 2004, p. 37.

<sup>250</sup> T. 6 April 2004, pp. 37-38, 41-42, 50.

<sup>251</sup> T. 2 Sept. 2004, pp. 48, 51; T. 23 August 2004, p. 45.

292. Consequently, the Chamber finds that the Prosecution has proved beyond reasonable doubt the allegation in Paragraph 6 (c) (ii) of the Indictment.

***Rape of AU, Immaculee Mukabarore, Josephine Mukankwaro, and Bernadette at Mugonero Hospital***

**Allegations**

293. The Prosecution alleges that:

On 16 April 1994, at the Mugonero complex, Mikaeli Muhimana, acting in concert with *Interahamwe* went to one of the operating rooms in the medical school building in the Mugonero complex and collectively raped *Tutsi* women AU, Immaculate Mukabarore, Josephine Mukankwaro In particular Mikaeli Muhimana raped AU.<sup>252</sup>

On 16 April 1994, at the Mugonero complex, Mikaeli Muhimana, acting in concert with *Interahamwe* went to one of the operating rooms in the medical school building in the Mugonero complex and collectively killed civilian *Tutsi* women named Immaculate Mukabarore, Bernadette Mukangorero and Josephine Mukankwaro.<sup>253</sup>

**Evidence**

*Prosecution Evidence*

294. **Prosecution Witness AU** testified that, when she arrived at Mugonero Complex, the courtyard in front of the complex was already full of an inestimable number of refugees, including people from Bisesero and other places.<sup>254</sup>

295. Witness AU testified that she and other refugees fled from an attack at Mugonero Church to the nearby hospital, where they sought shelter in the surgical theatre located in the basement. She and her companions entered a small room in the hospital, the second to the left in the basement. The room could hold two mattresses placed on the floor, which together could accommodate eight people. The witness and the other refugees lay down on the floor and pushed the door closed, without locking it securely.<sup>255</sup>

296. Witness AU testified that the Accused, who carried a knife and gun, entered the little room, with “about six” *Interahamwe*, including Ezekias Ntakirutimana and Alphonse Kanyabungo. Witness AU recognized the Accused. She begged him to save her. He did not listen to her but threatened to kill her.<sup>256</sup>

297. The Accused then ordered the witness to undress, and when she did not fully comply, he used his knife to tear off her pair of shorts, two pieces of underwear, and a loin cloth. The Accused, who wore a pair of jeans, a white shirt, and white underwear, then undressed. He pushed the witness on to the floor. The witness screamed for mercy, prompting the Accused to threaten to kill her. Muhimana then climbed on top of her

---

<sup>252</sup> Indictment, para. 6 (c) (iv).

<sup>253</sup> Indictment, para. 7 (c) (i).

<sup>254</sup> T. 7 April 2004, pp. 17-19.

<sup>255</sup> T. 7 April 2004, pp. 4, 7, 22-23.

<sup>256</sup> T. 7 April 2004, pp. 6, 23.

and had sexual intercourse with her. While he raped her, he banged her head against the floor and promised to take her “out of that area where the victims were; and he was saying that *Tutsis* had been handed over to them and they should kill them”.<sup>257</sup> Witness AU stated that she had confidence in the Accused’s promise because he was in a position of authority and could rescue her. Muhimana did not honour his word to save Witness AU. Instead he raped her twice. The witness recalled that the two rapes lasted some hours. After the rapes, the Accused left the witness in the room, where she hid among the dead bodies, until she escaped at approximately 2.00 a.m., proceeding toward Lake Kivu.<sup>258</sup>

298. While she was being raped, Witness AU saw *Interahamwe* raping many young girls and women in the hallway, before killing them. One of the *Interahamwe*, whom the witness recognized, was Ezekias Ntakirutimana. The witness testified that all of these acts occurred in the presence of the Accused. Prosecution Witness AU also stated that “*bonbons* were distributed”<sup>259</sup> to some of the young girls, and the *Interahamwe* promised to take them away. While the witness did not know the names of all the women and young girls whom the *Interahamwe* sexually assaulted, she was able to identify three young women: Immaculee Mukabarore, Josephine Mukangwiro, and Bernadette, who was the witness’ neighbour.<sup>260</sup>

#### *Defence Evidence*

299. **Defence Witnesses AH7 and TQ28** both testified that they were unable to confirm that any rapes had been committed at Mugonero Hospital in April 1994. Witness AH7 stated that he had no knowledge of any rapes that had occurred within their locality before 1994 or thereafter.<sup>261</sup> Similarly, Witness TQ28 testified that he neither saw nor heard of anyone committing acts of rape at Mugonero Hospital.<sup>262</sup>

### **Findings**

#### *Findings on Rape*

300. The Prosecution relies on the testimony of Witness AU to establish the allegation in Paragraph 6 (c) (iv) of the Indictment that the Accused and *Interahamwe* collectively raped *Tutsi* women AU, Immaculate Mukabarore, and Josephine Mukankwaro. Specifically, the Prosecution alleges that the Accused raped Witness AU.
301. The Defence challenges the credibility of Witness AU on the basis of alleged inconsistencies in her testimony concerning the identities of other rape victims and her failure to recall their full names.
302. On the basis of Witness AU’s testimony, which the Chamber has found credible, the Chamber finds that on 16 April 1994, in the basement of Mugonero Hospital, at Mugonero Complex, the Accused raped Witness AU twice.

---

<sup>257</sup> T. 7 April 2004, pp. 4-6, 31-32.

<sup>258</sup> T. 7 April 2004, pp. 6-8, 10-11, 21, 24, 33-38.

<sup>259</sup> T. 7 April 2004, p. 23

<sup>260</sup> T. 7 April 2004, pp. 5, 9, 32-33, 36.

<sup>261</sup> T. 6 September 2004, p. 46; T. 24 August 2004, pp. 22, 51.

<sup>262</sup> T. 24 August 2004, pp. 22, 51.

303. The Prosecution also charges the Accused with the collective rape of Immaculee Mukabarore and Josephine Mukankwaro. By virtue of her location, and the fact that she was being violently raped at the time, the Chamber finds that she may not have been in a position to observe what was being done to other girls in the hallway.
304. Consequently, the Chamber finds proved beyond reasonable doubt the allegation in Paragraph 6 (c) (iv) of the Indictment that the Accused personally raped Witness AU on 16 April 1994 in a room in the basement of Mugonero Hospital. However, the Chamber finds that the Prosecution has failed to prove the allegation that the *Interahamwe* raped Immaculee Mukabarore and Josephine Mukankwaro in the presence of the Accused.

#### *Findings on Murder*

305. The Prosecution relies on the testimony of Witness AU to establish the allegation in Paragraph 7 (c) (i) of the Indictment that the Accused and *Interahamwe* killed Immaculee Mukabarore, Bernadette Mukangorero, and Josephine Mukankwaro after they were raped.
306. For the reasons stated above with regard to the rape of the other women, the Chamber finds that the Prosecution has failed to prove this allegation. Therefore, the Chamber dismisses the allegation in Paragraph 7 (c) (i) of the Indictment.

### ***N. RAPE OF WITNESS BG, 22 APRIL 1994***

#### **Allegations**

307. The Prosecution alleges that:

On or around 22 April 1994, Mikaeli Muhimana permitted an armed civilian, one Mugonero to detain and keep a *Tutsi* woman BG-K in his house where he repeatedly raped her for several weeks.<sup>263</sup>

#### **Evidence**

##### *Prosecution Evidence*

308. **Prosecution Witness BG** testified that, during the night of 16 April 1994, she climbed the hills towards Gitwa and that, the following day, she continued walking towards Bisesero. Like many others, she sought refuge in Bisesero because she thought that the region's hilly and forested terrain would deter the assailants. However, the Accused and other assailants pursued the *Tutsi* refugees to Bisesero. According to the witness, the assailants did not leave the area until they had killed as many people as they could. Witness BG testified that she saw the Accused in Bisesero on several occasions and heard him encourage other assailants to seek out *Tutsi* who had sought refuge in the region.<sup>264</sup>
309. Witness BG testified that, on 22 April 1994, at around 3.30 p.m., the Accused and members of the *Interahamwe*, including a man called Mugonero, found her hiding on a hill in Bisesero. She was with seven other *Tutsi*. The assailants brought the *Tutsi* refugees close to a road, where they were told to sit down and stretch out. The

---

<sup>263</sup> Indictment, Para. 6 (d).

<sup>264</sup> T. 5 April 2004, pp. 4, 36-37.

*Interahamwe* then killed the other refugees. According to the witness, the orders to kill must have been given beforehand, but she noted that the Accused, who was an influential person, did nothing to stop the killings, which occurred in his presence. The witness did not see how each of the refugees was killed, but she heard their cries of pain before death.<sup>265</sup>

310. Witness BG stated that Mugonero, a member of the *Interahamwe*, asked the Accused to allow him to take away Witness BG so that he could “smell the body of a *Tutsi* woman”. According to the witness, this meant that he wanted to rape her. The Accused gave Mugonero permission to take the witness, and Mugonero drove her to his house, in Muramba in Gishyita *Secteur*, Gishyita *Commune*. During the next two days, Mugonero kept Witness BG at his house, under the guard of *Interahamwe*, and raped her “on three occasions”, before she escaped on 24 April 1994.<sup>266</sup>

### *Defence Evidence*

311. **Defence Witness DAB** testified that Mugonero, a farmer had asked for Witness BG’s hand in marriage and that Witness BG had agreed to “go and live with him as his wife”.<sup>267</sup> Witness DAB stated that he visited Mugonero’s house the day after Witness BG had arrived, that he visited her every day while she was in the house, and that Mugonero did not rape Witness BG.<sup>268</sup>
312. According to Witness DAB, Witness BG left Mugonero’s house at the end of April or in early May. Witness DAB testified that Witness BG did not want to leave Mugonero’s house. However, an attack was launched by *Interahamwe* in Gisovu in the Gisagara Region, and Mugonero, who did not want his “wife” to be killed, escorted her to her parents’ house in Ambara, en route to the Congo. Witness DAB accompanied them. According to the witness, Mugonero provided Witness BG with pocket money. He also told the witness, “I will come and fetch her after the war”.<sup>269</sup>
313. **Defence Witness DAC** testified that, on 16 April 1994, while at home with his wife, they heard explosions from an attack launched against Mugonero Hospital. Witness BG, who worked in the maternity of the hospital, arrived at Witness DAC’s home at about 3.00 p.m. Defence Witness DAC testified that Witness BG stayed with Witness DAC and his wife for two weeks and that they tried to console her, as she was concerned about her family and her fiancé, Samuel Cyibitoki, whom she believed was dead.<sup>270</sup>
314. Witness DAC testified that Mugonero spoke with Witness BG on several occasions during the time that she resided with Witness DAC. According to the witness, Mugonero reminded Witness BG that he knew her from Kibuye, where he was friends with her father and cared for property at her father’s home. The witness testified that, on another occasion, Witness BG and Mugonero spoke together on the road for approximately an hour. Following this conversation, Witness BG informed the witness

---

<sup>265</sup> T. 5 April 2004, pp. 38, 40; T.6 April 2004, p. 14.

<sup>266</sup> T. 5 April 2004, pp. 41-42, T. 6 April 2004, pp. 24-27, 29.

<sup>267</sup> T. 25 August 2004, pp. 59-60.

<sup>268</sup> T. 25 August 2004, pp. 5, 60, 63.

<sup>269</sup> T. 25 August 2004, pp. 60-62.

<sup>270</sup> T. 25 August 2004, pp. 45-46, 49-51.

that she had agreed to become Mugonero's "wife", since her husband had been killed.<sup>271</sup>

315. According to Witness DAC, Witness BG desired to marry Mugonero. Witness DAC stated that Mugonero would not have forced Witness BG to marry him. According to the witness, Mugonero brought Witness BG clothes and allowed her to visit the church to pray. Witness DAC expressed the view that Mugonero could not have raped Witness BG.<sup>272</sup>
316. Witness DAC testified that, in response to BG's request, he visited her parents. At that time, the witness found at home BG's mother, who had been badly beaten, and learned that both BG's father and her *fiancé*, Samuel, had sought refuge in the Congo. After receiving this information, Witness BG planned to leave Mugonero. According to the witness, Mugonero accepted that she should leave, because of criticism from his cousins about marrying a *Tutsi*. The witness also stated that Mugonero planned to come for Witness BG after the war.<sup>273</sup>
317. Witness DAC assisted Witness BG in escaping to the Congo. He changed her identity card and accompanied her by boat to Kibuye.<sup>274</sup>

## Findings

318. In light of the evidence and submissions of the Parties, the Chamber finds credible Witness BG's testimony that the Accused allowed an *Interahamwe*, Mugonero, to abduct and rape her.
319. The Chamber accepts Witness BG's testimony that, on 22 April 1994, on a Bisesero Hill, she and other refugees who were in hiding were found by the Accused, Mugonero, and a group of *Interahamwe*. Mugonero asked the Accused if he could take away the witness so that he could "smell the body of a *Tutsi* woman". It is apparent to the Chamber, from the witness' testimony, that Mugonero's words meant that he wanted to rape her. The Chamber finds that the Accused granted his request, following which Mugonero took the witness to his house in Muramba. There, the witness was kept in a locked room, with *Interahamwe* standing guard on the outside of the room, where the witness was raped several times until she escaped on 24 April 1994.
320. The Chamber notes the Defence contention that the witness voluntarily "married" Mugonero, who gave her protection. In support of this version of the incident, the Defence relied on the evidence of Witness DAC, whom the Chamber finds not to be a credible witness.
321. The Defence also challenges Witness BG's credibility because of her inability to describe the vehicle in which she was taken to Mugonero's house, her description of the size of the window in the room in which she was detained, and her escape through a window in the house, which was surrounded by *Interahamwe*.
322. Having considered the evidence and the Parties' submissions, the Chamber finds Witness BG's account of her abduction and rape credible and reliable. In light of the coercive circumstances prevailing in the Bisesero area at this time, the Chamber is not

---

<sup>271</sup> T. 25 August 2004, pp. 45, 51.

<sup>272</sup> T. 25 August 2004, pp. 55-57.

<sup>273</sup> T. 25 August 2004, pp. 45-46.

<sup>274</sup> T. 25 August 2004, p. 46.

persuaded by the testimonies of Defence Witnesses DAB and DAC that Witness BG consented to “marry”, or cohabit with Mugonero, an *Interahamwe*, who had participated in killing other refugees who had been in hiding with the witness. The Chamber finds the testimony of Witnesses DAB and DAC implausible. In the Chamber’s view, the inconsistencies in Witness BG’s account of her abduction and rape, such as the circumstances surrounding her detention and eventual escape, are insignificant, and do not undermine the credibility and reliability of her evidence.

323. Accordingly, the Chamber finds that the Accused permitted Mugonero to take away Witness BG, knowing that he wanted to rape her. The Chamber further finds that Mugonero raped Witness BG several times in his house, as alleged in Paragraph 6 (d) of the Indictment.

## ***O. KANYINYA HILL ATTACK, MAY 1994***

### **Allegations**

324. The Prosecution alleges that:

The Bisesero area straddles Gishyita and Gisovu *Communes* in Kibuye Prefecture. Following attacks on *Tutsi* civilians who had gathered in enclosed places throughout Kibuye prefecture between April and June 1994, thousands of *Tutsi* survivors fled to the open but steep and undulating hills of Bisesero as their last point of refuge.<sup>275</sup>

In May 1994 Mikaeli Muhimana along with Clement Kayishema, Obed Ruzindana, *Interahamwe* and *gendarmes*, searched for and attacked *Tutsi* civilians taking refuge in Kabakobwa, Gitwa, Kanyinya and Ngendombi hills in Bisesero area..<sup>276</sup>

### **Evidence**

#### *Prosecution Evidence*

325. **Prosecution Witness BI** testified that, in mid-May 1994, he was amongst a group of refugees at Kanyinya Hill when he saw a vehicle transporting soldiers approach from below. The Accused and others alighted from the vehicle, which was parked 30-40 metres from the witness. The Accused instructed the refugees to come close, but they refused. The Accused said, “Listen, we are coming to reassure you, to tell you that there will be no more problems. Go and gather all the sick people and the fugitives, let us meet at Mubuga school, and we are going to provide you with food and medicine.”<sup>277</sup> After asking the refugees to meet with him early the next morning at Mubuga Primary School, the Accused drove away with the other assailants. According to Witness BI, the refugees did not go to Mubuga School the next day because they suspected that a trap awaited them.<sup>278</sup>

---

<sup>275</sup> Indictment, para. 6 (d).

<sup>276</sup> Indictment, para. 5 (d) (v).

<sup>277</sup> T. 30 April 2004, p. 16.

<sup>278</sup> T. 30 April 2004, pp. 17-18.

326. **Prosecution Witness AP** told the Chamber that she could not recall the specific dates of events that occurred when she was in the Bisesero Hills. However, she did remember seeing the Accused in May 1994, after she had been in Bisesero for approximately one month. The Accused, accompanied by a *commune* police officer in a red Toyota vehicle belonging to the *commune*, arrived one day at around 2.00 p.m. on Kanyinya Hill. He beat drums, calling the refugees to a meeting, but they refused to attend, with the exception of one man named Ruzindana, who spoke with the Accused. The Accused told Ruzindana that the following morning at around 9.00 a.m. he would return to Kanyinya Hill with white people, and that they would bring food and drugs to the hungry and the sick.<sup>279</sup>
327. According to Witness AP, the Accused did indeed return the next morning. However, he brought no food or drugs, as promised. Instead he arrived with buses full of assailants, so numerous that they dominated an entire hill. Assailants, armed with clubs and guns, also arrived in pick-up trucks. The Accused wore red clothes and banana leaves. Some of the attackers were dressed in white T-shirts and shorts. Others wore coffee leaves around their heads. The attack at Kanyiniya commenced around 11.00 a.m.<sup>280</sup>
328. According to Witness AP, Nyagihigi was killed at Kanyinya Hill. The witness testified that she heard Nyagihigi say to the Accused “Come and finish me off because you are the one who shot me.”<sup>281</sup>
329. **Prosecution Witness AW** testified that, on Saturday, two or three days after the attack on Rugona Hill, he saw the Accused again on Kanyinya Hill, which is a 20-minute walk from Rugona Hill. According to the witness, the Accused and two soldiers arrived in a red vehicle driven by Obed Ruzindana. Upon his arrival, the Accused asked the group of refugees if they knew who had been attacking them. The witness replied that the Accused and Ruzindana were responsible for the attacks. The Accused then asked the witness how many *Tutsi* were in their group. The witness replied that all *Tutsi* had already been killed. The Accused then told the refugees gathered at Kanyinya Hill to assemble there on Monday to receive assistance from the Red Cross. The refugees did not comply with the Accused’s request because they suspected that, instead of gathering them together to provide assistance, he had come to assess the number of *Tutsi* survivors in order to exterminate them.<sup>282</sup>

### *Defence Evidence*

330. **Defence Witness NM6**, presented by the Defence as an alibi witness, testified that he saw the Accused 15 times in Gishyita commercial centre from 9 May to 27 May 1994. However, in Court, the witness could list only four specific dates on which he saw the Accused, specifically, 9, 13, 25, and 27 May 1994. The witness acknowledged that his observation of the Accused on each occasion was brief.<sup>283</sup>
331. **Defence Witness AH8**, presented by the Defence as an alibi witness, worked as a trader between April and June 1994. He knew the Accused well, since his brother was the

---

<sup>279</sup> T. 30 March 2004, p. 33.

<sup>280</sup> T. 30 March 2004, p. 34; T. 31 March 2004, p. 20.

<sup>281</sup> T. 31 March 2004, p. 19.

<sup>282</sup> T. 14 April 2004, pp. 14-15.

<sup>283</sup> T. 2 September 2004, pp. 78-82; T. 6 September 2004, pp. 2-6, 9-10, 15.

Accused's friend. During this time he saw the Accused six times a week at various locations in Gishyita.<sup>284</sup>

332. **Defence Witness DY** testified that he participated in attacks at Karora *Cellule* in Mara and Murangara *Secteurs* in Gishyita *Commune*. He was also involved in three attacks launched in the Bisesero region. According to the witness, the third and major attack took place at Muyira Hill on 13 May 1994. He could not remember the dates on which the other attacks occurred. The witness disclosed the names of people who led the attacks in Bisesero, but did not mention the Accused. Furthermore, the witness testified that there were no cases of rape during the Bisesero attacks in which he participated.<sup>285</sup>
333. **Defence Witness DK** testified that he participated in different attacks at Bisesero, Murangara and Mara *Secteurs*, and also in three attacks in Bisesero. The witness confessed in Rwanda to his role in these attacks. The witness stated that during the *gacaca* sessions held in prison, neither the Accused's name nor any case of rape was ever mentioned. However, an exhibit tendered by the Prosecution shows that he previously admitted witnessing a rape.<sup>286</sup>
334. **Defence Witness DL** testified that he confessed to criminal participation in an attack in the Bisesero region before 9 May 1994. The witness testified that he was forced to participate in the attack. Before the attack, *Bourgmestre* Sikubwabo, assisted by policemen and others, came to the town centre, and forced people to take part in the attack. Those who refused were beaten. The witness stated that the Accused neither led nor was involved in the attacks in Bisesero. Had he been, the witness said he would have known of it. He stated that, during the *gacaca* sessions, it was said that Vincent Rutaganira called people to participate in the massacres at the church, and that Muhimana's name was never mentioned.<sup>287</sup>
335. **Defence Witness DF** testified that, towards the end of April 1994, *Bourgmestre* Sikubwabo came to Mubuga centre, where the witness lived, and encouraged members of the population to participate in the attacks in Bisesero. The witness participated in more than ten attacks in the Bisesero region, but did not remember the exact names of the hills. The witness testified that he never saw Muhimana between April 1994 and June 1994. Furthermore, he never heard about any rapes committed in the Bisesero region.<sup>288</sup>
336. **Defence Witness DD** testified that when he left Mubuga Church, he fled to the Bisesero Hills. The witness, and other refugees, did not take refuge on only one hill in Bisesero, but ran across several hills, such as, hills of Mubuga, Muyira, Mutiti, and Kanyinya. The witness stated that he did not see the Accused during the attack on Kanyinya Hill.<sup>289</sup>

---

<sup>284</sup> T. 6 September 2004, pp. 60, 62.

<sup>285</sup> T. 6 September 2004, pp. 26-31.

<sup>286</sup> Exhibit P-90 (E); Exhibit P-91 (E); T. 8 August 2004, p. 42; T. 8 September 2004, pp. 34-36, 40.

<sup>287</sup> T. 31 August 2004, pp. 67, 70, 72, 76.

<sup>288</sup> T. 30 August 2004, pp. 4-5, 11-14.

<sup>289</sup> T. 17 August 2004, p. 15 ; This place is called Muhira in the French version of the transcripts. See French T. 17 août 2004, p. 18.

## Findings

### *The Kanyinya Hill Attack*

337. The Chamber notes that the Prosecution adduced evidence only in relation to the Accused's alleged involvement in an attack at Kanyinya Hill, occurring during May 1994. The Prosecution relies on the evidence of Witnesses AP, AW, and BI to prove that the Accused participated in this attack.
338. The Chamber recalls its previous findings that Witnesses AP, AW, and BI are credible witnesses.<sup>290</sup> Furthermore, in relation to the events at Kanyinya hill, the Chamber finds that the testimonies of Witnesses AP and AW are corroborative. Both witnesses saw the Accused at Kanyinya Hill during mid-May 1994. Both recalled that the Accused arrived in a red vehicle accompanied by others, and that he promised the refugees that he would return with assistance for them. The Chamber thus relies on their testimonies in relation to this event. However, the Chamber notes that the account of Witness BI differs in some respects from those of Witnesses AP and AW, and the Chamber is not convinced that he was describing the same attack. In particular, according to Witness BI, the Accused told the refugees not to remain on the hill, but to gather at Mubuga Primary School to receive food and medicine. Thus, the Chamber will not rely on Witness BI's evidence in respect of this event.
339. On the basis of Witness AP's testimony, the Chamber finds that the Accused arrived at Kanyinya Hill at around 11.00 a.m., on a morning during May 1994, with others, beating drums and calling the refugees to a meeting. Only one of the refugees stepped forward to speak to the Accused. The Accused told this man that he would return the next day with white people who would bring food and medicine.
340. Many of the *Tutsi* refugees remained on Kanyinya Hill after the Accused's initial visit. The Accused returned the following morning not with aid workers, food, or medicine. Rather, he came with buses full of assailants and pick-up trucks loaded with clubs and guns. Many of the assailants wore white clothes, but the Accused himself wore red clothes, which made him appear to Witness AP as a leader. The assailants "occupied the entire hill", and the refugees knew that their only chance was to try and confuse the situation by intermingling with the assailants.<sup>291</sup> Nevertheless, a devastating attack on the *Tutsi* refugees followed, and many refugees were killed or wounded. The Chamber finds that the Accused actively participated in this massacre of *Tutsi* refugees, shooting and wounding a *Tutsi* man by the name of Nyagihigi.
341. The Defence submits that the Prosecution evidence is unreliable. In particular, it alleges that Witness AW's testimony contains discrepancies in his description of the Accused's vehicle as he travelled around various locations in the Bisesero region. According to the Defence, Witness AW contradicted himself in regard to the colour of the vehicle in which the Accused arrived at the scene. The Chamber notes from the evidence that the witness' references to red and white vehicles relate to different events. Thus, the Chamber rejects the Defence challenge.
342. The Chamber finds that the testimonies of Defence Witnesses DY, DK, DL, and DF, who admitted taking part in various attacks throughout the Bisesero region, do not cast any doubt on the Prosecution's evidence. The witnesses gave vague descriptions of the

---

<sup>290</sup> See Sections D, E, and L, respectively.

<sup>291</sup> T. 30 March 2004, p. 34.

time and place of the attacks in which they participated and sketchy details about their own roles in the killings. The thrust of the Defence evidence was that these witnesses neither saw the Accused during the attacks nor heard, during *gacaca* sessions held in prison in Rwanda, that the Accused participated in the attacks. The Chamber is not persuaded by the Defence evidence. The Chamber notes that these attacks involved thousands of assailants spread over a large area. Consequently, the fact that these Defence witnesses did not see or hear about the Accused's participation in the attacks does not necessarily mean that he was not involved.

343. Similarly, the Chamber is not persuaded by the evidence of Witness DD, who claims to have been a refugee on Kanyinya Hill at the time of the attack, yet never to have seen the Accused. The Chamber notes that the hill was covered with numerous assailants and refugees and that both the Accused and Witness DD could have been there without one seeing the other.
344. Witness NM6, a relative of one of the Defence Investigators, testified that he saw the Accused on a number of dates, including 13 May 1994, when he observed the Accused at his shop. When asked by the Bench why he recollected going to the Accused's shop three times on 13 May 1994, morning, afternoon, and evening, the witness could not recall a specific reason for these trips. The Chamber does not find the testimony of Witness NM6 credible. Witness AH8, who also knows the Defence Investigator well, claimed to have seen the Accused approximately six times each week at his home from 13 April 1994 onwards, at various times, but could not recall any specific occasion. The Chamber finds this evidence implausible. Even if accepted, this evidence does not preclude the possibility that the Accused was also at Kanyinya Hill and participated in the attack.
345. Consequently, in relation to the allegation contained in Paragraph 5 (d) (v) of the Indictment, the Chamber finds that the Prosecution has proved beyond reasonable doubt that in May 1994, the Accused and others searched for and attacked *Tutsi* civilian refugees taking refuge in the Kanyinya Hill area in the Bisesero region of Rwanda.

## ***P. MUYIRA HILL ATTACKS, MAY 1994***

### **Allegations**

346. The Prosecution alleges that:

The Bisesero area straddles Gishyita and Gisovu *Communes* in Kibuye Prefecture. Following attacks on *Tutsi* civilians who had gathered in enclosed places throughout Kibuye prefecture between April and June 1994, thousands of *Tutsi* survivors fled to the open but steep and undulating hills of Bisesero as their last point of refuge.<sup>292</sup>

On or around 13 and 14 May 1994 Mikaeli Muhimana, Clement Kayishema, Obed Ruzindana, Charles Sikubwabo, *Interahamwe*, *gendarmes*, and other civilians participated in attacks on *Tutsi* civilians taking refuge on Gitwa/Muyira hills Bisesero area killing over ten thousand *Tutsi* civilians.<sup>293</sup>

---

<sup>292</sup> Indictment, para. 5 (d).

<sup>293</sup> Indictment, para. 5 (d) (vi).

## Evidence

### Prosecution Evidence

347. **Prosecution Witness AW** testified that, on or about 13 or 14 April 1994, the Accused led an attack of over 3000 soldiers and *Interahamwe* on Muyira Hill. The Accused was joined by eight trucks and eight buses full of *Interahamwe*. Other assailants came on foot. The witness saw assailants, armed with guns, grenades, machetes, and sharpened bamboo sticks, climbing up Gishyita Road towards his position. The assailants, including the Accused, surrounded the hill. The Accused was armed with the same gun, which he always carried. Among the assailants were: Vincent Rutaganira, the *Conseiller* of Mubuga; Ndimbati, the *Bourgmestre* of Gisovu; Musema, Director of the Gisovu Tea Factory; and Ruzindana, “who had come from Muramba”.<sup>294</sup>
348. According to Witness AW, the attack at Muyira Hill began at 6.00 a.m. and lasted until 6.00 p.m. The witness was unable to estimate how many people were killed but testified to seeing many corpses. The witness returned home that evening for food, but later rejoined other refugees at Muyira Hill, where they hid overnight. On the morning of 14 May 1994, another attack was launched at Muyira Hill, led by the Accused, Ndimbati, and *Musema*. The witness testified that this attack again lasted from 6.00 a.m. to 6.00 p.m.<sup>295</sup>
349. **Prosecution Witness W** testified that, on 13 May 1994, attacks occurred on many hills, including Muyira, Gitwa, Mataba, Gititi, Kigarama, and Kazirandimwe. According to the witness, the Muyira attack began between 9.00 and 10.00 a.m., with the arrival of eight buses carrying trained *Interahamwe*, armed with guns and traditional weapons. The witness specified that the buses belonged to ONATROCOM, a state corporation. According to the witness, the attacks were launched from Rubazo, and the assailants came from Rutsiro and Kibuye. The buses, which carried *Interahamwe*, parked at Kucyapa on the border between Gishyita and Gisovu *Communes*. The assailants alighted from the buses, consulted one another for a short while, and then started shooting at the refugees. The witness also testified that *Interahamwe* carried rocket launchers.<sup>296</sup>
350. Witness W saw the Accused and his group on a nearby hill. According to the witness, the Accused wore civilian clothes and carried a “small gun like a pistol.”<sup>297</sup> Vincent Rutaganira, who stood alongside the Accused in front of the other assailants, also had a gun. During the late afternoon, around 2.00 to 3.00 p.m., the Accused, standing at a distance of about 20 metres, shot Witness W’s 14-15 year-old sister, who was walking about two metres ahead of the witness. When the witness recovered his sister’s body, he saw many other bodies near it but could not identify any of them. The assailants, instructed by Vincent Rutaganira, also abducted the witness’ seven year old brother, grabbing the boy just in front of the witness. Witness W never saw his brother again.<sup>298</sup>
351. **Prosecution Witness BH** testified that, on 13 or 14 May 1994, around 8.00 a.m., he saw the Accused leading one of numerous attacks on Muyira Hill.<sup>299</sup> Many buses carried

<sup>294</sup> T. 14 April 2004, pp. 15-17, 56 ; See French Transcripts : T. 14 avril 2004, p. 17.

<sup>295</sup> T. 14 April 2004, pp. 17-18.

<sup>296</sup> T. 27 April 2004, pp. 15-17, 48-50.

<sup>297</sup> T. 27 April 2004, p. 22.

<sup>298</sup> T. 27 April 2004, pp. 19-23.

<sup>299</sup> T. 8 April 2004, p. 12.

- assailants from all over Rwanda. The Accused arrived in a *commune* vehicle, accompanied by Sikubwabo, Nzandake, Ruzindana, Kayishema, and members of the *Interahamwe*. Witness BH stated that the Accused led the group of assailants from Gishyita and that the *conseiller* of Mubuga *Secteur* led another attack. The witness could not identify who led other attacks, which were launched from all sides.<sup>300</sup>
352. Witness BH was surrounded on all sides by assailants and was separated from the Accused by only a small stream. The Accused, who was armed with a gun, was shooting at people. The witness stated that grenades were thrown, and shots were fired at the refugees. The witness could not estimate the number of victims who died in the attacks. He testified that any survivors were killed the following day.<sup>301</sup>
353. According to Witness BH, the next morning, at about 8.00 a.m., the Accused and Sikubwabo arrived at Muyira Hill on board a *commune* vehicle and launched another attack against the surviving refugees gathered at Muyira Hill. Many *Interahamwe* from Gishyita, armed with machetes, arrived with the Accused. The witness recognized, among the attackers, many prominent personalities, including Ruzindana, Kayishema and the *conseiller* of Mubuga. The attack lasted until approximately 2.00 p.m., when many assailants left in vehicles, although the *Interahamwe* remained at the massacre site until approximately 6.00 p.m.<sup>302</sup>
354. Witness BH said that at night the *Interahamwe* from Cyangugu did not return to their homes but instead were housed at the Accused's residence. According to the witness, from Nyarutovu Hill, which is not far from the Accused's residence, he and other refugees could see Gishyita, the shops near the Accused's house, and many vehicles parked outside the Accused's compound during the day. The witness stated that he often saw the Accused, driving together with *Interahamwe*, towards the hill where the refugees gathered. After the attack at Muyira Hill, the witness fled to nearby Runyangingo Hill.<sup>303</sup>
355. **Prosecution Witness BI** testified that, on 13 May 1994, he and other refugees returned to Muyira Hill, to bury their dead and to evacuate the wounded, when they were surprised by assailants at Cyapa. The assailants were already at Muyira Hill when the refugees arrived at approximately 8.30 a.m., and the witness saw the Accused, at a distance of 30 or 40 metres.<sup>304</sup>
356. According to Witness BI, the Accused then launched an attack on the refugees at Muyira Hill. The witness testified that the Accused was accompanied by the *Bourgmestre* of Gishyita *Commune*, the *Bourgmestre* of Gisovu *Commune*, the *préfet*, Minister Eliezer Niyitegeka, Musema, the assistant *Bourgmestre* called Kananira, *secteur conseillers* of the Gishyita *Commune*, including Vincent Rutaganira, Ntakirutimana, and people from the north of the country. Some assailants arrived on board trucks of the Cola Company. The Accused was armed with a gun, which he used, while the *Interahamwe* attacked with machetes. The attack lasted until about 4.30 p.m., and refugees were killed on a large scale.<sup>305</sup>

---

<sup>300</sup> T. 8 April 2004, pp. 13, 43.

<sup>301</sup> T. 8 April 2004, pp. 12-13.

<sup>302</sup> T. 8 April 2004, pp. 14, 43.

<sup>303</sup> T. 8 April 2004, pp. 14, 44-45, 52-53.

<sup>304</sup> T. 30 April 2004, pp. 19-20.

<sup>305</sup> T. 30 April 2004, pp. 18, 54-55.

357. Witness BI testified that the next day, 14 May 1994, a similar attack occurred in Muyira. The refugees ran towards Kiziba Hill, quite close to Karongi in the former Gitesi *Commune*. When the refugees arrived there, they were stopped by the assailants' vehicles, and the assailants' gunfire forced them back towards Muyira Hill, while assailants waited for them in Kiraro, on the Gitesi-Gisovu boundary. Many people died at this place. "[T]he bodies formed a sort of barrier that prevented the water from flowing, and the little river that was there became ... a river of blood".<sup>306</sup>
358. **Prosecution Witness BU** testified that, from the month of May 1994 until the end of the war, the Accused, armed with a gun, led bands of *Interahamwe* in every attack that was launched against Bisesero, including the attack at Muyira Hill.<sup>307</sup>
359. Witness BU testified that, at Muyira Hill, the witness, from close range, saw the Accused rape a young woman, Josephine Uwamilya. The witness had known Josephine, a *Tutsi* female, from her birth in 1971. The witness was hiding in the bush when he saw the Accused drag Josephine about 20 metres away from his hiding place. Josephine begged her assailants not to kill her. In response, the Accused said, "Give me time to see this young lady first, this first lady who is so haughty".<sup>308</sup> The Accused then told the *Interahamwe*, "This girl has always been very arrogant and now we have to settle scores with her".<sup>309</sup> He ordered Josephine to undress. When she refused, the Accused pushed Josephine to the ground, undressed her with the help of the *Interahamwe*, then climbed on top of her, and raped her. Although Witness BU testified that he did not actually see the Accused's penis penetrate the victim's vagina, he was certain, based on the position of the Accused over the woman and her screams of pain, that he was raping her. The witness testified that, after the Accused had finished raping Josephine, he left her to the *Interahamwe*, who cut off her legs and arms, leaving her to die a slow death.<sup>310</sup>

#### *Defence Evidence*

360. The Chamber recalls the alibi evidence of **Defence Witnesses NM6 and AH8**, and the evidence of **Defence Witnesses DK, DL, and DF** summarised above.<sup>311</sup>
361. **Defence Witness DY** testified that he was coerced under the threat of punishment to participate in three attacks that were launched against Bisesero. According to the witness, the third and major attack took place on 13 May 1994, but he did not remember the dates on which the other attacks occurred. Before this attack, he met with the authorities and the soldiers. The authorities, including Sikubwabo, Rutaganira, Nshyinuykiza, and *commune* policemen, introduced themselves. According to the witness, the Accused was not among them.<sup>312</sup>
362. Witness DY testified that, during the attack on Muyira Hill, he and other civilians were ordered to stay on the top of the hills, screaming, in order to scare the *Tutsi* out of their hiding place. The witness stated that, when the people from Gikongoro attacked, the

---

<sup>306</sup> T. 30 April 2004, p. 19.

<sup>307</sup> T. 16 April 2004, pp. 35-37, 43.

<sup>308</sup> T. 16 April 2004, p. 39.

<sup>309</sup> T. 16 April 2004, p. 45.

<sup>310</sup> T. 16 April 2004, pp. 37-40, 43, 45, 47-49.

<sup>311</sup> See *supra* Section O, *Defence Evidence*.

<sup>312</sup> T. 6 September 2004, pp. 26-31.

*Tutsi* fled to the valley below. The witness estimated that over 300 civilians and twice that number of soldiers participated in the attack.<sup>313</sup>

363. Witness DY did not see the Accused during the attacks, although he admitted that the Accused was expected to be there. He stated that, during *gacaca* sessions in the prison where he was detained, the name of the Accused was not mentioned. The witness denied that any rapes were committed during the three attacks in which he participated in Bisesero and stated that during the *gacaca* sessions in the prison, nobody had mentioned any cases of rape.<sup>314</sup>
364. **Defence Witness DD** recalled two “large-scale”<sup>315</sup> attacks and many smaller ones which he survived on Muyira Hill, on 13 and 14 April 1994. According to the witness, there were many assailants, *gendarmes*, *Interahamwe*, and ordinary members of the population, who arrived in many vehicles, including cars and buses. Among the assailants the witness identified Sikubwabo, who was “showing the attackers how they had to kill ...”.<sup>316</sup> The witness also identified a man called Ndimbati, who came from Gisovu. The witness stated that he did not see the Accused during the attack on Muyira Hill, and furthermore asserted that if the Accused had been there, “he would have been beside the *Bourgmestre*, giving advice to the other attackers”.<sup>317</sup>
365. Witness DD stated that he saw Sikubwabo each time there were major attacks, such as the attacks on 13 and 14 April 1994. According to the witness, Sikubwabo arrived in a Toyota vehicle that he had seized from a trader called Rulinda after killing him, and that this vehicle travelled in front of the bus that carried the assailants. A *gendarme* carrying a gun rode in the cab beside Sikubwabo, but there were others in the back.<sup>318</sup>
366. Witness DD stated that, during the time he spent in the Bisesero Hills, he neither witnessed nor heard of any rapes. Furthermore, in his opinion, rapes would have been impossible, because “[the] attackers rushed on victims to kill them, and to share them amongst themselves, I don't think that under those circumstances the assailants could have raped anyone”.<sup>319</sup>

## Findings

### *Muyira Hill Attacks- 13 and 14 May 1994*

367. Both Prosecution and Defence witnesses testified to the occurrence of two massive attacks, on 13 and 14 May 1994, against *Tutsi* civilians seeking refuge on Muyira Hill in the Bisesero region. Witnesses AW, W, BH, and BI all testify to the commencement of the 13 May attack during the morning, at times varying between 6.00 and 10.00 a.m., and lasting throughout the day. Witnesses AW, BI, BH, and DD testified that the attack resumed the following day.

---

<sup>313</sup> T. 6 September 2004, pp. 30, 34, 36, 39.

<sup>314</sup> T. 6 September 2004, pp. 28, 31, 34-35, 37-38.

<sup>315</sup> T. 17 August 2004, p. 15.

<sup>316</sup> T. 17 August 2004, p. 15.

<sup>317</sup> T. 17 August 2004, pp. 15, 20, 22-23.

<sup>318</sup> T. 17 August 2004, p. 24.

<sup>319</sup> T. 17 August 2004, p. 16.

368. The Prosecution relies on the evidence of Witnesses AW, W, BH, BI, and BU to prove the allegation that the Accused took part in these attacks.<sup>320</sup> The Defence disputes the allegation that the Accused was present or played any part in the attacks, and led Witnesses DD and DY to contradict the Prosecution's evidence.<sup>321</sup>
369. The Chamber recalls its previous findings that Witnesses AW, W, and BI gave credible testimony.<sup>322</sup>
370. The evidence of Witness AW, as corroborated by Witnesses W and BH, leads the Chamber to conclude that the Accused arrived at Muyira Hill on 13 May 1994 with a group of *Interahamwe* from Gishyita. The Chamber is persuaded by the corroborative evidence of Witnesses BI, AW, and W that the Accused was armed with a gun. Based upon the testimony of Witnesses BI, AW, and BH, the Chamber finds that, on 13 May 1994, the Accused was one of many prominent authorities at Muyira Hill, including *Préfet* Kayishema, Minister Niyitegeka, *Bourgmestre* Sikubwabo, the *bourgmestre* of Gisoro, *Conseiller* Vincent Rutaganira, Obed Ruzindana, Alfred Musema, and Ndimbati.
371. The Chamber is persuaded by the evidence of Witnesses AW and W that, during the attack, numerous *Tutsi* civilians were killed by assailants armed with clubs, sharpened bamboo sticks, machetes, guns, and grenades. Having accepted the testimony of Witness W as credible, the Chamber concludes that, during the attack on 13 May 1994, the Accused shot and killed Witness W's young sister, a *Tutsi* girl.
372. Based on the testimonies of Witnesses BI, AW, and BH, the Chamber finds that the Accused, along with many other assailants, returned the next day to finish the killings, forcing any survivors to flee into the valleys below, where "the bodies formed a sort of barrier that prevented the water from flowing, and the little river that was there became ... a river of blood".<sup>323</sup>
373. Defence Witnesses DY and DD testified that they were present during the Muyira Hill attacks on 13 and 14 May 1994 but did not see the Accused there. Witness DY testified that there were almost one thousand armed assailants on the hill on 13 May 1994. The Chamber finds that, under such circumstances, the fact that they did not see the Accused does not necessarily lead to the conclusion that he was not present.
374. In regard to the Accused's involvement in attacks in the Bisesero region in May 1994, the Chamber has previously considered and ruled on the general statements of Witnesses DK, DL, and DF that they never saw or heard of the Accused's participation in attacks in the Bisesero region, and also on the alibi evidence of Witnesses NM6 and AH8.<sup>324</sup>
375. Consequently, in relation to the allegation contained in Paragraph 5 (d) (vi) of the Indictment, the Trial Chamber finds that, around 13 or 14 May 1994, the Accused and others participated in attacks on *Tutsi* civilians taking refuge in the Muyira Hill area in the Bisesero region of Rwanda, killing a great number of *Tutsi* civilians.

---

<sup>320</sup> Prosecution Closing Brief, pp. 143-146, paras. 324, 326.

<sup>321</sup> Defence Closing Brief, paras. 196-199.

<sup>322</sup> See *supra* Sections E and L.

<sup>323</sup> T. 30 April 2004, p. 19.

<sup>324</sup> See *supra* Section O.

## ***Q. RAPE OF WITNESS AX, MAY 1994***

### **Allegations**

376. The Prosecution alleges that:

Towards the end of April 1994, Mikaeli Muhimana raped a *Tutsi* civilian woman, AX-K, on two occasions, at the Bureau *commune* in Gishyita town Gishyita *Secteur*, Gishyita *Commune*.<sup>325</sup>

### **Evidence**

#### *Prosecution Evidence*

377. **Prosecution Witness AX** testified that, in May 1994, after the death of her children, the Accused sent *Interahamwe*, including a person called Alexei, to bring the witness to his office. Witness AX testified that the Accused “immediately pulled me to himself, seized me by the neck and pushed me to the ground, and then he undressed me brutally and he raped me”.<sup>326</sup> The witness testified she was raped on the cement floor and that the rape lasted about one hour.<sup>327</sup>
378. Witness AX testified that, in June 1994, the Accused again sent *Interahamwe*, carrying guns and traditional weapons, to bring her to his office. The witness testified that Burabyo and Gasigwa, both neighbours of the witness, were among the *Interahamwe*.<sup>328</sup>
379. The Accused told Witness AX to take off her clothes and told her that “if you resist, I’m going to shoot you”.<sup>329</sup> The witness testified that the Accused tore off her clothes and threw her on to the floor. The Accused removed his trousers and underwear and raped Witness AX on the floor. The rape lasted about 20 minutes.<sup>330</sup>
380. According to Witness AX, the Accused raped her because “after the death of my relatives, he found that the opportunity was good, and so he tortured me”.<sup>331</sup>

#### *Defence Evidence*

381. **Defence Witness TQ1** testified that she neither witnessed any rape nor knew of any case of rape in Gishyita *Commune*. The witness testified that she saw the Accused after, he had lost his child on 8 April 1994, and saw him throughout the period of mourning. The witness also saw the Accused during the events of April, May, and June 1994 because they were neighbours. According to the witness, the Accused never raped Witness AX or any other woman.<sup>332</sup>

---

<sup>325</sup> Indictment, para. 6 (a) (iii).

<sup>326</sup> T. 31 March 2004, p. 42.

<sup>327</sup> T. 31 March 2004, pp. 41, 44-45; T. 1 April 2004, p. 30.

<sup>328</sup> T. 31 March 2004, p. 47; T. 1 April 2004, p. 30.

<sup>329</sup> T. 31 March 2004, p. 48.

<sup>330</sup> T. 31 March 2004, pp. 47-48.

<sup>331</sup> T. 1 April 2004, p. 33

<sup>332</sup> T. 23 August 2004, pp. 3-4, 8-9, 23.

382. **Defence Witness DS** testified that it was not possible that the Accused raped Witness AX, because the Accused was a married man. The witness further testified that, during the *gacaca* sessions, he never heard of any confession to the crime of rape in Gishyita *Secteur*, and that no one else had been accused of participating in rape in the Accused's *secteur*.<sup>333</sup>
383. **Defence Witnesses TQ13,**<sup>334</sup> **DS,**<sup>335</sup> **NT1,**<sup>336</sup> **and DJ**<sup>337</sup> testified that there was no *secteur* office in Gishyita.
384. **Defence Witness DU** testified that he is currently in prison in Rwanda for the murder of three *Tutsi* victims. According to the witness, a group of attackers came to his house and coerced him to kill Witness AX's children and her mother. The group of attackers included Alexis Mutagana, Amir Munyamani, Mugabushaka, Alphonse, and Gasigwa. The witness said that the Accused "didn't give them any instructions, nor did he issue any orders to them".<sup>338</sup> Witness DU testified that he "never saw Mika and he gave me no orders".<sup>339</sup> The witness insisted that it was "the *bourgmestre* who gave them the orders or they themselves took the decisions because they were independent. They used to take initiative themselves".<sup>340</sup>

## Findings

385. The Prosecution relies on the testimony of Witness AX in support of the allegation that the Accused raped her on two occasions "towards the end of April 1994".<sup>341</sup>
386. Witness AX was visibly traumatized whilst recalling before the Chamber what happened to her family and her. Apart from her own injuries, Witness AX lost her mother, her four children, and her husband during the events of 1994. Despite this tragedy, her testimony was clear, straightforward, and convincing. The Chamber finds her to be a credible witness.
387. The Chamber rejects Witness DS's opinion that it is impossible for a married man to commit rape. The Chamber does not accept Witness DS's testimony that he never heard of any rapes in Gishyita *Commune*, in the light of abundant testimony to the contrary. The testimony of many witnesses that Gishyita *Secteur* had no official *secteur* office is inconsequential. Witness AX testified that she was taken to a building which the Accused used as his office. Whether that building was the *commune* office or the *secteur* office is immaterial.
388. The Chamber accepts Witness AX's testimony that she was raped twice by the Accused after he summoned her to his office, once in May 1994, and again in June 1994.
389. Unfortunately, the Prosecution pleaded in the Indictment that the rapes occurred during April 1994. The witness' testimony cannot therefore be reconciled with the allegations

---

<sup>333</sup> T. 7 September 2004, pp. 6-7.

<sup>334</sup> T. 25 August 2004, pp. 9-15.

<sup>335</sup> T. 7 September 2004, p. 8.

<sup>336</sup> T. 26 August 2004, pp. 9-10, 19.

<sup>337</sup> T. 1 September 2004, p. 73.

<sup>338</sup> T. 8 September 2004, p. 28.

<sup>339</sup> T. 8 September 2004, p. 24.

<sup>340</sup> T. 8 September 2004, pp. 24, 27-28.

<sup>341</sup> Indictment, para. 6 (a) (iii).

contained in the Indictment. Moreover, the Prosecution failed to provide the Defence with clear and consistent notice of the material facts in support of this allegation.

390. Consequently, the Chamber dismisses the allegations contained in Paragraph 6 (a) (iii) of the Indictment.

## **R. RAPE AND MURDER OF PASCASIE MUKAMERA AND FÉLICITÉ KANKUYU, MID-MAY 1994**

### **Allegations**

391. The Prosecution alleges that:

Towards the end of May 1994, at Nyakiyabo hill in the Bisesero area Mikaeli Muhimana, in concert with an Interahamwe named Gisambo, raped Pascasie Mukarema.<sup>342</sup>

Around June 1994, at Gitwa hills in the Bisesero area, Mikaeli Muhimana in concert with armed civilians, including one Ngabonzina, raped a civilian *Tutsi* woman named Félicité Kankuyu.<sup>343</sup>

Towards the end of May 1994, at Nyakiyabo hill in the Bisesero area an Interahamwe named Gisambo, killed Pascasie Mukarema, on instructions of Mikaeli Muhimana.<sup>344</sup>

Around June 1994, at Gitwa hills in the Bisesero area, Mikaeli Muhimana in concert with one Ngabonzina and other Interahamwe killed a civilian *Tutsi* woman named Félicité Kankuyu.<sup>345</sup>

### **Evidence**

#### *Prosecution Evidence*

#### *Rape and Murder of Pascasie Mukaremera*

392. **Prosecution Witness AW** testified that, around mid-May 1994, on Rugona Hill, located about four kilometres from Nyarutovu Hill, the Accused arrived with Charles Sikubwabo and members of the *Interahamwe* in a *commune* vehicle, which they parked by the roadside. The witness was hiding behind a rock that was 20-50 metres away from where the assailants parked and could recognise the Accused.

393. Witness AW heard the Accused order the *Interahamwe* to scour the forest for *Tutsi*.<sup>346</sup> In the course of the search, the *Interahamwe* caught Pascasie Mukaremera, who was pregnant. When they brought her to the Accused, he said, “I’m going to cut this woman, to disembowel this woman, to see the position of the foetus in its mother’s womb”.<sup>347</sup> According to the witness, “Mika took a machete and he cut off (*sic*) this woman into pieces, beginning from her breast, right up to her genitals, and then he

---

<sup>342</sup> Indictment, para. 6 (d) (ii).

<sup>343</sup> Indictment, para. 6 (d) (iii).

<sup>344</sup> Indictment, para. 7 (d) (i).

<sup>345</sup> Indictment, para. 7 (d) (ii).

<sup>346</sup> T. 14 April 2004, p. 9.

<sup>347</sup> T. 14 April 2004, p. 10.

removed the baby from the mother's womb and put it beside its mother. The baby cried for some moments and then died".<sup>348</sup> The *Interahamwe* then cut off Pascasie Mukaremera's hands, sharpened a stake, and pierced it through her arms.<sup>349</sup>

394. Witness AW testified that he had known Pascasie Mukaremera before the Accused killed her at Rugona Hill. According to the witness, she was a peasant, around 40 years of age, and a resident of Bisesero. The witness stated that Pascasie was married but was unable to recall the name of her husband.<sup>350</sup>

#### *Rape and Murder of Félicité Kankuyu*

395. Witness AW testified that, about an hour after the killing of Pascasie, the assailants flushed out a woman called Félicité Kankuyu, a teacher in a Bisesero school in Nyaratovu *Cellule*. According to the witness, the assailants shouted, "We have just discovered Félicité Mukakankuyu", before they handed her over to the Accused and Sikubwabo.<sup>351</sup>

396. Witness AW testified that Sikubwabo threw the woman down, unzipped his trousers, climbed on top of her, and raped her for about ten minutes. Sikubwabo then called the Accused, who undressed and also "took advantage of the woman".<sup>352</sup> According to the witness, "[a]fter that act, which lasted ten minutes, Mika called other *Interahamwe* who were with him, and those *Interahamwe* also raped her".<sup>353</sup> The witness testified that he heard the Accused tell the *Interahamwe* to kill the woman, "because she's also an Inyenzi, like every other Inyenzi".<sup>354</sup> All five *Interahamwe* raped Mukakankuyu in the presence of the Accused. When they had finished, they thrust pieces of wood into her vagina until she died.<sup>355</sup>

#### *Defence Evidence*

397. **Defence Witness DY** testified that he participated in three large-scale attacks in Bisesero; however, according to the witness, no rapes occurred during any of these attacks. Witness DY also stated that no rape was mentioned during any of the *gacaca* sessions held in the prison in Rwanda where he is detained.<sup>356</sup>
398. **Defence Witness DF** testified that he had never heard of any case of rape during the attacks of 1994 in the Bisesero area or in any other area.<sup>357</sup>
399. **Defence Witness DD** stated that, while he was in the Bisesero Hills, he neither witnessed nor heard of any rapes during the attacks of 1994. Furthermore, in the witness' opinion, rape would have been impossible, because "[the] attackers rushed on

---

<sup>348</sup> T. 14 April 2004, p. 10.

<sup>349</sup> T. 14 April 2004, pp. 10, 49.

<sup>350</sup> T. 14 April 2004, p. 11.

<sup>351</sup> T. 14 April 2004, pp. 11, 13, 53.

<sup>352</sup> T. 14 April 2004, p. 12.

<sup>353</sup> T. 14 April 2004, p. 13.

<sup>354</sup> T. 14 April 2004, p. 13.

<sup>355</sup> T. 14 April 2004, p. 13.

<sup>356</sup> T. 6 September 2004, pp. 31, 37.

<sup>357</sup> T. 30 August 2004, p. 13.

victims to kill them, and to share them amongst themselves, I don't think that under those circumstances the assailants could have raped anyone".<sup>358</sup>

400. **Defence Witness DK** testified that, during *gacaca* sessions organised in Gisovu Prison in 2001, he did not hear of any case of rape, other than that to which he confessed before the Public Prosecutor at the Kibuye Tribunal of First Instance.<sup>359</sup>

## Findings

### *Factual Findings on the Murder and Rape of Pascasie Mukaremera*

401. The Chamber has previously made findings regarding the credibility of Witness AW.<sup>360</sup> The Chamber finds the witness to be credible, unshaken in cross-examination, and knowledgeable of the people of whom he spoke.
402. On the basis of Witness AW's testimony, the Chamber accepts that the witness saw the Accused disembowel Pascasie Mukaremera on Rugona Hill in mid-May 1994. The Accused knew the victim prior to this event. The Chamber finds that the *Interahamwe* brought Pascasie Mukaremera to the Accused, who stated that he wanted "to see the position of the foetus in its mother's womb". He then cut the woman from her breasts down to her genitals and removed the baby who cried for some time before dying. After disembowelling the woman, the assailants cut off her hands and inserted sharpened sticks into them. The Chamber finds that the victim died as a result of these injuries.
403. The Chamber notes the Defence submission that the witness' testimony refers to an incident on Rugona Hill, whereas the Indictment alleges that the crime was committed on Nyakiyabo Hill. The Chamber notes that the evidence indicates that Nyakiyabo Hill is in the Bisesero area, as is Rugona Hill. The Chamber further observes that the Prosecution's Pre-Trial Brief provided sufficient and reliable notice to the Accused of this material fact in the summary of Witness BI's anticipated testimony.
404. The Defence also contends that the Accused was not sufficiently notified of the charge against him. The Chamber is satisfied, based on the contents of the Prosecution's Pre-Trial Brief and the disclosure of Witness AW's written statements, that the Accused was sufficiently notified of the identity of the victim, and the general area of the crime, to be able to prepare his defence against the allegations. The Chamber finds that this defect in the Indictment has been cured by timely, clear, and consistent information. Furthermore, the witness' testimony and his prior written statement are consistent as to the date of the incident. The Chamber has previously stated that in conflict situations, such as that existing in Rwanda in 1994, and with the passage of time, some discrepancy as to dates may be inevitable.
405. The Defence also submits that Witness AW could not have witnessed the events in question because the witness was in Muyira until the French arrived. The Chamber has considered the submissions of the Parties and the witness' testimony, and is satisfied that the witness was in the Bisesero area at this time.
406. The Chamber finds that it was the Accused who disembowelled Pascasie Mukaremera and not Gisambo, on the instructions of the Accused, as alleged in Paragraph 7 (d) (i) of the Indictment.

---

<sup>358</sup> T. 17 August 2004, p. 16.

<sup>359</sup> T. 8 September 2004, p. 40.

<sup>360</sup> See *supra* Sections E and O.

407. The Chamber will consider, in its legal findings in Chapter III, whether the Accused can be held responsible for personal commission of the murder of Pascasie Mukaremera, even though the Indictment charges him with ordering Gisambo to commit the act.
408. The Prosecution alleges that the actions of the Accused, in cutting open Pascasie Mukaremera from her breasts to her vagina, constitute rape, as alleged in Paragraph 6 (d) (ii) of the Indictment. The Chamber will consider this argument in the Legal Findings Chapter.

*Factual Findings on the Rape and Murder of Félicité Kankuyu*<sup>361</sup>

409. The Chamber accepts the testimony of Witness AW as credible. The witness testified to the rape and murder of Félicité Kankuyu, whom the witness knew, which occurred about an hour after the disembowelment of Pascasie Mukaremera. The witness testified that, after the death of Pascasie, the assailants found Félicité and alerted the Accused and Sikubwabo. The latter ordered that she be brought to them, and the assailants complied. The witness testified that Sikubwabo called the Accused to come and “have intercourse” with this woman. The Accused then took the woman, undressed and raped her, after which the Accused invited the five *Interahamwe* to rape and kill her “because she’s also an Inyenzi”. The *Interahamwe* duly complied, in the Accused’s presence, and then thrust pieces of wood into her genitals until she died.
410. While the Chamber accepts Witness AW’s testimony on the chain of events, as described above, the Chamber notes that Paragraphs 6 (d) (iii) and 7 (d) (ii) of the Indictment charge these events as two separate incidents, occurring a month apart and in two different locations. The Chamber observes that Witness AW neither mentions Ngabonzina nor indicates that Félicité was raped in Gitwa Hills. The time and the location of the alleged crimes, as set out in Paragraphs 6 (d) (iii) and 7 (d) (ii) of the Indictment, are clearly at variance with the evidence.
411. Consequently, the Chamber finds that the Prosecution has failed to prove the allegations contained in Paragraphs 6 (d) (iii) and 7 (d) (ii) of the Indictment.

## ***S. LURING AND ATTACK OF TUTSI REFUGEES, JUNE 1994***

### **Allegations**

412. The Prosecution alleges that:

The Bisesero area straddles Gishyita and Gisovu *Communes* in Kibuye Prefecture. Following attacks on *Tutsi* civilians who had gathered in enclosed places throughout Kibuye prefecture between April and June 1994, thousands of *Tutsi* survivors fled to the open but steep and undulating hills of Bisesero as their last point of refuge.

On or around 28 June 1994 Mikaeli Muhimana in the company of Obed Ruzindana lured *Tutsi* civilians who were injured in the course of attacks on *Tutsi* civilians taking place throughout Kibuye prefecture to come out of their hiding places in order to receive medication. After the *Tutsi* had come out from their hiding places Mikaeli Muhimana and Obed Ruzindana brought armed attackers, including *Interahamwe*, *gendarmes* and soldiers

---

<sup>361</sup> Indictment, paras. 6 (d) (iii) and 7 (d) (ii).

and attacked the *Tutsi* civilians killing over two thousand and injuring one thousand or so others.<sup>362</sup>

## Evidence

### *Prosecution Evidence*

413. **Prosecution Witness W** testified that, during the month of June 1994, the Accused and other assailants, including Obed Ruzindana and Ruzindana's brother, Joseph, sought out *Tutsi* refugees, many of whom were hiding in "holes" of the cassiterite mine at Nyiramurego. The refugees had covered the holes with grass to conceal themselves.<sup>363</sup> The witness stated that, from his hiding place in bushes close to the cassiterite mine, he observed a young boy, who had been captured by the assailants, point out the refugees' hideouts. The Accused, who carried "a gun like pistol", shot at many people. According to Witness W, the attack at Nyiramurego lasted "quite a while", beginning at 9.00 a.m. and ending around 3.00 p.m. "because they had to bring up people from the hole[s]".<sup>364</sup> The witness stated that the Accused wore a shirt with a MRND slogan.<sup>365</sup>
414. Witness W testified to having seen a "horrible thing that [Mika] did amongst others".<sup>366</sup> The Accused took hold of a little girl, one and half years old, and threw her against a stone, killing her. The Accused and Ruzindana's younger brother, Joseph, also flushed victims out of the holes and killed them. Two girls, Beatrice and Immaculee, who were secondary school students, were killed by the road. Ruzindana cut off Beatrice's breasts, and sticks were pushed up Immaculee's genitals. These acts were committed in the presence of the Accused.<sup>367</sup>
415. Witness W stated that, at the end of June 1994, he saw the Accused at Gitwa, at approximately 10.00 a.m., firing at fleeing refugees.<sup>368</sup>
416. **Prosecution Witness BH** testified that he saw the Accused again in June 1994. The Accused spoke to refugees gathered on Gitwa Hill close to Kanyinya in Bisesero, promising food, medicine, plastic tents and other assistance if they returned to the hill on the following Monday. The witness testified that, on that day, the Accused "did nothing wrong because he was hoping to rally a large number of people".<sup>369</sup> Witness BH testified that he and other refugees with him did not believe the Accused and went into hiding. Indeed, on the following Monday, the Accused returned to Gitwa, accompanied by Ruzindana, Sikubwabo, and a group of assailants, to launch an attack.<sup>370</sup>
417. **Prosecution Witness BB** testified that "sometime in June" he, Rutabana, Nzakamwita, Assiel Kabanda, and Alexis Nduwamungu left Igaramara in the morning to hide in a millet farm in Uwingabo *Cellule*. When the assailants flushed them out of hiding, the refugees fled to Runyangingo, also in Uwingabo *Cellule*, where they hid in a pine

---

<sup>362</sup> Indictment, para. 5 (d) (vii).

<sup>363</sup> T. 27 April 2004, p. 23.

<sup>364</sup> T. 27 April 2004, pp. 23-24.

<sup>365</sup> T. 27 April 2004, pp. 23, 25, 40.

<sup>366</sup> T. 27 April 2004, p. 23.

<sup>367</sup> T. 27 April 2004, pp. 23, 25-26.

<sup>368</sup> T. 27 April 2004, p. 26.

<sup>369</sup> T. 8 April 2004, p. 16.

<sup>370</sup> T. 8 April 2004, p. 16.

forest. The assailants pursued and flushed them out yet again. The refugees defended themselves with stones, but the assailants fired at them. The Accused, accompanied by approximately 100 to 200 assailants, stood about 20 metres away from the refugees.<sup>371</sup>

418. The witness was next to Kabanda and Alexis, when the two men were shot and fell to the ground.<sup>372</sup> The witness and his neighbour Rutabana then fled and hid in a hole inside the quarry about 80 metres from where the Accused and the assailants stood. At about 5:00 p.m., after the gunfire had ceased, they emerged from hiding to find Nduwamungu's naked body and Nzakamwita bleeding around the kidneys where he had been shot. The witness testified, "We also saw Assiel Kabanda's body; he was naked. His head had been cut off. He had also been castrated, so they had cut off his penis".<sup>373</sup> The surviving refugees remained at Runyangingo Hill until the end of June, during which time other sporadic attacks were launched before the war finally ended. The witness' wife and two children were killed at Runyangingo Hill.<sup>374</sup>

## Findings

419. The Defence submits in its Closing Brief that Paragraph 5 (d) (vii) of the Indictment does not disclose the location of the alleged crime. Therefore, in order to protect the Accused's right to a fair trial, the Chamber should dismiss the allegation.<sup>375</sup>
420. The Trial Chamber notes that Paragraphs 5 (d) and 5 (d) (vii) of the Indictment, read together, allege crimes committed "in Bisesero Area, Gishyita and Gisovu *Communes*" committed upon *Tutsi* civilians lured out of their hiding places "throughout Kibuye *Préfecture*".
421. In a similar situation which arose in *Niyitegeka*, the Appeals Chamber held that general allegations of attacks occurring in "Kibuye" or in "Bisesero" did not give specific notice of the location of an attack occurring on Muyira Hill. Neither did the Indictment disclose the date of the attack. In the opinion of the Appeals Chamber, these omissions created a presumption that the Defence was materially impaired in answering the allegation. The Prosecution failed to rebut this presumption.<sup>376</sup>
422. Although in the instant case the Indictment does specify a date, 28 June 1994, the allegation as to the location is equally as vague as that which the Appeals Chamber rejected as insufficient in *Niyitegeka*. Similarly, in the present case, the Prosecution failed to demonstrate that it provided clear, timely, and consistent notice to the Defence in order to cure the defect.
423. Consequently, the Chamber dismisses the allegation contained in Paragraph 5 (d) (vii) of the Indictment.

---

<sup>371</sup> T. 16 April 2004, pp. 10, 29.

<sup>372</sup> T. 16 April 2004, p. 9.

<sup>373</sup> T. 16 April 2004 p. 16.

<sup>374</sup> T. 16 April 2004, pp. 11-13.

<sup>375</sup> Defence Closing Brief, para. 200.

<sup>376</sup> *Niyitegeka*, Judgement (AC), 9 July 2004, paras. 229-235.

## **T. ATTACKS AGAINST TUTSI AT UWINGABO, END OF JUNE 1994**

### **Allegations**

424. The Prosecution alleges that:

The Bisesero area straddles Gishyita and Gisovu *Communes* in Kibuye Prefecture. Following attacks on *Tutsi* civilians who had gathered in enclosed places throughout Kibuye prefecture between April and June 1994, thousands of *Tutsi* survivors fled to the open but steep and undulating hills of Bisesero as their last point of refuge.<sup>377</sup>

In April 1994 in Uwingabo *Cellule* in Bisesero Mikaeli Muhimana in the company of soldiers and *Interahamwe*, shot at twenty *Tutsi* civilians killing them all.<sup>378</sup>

### **Evidence**

425. **Prosecution Witness W** testified that, following the attacks at Gitwa in Bisesero, during April 1994, the refugees fled to Uwingabo. The assailants pursued them, and continued their attack. The witness saw the Accused participate in this attack by shooting at refugees.<sup>379</sup>

426. Witness W stated that, at the end of June 1994, he saw the Accused at Gitwa, at approximately 10.00 a.m. The Accused was firing at the fleeing refugees. The witness saw the Accused again four or five hours later, between 3.00 p.m. – 6.00 p.m. at Uwingabo. As he hid in a pine tree, the witness saw the Accused on board Minister Eliezer Niyitegeka's vehicle, a white Toyota, in which there were a few soldiers. The witness knew the minister because Niyitegeka used to visit Witness W's family in Gitabura *Secteur*. The soldiers in the vehicle fired at the *Tutsi* hiding in the hills. The soldiers could not fire many gunshots because there were *Hutu* between the assailants' positions and the *Tutsi* whom they were targeting.<sup>380</sup>

### **Findings**

427. The Chamber considers the testimony of Witness W to be clear and consistent. The Chamber further finds him to be a credible witness. Accordingly, the Chamber accepts Witness W's testimony regarding two attacks that occurred in Uwingabo, in April and in June 1994. The Chamber finds that, during April 1994, following the attack at Gitwa, the survivors fled to Uwingabo, where they were again attacked by assailants. The Chamber further finds that the Accused participated in this attack and shot at refugees. However, the Prosecution has failed to prove that the Accused killed twenty *Tutsi* civilians.

---

<sup>377</sup> Indictment, para.5 (d)..

<sup>378</sup> Indictment, para.5 (d) (i).

<sup>379</sup> T. 27 April 2004, p. 14.

<sup>380</sup> T. 27 April 2004, pp. 26-27, 47.

428. Consequently, the Chamber dismisses the allegation in Paragraph 5 (d) (i) of the Indictment.

## ***U. MURDER OF ASSIEL KABANDA IN GISHYITA TOWN, END OF JUNE 1994***

### **Allegations**

429. The Prosecution alleges that:

On or around 22 June 1994, in Bisesero hills Mikaeli Muhimana participated in the killing of a prominent Gishyita town civilian *Tutsi* businessman named Assiel Kabanda.<sup>381</sup>

### **Evidence**

#### *Prosecution Evidence*

430. **Prosecution Witnesses AF<sup>382</sup> and BB<sup>383</sup>** both testified that Kabanda was a popular trader and an influential person. Witness BB added that Kabanda and Muhimana were both traders in the same centre.
431. **Prosecution Witness W** testified that, during the attack at Ngendombi Hill, he heard Muhimana offer a reward to any *Interahamwe* who killed Kabanda.<sup>384</sup>
432. **Prosecution Witness BF** testified that Kabanda was killed towards the end of June.<sup>385</sup>
433. **Prosecution Witness BE** testified that Kabanda was killed in mid-June.<sup>386</sup>
434. **Prosecution Witnesses BE and AT<sup>387</sup>** both testified that they had been hiding with Kabanda and other refugees the day that Kabanda was killed. According to BE, they had found refuge in a sorghum farm before they were flushed out by attackers, who chased them from Gitwa Hill in Gitwa *Cellule* to nearby Runyangingo Hill, Uwingabo *Cellule*, where they hid again.<sup>388</sup>
435. **Prosecution Witnesses AF,<sup>389</sup> AT,<sup>390</sup> BB,<sup>391</sup> BE,<sup>392</sup> and BH<sup>393</sup>** all testified that Muhimana, Sikubwabo, and a group of *Interahamwe* were involved in pursuing and flushing Kabanda from his hiding place. According to Witnesses BE and BH,

---

<sup>381</sup> Indictment, para.7 (d) (iii).

<sup>382</sup> T. 29 April 2004, p. 21.

<sup>383</sup> T. 16 April 2004, pp. 11, 28.

<sup>384</sup> T. 27 April 2004, pp. 8, 10.

<sup>385</sup> T. 22 April 2004, p. 6.

<sup>386</sup> T. 21 April 2004, pp. 4, 15.

<sup>387</sup> T. 20 April 2004, pp. 17-19.

<sup>388</sup> T. 21 April 2004, pp. 12-13, 18.

<sup>389</sup> T. 29 April 2004, p. 21.

<sup>390</sup> T. 20 April 2004, pp. 17-19.

<sup>391</sup> T. 16 April 2004, p. 10.

<sup>392</sup> T. 21 April 2004, pp. 3-4, 12-13, 15, 18.

<sup>393</sup> T. 8 April 2004, p. 15.

Muhimana and Sikubwabo arrived at Runyangingo Hill in a Gishyita *Commune* vehicle.<sup>394</sup>

436. **Prosecution Witness AT** testified that the assailants flushed Witness AT and Kabanda out of their hiding place. As Witness AT fled, the Accused, Sikubwabo, and other assailants shot at Kabanda several times, wounding him in the leg. Kabanda fell but did not die instantly. Witness AF testified that the *Interahamwe* who found Kabanda shot at him to prevent his escape.<sup>395</sup>
437. Witness BE testified that, as the refugees fled from the assailants, Kabanda, who was an elderly person, lagged behind them. Upon hearing gunshots, the witness turned to see Kabanda fall to the ground about ten steps behind him. Witness BE inferred that Mikaeli Muhimana had killed Kabanda because he saw no other assailant carrying a gun. According to Witness BE, the *Interahamwe* carried cudgels, machetes, and spears. Witness BE testified that he and the other refugees found a hiding place in a pit in an old casserite quarry. From this shelter, the witness heard the assailants shouting that they had found Kabanda. He also heard Muhimana reply, “Don’t kill him. Wait for me to come first”.<sup>396</sup>
438. **Prosecution Witness BB** testified that he saw Mikaeli Muhimana shoot Kabanda. He also stated that he was close to the scene and was able to clearly see the events that occurred. According to the witness, the refugees formed a “kind of wall” from which they threw stones to protect themselves against the assailants. Witness BB estimated the distance between the attackers and the refugees to be about 15 metres.<sup>397</sup>
439. According to Prosecution Witness BH, when Kabanda was discovered, he tried to run, but the assailants caught up with him, cut him with machetes and beheaded him. Kabanda’s head was then taken to the Accused, who was sitting on the road with Sikubwabo and Ruzindana.<sup>398</sup>
440. **Prosecution Witness AT** testified that, after Kabanda fell to the ground, the Accused and the other assailants surrounded him. The Accused beheaded him, and other assailants undressed him. The Accused then handed Assiel Kabanda’s decapitated head to a young man and ordered that he take it away.
441. **Prosecution Witnesses AF,<sup>399</sup> BE<sup>400</sup> and AT<sup>401</sup>** all testified that they saw Kabanda’s naked body and that his head and private parts had been severed. Witness BE also testified that Kabanda had been wounded in his right leg.<sup>402</sup>
442. Witness AF testified that, at approximately 3.00 p.m. toward the end of June 1994, he was at his house, when he saw the Accused and Ruzindana lead a sizeable group of *Interahamwe*, armed with guns, hoes, and other weapons to Kabanda’s house. They were shouting and singing that they had Kabanda. According to Witness AF, the

---

<sup>394</sup> T. 8 April 2004, p. 15.

<sup>395</sup> T. 29 April 2004, p. 21.

<sup>396</sup> T. 21 April 2004, pp. 3-5, 18-23.

<sup>397</sup> T. 16 April 2004, pp. 11, 28.

<sup>398</sup> T. 8 April 2004, pp. 14-15, 48.

<sup>399</sup> T. 29 April 2004, p. 21.

<sup>400</sup> T. 20 April 2004, p. 20.

<sup>401</sup> T. 21 April 2004, pp. 6, 24.

<sup>402</sup> T. 21 April 2004, p. 24.

*Interahamwe* were excited to present Kabanda's head to their boss, Kayishema, to demonstrate that they had killed an important person.<sup>403</sup>

443. Witnesses BF testified that an unidentified *Interahamwe* carried a white jute bag, which he opened, and that the Accused removed Kabanda's head from the bag and hung it in the window of Kabanda's store, between two iron bars. Prosecution Witness BE testified that the Accused's relative, an old man named Ndoliyobijya, told him that Kabanda's head was hung on a window of Kabanda's home and that his genitals were hung on a pole. After the war, in October 1994, the witness was able to personally confirm this information.<sup>404</sup>
444. Witness AT testified that he heard that Kabanda's genitals had been hung on a stake in Gitarama. After the war, in October 1994, the witness was able to personally confirm this information.<sup>405</sup>
445. Witnesses BF, BB, and BE,<sup>406</sup> testified that Kabanda's remains were buried the day following his death. Witness BF<sup>407</sup> testified that he, his neighbour named Ndoriyobijya, and other persons buried Kabanda's head near the deceased's store. The witness also said that the Accused gave him Kabanda's head, on Sikubwabo's authorisation. Witness BB stated that he heard from a man by the name of Jean that Nzagamwita's nephew and Jean had buried Kabanda's remains.<sup>408</sup>

#### *Defence Evidence*

446. **Defence Witnesses DI and DJ** both testified that the Accused was at his house when the *Interahamwe* hung Kabanda's decapitated head on his own door for public display. Witness DJ testified that the Accused came out to watch the scene, like everyone else in the trading centre.<sup>409</sup>
447. **Defence Witness NT1** testified that it was the *Abakiga* who killed Kabanda.<sup>410</sup>

#### **Findings**

448. On the basis of the testimonies presented by Witnesses AF, AT, BB, BE, and BH, the Chamber finds that the Accused, Sikubwabo, and a group of *Interahamwe* pursued a *Tutsi* man by the name of Assiel Kabanda in the Bisesero Hills. During the pursuit, the Accused and others shot at Kabanda, wounding him in the leg, and he fell to the ground. The assailants killed him, although it is not clear from the evidence which of the assailants inflicted the fatal blow. The Chamber notes that there is some inconsistency between the testimonies of Witness AT and Witness BH as to who beheaded Assiel Kabanda. However the Chamber prefers the evidence of Witness AT that it was the Accused who beheaded Kabanda.

---

<sup>403</sup> T. 29 April 2004, p. 21.

<sup>404</sup> T. 21 April 2004, pp. 7, 25.

<sup>405</sup> T. 20 April 2004, p. 20.

<sup>406</sup> T. 21 April 2004, p. 6.

<sup>407</sup> T. 22 April 2004, pp. 8, 27-30.

<sup>408</sup> T. 16 April 2004, p. 12.

<sup>409</sup> T. 1 September 2004, pp. 44-45, 72.

<sup>410</sup> T. 26 August 2004, pp. 26-27.

449. The Chamber notes that Defence Witnesses NT1, DI, and DJ were not present when Assiel Kabanda was killed and therefore cannot testify as to who killed him. The Chamber cannot rely on the hearsay testimony of Witness NT1 that it was the *Abakiga* who killed Assiel Kabanda because it lacks indicia of reliability. The Chamber finds that the testimonies of Witnesses DI and DJ that the Accused was on his verandah when the *Interahamwe* brought Kabanda's decapitated head to the commercial centre has no relevance in the determination of who killed Assiel Kabanda.
450. Consequently, the Chamber finds that the Prosecution has proved beyond reasonable doubt that the Accused participated in the killing of a *Tutsi* businessman named Assiel Kabanda, as alleged in Paragraph 7 (d) (iii) of the Indictment.

## **V. FACTS NOT PLEADED IN THE INDICTMENT**

### **Jurisprudence**

451. The jurisprudence on this issue has been set out in a number of Appeals Chamber Judgements. The Accused has a statutory right to be promptly informed in detail of the nature of the charges brought against him or her. The Prosecution has an obligation to state the material facts underpinning the charges in the Indictment. The Prosecution does not have to set out the evidence which will prove those material facts.<sup>411</sup> The Prosecution is expected to know its case before going to trial. If the Prosecution does not plead material facts in the Indictment but includes them in its Pre-Trial Brief or raises them at the trial, it will be difficult for the Defence to investigate the new information before the start of the trial. The test to be applied by the Trial Chamber is whether the accused had enough details of the charges to prepare a defence to them.
452. Where the evidence turns out differently from the material facts pleaded in the Indictment, the Trial Chamber may have to take steps to ensure that the trial remains fair.<sup>412</sup> Where an Indictment fails to include material facts, or sufficient detail on those material facts, this constitutes a material defect in what is the principal accusatory instrument, and curative action must be taken. Few Indictments with material defects are likely to be cured by information given to the Defence outside the Indictment, in view of the factual and legal complexity of the crimes heard by the *ad hoc* tribunals. It is a possibility in a few cases that the Prosecution might cure the defect by giving timely, clear, and consistent information concerning the factual basis of the charge in relatively uncomplicated cases.<sup>413</sup> Disclosure of witness statements by the Prosecution does not, by itself, suffice to inform the Defence of material facts that the Prosecution intends to prove at trial. Clear notice must be given and, until that time, the Defence is entitled to assume that the material facts enumerated in the Indictment are exhaustive and represent the case it has to meet.<sup>414</sup> In the ICTY, it has been held that in certain circumstances, a statement in the Prosecution's Pre-Trial Brief may serve to provide sufficient notice to the Defence of an intention to prove certain material facts in support

---

<sup>411</sup> *Kupreškić et al.* Judgement (AC), para. 88, *Niyitegeka* Judgement (AC), para. 193.

<sup>412</sup> *Kupreškić et al.* Judgement (AC), para. 92, cited in *Niyitegeka* Judgement (AC), para. 194.

<sup>413</sup> *Kupreškić et al.* Judgement (AC), para. 114, cited in *Niyitegeka* Judgement (AC), para. 195.

<sup>414</sup> *Prosecution v. Brđanin and Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 64.

of a count in the Indictment.<sup>415</sup> However, under Rule 65 *ter* of the ICTY Rules there is a mandatory obligation to specify, in relation to *each* count, a summary of the evidence which the Prosecution intends to elicit regarding the commission of the alleged crime and the form of the responsibility incurred by the accused.<sup>416</sup> Failure to file such a Brief may result in sanctions.

453. In the ICTR, there is no such mandatory rule. The equivalent provision is contained in Rule 73 *bis* (B) and requires that, at the Pre-Trial Conference, a Trial Chamber or a Judge may order the Prosecution, within a set time limit or before the date set for trial, to file a “pre-trial Brief addressing the factual and legal issues”. Under a separate provision of the same rule, also not mandatory, the Trial Chamber or a judge *may* require the filing of a list of Prosecution witnesses to be called and this *may* be accompanied by a summary of the facts on which each witness will testify and the points in the Indictment on which each witness will testify.<sup>417</sup> Nothing in the ICTR Rules, therefore, requires the Pre-Trial Brief to contain the information required at the ICTY, which would amount to clear notice. While a Pre-Trial Brief at the ICTR may contain information that amounts to clear notice, the timing of its filing is a vital consideration.
454. The Trial Chamber is of the view that, where the material defect is the absence of a pleading of material facts underpinning a charge, it is less likely to be curable by information provided outside the Indictment. In this case, the material facts not pleaded relate to allegations that the Accused personally committed a series of individual acts and, with the exception of one allegation that arose after the filing of the Indictment in its final form, pleading the material facts in the Indictment was entirely practical, and the Prosecution’s failure to do so remains largely unexplained. In its Pre-Trial Brief, the Prosecution had attempted to excuse itself from providing precise details of some attacks because of the lapse of time, the trauma of witnesses, and the scale of the alleged crimes.<sup>418</sup> However, in respect of all but the one exception referred to above, the Prosecution had the requisite information and was aware of the material facts at the time that the Revised Amended Indictment was filed.
455. The Prosecution’s Pre-Trial Brief with an Appended Witness Grid was filed on 27 February 2004. A Corrigendum to the Appendix was filed with Registry on 26 March 2004. The trial began on 29 March 2004. This brief time period before the commencement of the trial gives the context to the submission that disclosed statements

---

<sup>415</sup> *Prosecution v. Brđanin and Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, para. 64.

<sup>416</sup> The Rule reads, in part: “... the pre-trial Judge shall order the Prosecution, upon the report of the Senior Legal Officer, and within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 73 *bis*, to file the following: (i) the final version of the Prosecution’s pre-trial Brief including, for each count, a summary of the evidence which the Prosecution intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused; ...”

<sup>417</sup> The same provision is found in ICTY’s Rule 65 *ter*, but the requirement is mandatory. Additionally, it is noted that the deadline for requiring submission of the Pre-Trial Brief is earlier at the ICTY [at least six weeks before the date set for trial] and therefore is likely to be more useful as notice to the Defence.

<sup>418</sup> Prosecution’s Pre-Trial Brief, para. 60. “... in a situation with frequent attacks in the same area it may be difficult to provide precise evidence, ten (10) years after the events, about specific attacks on particular dates against named victims in precise locations. Survivors, who during three months were under great distress and subject to numerous attacks, may have difficulties in recalling the time and place of the alleged crimes as well as the identity of the victims. In such situations the sheer scale of the alleged crimes may well make it impracticable to require a high degree of specificity.”

and references in the Pre-Trial Brief can constitute notice sufficient to allow the Accused to prepare his defence.

456. The main text of the Pre-Trial Brief referred generally to the responsibility of the Accused "...and his accomplices..." either individually or pursuant to a joint enterprise, for causing rape and personally committing rapes.<sup>419</sup> Paragraph 37 of the Brief stated that the Accused raped women in Gishyita *Secteur*, in Mugonero Complex and in Bisesero "throughout April, May and June 1994". The Chamber notes that the Prosecution, at some points in the main text of the Pre-Trial Brief, makes specific corrections to averments in the Indictment. This places in context the submission that the Pre-Trial Brief and the disclosed statements constituted sufficient notice. No references to the intention to add material facts [such as specific allegations of rape] to the Indictment were made in the main text of the Pre-Trial Brief. The references which, according to the Prosecution, constitute clear notice are to be found in the Appendix setting out the points on which the witnesses were to be called to testify. It will be noted that, in most cases, the references in the Appendix specifically directed the attention of the Accused to parts of the Indictment that had nothing to do with the allegations not pleaded.
457. At the end of this case, in its Closing Brief, the Prosecution acknowledged that it had failed to plead several material facts in the Indictment. It requested the Chamber to treat information contained in statements disclosed to the Defence and references in the Pre-Trial Brief as curing the failure to plead material facts. In the course of the Closing Brief and its final arguments, the Prosecution failed to justify its omission to include the material facts in the Indictment, or its failure to request curative action.<sup>420</sup>
458. The Trial Chamber specifically raised the issue of material facts not pleaded with the Prosecution during Closing Arguments. The Prosecution requested that the evidence of unpleaded rapes be the subject of findings and also averred that unpleaded material facts could be used to establish genocidal intent or to show a consistent pattern of conduct under Rule 93 of the Rules. On the second day of Closing Arguments, the Prosecution conceded that the failure to plead the facts rendered the Indictment defective. The Prosecution expressly stated in relation to unpleaded murder allegations that:

As I said, Your Honours, failure to describe them in the Indictment rendered the Indictment defective in terms of the legal provisions which I have just shown. And we say they are defective principally because the Defence did not have adequate notice to prepare. ... Now, an Indictment which does not refer to a matter which is read in the witness statement becomes incurably defective. You cannot subsequently come and say, 'Well, the matter is in the witness statement; we forgot to include it in the Indictment, but we still request Your Honours to consider it.' In our view -- my view is that such a matter which is contained in the witness statement and was available at the time the Indictment was being prepared but is not included in the Indictment renders an Indictment incurably defective.

---

<sup>419</sup> Prosecution's Pre-Trial Brief, paras. 27, 28 and 33. Paragraph 34 of the Brief stated that 14 of the 22 factual witnesses to be called would give evidence of rape either as eye-witnesses or as victims.

<sup>420</sup> The Trial Chamber notes that the exercise by the Accused of his right to cross-examine witnesses on the unpleaded facts does not cure the material defects in the Indictment.

459. Under questioning from the Chamber, the Prosecution repeated this clear position.<sup>421</sup>
460. The Prosecution then went on to address matters that arose after the drafting of the Indictment and observed that, in its view, timely express notice would cure such a defect. The Prosecution was asked again to clarify the implications of unpleaded facts:

JUDGE MUTHOGA:

If I can just sum it up so that I make sure I understand what you said. You are saying -- you are not asking us to convict Mr. Muhimana on any ground which is not stated in the Indictment, even if -- where evidence of it came to you before the Indictment was drafted. We must assume that because you knew the evidence you did not wish to charge him with it.

MR. KAPAYA:

Yes.

JUDGE MUTHOGA:

And you are not now asking us that you have changed your mind and you want him convicted of them. Is that --

MR. KAPAYA:

Yes, that's the general statement. It's qualified with regards to two or three people as regards rape. It's qualified as regards to rape which we say we have provided post-Indictment information which adequately informed the Defence.

JUDGE MUTHOGA:

But that is rapes about which you were not aware at the time the Indictment was drafted. Is that the case?

MR. KAPAYA:

Yes, Your Honour. That's the point. Yes.<sup>422</sup>

461. The Prosecution also went on to confirm that there were no unpleaded murder allegations which had been cured by timely notice. The Prosecution, therefore, was stating its position that, apart from rape allegations where the information was not within the knowledge of the Prosecution at the time the Revised Amended Indictment was filed on 4 February 2004, there were no unpleaded allegations that could be saved by curative steps. The Prosecution's position was not, however, entirely consistent. The Chamber has noted that the Prosecution appeared to be asking for findings in respect of certain unpleaded allegations. Accordingly, in respect of seven material facts not pleaded, the Trial Chamber will consider each in turn to ascertain whether the failure to plead them was cured by clear and timely notice such as to prevent prejudice to the Accused.

---

<sup>421</sup> T. 19 January 2005, p. 2.

<sup>422</sup> T. 19 January 2005, p. 2.

## Specific Material Facts Not Pleaded

### *a. Rape of Evelyn and Tabita*

#### *Discussion*

462. Witness BG stated that a woman named Evelyn from Rwamatamu in Mugozi *Secteur* was hiding with her in the Bisesero Hills. The evidence was led by the Prosecution without objection. The witness testified that Evelyn told her about being raped by *Interahamwe*, who were led, among others, by the Accused. During cross examination, Witness BG stated that she had mentioned the Accused in relation to Evelyn in response to a question about who led the attacks. According to the witness, she had not said that the Accused was the person who had raped Evelyn but that she mentioned him "...because he was aware of all those attacks and assaults".<sup>423</sup>
463. The Prosecution also elicited that one Tabita was abducted, raped, and killed by *Interahamwe*. No specific evidence concerning any role of the Accused was elicited. The witness stated that Tabita had "...suffered the same fate as I related to you."<sup>424</sup> It is not clear, but presumably the Chamber was being asked to assume that the witness meant that Tabita had suffered the same fate as Evelyn. No such inference can be made as a matter of certainty. Witness BG stated that she had not witnessed the events concerning Tabita since she had been trying to save her own life.
464. The Prosecution's Pre-Trial Brief contained in an Appendix the summary for the evidence of Witness BG: "Also received report of the rape of Evelne [sic] & Tabitha".<sup>425</sup> An additional reference in the Brief did not take the issue of notice any further. The Prosecution, in its Closing Brief, sought to argue that this, together with the disclosed statements, was sufficient and precise notice of the allegations.<sup>426</sup> The Trial Chamber finds that the reference in the Pre-Trial Brief was cursory and provided insufficient foundation for the suggestion that the Defence was on notice that the rapes of Evelyn and Tabitha were to be proved against the Accused. Additionally, the Appendix specifically stated that the evidence of the witness was directed at Paragraphs 5 (c), 6 (d), 6 (d) (i) and 7 (d) of the Indictment. In the earlier Appendix, the paragraphs referred to included 5 (d) (vii). Thus, the Prosecution was expressly giving notice that the evidence of the witness was directed at proving unspecified attacks at Mugonero Complex,<sup>427</sup> the rapes of BG,<sup>428</sup> and sexual assault on, and killing of, Virginie Gasherebuka.<sup>429</sup> The references to these events in BG's statements of 24 October 1999 and 2 February mention the rape and the killing of Evelyn and Tabita but without any ascription of specific responsibility to the Accused.
465. In addition, the Prosecution submitted that the evidence in relation to Evelyn was admissible to prove a persistent pattern of conduct by the Accused. In Oral Closing

---

<sup>423</sup> T. 6 April 2004, p. 30.

<sup>424</sup> T. 6 April 2004, p. 5.

<sup>425</sup> Prosecution's Pre-Trial Brief, filed with the Registry on 27 February 2004, Part iv, p. 3, and Corrigendum to Prosecution's Witness Grid filed with the Registry on 24 March, 2004.

<sup>426</sup> Prosecution's Closing Brief, filed with the Registry on 25 October 2004, p. 139.

<sup>427</sup> Indictment, para. 5 (c).

<sup>428</sup> Indictment, para. 6 (d).

<sup>429</sup> Indictment, paras. 6 (d) (i) and 7 (d).

Arguments, the Prosecution averred that although the allegation was not pleaded in the Indictment "...it should actually buttress what other witnesses were saying."<sup>430</sup>

### *Findings*

466. The Trial Chamber notes that, where such evidence is sought to be called to establish a pattern of conduct, the normal considerations as to notice of material facts apply. The Defence must be given clear, timely notice of the allegation and the purpose of making the allegation. In this case, the Prosecution gave notice that, in effect, pointed away from its intention to call the witness to testify on these two rapes to other events. The Chamber, accordingly, makes no finding in relation to these allegations.

### **b. Rape and killing of Therese Mukabitega**

#### *Discussion*

467. The Prosecution alleges that Therese Mukabitega was surrounded, raped, and killed by unspecified assailants in Bisesero area. The Prosecution does not dispute that this incident was not pleaded in the Indictment.<sup>431</sup> Prosecution Witness BB testified that, one day in May, he saw the Accused lead an attack at Igarama at about 9.00 a.m.<sup>432</sup> and that he saw the attackers, including the Accused, seize and surround Therese Mukabitega who screamed. The witness later deduced that the woman had been raped when he saw her dead body with her throat slit, a torn skirt, and a stick thrust into her genitals.<sup>433</sup> The witness could not identify exactly who had done what to Therese Mukabitega because the assailants had completely surrounded her, blocking the witness' view.<sup>434</sup>

468. In light of the Prosecution's generalised argument that notice in respect of all the unpleaded rapes was sufficient from the statements and the Pre-Trial Brief, the Trial Chamber notes that, while the statement of BB of 13 December 1999 does refer to the killing of this victim, the Appendix to the Prosecution's Pre-Trial Brief, which addresses BB's testimony, reads: "Two women were flushed out and dragged to the bottom of the valley. Witness saw their corpse's (*sic*) later". The evidence of the witness is expressed to be directed at Paragraph 7 (d) (iii) of the Indictment, which concerns the killing of Assiel Kabanda.

### *Findings*

469. The Trial Chamber finds that this does not constitute sufficient, clear, and timely notice of the intention to prove the allegation of rape against the Accused. Accordingly, the Trial Chamber makes no finding in respect of this allegation.

---

<sup>430</sup> T. 18 January 2005, p. 49.

<sup>431</sup> Prosecution's Closing Brief, p. 141, para. 282.

<sup>432</sup> T. 16 April 2004, p. 7.

<sup>433</sup> T. 16 April 2004, pp. 9, 25-26.

<sup>434</sup> T. 16 April 2004, pp. 25-26.

### **c. Rape of Josephine Uwamariya or Uwamaliya**

#### *Discussion*

470. The Prosecution alleges that, one afternoon around 13 May 1994, at Muyira Hill in Bisesero, the Accused raped a refugee called Josephine Uwamaliya, who was killed soon after the rape by *Interahamwe*, who cut off her legs and arms, leaving her to die a slow death.<sup>435</sup> The Prosecution does not dispute that this incident was not pleaded in the Indictment.<sup>436</sup> Witness BU testified that he saw the Accused at Muyira Hill, in Bisesero, rape Josephine Uwamaliya who was known to the witness. Afterwards the victim was killed by *Interahamwe*. The allegation was contained in the Appendix to the Prosecution's Pre-Trial Brief, and it was contained in the witness' disclosed out-of-court statement. In the first Pre-Trial Brief Appendix, the evidence of the witness was stated to be directed at Paragraph 6 (d) (iii) of the Indictment, which concerns the rape of Félicité Kankuyu. In the Corrected Appendix, served just before the trial, the evidence was expressed to be directed at Paragraph 6 of the Indictment. This paragraph states the offence and not the particulars of the offence. Nevertheless, it appears to have amounted to at least notice of an intention to prove something that would include the specific allegation of rape of Josephine. The difficulty is that it does not relate to any averment related to the particulars of Paragraph 6. Moreover, there was no clear statement provided in the Brief, served four weeks before the commencement of the trial, that the witness' evidence was intended to prove the specific allegation against the Accused. In addition, the time frame which was thus allowed to the Defence to meet the allegation was insufficient.

#### *Findings*

471. The Chamber finds that this does not constitute sufficient, clear, and timely notice of the intention to prove the allegation of rape against the Accused. Accordingly, the Trial Chamber makes no finding in respect of this allegation.

### **d. Rape of Mukasine**

#### *Discussion*

472. Witness BI testified that in early May 1994, at a specified location, Mukasine was raped and killed by the Accused. The Accused then was alleged to have killed the victim. The Prosecution does not dispute that this incident was not pleaded in the Indictment,<sup>437</sup> but argues that it referred to the Accused's alleged rape and murder of Mukasine in its Pre-Trial Brief. The allegation was contained in the Appendix to the Prosecution's Pre-Trial Brief and in the disclosed statement of Witness BI. The Appendix, however, stated that the evidence of the witness was directed at proving Paragraphs 5 (c) and 6 (c) of the Indictment, which address the general attacks at Mugonero Complex and the rapes of Josiana, Mariana Gafurafura, and Martha Gafurafura. No clear statement was made in the Brief, served four weeks before the commencement of the trial, that the evidence was intended to prove the specific allegation against the Accused. In addition, the time frame which was thus allowed to the Defence to meet the allegation was insufficient.

---

<sup>435</sup> T. 16 April 2004, pp. 40, 47.

<sup>436</sup> Prosecution's Closing Brief, filed with the Registry on 25 October 2004, paras. 279-281.

<sup>437</sup> Prosecution's Closing Brief, filed with the Registry on 25 October 2004, paras. 276-278.

## Findings

473. The Trial Chamber finds that there was no sufficient, clear and timely notice of the intention to prove the allegation of rape against the Accused. Accordingly, the Trial Chamber makes no finding in respect of this allegation.

### e. Murder of Jean Claude Nkundiye and Emmanuel Murindahabi.

#### Discussion

474. Prosecution Witness AP testified that she witnessed two *Tutsi* men, Nkundiye and Murindahabi, beaten to death with clubs by the Accused and others.<sup>438</sup> The Prosecution does not dispute that this incident was not pleaded in the Indictment.

475. Witness AW testified that, on 7 April 1994, the Accused had organized a roadblock and that the Accused had, with another, caused the arrests of Nkundiye and Murindahabi<sup>439</sup> and that they were subsequently killed.<sup>440</sup> Witness AP testified that, on 7 April 1994, she was arrested on the orders of the Accused and later released. Sometime after her release, she witnessed Nkundiye and Murindahabi being beaten to death with clubs by the Accused and others.<sup>441</sup> AP testified to seeing the Accused raise a club and hit one of the men over the head, saying, “This is how you kill a *Tutsi*,” after which she immediately ran home. AP later learned from the people who performed the burial that the bodies bore signs of machete blows.<sup>442</sup> Defence Witnesses DI and DJ gave evidence that the Accused was not implicated in the arrest of these two victims, and was not at the *commune* offices when the one victim was brought there under arrest. Witness DJ stated that the Accused was at home at the time.<sup>443</sup> Witness DJ did not see Nkundiye arrested, but he heard that he was arrested on 8 April 1994 and brought before the *bourgmestre*, who ordered him taken to the *commune* jail.<sup>444</sup> The cross-examination of these witnesses did not substantially alter their account. A prior, allegedly inconsistent, statement was ruled inadmissible by the Trial Chamber. Witness NT1 also gave an account that placed the blame for their deaths elsewhere than with the Accused.

476. The Pre-Trial Brief did refer in the Annex to the fact that AP would testify as to this incident but the reference is cursory: “Muhimana instructed *Interahamwe* to kill Nkundiye.” The original Appendix to the Prosecution’s Pre-Trial Brief asserted that the evidence of this witness related to Paragraphs 5 (a), 6 (a) (i) and 7 (a) of the Indictment. The reference to Paragraph 5 (a) was removed in the Corrigendum. The paragraphs cited refer to the rape and murder of Gorette Mukashyaka and Languida Kamukina. No mention of the two male victims was made in relation to AW in the Appendix. The prior statements of both AP and AW mentioned the killing of the two men, Nkundiye and Murindahabi.

477. The Prosecution argues that sufficient notice was provided to the Defence. In support of this contention, the Prosecution refers to the fact that the Defence called witnesses to

<sup>438</sup> T. 30 March 2004, pp. 23, 47-48.

<sup>439</sup> T. 14 April 2004, p. 5.

<sup>440</sup> T. 14 April 2004, pp. 5, 32.

<sup>441</sup> T. 30 March 2004, p. 23.

<sup>442</sup> T. 30 March 2004, pp. 23, 47-48.

<sup>443</sup> T., 2 September 2004, pp. 18-20.

<sup>444</sup> T., 2 September 2004, p. 19.

rebut, in part, the allegations. The Chamber notes that the analysis of prejudice to the Accused is not dependent on whether the Accused manages to call any witnesses in rebuttal. If the Accused is not given clear and timely notice of specific allegations, he or she is not in a position to appreciate or understand the full case to be met. In this case, the Appendix to the Pre-Trial Brief specifically directed the Accused to *other allegations* that the witnesses were being called to prove. Far from constituting clear notice, the document served to obscure the intention of the Prosecution.

### *Findings*

478. The Trial Chamber finds that this does not constitute sufficient, clear, and timely notice of the intention to prove the allegation against the Accused. Accordingly, the Trial Chamber makes no finding in respect of this allegation.

## **f. Murder of Witness AX's Children**

### *Discussion*

479. Prosecution Witness AX testified that four of her children were killed in her parents' house at the same time her mother was killed.<sup>445</sup> The perpetrators were led by Mika Muhimana,<sup>446</sup> who did not take a direct part in the killings<sup>447</sup> but was present and encouraged the assailants.<sup>448</sup> The Prosecution does not dispute that this incident was not pleaded in the Indictment. The Indictment made no mention of any murders of AX's family but refers to AX being raped twice. The Annex to the Prosecution's Pre-Trial Brief, which addresses AX's testimony, did refer to the killing: "...Recalls how Muhimana instructed *Interahamwe* to kill her 3 children starting with youngest. Witness heard it was a group instructed by Muhimana that killed her mother." There is also another brief reference to the killing of an eldest daughter by the Accused. The Prosecution's document, however, specifically stated that the witness was being called to prove Paragraph 6 (a) (iii), and the Corrigendum added Paragraph 7(d)(iii) of the Indictment. These two paragraphs address the rape of AX and the killing of Félicité Kankuyu. The witness' prior statement, dated 16 December 1999, did mention the killing of the children [and the mother of the witness]. Thus, again, the document said by the Prosecution to constitute notice, with the statements, in fact directed the attention of the Accused away from the unpleaded allegations.

### *Findings*

480. The Trial Chamber finds that this does not constitute sufficient, clear and timely notice of the intention to prove the allegation against the Accused. Accordingly, the Trial Chamber makes no finding in respect of this allegation.

---

<sup>445</sup> T. 31 March 2004, pp. 30-31, 48; T. 1 April 2004, p. 19.

<sup>446</sup> T. 31 March 2004, p. 30.

<sup>447</sup> T. 31 March 2004, p. 3.

<sup>448</sup> T. 31 March 2004, p. 31.

## **g. Rape of Witness AQ**

### *Discussion*

481. Prosecution Witness AQ testified that, in April 1994, the Accused raped her on three different occasions in her bedroom.<sup>449</sup> The prior out-of-court statement of this witness, dated 30 August 1999, refers to the rape of Esperance by the Accused but states that she did not witness any other rapes and killings committed by the Accused. The Prosecution included a reference to the allegation that the Accused raped Witness AQ in its Appendix to the Pre-Trial Brief. “Witness added that MUHIMANA raped her twice after Esperance never returned.”
482. In its Closing Argument, the Prosecution at first stated that the witness had only “opened up a few weeks before the trial”. The Prosecution later stated that it had known of her additional allegation since February or March 2004, when the Prosecution reconfirmed her evidence. The Prosecution stated that it then served an additional statement on the Defence, to which it included a reference in its Pre-Trial Brief Appendix. In reply to a question from the Chamber as to how the Defence was to conduct investigations into the matter, the Prosecution stated that the Defence had about 60 days to do so and could have made an application to the Trial Chamber to request time to pursue investigations. Since the Defence had not done so, the Prosecution considered that the notice was sufficient.
483. The difficulty in accepting the Prosecution’s submission that sufficient notice was given of its intention to prove the specific allegation against the Accused is that AQ’s evidence is expressly stated in the Appendix to be directed to Paragraphs 6 (c) (ii) and 7 (a) (i) of the Indictment. This evidence deals with the rape of Mukasine, Murekatete, and BJ-K and the murder of Esperance Mukagasana. It is thus evident that the Prosecution’s asserted “clear notice” was in fact far from clear.

### *Findings*

484. The Trial Chamber finds that, in the absence of a request for curative action, and in the light of the Prosecution’s failure to give clear notice, it would be unfair to the Accused, under all the circumstances, to allow the Prosecution to rely on such an allegation. Accordingly, the Trial Chamber will not consider this allegation in its factual or legal findings.

---

<sup>449</sup> T. 15 April 2004, pp. 25, 28.

## CHAPTER III – LEGAL FINDINGS

485. Based on its factual findings set out above, the Chamber will present its legal findings on the charges alleged against the Accused in the order of the Counts as they appear in the Indictment.
486. The Indictment contains four counts: Count 1, Genocide; alternatively, Count 2, Complicity in Genocide; Count 3, Rape as a Crime against Humanity; Count 4, Murder as a Crime against Humanity. With the exception of Count 1 and Count 2 (Genocide and Complicity in Genocide), the counts are charged cumulatively.

### A. GENOCIDE (COUNT 1)

487. Count 1 of the Indictment charges the Accused with genocide, by acting individually or in concert with others, to cause many *Tutsi* to be killed. In support of this charge, the Prosecution, in Paragraph 5 of the Indictment, alleges the following acts committed by the Accused:<sup>450</sup>

- ( ) Mobilisation and distribution of arms to assailants;
- ( ) Visit to Mubuga Church in preparation for an attack on *Tutsi* refugees;
- ( ) Looting of food which was intended for civilians who had taken refuge in Mubuga Church;
- ( ) Distribution of grenades and guns at Mubuga Church;
- ( ) Attacks against civilian *Tutsi* within Mubuga Church;
- ( ) Attack against *Tutsi* civilians at Mugonero Complex;
- ( ) Shooting twenty *Tutsi* civilians at Uwingabo;
- ( ) Pursuing and attacking *Tutsi* at Rushishi and Ngendombi, Gitwa, and Muyira Hills.

488. The Defence contends that “by failing to indicate in the amended Indictment any of the [material elements of genocide], the Prosecution made it impossible for the Accused to identify the offence charged within the meaning of the Genocide Convention and the Statute, and made it unnecessary for the Defence to analyse the *actus reus* of genocide”.<sup>451</sup>

---

<sup>450</sup> Indictment, para. 5.

<sup>451</sup> Defence Closing Brief, para. 119; Defence Oral Closing arguments: T. 20 Janvier 2005, pp. 5 and 6 (in French).

489. After carefully reviewing the Defence argument, the Chamber finds that the Indictment provided the Accused with sufficient notice of the material elements of the crime of genocide charged against him.
490. The Indictment charges the Accused with criminal responsibility, under Article 6 (1) of the Statute, but fails to detail the form of his alleged participation in the crime of genocide. Article 6 (1), which identifies five forms of criminal responsibility, provides:
- A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.
491. The Chamber considers that the Prosecution's failure to indicate the precise form of the Accused's alleged participation is not fatal because the factual allegations of the Indictment adequately describe the Accused's role in the crimes.<sup>452</sup> Accordingly, the Chamber has considered all forms of participation, under Article 6 (1), relevant to its factual findings, in making its legal findings on the Accused's criminal responsibility.

## **1. Applicable Law**

492. Rwanda is a Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, signed on 12 February 1975.<sup>453</sup>
493. Genocide means:
- ... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) Killing members of the group;
  - (b) Causing serious bodily or mental harm to members of the group;
  - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - (d) Imposing measures intended to prevent births within the group;
  - (e) Forcibly transferring children of the group to another group.<sup>454</sup>
494. In the instant case, the Prosecution charges the Accused with two genocidal acts enumerated in the Statute: killing members of the group; and causing serious bodily or mental harm to members of the group. Therefore, the Chamber will apply the law to its factual findings only in relation to these two forms of genocide.
495. In addition to these material elements, the specific intent for genocide requires that the perpetrator target the victims with "intent to destroy, in whole or in part, a national, ethnical, racial or religious group".
496. The perpetrator's specific genocidal intent may be inferred from deeds and utterances. It may also be inferred from the general context of the perpetration, in consideration of factors such as: the systematic manner of killing; the methodical way of planning; the general nature of the atrocities, including their scale and geographical location, weapons employed in an attack, and the extent of bodily injuries; the targeting of

---

<sup>452</sup> *Ntagerura et al.* Judgement, (TC) para. 38; *Semanza* Judgement (TC), para. 59.

<sup>453</sup> *Gacumbitsi* Judgement (TC), para. 248; *Akayesu* Judgement (TC), para. 496; *Kajelijeli* Judgement (TC), para. 744; *Kamuhanda* Judgement (TC), para. 576.

<sup>454</sup> ICTR Statute, Article 2 (2).

property belonging to members of the group; the use of derogatory language towards members of the group; and other culpable acts systematically directed against the same group, whether committed by the perpetrator or others.<sup>455</sup>

497. The notion of “destruction of a group” means “the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group”.<sup>456</sup>
498. In proving the intent to destroy “in whole or in part”, it is not necessary for the Prosecution to establish that the perpetrator intended to achieve the complete annihilation of a group. There is no numeric threshold of victims necessary to establish genocide<sup>457</sup>, even though the relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Article 2 of the Statute, is strong evidence of the intent to destroy a group, in whole or in part.<sup>458</sup>
499. To convict a person of genocide for killing members of a group requires that the Prosecution establish that the accused, having the intent to destroy, in whole or in part, the group as such:
- committed, planned, ordered, or instigated the killing; or
  - as an accomplice, aided and abetted the killing of one or several members of the group.<sup>459</sup>
500. The Prosecution also has the burden of proving either that the victim belongs to the targeted ethnic, racial, national, or religious group or that the perpetrator of the crime believed that the victim belonged to the group.<sup>460</sup>
501. Pursuant to Article 2 (2) (b) of the Statute, an accused incurs criminal liability if he causes serious bodily or mental harm to members of the group.<sup>461</sup>
502. Serious bodily harm is any serious physical injury to the victim, such as torture and sexual violence. This injury need not necessarily be irremediable.<sup>462</sup> Similarly, serious mental harm can be construed as some type of impairment of mental faculties or harm that causes serious injury to the mental state of the victim.<sup>463</sup>
503. Planning occurs when one or more persons contemplate and take any steps towards commission of a crime.<sup>464</sup>

---

<sup>455</sup> *Gacumbitsi* Judgement (TC), paras. 252-253; *Akayesu* Judgement (TC), para. 523; *Kayishema and Ruzindana* Judgement (TC), para. 93; *Ntagerura and Others* Judgement (TC), para. 663.

<sup>456</sup> See ILC Report (1996), para. 50; see also *Gacumbitsi* Judgement (TC), para. 253; *Semanza* Judgement (TC), para. 315; *Kayishema and Ruzindana* Judgement (TC), para. 95.

<sup>457</sup> *Gacumbitsi* Judgement (TC), para. 253; *Semanza* Judgement (TC), para. 316.

<sup>458</sup> *Gacumbitsi* Judgement (TC), para. 253; *Kayishema and Ruzindana* Judgement (TC), para. 93.

<sup>459</sup> *Gacumbitsi* Judgement (TC), para. 255; *Akayesu* Judgement (TC), para. 473; *Kajelijeli* Judgement (TC), para. 757; *Semanza* Judgement, para. 377.

<sup>460</sup> *Gacumbitsi* Judgement (TC), para. 255-256; *Semanza* Judgement, (TC), para. 319; *Rutaganda* Judgement (TC), para. 60; *Kayishema and Ruzindana* Judgement (TC), para. 99; *Akayesu* Judgement (TC), para. 499.

<sup>461</sup> *Gacumbitsi* Judgement (TC), para. 256; See ILC Report (1996), para. 8.

<sup>462</sup> *Gacumbitsi* Judgement (TC), para. 291; *Akayesu* Judgement (TC), para. 502; *Kayishema and Ruzindana* Judgement (TC), para. 110; *Semanza* Judgement (TC), paras. 320 -321.

<sup>463</sup> *Gacumbitsi* Judgement (TC), para. 291; See ILC Report (1996), para. 14, under Article 17 of the Draft Code of Crimes. Bodily harm is defined therein as “some type of physical injury”, while mental harm is defined as “some type of impairment of mental faculties”.

<sup>464</sup> *Gacumbitsi* Judgement (TC), para. 271.

504. Instigating involves prompting another person to commit an offence.<sup>465</sup> Instigating need not be direct or public, as required for direct and public incitement to commit genocide, punishable pursuant to Article 2 (3) (c) of the Statute. Proof is required of a causal connection between the instigation and the *actus reus* of the crime.<sup>466</sup>
505. Ordering refers to a situation where an individual, in a position of authority, uses such authority to compel another individual to commit an offence.<sup>467</sup>
506. Committing refers to the direct and physical perpetration of the crime by the offender.<sup>468</sup>
507. Aiding and abetting are distinct legal concepts. Aiding means assisting or helping another to commit a crime. Abetting means facilitating, advising, or instigating the commission of a crime.<sup>469</sup>

## 2. Legal Findings

508. In light of its factual findings with regard to the allegations of genocide set forth in Paragraphs 5 (a), (b), (c), and (d) of the Indictment, the Chamber has considered the criminal responsibility of the Accused under Count 1, Genocide, under Article 2 of the Statute of the Tribunal.

### *The Tutsi Group*

509. The Chamber has found that, during the period addressed by the Indictment, Rwandan citizens were individually identified according to three ethnic groups: that is, *Tutsi*, *Hutu*, and *Twa*.<sup>470</sup>
510. The Defence does not contest that the *Tutsi* were considered a distinct group in Rwanda in 1994, stating that any question as to whether they constituted a national, ethnic, racial, or religious group in the sense of the 1948 Convention against Genocide is academic.<sup>471</sup> According to its interpretation of *Akayesu*, the 1948 Convention protects not only the explicitly mentioned groups, but all stable and permanent groups.<sup>472</sup>
511. The Chamber concludes - having noted that the question is not in dispute between the Parties - that in Rwanda, in 1994, the *Tutsi* were a group protected by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

---

<sup>465</sup> *Gacumbitsi* Judgement (TC), para. 279; *Kajelijeli* Judgement (TC), para. 762; *Bagilishema* Judgement (TC), para. 30; *Akayesu* Judgement (TC), para. 482.

<sup>466</sup> *Gacumbitsi* Judgement (TC), para. 279; *Semanza* Judgement (TC), para. 381; *Akayesu* Judgement (AC), paras. 478 to 482.

<sup>467</sup> *Gacumbitsi* Judgement (TC), para. 281; *Akayesu* Judgement (TC), para. 483; *Kajelijeli* Judgement (TC), para. 763.

<sup>468</sup> *Gacumbitsi* Judgement (TC), para. 285; *Kayishema and Ruzindana* Judgement (AC), para. 187; ICTY, *Tadic* Judgement (AC), para. 188; ICTY, *Kunarac and Others* Judgement (TC), para. 390; *Semanza* Judgement (TC), para. 383.

<sup>469</sup> *Gacumbitsi* Judgement (TC), para. 286; *Ntakirutimana* Judgement (TC), para. 787; *Akayesu* Judgement (TC), para. 484; *Kajelijeli* Judgement (TC), para. 765.

<sup>470</sup> See *supra*: Chapter II, Section B.

<sup>471</sup> Defence Closing Brief, paras. 100, 104.

<sup>472</sup> Defence Closing Brief, para. 111 : The Defence further states “In the *Akayesu* Judgement, ICTR considered all Tutsis as an ethnic group and very reasonably and wisely observed that the Genocide Convention is applicable to all stable and permanent groups. We are greatly indebted to ICTR for this interpretation which is the most reasonable there could be”.

### *The Accused's Actions*

512. The Chamber has found that, during the months of April and May 1994, the Accused participated in acts of killing members of the *Tutsi* ethnic group and causing serious bodily or mental harm to members of the *Tutsi* ethnic group.
513. The Chamber finds that, through personal commission, the Accused killed and caused serious bodily or mental harm to members of the *Tutsi* group :
- ( ) By taking part in attacks at Nyarutovu and Ngendombi Hills, where he shot and wounded a *Tutsi* man called Emmanuel;<sup>473</sup>
  - ( ) By taking part in an attack at Mubuga Church, where he shot at *Tutsi* refugees and threw a grenade into the church where refugees were gathered. The grenade explosion killed a *Tutsi* man called Kaihura and seriously wounded many others. Many *Tutsi* refugees died or were injured in the attack;<sup>474</sup>
  - ( ) By taking part in attacks at Mugonero Complex, where he raped *Tutsi* women and shot at *Tutsi* refugees. Many *Tutsi* refugees died or were injured in the attack;<sup>475</sup>
  - ( ) By taking part in attacks at Kanyinya Hill, where he pursued and attacked *Tutsi* refugees and shot a *Tutsi* man called Nyagihigi;<sup>476</sup>
  - ( ) By taking part in attacks at Muyira Hill, where he shot and killed the sister of Witness W, a *Tutsi*.<sup>477</sup>

### *The Accused's Intent*

514. The Chamber notes that the phrase “destroy in whole or in part a[n] ethnic group” does not imply a numeric approach. It is sufficient to prove that the Accused acted with intent to destroy a substantial part of the targeted group.<sup>478</sup>
515. The Chamber finds that the attacks mentioned in Paragraph 513 above were systematically directed against the *Tutsi* group. Before the attacks on Mubuga Church commenced, *Hutu* refugees, who were intermingled with the *Tutsi*, were instructed to come out of the church. Similarly, both Prosecution and Defence witnesses testified that the refugees who had gathered on Kanyinya and Muyira Hills were predominantly *Tutsi*.
516. Factors such as the sheer scale of the massacres, during which a great number of *Tutsi* civilians died or were seriously injured, and the number of assailants who were involved in the attacks against *Tutsi* civilians, lead the Chamber to the irresistible conclusion that the massacres, in which the Accused participated, were intended to destroy the *Tutsi* group in whole or in part.
517. The Accused targeted *Tutsi* civilians during these attacks by shooting and raping *Tutsi* victims. He also raped a young *Hutu* girl, Witness BJ, whom he believed to be *Tutsi*,

---

<sup>473</sup> See *supra*: Chapter II, Section E.

<sup>474</sup> See *supra*: Chapter II, Section H.

<sup>475</sup> See *supra*: Chapter II, Section L.

<sup>476</sup> See *supra*: Chapter II, Section O.

<sup>477</sup> See *supra*: Chapter II, Section P.

<sup>478</sup> See ILC Report (1996), para. 8.

but later apologised to her when he was informed that she was *Hutu*. During the course of some of the attacks and rapes, the Accused specifically referred to the *Tutsi* ethnic identity of his victims.

518. Thus, the Chamber finds that the Accused's participation in the attacks, and his words and deeds demonstrate his intent to destroy, in whole or in part, the *Tutsi* group.

#### *Conclusion*

519. The Chamber therefore finds the Accused, Mika Muhimana, GUILTY of GENOCIDE, as charged under Count 1 of the Indictment.

### ***B. COMPLICITY IN GENOCIDE (COUNT 2)***

520. Since the Chamber has found the Accused guilty under Count 1 (Genocide), the Chamber makes no finding on the count of complicity in genocide. Count 2 is therefore dismissed.

### ***C. CRIME AGAINST HUMANITY – RAPE (COUNT 3)***

521. Count 3 of the Indictment charges the Accused with rape as a crime against humanity, pursuant to Article 3 (g) of the Statute. The Prosecution's factual allegations in support of this charge are contained in Paragraph 6 of the Indictment.

522. The Indictment refers generally to the modes of responsibility in Article 6 (1) of the Statute and alleges specifically that, between 6 April 1994 and 30 June 1994, the Accused "committed rape as part of a widespread or systematic attack against *Tutsi* women civilians and other women perceived to be *Tutsi* in Gishyita sector, Mugonero church, hospital and nursing school, and in the Bisesero area".

#### **1. Common Elements of Crimes Against Humanity**

##### *Applicable Law*

523. Article 3 of the Statute provides as follows:

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;

- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

524. Article 3 of the Statute relating to crimes against humanity contains common elements that are applicable to all of the acts enumerated therein.
525. The commission of any of these acts by the Accused constitutes a crime against humanity only if the Chamber finds the act to have been committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.<sup>479</sup>
526. The concept of “attack”, within the meaning of Article 3 of the Statute, has been defined as an unlawful act, event, or series of events of the kind listed in Article 3 (a) through (i) of the Statute.<sup>480</sup>
527. The concept of a “widespread” attack refers to the scale of the attack and multiplicity of victims.<sup>481</sup> The concept of a “systematic” attack, within the meaning of Article 3 of the Statute, refers to a deliberate pattern of conduct but does not necessarily require the proof of a plan.<sup>482</sup> The existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic. However, the existence of such a policy or plan is not a distinct legal element of the crime.<sup>483</sup>
528. The attack must be directed against a civilian population. The presence of certain individuals within the civilian population who do not fall within the definition of civilians does not change the civilian character of this population.<sup>484</sup>
529. The attack against the civilian population must have been carried out on a discriminatory basis, that is, on national, political, ethnic, racial or religious grounds. However, the victim’s membership in a national, political, ethnic, racial or religious group is irrelevant, provided that the perpetrator’s intention is to support or further an attack against a civilian population on one of the enumerated discriminatory grounds.<sup>485</sup>
530. Lastly, the perpetrator must have acted knowing that the act formed part of a widespread or systematic attack against a civilian population.<sup>486</sup>

---

<sup>479</sup> *Gacumbitsi* Judgement (TC), para. 299; Although both versions are equally authentic, the French and English versions differ on this point. The “widespread” and “systematic” components in the nature of the attacks are cumulative in the French version (“*systématique et généralisée*”), while any of those components suffices in the English version (“widespread or systematic”). In practice, ICTY and ICTR prefer the English version, which is in conformity with international customary law. See ILC Report (1996), paras. 3 to 4 under Article 18 (crimes against humanity) of the Draft Code of Crimes.

<sup>480</sup> *Gacumbitsi* Judgement (TC), para. 298 ; *Semanza* Judgement (TC), para. 327 ; *Musema* Judgement (TC), para. 205; *Rutaganda* Judgement (TC), para. 70; *Akayesu* Judgement (TC), para. 581.

<sup>481</sup> *Gacumbitsi* Judgement (TC), para. 299 ; *Semanza* Judgement (TC), para. 329; *Niyitegeta* Judgement (TC), para. 439, *Akayesu* Judgement (TC), para. 580 ; *Musema* Judgement (TC), para. 205; *Rutaganda* Judgement (TC), para. 70.

<sup>482</sup> *Gacumbitsi* Judgement (TC), para. 299; *Semanza* Judgement (TC), para. 329.

<sup>483</sup> *Gacumbitsi* Judgement (TC), para. 299; *Semanza* Judgement (TC), para. 332; *Ntagerura et al.* Judgement (TC), para. 698.

<sup>484</sup> *Gacumbitsi* Judgement (TC), para. 300; *Akayesu* Judgement (TC), para. 582.

<sup>485</sup> *Gacumbitsi* Judgement (TC), para. 301; *Kajelijeli* Judgement (TC), paras. 877 to 878; *Semanza* Judgement (TC), para. 331.

<sup>486</sup> *Gacumbitsi* Judgement (TC), para. 302; *Semanza* Judgement (TC), para. 332; *Ntagerura and Others* Judgement (TC), para. 698.

### Legal Findings

531. In the instant case, the Chamber has found that several attacks were carried out against *Tutsi* refugees between April and May 1994 in Gishyita *Commune*: on 9 and 11 April 1994, *Tutsi* residents were attacked at Nyarutovu; on 15 April 1994, numerous *Tutsi* refugees were attacked at Mubuga Church; the next day, 16 April 1994, refugees, mainly *Tutsi*, were attacked at Mugonero Complex; in May 1994, *Tutsi* were attacked on Kanyinya Hill; on 13 and 14 May 1994, *Tutsi* were attacked on Muyira Hill. At Mubuga Church and Mugonero Complex, the assailants instructed *Hutu* refugees to separate from the crowd. During these attacks, many *Tutsi* were killed or seriously injured.<sup>487</sup>
532. Considering the circumstances and nature of the attacks, as well as evidence that, in some instances, assailants instructed *Hutu* refugees to separate from the *Tutsi*, the Chamber finds that the *Tutsi* civilians were targeted on the basis of their ethnicity, within the meaning of Article 3 of the Statute and that many died or were seriously injured.
533. The Chamber, therefore, finds that discriminatory, widespread, and systematic attacks were directed against groups of *Tutsi* civilians in Gishyita *Commune* and in the Bisesero area, between April and June 1994.

## 2. Rape as a Crime Against Humanity

534. On the basis of its factual findings on the allegations of rape in Paragraph 6 of the Indictment, the Chamber has considered the criminal responsibility of the Accused, under Count 3 for rape as a crime against humanity, punishable under Article 3 (g) of the Statute of the Tribunal.

### Applicable Law

535. The Chamber notes that both the Defence and the Prosecution in the present case endorse the *Akayesu* definition of rape.<sup>488</sup>
536. The Prosecution invites the Chamber to consider that the disembowelment of Pascasie Mukarempera, as alleged in Paragraph 6 (d) (ii) of the Indictment, and shown by the evidence to have been effected by using a machete to cut her from her breasts to her genitals, constitutes rape. In light of the peculiar factual circumstances of this case, the Chamber deems it necessary to analyse the evolution of the definition of rape in international criminal law.
537. The first judgement in which an international criminal tribunal defined rape as a crime against humanity and an instrument of genocide was issued on 2 September 1998 in the case Prosecutor v. *Akayesu*, by Trial Chamber I of the ICTR. In the present case, rape is charged as a crime against humanity. Emphasizing that “the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts”,<sup>489</sup> the *Akayesu* Judgement defined rape and sexual violence as:

a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, which includes rape, is

<sup>487</sup> See *supra*: Chapter II, Sections E, I, L and O.

<sup>488</sup> Defence Closing Brief, para. 133; T. 20 January 2005, p.5; Prosecution Closing Brief, Chapter 5, para.1.

<sup>489</sup> *Akayesu* Judgement (TC) para. 687.

considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.<sup>490</sup>

538. Recognizing that rape has been historically defined in national jurisdictions as “non-consensual sexual intercourse”, the *Akayesu* Trial Chamber found this description too mechanical, insofar as “variations on the form of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual”.<sup>491</sup> As an example, the *Akayesu* Trial Chamber referred to its factual finding that a piece of wood was thrust into the sexual organs of a woman as she lay dying - a physically invasive act of the victim’s body, which it found to constitute rape.<sup>492</sup>

539. Consonant with the definition of rape in *Akayesu*, this Chamber notes with approval the *Furundžija* Trial Chamber’s conclusion that:

The general principle of respect for human dignity is the basic underpinning and indeed the very *raison d’être* of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law. This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well being of a person. It is consonant with this principle that such an extremely serious sexual outrage as forced oral penetration should be classified as rape.<sup>493</sup>

540. The Chamber observes that the *Akayesu* definition of rape was endorsed by Trial Chamber I of this Tribunal in *Musema*<sup>494</sup> and *Niyitegeka*,<sup>495</sup> and by Trial Chamber II of the ICTY in *Delalic*.<sup>496</sup> No appeal was taken as to this issue in any of these cases.

541. In *Kunarac*, the Trial Chamber referred to the *Akayesu* definition of rape briefly. It made no adverse comments on the definition and tacitly accepted it, but went on to focus on providing the elements of rape. The *Kunarac* Trial Chamber stated:<sup>497</sup>

The specific elements of the crime of rape, which are neither set out in the Statute nor in international humanitarian law or human rights instruments, were the subject of consideration by the Trial Chamber in the *Furundžija* case. There the Trial Chamber noted that in the International Criminal Tribunal for Rwanda judgement in the *Akayesu* proceedings the Trial Chamber had defined rape as “a physical invasion of a sexual nature, committed under circumstances which are coercive”. It then reviewed the various sources of international law and found that it was not possible to discern the elements of the crime of rape from international treaty or customary law, nor from the “general principles of international criminal law or ... general principles of international law”...

---

<sup>490</sup> *Akayesu* Judgement (TC) paras. 598 and 688.

<sup>491</sup> *Akayesu* Judgement (TC) para. 686.

<sup>492</sup> *Akayesu* Judgement (TC) para. 686.

<sup>493</sup> *Furundžija* Judgement (TC), para. 183.

<sup>494</sup> *Musema* Judgement (TC), paras. 229, 907, 933, 936.

<sup>495</sup> *Niyitegeka* Judgement (TC), para. 456.

<sup>496</sup> *Delalic* Judgement (TC), paras. 478-479.

<sup>497</sup> *Kunarac* Judgement (TC), paras.437-438.

This Trial Chamber agrees that these elements, if proved, constitute the actus reus of the crime of rape in international law. However, in the circumstances of the present case the Trial Chamber considers that it is necessary to clarify its understanding of the element in paragraph (ii) of the Furundžija definition. The Trial Chamber considers that the Furundžija definition, although appropriate to the circumstances of that case, is in one respect more narrowly stated than is required by international law. In stating that the relevant act of sexual penetration will constitute rape only if accompanied by coercion or force or threat of force against the victim or a third person, the Furundžija definition does not refer to other factors which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim, which, as foreshadowed in the hearing and as discussed below, is in the opinion of this Trial Chamber the accurate scope of this aspect of the definition in international law. [Emphasis added]

542. It is clear from the above quotation that the *Kunarac* Trial Chamber was dealing with the elements of rape. The Trial Chamber's articulation of the elements of the crime of rape was as follows:<sup>498</sup>

The actus reus of the crime of rape in international law is constituted by: the sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.

The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.

543. When the *Kunarac* Appeals Chamber concurred with the Trial Chamber's "definition", it is clear that it was approving the elements set out by the Trial Chamber. That was the issue before the Appeals Chamber. It was not called upon to consider the *Akayesu* definition.
544. In analyzing the relationship between consent and coercion, the Appeals Chamber acknowledged that coercion provides clear evidence of non-consent. The Appeals Chamber in *Kunarac* opined as follows:<sup>499</sup>

... with regard to the role of force in the definition of rape, the Appeals Chamber notes that the Trial Chamber appeared to depart from the Tribunal's prior definitions of rape. However, in explaining its focus on the absence of consent as the condition sine qua non of rape, the Trial Chamber did not disavow the Tribunal's earlier jurisprudence, but instead sought to explain the relationship between force and consent. Force or threat of force provides clear evidence of non-consent, but force is not an element per se of rape. In particular, the Trial Chamber wished to explain that there are "factors [other than force] which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim". A narrow focus on force or threat of force could permit perpetrators to evade liability for

---

<sup>498</sup> *Kunarac*, Judgement (TC), paras. 460, 437, approved in: *Kunarac*, Judgement (AC), para. 128; see also: *Semanza*, Judgement (TC), paras. 345-346.

<sup>499</sup> *Kunarac*, Judgement (AC), paras. 129-130.

sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.

The Appeals Chamber notes, for example, that in some domestic jurisdictions, neither the use of a weapon nor the physical overpowering of a victim is necessary to demonstrate force. A threat to retaliate “in the future against the victim or any other person” is a sufficient indicium of force so long as “there is a reasonable possibility that the perpetrator will execute the threat”. While it is true that a focus on one aspect gives different shading to the offence, it is worth observing that the circumstances giving rise to the instant appeal and that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be possible.

545. Similarly, the Chamber also recalls that the *Furundžija* Trial Chamber acknowledged that “any form of captivity vitiates consent”.<sup>500</sup>
546. Accordingly, the Chamber is persuaded by the Appellate Chamber’s analysis that coercion is an element that may obviate the relevance of consent as an evidentiary factor in the crime of rape. Further, this Chamber concurs with the opinion that circumstances prevailing in most cases charged under international criminal law, as either genocide, crimes against humanity, or war crimes, will be almost universally coercive, thus vitiating true consent.
547. The Chamber notes that the definition of rape, as enunciated in *Akayesu*, has not been adopted *per se* in all subsequent jurisprudence of the *ad hoc* Tribunals. The ICTR Trial Chambers in *Semanza*, *Kajelijeli* and *Kamuhanda*, for example, described only the physical elements of the act of rape, as set out in *Kunarac*, and thus seemingly shifted their analyses away from the conceptual definition established in *Akayesu*.<sup>501</sup>
548. The Trial Chamber in *Semanza* stated:<sup>502</sup>

The Akayesu Judgement enunciated a broad definition of rape which included any physical invasion of a sexual nature in coercive circumstance and which was not limited to forcible sexual intercourse. The Appeals Chamber of the ICTY, in contrast, affirmed a narrower interpretation defining the material element of rape as a crime against humanity as the non-consensual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or by any other object used by the perpetrator, or of the mouth of the victim by the penis of the perpetrator. Consent for this purpose must be given voluntarily and freely and is assessed within the context of the surrounding circumstances.

While this mechanical style of defining rape was originally rejected by this Tribunal, the Chamber finds the comparative analysis in *Kunarac* to be persuasive and thus will adopt the definition of rape approved by the ICTY Appeals Chamber. In doing so, the Chamber recognises that other acts of sexual violence that do not satisfy this narrow definition may be prosecuted as other crimes against humanity within the jurisdiction of this Tribunal such as torture, persecution, enslavement, or other inhumane acts.

549. This Chamber considers that *Furundžija* and *Kunarac*, which sometimes have been construed as departing from the *Akayesu* definition of rape – as was done in *Semanza* -

---

<sup>500</sup> *Furundžija* (TC), para. 271.

<sup>501</sup> *Delalic* Judgement (TC), paras. 478-479.

<sup>502</sup> *Semanza* Judgement (TC), paras. 344-345.

actually are substantially aligned to this definition and provide additional details on the constituent elements of acts considered to be rape.

550. The Chamber takes the view that the *Akayesu* definition and the *Kunarac* elements are not incompatible or substantially different in their application. Whereas *Akayesu* referred broadly to a "physical invasion of a sexual nature", *Kunarac* went on to articulate the parameters of what would constitute a physical invasion of a sexual nature amounting to rape.
551. On the basis of the foregoing analysis, the Chamber endorses the conceptual definition of rape established in *Akayesu*, which encompasses the elements set out in *Kunarac*.

### *Legal Findings*

552. On the basis of the above analysis, the Chamber finds that, during the months of April and May 1994, the Accused committed rape:

- ( ) On 7 April 1994, in Gishyita town, the Accused took two women, Gorretti Mukashyaka and Languida Kamukina, into his house and raped them. Thereafter he drove them out of his house naked and invited *Interahamwe* and other civilians to see what naked *Tutsi* girls looked like;<sup>503</sup>
- ( ) During the first week after the eruption of hostilities, the Accused pushed Esperance Mukagasana onto his bed, stripped her naked, and raped her. He raped her in his home several times;<sup>504</sup>
- ( ) On 15 April 1994, the Accused, acting in concert with a group of *Interahamwe*, abducted a group of *Tutsi* girls and led them to a cemetery near Mubuga Parish Church. The Accused then raped one of the abducted girls, Agnes Mukagatere;<sup>505</sup>
- ( ) On 16 April 1994, in the basement of Mugonero Hospital, at Mugonero Complex, the Accused raped Mukasine Kajongi;<sup>506</sup>
- ( ) On 16 April 1994, in a room of the basement of Mugonero Hospital, at Mugonero Complex, the Accused raped Witness AU twice;<sup>507</sup>
- ( ) On 16 April 1994, in the basement of Mugonero Hospital, at Mugonero Complex, the Accused raped Witness BJ, a young *Hutu* girl, whom he mistook for a *Tutsi*. He later apologised to her for the rape, when he was informed by an *Interahamwe* that BJ was not a *Tutsi*.<sup>508</sup>

553. The Chamber finds that the Accused also abetted in the commission of rapes by others:

- ( ) On 16 April 1994, at the same time and in the same area where the Accused raped Mukasine Kajongi in the basement of Mugonero Hospital, two soldiers, in his presence, raped the daughters of Amos Karera. The presence of the Accused during the rape of Amos Karera's daughters coupled with his own action of raping Mukasine,

<sup>503</sup> See *supra*: Chapter II, Section D.

<sup>504</sup> See *supra*: Chapter II, Section D.

<sup>505</sup> See *supra*: Chapter II, Section J.

<sup>506</sup> See *supra*: Chapter II, Section L and M.

<sup>507</sup> See *supra*: Chapter II, Section L and M.

<sup>508</sup> See *supra*: Chapter II, Section L and M.

encouraged the two soldiers to rape Amos Karera's daughters. This encouragement contributed substantially to the commission of these rapes;<sup>509</sup>

- ( ) On 16 April 1994, while the Accused was raping Witness BJ in the basement of Mugonero Hospital, two men, who accompanied him, were also raping two other girls named Murekatete and Mukasine. The Accused, by his actions, encouraged the other men to commit the rapes of Murekatete and Mukasine. This encouragement contributed substantially to the commission of these rapes;<sup>510</sup>
- ( ) On 22 April 1994, the Accused permitted an *Interahamwe* named Mugonero to take Witness BG away so that he could "smell the body of a *Tutsi* woman". The witness was raped several times in Mugonero's residence over a period of two days. The Chamber finds that by allowing Mugonero to take Witness BG home, the Accused encouraged him to rape Witness BG. This encouragement contributed substantially to the commission of the rape.<sup>511</sup>

554. The Chamber finds insufficient evidence to prove the allegations that the Accused bears criminal responsibility for:

- ( ) the collective rape of Immaculee Mukabarore and Josephine Mukankwaro, who, according to the Prosecution, were raped by *Interahamwe* at the same time that the Accused raped Witness AU;<sup>512</sup>
- ( ) killings, rapes, and other atrocities which the Prosecution alleges were linked to a meeting held in the Accused's residence on 7 April 1994;<sup>513</sup>
- ( ) abetting the rape of Esperance Mukagasana in the Accused's house, by offering her to an *Interahamwe* named Gisambo;<sup>514</sup>
- ( ) the rape of Josiana, Mariana Gafurafura and Martha Gafurafura in Gishyita, following their abduction on 13 April 1994;<sup>515</sup>
- ( ) the rape of Johaneta, Teresa Mukabutera and Eugenia at the Mugonero hospital on 16 April 1994.<sup>516</sup>

555. The Chamber also finds that the Accused bears no criminal responsibility for the rape of Felicité Kankuyu, because the evidence led by the Prosecution did not support the facts as pleaded in the Indictment.<sup>517</sup>

556. The Chamber finds that the Accused bears no criminal responsibility for the rapes of Witness AX, because the Prosecution failed to plead the material fact of the dates of the crime accurately, thus rendering the Indictment defective. The Chamber has examined

---

<sup>509</sup> See *supra*: Chapter II, Sections L and M.

<sup>510</sup> See *supra*: Chapter II, Sections L and M.

<sup>511</sup> See *supra*: Chapter II, Section N.

<sup>512</sup> See *supra*: Chapter II, Sections L and M.

<sup>513</sup> See *supra*: Chapter II, Section F.

<sup>514</sup> See *supra*: Chapter II, Section G.

<sup>515</sup> See *supra*: Chapter II, Section K.

<sup>516</sup> See *supra*: Chapter II, Sections L and M.

<sup>517</sup> See *supra*: Chapter II, Section R.

the Prosecution's Pre-Trial Brief and the witness statements and finds that this defect was not cured by clear and consistent notice.

557. The Chamber finds that the Accused bears no criminal responsibility for the rape of Pascasie Mukaremera. In its factual findings, the Chamber has found that the Accused disembowelled Pascasie Mukaremera by cutting her open with a machete from her breasts to her vagina. The Chamber has carefully considered the Prosecution's submission to consider this act as rape, and concludes that such conduct cannot be classified as rape. Although the act interferes with the sexual organs, in the Chamber's opinion, it does not constitute a physical invasion of a sexual nature. However, the Chamber will return to consider this incident under its legal findings on murder.<sup>518</sup>
558. The Chamber recalls its finding that a discriminatory, widespread and systematic attack was carried out against a group of *Tutsi* civilians in Gishyita *Commune*, between the months of April and June 1994.<sup>519</sup>
559. The Chamber recalls its finding that the Accused participated in attacks against *Tutsi* during April, May, and June 1994 and that in doing so, he intended to destroy the *Tutsi* ethnic group.<sup>520</sup>
560. Consequently, the Chamber finds that the Accused knew that all of these rapes were part of a discriminatory, widespread, and systematic attack against *Tutsi* civilians.
561. The Chamber finds that the Accused chose his rape victims because he believed that they were *Tutsi*. Whether the victims were in fact *Tutsi* is irrelevant in the determination of the Accused's criminal responsibility. The Chamber concludes, on the basis of the Accused's conduct, that he raped his victims with the knowledge that the rapes formed part of a widespread and systematic attack on the *Tutsi* civilian population.
562. Accordingly, the Chamber finds the Accused Mika Muhimana criminally liable for committing and abetting the rapes charged, as part of a widespread and systematic attack against a civilian population.
563. Consequently, the Chamber finds the Accused Mika Muhimana GUILTY of RAPE AS A CRIME AGAINST HUMANITY, under Count 3 of the Indictment.

#### ***D. CRIME AGAINST HUMANITY – MURDER (COUNT 4)***

564. Count 4 of the Indictment charges the Accused with murder as a crime against humanity, pursuant to Article 3 (a) of the Statute. The Prosecution's factual allegations in support of this charge are contained in Paragraph 7 of the Indictment.
565. The Indictment refers generally to the modes of responsibility in Article 6 (1) of the Statute and alleges specifically that, between 6 April 1994 and 30 June 1994, the Accused "committed murder as part of a widespread and systematic attack against civilians in Gishyita sector, Mugonero church, hospital and nursing school, and in the Biseseo area".

---

<sup>518</sup> See *supra*: Chapter II, Section N.

<sup>519</sup> See *supra*: Chapter III, Section C.

<sup>520</sup> See *supra*: Chapter III, Section A.

566. In the sub-paragraphs of Paragraph 7, the Indictment alleges acts of abduction and orders to kill; massive killing; instructions to disembowel a *Tutsi* woman; killing named women; collectively killing *Tutsi* women; instructions to kill named women; and participation in the killing of a *Tutsi* man.
567. On the basis of its factual findings on the allegations of murder in Paragraph 7 of the Indictment, the Chamber has considered the criminal responsibility of the Accused under Count 4, murder as a crime against humanity, punishable under Article 2 of the Statute of the Tribunal.

### **Applicable Law**

568. Murder is the intentional killing of a person, or intentional infliction of grievous bodily harm committed with the knowledge that such harm, will likely cause the victim's death, and with no lawful justification or excuse.<sup>521</sup> Murder, like rape, is punishable as a crime against humanity, "when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds."<sup>522</sup>
569. The Chamber agrees with the Trial Chamber in *Semanza* that:<sup>523</sup>

... it is premeditated murder (assassinat) that constitutes a crime against humanity in Article 3(a) of the Statute. Premeditation requires that, at a minimum, the accused held a deliberate plan to kill prior to the act causing death, rather than forming the intention simultaneously with the act. The prior intention need not be held for very long; a cool moment of reflection is sufficient. The Chamber observes that the requirement that the accused must have known that his acts formed part of a wider attack on the civilian population generally suggests that the murder was pre-planned. The Chamber emphasises that the accused need not have premeditated the murder of a particular individual; for crimes against humanity it is sufficient that the accused had a premeditated intention to murder civilians as part of the widespread or systematic attack on discriminatory grounds.

### **Legal Findings**

#### *The Accused's Actions*

570. Having considered the evidence presented by the Prosecution and the Defence, the Chamber finds that, during the months of April, May, and June 1994, the Accused committed murders:
- ( ) On the morning of 15 April 1994, the Accused removed a grenade from a box and threw it into Mubuga Church where *Tutsi* refugees were gathered. This resulted in the death of a *Tutsi* man by the name of Kaihura. By his actions, the Accused committed the murder of Kaihura;<sup>524</sup>

---

<sup>521</sup> *Akayesu*, Judgement (TC), para. 589; *Rutaganda*, Judgement (TC), para. 81; *Musema*, Judgement (TC), para. 215.

<sup>522</sup> Statute, article 3 ; See *supra* Chapter III, Section C.

<sup>523</sup> *Semanza* Judgement (TC), para. 339.

<sup>524</sup> See *supra*: Chapter II, Section I.

- ( ) On 16 April 1994 assailants killed Mukasine Kajongi and Amos Karera's daughters. The assailants acted under the instructions and with the encouragement of the Accused, who was present. By his words and actions, the Accused instigated the murder of Mukasine Kajongi and Amos Karera's daughters. This instigation contributed substantially to the commission of these murders;<sup>525</sup>
- ( ) In June 1994, the Accused participated in the killing of a *Tutsi* businessman named Assiel Kabanda, who was hiding in the Bisesero Hills. The Chamber finds that the Accused participated in the commission of his murder;<sup>526</sup>
- ( ) In mid-May 1994, the Accused told a gathering of *Interahamwe* that he was going to disembowel a pregnant woman called Pascasie Mukaremera so that he could see what the foetus looks like in its mother's womb. He then cut the woman from her breasts down to her genitals and removed the baby who cried for some time before dying. After disembowelling the woman, the assailants cut off her arms and stuck sharpened sticks into them. Having previously found that Pascasie died as a result of her injuries, the Chamber finds that the Accused committed her murder.<sup>527</sup>

571. With regard to Paragraph (d) above, the Chamber finds that, although the Prosecution charges the Accused with instructing Gisambo to commit the murder of Pascasie Mukaremera, the evidence shows that it was the Accused who committed the murder.

572. The Chamber, therefore, has to consider whether it can find the Accused guilty of the murder of Pascasie Mukaremera even though the mode of participation pleaded in the Indictment is different from that shown by the evidence.

573. First, the Chamber recalls that both forms of participation – “commission” and “ordering” - are punishable under Article 6 (1) of the Statute. With regard to the reclassification of an Accused's mode of participation in a crime, the Chamber agrees with the *Cyangugu* Trial Chamber that:

... in principle, defects in legal qualification may not be fatal because the Chamber can apply the correct material law to the factual findings regardless of the qualification indicated by the Prosecution, provided that the concise statement of facts of the crime adequately describes the accused's role in the crime.<sup>528</sup>

574. In the instant case, the Chamber is of the view that, although the concise statement of facts in the Indictment is defective in its legal qualification of the Accused's act of the murder of Pascasie Mukaremera, the Pre-Trial Brief and the disclosures provided the Accused with timely, clear, and consistent information detailing the factual basis underpinning the crimes alleged against him. Therefore, the Chamber is satisfied that the Accused has suffered no prejudice as a result of this defect in the legal qualification.

575. Second, the Chamber notes that the Defence raised no objection with regard to the error in legal qualification of the Accused's participation in the alleged crimes, in Paragraphs 6 () (ii) and 7 (d) (i) of the Indictment. Rather, the Defence challenged the allegations,

---

<sup>525</sup> See *supra*: Chapter II, Section L.

<sup>526</sup> See *supra*: Chapter II, Section U.

<sup>527</sup> See *supra*: Chapter II, Section R.

<sup>528</sup> *Cyangugu* Judgement (TC), para. 38.

of the Accused's participation in the rape and murder of Pascasie Mukaremera, on the basis of Witness AW's credibility and the Defence evidence that no rapes occurred in the Bisesero area during the time in question.

576. In light of the foregoing considerations, and the Chamber's finding that Pascasie died as a result of injuries caused by the Accused and other assailants, the Chamber finds that the Prosecution has established beyond reasonable doubt the Accused's responsibility, by commission, for the murder of Pascasie under Paragraph 7 (d) (i) of the Indictment.
577. The Chamber has already found, in its Factual Findings, insufficient evidence to prove the allegations that:
- ( ) On or about 7 April 1994, Languida Kamukina and Gorretti Mukashyaka were killed on the instructions, and in the presence, of the Accused;<sup>529</sup>
  - ( ) On or about 14 April 1994, Esperance Mukagasana was killed on the instructions, and in the presence, of the Accused;<sup>530</sup>
  - ( ) On or about 15 April 1994, at Mubuga Parish, two *Tutsi* girls called Alphonsine and Colette were disembowelled and killed on the orders, and in the presence, of the Accused;<sup>531</sup>
  - ( ) On 16 April 1994, at Mugonero Hospital, Immaculate Mukabarore, Bernadette Mukagorero, and Josephine Mukankwaro were killed collectively by the Accused and members of the *Interahamwe*.<sup>532</sup>
578. Furthermore, the Chamber finds that the Accused bears no criminal responsibility for the killing of Felicité Kankuyu, since he had insufficient notice of this allegation.<sup>533</sup>
579. The Chamber recalls its finding that a discriminatory, widespread, and systematic attack was carried out against *Tutsi* civilians in Gishyita *Commune* and in the Bisesero area, between the months of April and June 1994.<sup>534</sup>
580. The Chamber recalls its finding that the Accused participated in attacks against *Tutsi* during April, May, and June 1994 and that, in doing so, he intended the destruction of the *Tutsi* ethnic group.<sup>535</sup> Therefore, the Chamber finds that the Accused knew that the killings which are detailed above were either committed or instigated as part of a discriminatory, widespread, and systematic attack against *Tutsi* civilians.
581. Furthermore, the Chamber finds that the Accused intended to murder *Tutsi* civilians as part of a widespread and systematic attack.
582. Pursuant to Article 6 (1) of the Statute, the Chamber finds the Accused, Mika Muhimana, criminally liable for committing and instigating the murder of civilians as part of a widespread and systematic attack against *Tutsi* civilians.
583. Consequently, the Chamber finds Mika Muhimana GUILTY OF MURDER AS A CRIME AGAINST HUMANITY, under Count 4.

---

<sup>529</sup> See *supra*: Chapter II, Section D.

<sup>530</sup> See *supra*: Chapter II, Section G.

<sup>531</sup> See *supra*: Chapter II, Section J.

<sup>532</sup> See *supra*: Chapter II, Section M.

<sup>533</sup> See *supra*: Chapter II, Section R.

<sup>534</sup> See *supra*: Chapter III, Section C.

<sup>535</sup> See *supra*: Chapter III, Section A.

## **CHAPTER IV – VERDICT**

584. FOR THE FOREGOING REASONS, having considered all the evidence and the arguments presented by the Parties,

585. THE CHAMBER finds Mikaeli Muhimana:

**Count 1: Genocide**

**GUILTY**

**Count 3: Rape as a Crime against Humanity**

**GUILTY**

**Count 4: Murder as a Crime against Humanity**

**GUILTY**

586. THE CHAMBER dismisses:

**Count 2: Complicity in Genocide**

## CHAPTER V – SENTENCE

587. The Chamber has found Mika Muhimana guilty of Genocide (Count 1), Rape as a Crime against Humanity (Count 3) and Murder as a Crime against Humanity (Count 4). Accordingly, the Chamber now addresses the issue of sentencing, pursuant to Article 22 of the Statute.

### **A. SENTENCING PRINCIPLES AND PRACTICES**

588. The Preamble to United Nations Security Council Resolution 955 establishing the Tribunal has emphasized the need to further the goals of deterrence, justice, reconciliation, and restoration and maintenance of peace. The Chamber considers that a fair trial and, in the event of a conviction, a just sentence contribute towards these goals.

589. Article 23 of the Statute governs the Chamber's determination of sentencing.<sup>536</sup> It limits the penalty to be imposed by the Chamber to imprisonment. In deciding the sentence to be imposed upon a convicted person, the Chamber must consider the general practice regarding prison sentences in the courts in Rwanda, the gravity of the offence, and the individual circumstances of the Accused.

590. The Chamber recalls the general principle that only matters proved beyond reasonable doubt against the Accused are to be considered against him at the sentencing stage.

591. Pursuant to Article 23 (2) of the Statute and Rule 101 (A) of the Rules,<sup>537</sup> the Tribunal considers the principle of gradation in sentencing. Thus, the more heinous the crime,

---

<sup>536</sup> Article 23 of the Statute provides:

(1) The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

(2) In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

(3) In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

<sup>537</sup> Rule 101 of the Rules provides:

A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.

In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Articles 23(2) of the Statute, as well as such factors as:

(i) Any aggravating circumstances;

(ii) Any mitigating circumstances, including the substantial cooperation with the Prosecution by the convicted person before or after conviction;

(iii) The general practice regarding prison sentences in the courts of Rwanda;

(iv) The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the same Statute.

The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

the heavier the sentence will be. In assessing the gravity of the offences for which Mika Muhimana has been found guilty, the Chamber takes into account the particular circumstances of the case, the form and degree of Mika Muhimana's participation in the crimes, and the existence of any aggravating or mitigating circumstances.<sup>538</sup> The Chamber also takes into account the general practice of sentencing in the courts of Rwanda.

592. For serious offences such as murder, the Rwandan Penal Code establishes the maximum sentence as death or life imprisonment.<sup>539</sup> The sentencing range for rape ranges between five and forty years, depending on the circumstances.<sup>540</sup> The Rwandan Organic Law provides that, for genocide and crimes against humanity, the ordinary sentences of the *code pénal* shall apply; however, the heightened penalties of death and life imprisonment apply to category one and category two perpetrators, respectively.<sup>541</sup>
593. On examination of the sentencing practice of the ICTR and the ICTY, the Chamber notes that principal perpetrators convicted of genocide have received sentences ranging from fifteen years' imprisonment to imprisonment for life.<sup>542</sup> Lesser or secondary forms of participation generally receive a lower sentence. The *Ntakirutimana* Trial Chamber Judgement, recently upheld on appeal, found Elizaphan Ntakirutimana guilty of aiding and abetting genocide. That Chamber also took into account the convicted pastor's prior good work, his old age, and his frail health, in sentencing him to ten years' imprisonment.<sup>543</sup>
594. This Chamber understands its obligation to ensure that the sentence is commensurate with the individual circumstances of the offender.<sup>544</sup>

## **B. INDIVIDUAL CIRCUMSTANCES**

### **Prosecution Submissions**

595. The Prosecution calls for Mika Muhimana to be given the maximum sentence allowed under the Statute of the Tribunal on each count. It submits three main aggravating factors: the status of Mika Muhimana in the society in which he lived; the zeal with which Mika Muhimana committed his crimes; and the effect of Mika Muhimana's actions on the lives of the victims.

---

<sup>538</sup> *Semanza* Judgment (TC), para. 555.

<sup>539</sup> Rwandan *Code Pénal*, Articles 311-317.

<sup>540</sup> Rwandan *Code Pénal*, Articles 360-361. The Chamber will examine the particular aggravating circumstances under Rwandan law, below.

<sup>541</sup> *Code pénal rwandais*, Articles 35, 64, 89 and 311-317; article 14 de la *Loi Organique* (Rwanda) n° 08/96 du 30 août 1996 sur l'organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises à partir du 1<sup>er</sup> Octobre 1990, Journal Officiel n° 17 du 1 septembre 1996; *Cyangugu* Judgment, para. 811.

<sup>542</sup> *Musema*, Judgment (TC), para. 1008; *Rutaganda*, Judgment (TC), para. 473; *Kayishema and Ruzindana*, Sentence (TC), para. 27; *Akayesu*, Sentence (TC), p.13.

<sup>543</sup> *Ntakirutimana*, Judgment (TC), paras. 919-921; *Ntakirutimana*, Judgment (AC), paras. 565-570.

<sup>544</sup> *Delalic*, Judgment (AC), paras. 717-719.

*(a) The Status of Mika Muhimana in the Society in Which He Lived*

596. The Prosecution claims that Mika Muhimana, who was a *conseiller* and a businessman, served as a link between the people and the government. Furthermore, it submits that his close associations with senior civil servants and prominent business people, and his popularity within Gishyita *Commune*, where he was born and brought up and where he was well-known, further enhanced his status.
597. The Prosecution further submits that Mika Muhimana was in a position to know and to appreciate the dignity and value of life and the importance of peaceful co-existence between communities. Mika Muhimana “brushed aside”<sup>545</sup> these values, participating in the killings and rapes of *Tutsi* civilians and encouraging others to do the same.

*(b) The Zeal With Which Mika Muhimana Committed His Crimes*

598. The Prosecution informs the Chamber that Rwandan national law takes into consideration the zeal with which an accused person committed a crime in determining the appropriate sentence to be imposed.
599. In the present case, the Prosecution submits that Mika Muhimana’s “overzealousness”<sup>546</sup> is evidenced by the sheer number of rapes he committed and the brutal manner in which he committed the crimes.

*(c) The Effect of Mika Muhimana’s Actions on the Lives of Victims*

600. The Prosecution reminds the Chamber that Mika Muhimana’s victims, some of whom testified before the Chamber, demonstrated “medical, psychological, social and economic wounds”<sup>547</sup> which they suffered as a result of Mika Muhimana’s actions.
601. The Prosecution argues that no mitigating circumstances exist in this case. Mika Muhimana did not surrender to the Tribunal to face the charges against him and was “on the run from mid-July '94, when he fled Rwanda, until 8th November '99,”<sup>548</sup> the date of his arrest in Dar es Salaam. Furthermore, he has shown no remorse for his crimes.

**Defence Submissions**

602. The Defence did not extensively address the issue of mitigating circumstances, as required by Rule 86 (C) of the Rules. However, it did, in its closing arguments, state:

For my part, I have proposed to your Chamber that you should declare my client acquitted. Alternatively, however, if in spite of all the efforts that have been deployed to show how baseless the Prosecutor's approach is, if some guilt were found in Mika Muhimana and if he were to be convicted, we are counting on your knowledge of the case file. We are counting -- we are relying on your high sense of justice so that if there is any penalty, it really should be proportionate, not to the counts as brought forward by the

---

<sup>545</sup> T. 19 January 2005, p. 46.

<sup>546</sup> T. 19 January 2005, p. 48.

<sup>547</sup> T. 19 January 2005, p. 49.

<sup>548</sup> T. 19 January 2005, p. 49.

Prosecution but to the reality of the facts as retained and to the precise role that Mika might have played.<sup>549</sup>

## **C. FINDINGS**

### **The Seriousness of the Crimes Committed**

603. Genocide and murder and rape as crimes against humanity rank amongst the gravest of crimes. The Chamber has no doubt that principal perpetrators of such crimes deserve a heavy sentence.

### **The Individual Circumstances of the Accused**

604. Mika Muhimana was a *conseiller* and a well-known person in the Gishyita *Commune*, where most of the crimes were committed, and occupied a position of influence in the community. Instead of using, or attempting to use, his position within the community to promote peace and reconciliation, he actively participated in the atrocities. This constitutes an aggravating factor.

605. Mika Muhimana participated in attacks against *Tutsi* civilians who had sought refuge in churches and a hospital, which are traditionally regarded as places of sanctuary and safety. This constitutes an aggravating factor.

606. Mika Muhimana raped and killed women whom he believed to be *Tutsi* with reckless disregard for human life and dignity. In assessing the existence of aggravating factors in relation to these acts, the Chamber considers the provisions of the Rwandan *Code pénal*, in effect in 1994. At the time that Mika Muhimana committed these criminal acts, the Rwandan Courts were directed to consider the following as aggravating factors in the crime of rape:

- ( ) where the victim is a child under sixteen years of age;<sup>550</sup>
- ( ) where the crime is committed by a civil servant, a public official who has used his position in order to commit the rape;<sup>551</sup>
- ( ) if the perpetrator was assisted in the execution of the crime by one or more persons;<sup>552</sup>
- ( ) if the crime has caused serious harm to the victim's health.<sup>553</sup>

607. The Chamber recalls that one of Mika Muhimana's victims, Witness BJ, was only fifteen years old when Mika Muhimana raped her. The young age of the victim is an aggravating factor.

608. The Chamber has found that others, such as *Interahamwe*, were present, assisted, or participated in the following rapes committed by the Accused:

- ( ) Gorette Mukashyaka and Languida Kamukina, in Mika Muhimana's house;

---

<sup>549</sup> T. 20 January 2005, p. 54 (Professor Songa, Lead Defence Counsel).

<sup>550</sup> *Code pénal rwandais*, Article 360.

<sup>551</sup> *Code pénal rwandais*, Article 361.

<sup>552</sup> *Code pénal rwandais*, Article 361.

<sup>553</sup> *Code pénal rwandais*, Article 361.

- ( ) Agnes Mukagatere, in the cemetery of Mubuga Church;
- ( ) Mukasine Kajongi and the daughters of Amos Karera, in the basement of Mugonero Hospital;
- ( ) Witness AU, in the basement of Mugonero Hospital;
- ( ) Witness BJ Murekatete and Mukasine, in the basement of Mugonero Hospital.

609. From the victim's perspective, to be raped in the presence of other people, compounds the public humiliation and constitutes an aggravating factor. The Chamber finds this aggravating factor to exist in each of the above-mentioned rapes.
610. The Chamber also notes the particularly violent and cruel nature of the Accused's conduct. For example, while raping Witness AU, he repeatedly banged her head against the ground.
611. After raping two young *Tutsi* women in his home, Mika Muhimana led them out, paraded them naked, and invited onlookers to look at their naked bodies. This public humiliation is an aggravating factor.
612. The Chamber recalls the incident where the Accused used a machete to cut the pregnant woman Pascasie Mukaremera from her breasts down to her genitals and remove her baby, who cried for some time before dying. After disembowelling the woman, the assailants accompanying Muhimana then cut off her arms and stuck sharpened sticks into them. This savage attack upon a pregnant woman deserves condemnation in the strongest possible terms and constitutes a highly aggravating factor.
613. The atrocious crimes that Mika Muhimana committed against *Tutsi* women were calculated to degrade and humiliate them. This is an aggravating factor which weighs on his sentence.
614. The Chamber finds that Mika Muhimana's active participation in the decapitation of Assiel Kabanda, and the subsequent public display of his severed head, constitute an aggravating factor.
615. Mika Muhimana's actions have left many dead and others traumatized or with physical disabilities.
616. The Chamber finds no mitigating circumstances.

**D. SENTENCE**

617. Considering its findings in relation to the gravity of the crimes committed and to Mika Muhimana's individual circumstances, the Chamber deems it appropriate to impose the maximum sentence.

618. For the foregoing reasons, the Chamber now sentences Mika Muhimana as follows:

For Genocide (Count 1):

**Imprisonment for the Remainder of His Life**

For Rape as a Crime against Humanity (Count 3):

**Imprisonment for the Remainder of His Life**

For Murder as a Crime against Humanity (Count 4):

**Imprisonment for the Remainder of His Life**

619. The sentences shall run concurrently.

620. Mika Muhimana's sentence shall be enforced immediately. In accordance with Rules 102 (A) and 103, Mika Muhimana shall remain in the custody of the Tribunal pending transfer to the State where he shall serve his sentence.

621. If notice of appeal is filed, enforcement of the sentence shall be stayed until a decision has been delivered on the appeal, with Mika Muhimana meanwhile remaining in detention by the Tribunal.

622. This Judgement is rendered in English, which remains the authoritative version. The Chamber directs the Registry to translate the Judgement into both French and Kinyarwanda without delay.

623. Rendered on 28 April 2005, and signed on 25 May 2005, in Arusha, Tanzania.

Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

Emile Francis Short  
Judge

## **ANNEXES**

***ANNEX I – REVISED AMENDED INDICTMENT – 3 FEBRUARY 2004***<sup>554</sup>

***ANNEX II – PROCEDURAL BACKGROUND***

***ANNEX III – LIST OF SOURCES AND ABBREVIATIONS***

---

<sup>554</sup> Official version filed on 29 July 2004, which is the same text as the Revised Amended Indictment, stamped “Confidential”, filed on 4 February 2004.

**TRIAL CHAMBER III**

**THE PROSECUTOR**

**v.**

**MIKAELI MUHIMANA**

*Case No. ICTR- 95-1B-T*

---

**JUDGEMENT AND SENTENCE**

**Annex II – PROCEDURAL BACKGROUND**

---

## **A. THE INDICTMENT**

1. The original Indictment, issued on 22 November 1995 in Case No. ICTR-95-1-I, confirmed by Judge Navanethem Pillay on 28 November 1995, charged the Accused jointly with seven others, namely: Clement Kayishema; Ignace Bagilishema; Charles Sikubwabo; Aloys Ndimbati; Vincent Rutaganira; and Obed Ruzindana.
2. An Amended Joint Indictment, dated 29 April 1996, was confirmed on 6 May 1996. In that Indictment, the Accused was charged with seven counts, namely: conspiracy to commit genocide; genocide; murder as a crime against humanity; extermination as a crime against humanity; other inhumane acts as a crime against humanity; serious violations of Article 3 common to the Geneva Conventions, and serious violations of Additional Protocol II thereto.
3. On 6 July 2000, the Chamber denied the Prosecution's Motion for Leave to Sever the Indictment but granted the Prosecution leave to resubmit its motion at a later stage, when necessary supporting materials were available.
4. On 5 November 2002, the Prosecution renewed its request for Leave to Sever the Indictment against the Accused from the original Indictment. This Motion was granted on 14 April 2003. The Prosecution filed an Amended Indictment on 3 February 2003, with factual allegations specifically related to the Accused on four counts: genocide; complicity in genocide; rape as a crime against humanity; and murder as a crime against humanity, pursuant to Articles 2 and 3 of the Statute.
5. On 17 April 2003, the Prosecution filed a Motion for leave to amend the Indictment, pursuant to Rules 73 and 50 of the Rules, which Trial Chamber I granted on 21 January 2004.
6. As stated in Paragraph 2 of the Indictment, the events set out hereinafter occurred in the Republic of Rwanda between 1 January 1994 and 31 July 1994.

## **B. PROCEDURAL HISTORY**

7. Pursuant to a warrant of arrest issued on 26 October 1996 by Judge Navanethem Pillay, the Accused was arrested on 8 November 1999 in Dar es Salaam, Tanzania, and transferred on the same day to the United Nations Detention Facility in Arusha, Tanzania.<sup>1</sup>
8. On 24 November 1999, the Accused made his initial appearance before this Chamber. Pursuant to Rule 62 of the Rules, the Chamber entered a plea of not guilty.<sup>2</sup>

---

<sup>1</sup> Warrant of Arrest and Order for Transfer and Detention, 26 October 1999.

<sup>2</sup> Rule 62 (A) provides: "Upon his transfer to the Tribunal, the accused shall be brought before a Trial Chamber or a Judge thereof without delay, and shall be formally charged. The Trial Chamber or the Judge shall: (iii) Call upon the accused to enter a plea of guilty or not guilty on each count; should the accused fail to do so, enter a plea of not guilty on his behalf".

9. On 9 March 2000, the Chamber granted the Prosecution Motion regarding orders for protective measures for victims and witnesses. On 4 November 2001, the Chamber granted, in part, a Defence Motion for translation of filed documents from English into Kinyarwanda and French.
10. On 1 October 2002, the Chamber rejected the Defence Motion for provisional release of the Accused, pursuant to Rule 65 of the Rules.
11. On 18 February 2004, the Chamber informed the Parties of the commencement of the Accused's trial on 29 March 2004. On 27 February 2004, the Defence moved for a postponement of the trial, alleging violation of the rights of the Accused, as enshrined in Articles 19 (1), 20 (2), and 20 (4) (b) and (e) of the Statute, if the trial commenced on 29 March 2004, as scheduled. On 5 March 2004, the Chamber denied the Motion, noting that in the Status Conference of 23 January 2004, the Defence had indicated its readiness to commence trial proceedings in March 2004.
12. Pursuant to Rule 73 *bis* of the Rules, the Prosecution filed a Pre-Trial Brief and a request to admit facts, on 27 February 2004.
13. On 29 March 2004, the Trial commenced with the Prosecution's Opening Statement. On 20 May 2004, the Chamber dismissed, in its entirety, the Prosecution's Motion for the admission of witness statements, pursuant to Rules 89 (c) and 92 (*bis*).<sup>3</sup>
14. On 20 April 2004, the Chamber granted the Defence motion regarding the Amendment of the judicial calendar, thus affording the Defence two additional months to prepare its case.
15. The Prosecution closed its case on 30 May 2004, having called 19 witnesses. On 6 July 2004, the Chamber granted the Defence Motion for protective measures of its witnesses.
16. The Defence commenced its case on 16 August 2004 and closed its case on 8 September 2004, after presenting 33 witnesses. On 13 September 2004, the Chamber issued an order for the Parties to address a Defence Motion on the inadmissibility of witness testimony, in their respective Closing Briefs and oral arguments.
17. On 8 September 2004, the Chamber ordered that the Parties file their Closing Briefs on the same date.
18. However, the Defence sought and was granted an extension of time and filed its Closing Brief on 1 November 2004, while the Prosecution filed its Closing Brief on 25 October 2004.
19. The closing arguments of the Parties were heard on 18, 19, and 20 January 2005.

---

<sup>3</sup> Decision on the Prosecution Motion for Admission of Witness Statements, pursuant to Rules 89 (c) and 92 (*bis*)

**TRIAL CHAMBER III**

**THE PROSECUTOR**

**v.**

**MIKAELI MUHIMANA**

*Case No. ICTR- 95-1B-T*

---

**JUDGEMENT AND SENTENCE**

**ANNEX III**

**LIST OF SOURCES AND ABBREVIATIONS**

---

**Annex III – LIST of CITED SOURCES and ABBREVIATIONS**

**A. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, ICTR REPORTS OF ORDERS, DECISIONS AND JUDGEMENTS**

<b>Long form</b>	<b>Short form</b>
<i>ICTR Reports of Orders, Decisions and Judgements, 1998</i> , Brussels, Bruylant, 2003, Vol. I and II.	<i>ICTR Reports</i> , 1998
<i>ICTR Reports of Orders, Decisions and Judgements, 1999</i> , Brussels, Bruylant, 2004 Vol. I and II.	<i>ICTR Reports</i> , 1999

**B. LIST OF CITED JUDGEMENTS**

<b>Long form</b>	<b>Short form</b>
<b>International Criminal Tribunal for Rwanda</b>	
<b><i>The Prosecutor v. Jean-Paul Akayesu</i></b>	
<i>The Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-1996-4-T, Judgement (TC), 2 September 1998 (ICTR Reports, 1998, pp.44-404).	<i>Akayesu</i> Judgement (TC).
<i>The Prosecutor v. Jean-Paul Akayesu</i> , Case No. ICTR-1996-4-A, Judgement (AC), 1 June 2001.	<i>Akayesu</i> Judgement (AC).
<b><i>The Prosecutor v. Ignace Bagilishema</i></b>	
<i>The Prosecutor v. Ignace Bagilishema</i> , Case No. ICTR-1995-1A-T, Judgement (TC), 7 June 2001.	<i>Bagilishema</i> Judgement (TC).
<b><i>The Prosecutor v. Sylvestre Gacumbitsi</i></b>	
<i>The Prosecutor v. Sylvestre Gacumbitsi</i> , Case No. ICTR-2001-64-T, Judgement (TC), 17 June 2004.	<i>Gacumbitsi</i> Judgement (TC).
<b><i>The Prosecutor v. Juvénal Kajelijeli</i></b>	
<i>The Prosecutor v. Juvénal Kajelijeli</i> , Case No. ICTR-1998-44A-T, Judgement and Sentence (TC), 1 December 2003.	<i>Kajelijeli</i> Judgement (TC).
<b><i>The Prosecutor v. Jean de Dieu Kamuhanda</i></b>	
<i>The Prosecutor v. Jean de Dieu Kamuhanda</i> , Case No. ICTR-1999-54A-T, Judgement and Sentence (TC), 22 January 2004.	<i>Kamuhanda</i> Judgement (TC).
<b><i>The Prosecutor v. Clément Kayishema and Obed Ruzindana</i></b>	
<i>The Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-1995-1-T, Judgement (TC), 21 May 1999.	<i>Kayishema and Ruzindana</i> Judgement (TC).

***The Prosecutor v. Alfred Musema***

*The Prosecutor v. Alfred Musema*, Case No. ICTR-1996-13-T, Judgement (TC), 27 January 2000.

*Musema* Judgement (TC).

***The Prosecutor v. André Ntagerura et al.***

*The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR-1999-46-T, Judgement and Sentence (TC), 25 February 2004.

*Cyangugu* Judgement (TC).

or

*Ntagerura et al.* Judgement (TC).

***The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana***

*The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-1996-10 & ICTR-1996-17-T, Judgement (TC), 21 February 2003.

*Ntakirutimana* Judgement (TC).

*The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-1996-10-A & ICTR-1996-17-A, Judgement (AC), 13 December 2004.

*Ntakirutimana* Judgement (AC).

***The Prosecutor v. Eliezer Niyitegeka***

*The Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-1996-14-T, Judgement (TC), 16 May 2003.

*Niyitegeka* Judgement (TC).

*The Prosecutor v. Eliezer Niyitegeka*, Case No. ICTR-1996-14-A, Judgement (AC), 9 July 2004

*Niyitegeka* Judgement (AC).

***The Prosecutor v. Georges Anderson Nderubumwe Rutaganda***

*The Prosecutor v. Georges Rutaganda*, Case No. ICTR-1996-3-T, Judgement (TC), 6 December 1999.

*Rutaganda* Judgement (TC).

***The Prosecutor v. Laurent Semanza***

*The Prosecutor v. Laurent Semanza*, Case No. ICTR-1997-20-T, Judgement (TC), 15 May 2003.

*Semanza* Judgement (TC).

**International Criminal Tribunal for the Former Yugoslavia**

***Prosecutor v. Tihomir Blaškić***

*Prosecutor v. Tihomir Blaškić* Case No. IT-95-14-T, Judgement (TC), 3 March 2000.

*Blaškić* Judgement (TC).

***Prosecutor v. Zejnil Delalic et al.***

*Prosecutor v. Zejnil Delalic, Zdravko Mucic also known as “Pavo”, Hazim Delic, Esad Landzo also known as “Zenga”,* Case No. IT-96-21-A, Judgement (TC), 16 November 1998.

*Celebici Case* Judgement (TC).

***Prosecutor v. Anto Furundzija***

*Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, Judgement (TC), 10 December 1998.

*Furundzija* Judgement (TC).

***Prosecutor v. Dragoljub Kunarac et al.***

*Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T and 96-23/1, Judgement (TC), 22 February 2001.

*Kunarac et al.* Judgement (TC).

*Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T and 96-23/1, Judgement (AC), 12 June 2002.

*Kunarac et al.*, Judgement (AC).

***Prosecutor v. Kupreskic et al.***

*Prosecutor v. Kupreskic*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001.

*Kupreškić et al.* Judgement (AC).

***Prosecutor v. Dusko Tadic***

*Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A, Judgement (AC), 15 July 1999.

*Tadic* Judgement (AC).

***C. LIST OF OTHER SOURCES CITED***

**Long form**

**Short form**

United Nations Security Council Resolution 955 of 8 November 1994, UN Document S/RES/955 (1994)

Security Council Resolution 955

United Nations Security Council Resolution 1165 of 30 April 1998, UN Document S/RES/1165 (1998)

Security Council Resolution 1165

United Nations Security Council Resolution 1329 du 30 November 2000, UN Document S/RES/1329 (2000)

Security Council Resolution 1329

United Nations Security Council Resolution 1411 du 17 May 2002, UN Document S/RES/1411 (2002)	Security Council Resolution 1411
United Nations Security Council Resolution 1431 du 14 August 2002, UN Document S/RES/1431 (2002)	Security Council Resolution 1431
United Nations Security Council Resolution 1503 28 August 2003, UN Document S/RES/1503 (2003)	Security Council Resolution 1503
United Nations Security Council Resolution 1512 of 27 Octobre 2003, UN Document S/RES/1512 (2003)	Security Council Resolution 1512

***D. LIST OF CITED RWANDAN LAWS***

Law of 23 November 1963, amended by Law No. 31/91, 5 August 1991  
Code pénal rwandais

**E. LIST OF ABBREVIATIONS AND CONVENTIONS**

<b>Long form</b>	<b>Short form</b>
United Nations	UN
United Nations Security Council	Security Council
International Criminal Tribunal for the Former Yugoslavia	ICTY
International Criminal Tribunal for Rwanda	ICTR or the Tribunal
Statute of the ICTR	Statute (The)
ICTR Rules of Procedure and Evidence	Rules (The)
Trial Chamber	TC
Appeals Chamber	AC
Trial Chamber III	Chamber (The)
International Law Commission (ILC), 1996 Activity Report (A/51/10)	ILC Report, 1996
Transcripts in French of the hearing of 28 April 2004, p. 180.	T. 28 avril 2004, p. 180.
Transcripts in English of the hearing of 28 April 2004, p. 180.	T. 28 April 2004, p. 180.
Prosecution Exhibit No.1	P1
Defence Exhibit No. 1	D1
<i>Mouvement Révolutionnaire National pour le Développement</i> [before July 1991]	MRND
<i>Mouvement républicain national pour la démocratie et le développement</i> [after July 1991]	MRND
<i>Rwandan Patriotic Front</i>	RPF
<i>Forces armées rwandaises</i>	FAR