



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

Original: English

**Before Judges: William H. Sekule, Presiding
Winston C. Matanzima Maqutu
Arlette Ramaroson**

Registrar: Adama Dieng

Judgment of: 22 January 2004

THE PROSECUTOR

v.

Jean de Dieu Kamuhanda

Case No. ICTR-99-54A-T

**Judge Maqutu's Separate and Concurring Opinion
on the Verdict**

Counsel for the Prosecution:

Mr. Marks Moore Senior Trial Attorney

Mr. Ibukunolu Alao Babajide Trial Attorney

Ms. Dorothee Marotine Case Manager

Counsel for the Defence:

Ms. Aïcha Condé Lead Counsel

Ms. Patricia Mongo Co Counsel

Ms. Seynabou Benga Legal Assistant

Ms. Anta Guisse Legal Assistant

1. It has become necessary to hand down a separate opinion from the majority because we do not always believe the same witnesses. Even where we do, our opinions are sometimes only partially the same.

Introduction

2. There is general agreement about the historical aspects of the Tribunal, its mandate and the history of the case. The Indictment was far wider than the evidence was able to reveal.

3. Evidence only focused on his activities in Gikomero Protestant Parish and Gishaka Roman Catholic Parish. Because evidence was not available to prove conspiracy to commit genocide, at the close of the Prosecution case the Accused was acquitted of this charge.

4. The Indictment gave prominence to the fact that the Accused became a Minister of Higher Education and Scientific Research as a culmination to his public service career.

5. The Chambers approach to evidence and issues of credibility, corroboration and hearsay have been summarized in the main judgment. There is no need to repeat them here.

Background to the Genocide and Crimes Against Humanity

6. In this case (in contrast to some other cases) the Defence did not challenge that genocide and crimes against humanity occurred in Rwanda. Consequently the Prosecution was only put to the proof of allegations in the Indictment against the Accused. In other words the Prosecution had to prove the specific involvement and guilt of the Accused.

7. The Prosecution did not lead much evidence on the historical background to the genocide and the tragedy that occurred in Rwanda. It was the Defence that did so. It was Defence Expert Witness Dr. Nkiko Nsegimana who gave a version that was largely unchallenged. According to him there had been fighting between the Rwanda Patriotic Front which was identified with the Tutsi, and the Rwandan Government which was largely Hutu. There was a cease-fire that led to the signing of the Arusha Accords, on 4 August 1993. The implementation of the Arusha Accords was a problem when the President's aeroplane was shot down, killing him and his Chief of Staff. This left the country and the Rwandan armed forces without leadership.

8. It was as a result of this vacuum at the top of government that the entirely Hutu faction of the army and some political parties took effective power. Acting President Sindikubwabo and what remained of the multi-party government became the front for the extremist Hutu faction of the army and politicians. It was because of the domination of this group that the extermination of Tutsis became inevitable.

9. However, the facade of national reconciliation and an all-inclusive government in terms of the Arusha Accords was maintained to give legitimacy to this shift of power. Acting President Sindikubwabo, who was the Speaker of the National Assembly, was made to take office because in terms of the interim constitution he was the lawful person

to act as President. According to Defence Expert Witness Dr Nkiko Nsengimana, he was not a willing participant as his Tutsi wife had been killed.

10. Acting President Sindikubwabo was sworn in on 11 April 1994. By 19 April 1994 he was making speeches using words like “mukore” (work) to incite the killing of Tutsis, because pressure was put on moderate Hutus to take extremist positions.

11. According to Defence Witness VPM, a former Minister in the Rwandan Government, from January 1994 Rwanda was a powder keg and the resumption of hostilities between Government forces and the RPF was imminent. Witness VPM ought to know because he had been a Minister and Chairman of a branch of MRND. Consequently, according to Defence Expert Witness Dr Nkiko Nsengimana, as early as February 1994 the extermination of Tutsis had been threatened if the RPF resumed hostilities as a solution to the political impasse.

12. Tutsi and Hutu lived together in harmony and sometimes intermarried. For example the mother of the wife of the Accused was Tutsi. It is common cause that Rwanda had had ethnic tensions for a long time. According to Witness VPM, who is an admirer of the late President Habyarimana, President Habyarimana had taken power in 1973 after ethnic disturbances. Witness VPM says he resigned from being Chairman of the branch of MRND in 1992 for personal reasons after the burning houses and massacre of Tutsi in Genda, Gashora and Kanzenze in the Bugesera region because of irresponsible speeches.

Presence of the Accused at Gikomero on 12 April 1994

13. The Accused’s defence is that he was at his home in the Kacyiru quarter of Kigali between 7 April 1994 and 17 April 1994. Consequently he could not have led the attack at Gikomero Protestant Parish. Furthermore, in any event roads to Gikomero (according to the Accused) were closed because of the fighting. It was therefore impossible for him to get from his home to Gikomero Protestant Church on 12 April 1994.

14. The Prosecution has to prove its case against the Accused in respect of the crimes charged. The Accused does not have to prove his alibi, all he has to do is to persuade the Chamber that it is reasonably possible that he was not at Gikomero, but at the place he claims to have been. He claims he was at his residence in Kacyiru. Even if he was not, clearly it does not mean he is guilty of the crimes charged. That will depend on the evidence adduced and the evaluation of the evidence as a whole.

15. The Accused states that he remained at home to protect his home from looters who took advantage of the chaos to invade homes and to steal. His home was within walking distance from the Ministry of Higher Education and Research, which he headed as a public servant with the rank of Director General. After the shooting down of the President’s plane, people were instructed to remain at home. The Accused did so between 7 April 1994 and 17 April 1994, except on 8 April 1994 when he made two trips to Kimihurura, which is about one and a half kilometres from Kacyiru, in order to bring his

son René home. In other words the Ministry of Higher Education and Research, appears not to have functioned in Kigali during this period.

16. The Accused told the Chamber that fighting was so intense after the downing of the President's plane that he left his residence and went to live with a neighbour, Defence Witness ALS, to avoid artillery shells that were flying about. The house of another neighbour that was on higher ground had been hit by a shell.

17. The Accused further informed the Chamber that the men of his neighbourhood mounted day and night patrols against looters and no more slept in their homes. Between 7 April 1994 and 17 April 1994 they all slept outside, until they left Kigali. They were only armed with sticks during these patrols, which in his view acted only as a deterrent against looters. There was a military post 500 meters from his residence. In cross-examination the Accused conceded that their patrols were in violation of the order that they should stay at home. They all patrolled at the same time, and did not take turns.

18. Defence Witness ALS, in support of the Accused's alibi, said the Accused lived at her residence and that the Accused was never out of her sight for more than an hour. The Accused could never have gone to Gikomero without telling her. Defence Witness ALR supported the Accused's evidence in respect of the round-the-clock patrols. Witness ALR told the Chamber that on 8 April 1994 three armed soldiers extorted 2000 Francs from him after searching him. An hour later a group of Interahamwe armed with machetes invaded his house, ransacked it and took jewellery, crockery, cutlery and meat. He only informed neighbours including the Accused about the incident with the soldiers, but says he did not tell them about the Interahamwe. After that he went to live with Witness ALS and the Accused at the house of ALS, for his own security.

19. Defence Witness ALB told the Chamber that patrols began after that because soldiers had threatened Witness ALR. For the men patrolling, the rest periods were together and they all resumed patrols at the same time. The Accused's wife also gave evidence to the effect that the Accused could never have gone to Gikomero and confirmed the daily patrols of the Accused and others.

20. The whole story of intensive patrols and the reasons for them was not convincing. They could not patrol against armed soldiers and armed Interahamwe with sticks. It is significant that Witness ALR said he did not tell his neighbours about the Interahamwe that invaded him an hour after the soldiers. The intensive group patrols during which they all rested at the same time without taking turns are improbable, and were meant to buttress the Accused's false alibi.

Impossibility of moving from Kigali to Gikomero

21. The fact that Defence Witness RGB panicked and deserted his post as bourgmestre of Mbogo commune on 9 April 1994, when he heard firing in which soldiers of the Rwandan armed forces destroyed an RPF vehicle, but went back to Mbogo on 24 April 1994 to find that it was still in Government hands shows movement was still possible.

Witness RGB did not disclose that he went back to Mbogo in his evidence-in-chief. It was in cross-examination that he disclosed the fact that the army transported him back to Mbogo, and roads were open to unimpeded military transport. Witness RGB was to remain with family in Musasa commune in Kigali préfecture until he went into exile in July 1994. Yet, Witness RGB gave evidence that roads to Gikomero were closed and it was impossible to get there. The Chamber could not believe RGB, as he was not a truthful witness in other respects as well.

22. For reasons given by the majority it was not impossible to move from Kigali to Gikomero, a distance of not more than 20 Kilometres. The RPF had been in Kigali in the CND area even before the resumption of the fighting. The Defence supported impossibility through the evidence of junior front line soldiers. This evidence was brought to prove all roads were closed as soon as fighting resumed. The risk that was there after the resumption of the fighting was exaggerated. Even the evidence of Witness RKF, who held the rank of Major, and who was a legal officer whose other duties included working for the integration of the Rwandan armed forces with RPF in terms of the Arusha Accords, and some intelligence gathering - was not satisfactory. He claimed the Rwandan army had a demobilization mentality. If that is the case it could not in my view provide intelligence competently. In any event, according to Witness GEK the Accused was accompanied by a soldier when he went to Gikomero on 12 April 1994 – a limited precaution against danger. There was all over Kigali and Kigali Rural a danger that a stray bullet or an infiltrator could harm a person or a vehicle, but movement was still possible on the roads, side roads and footpaths.

Massacre at Gishaka Catholic Parish

23. I agree with the majority Judgment that the Accused could not be liable for events at the Gishaka Catholic parish on the evidence before the Chamber. Evidence that linked the Accused with events there was unsatisfactory. It is clear that the weight of evidence brought both by the Defence, especially through Defence Witness PC, and the Prosecution, show that refugees were taken out of the church to be killed. No grenades were thrown into the church as Prosecution Witness GKL testified. In summary, the allegation that the Accused was at Gishaka was not backed by concrete or satisfactory evidence.

Weapons distribution at Gikomero

24. As the Judgment of the Chamber shows, the only direct evidence that the Accused distributed weapons at Gikomero is that of Prosecution Witness GEK. Evidence of a single witness must be checked with care. The Chamber has to be alive to the fact that it stands alone and cannot be checked against some other evidence. The evidence of witnesses GEB and GAC, which should have corroborated the evidence of Witness GEK, was found unsatisfactory, unreliable and containing inherent improbabilities.

25. In the Accused's favour is the strong evidence of Witness GET who told the Chamber that the Accused was a good man. Witness GET testified that the Accused was an intellectual of such integrity that the crimes he is charged with do not correspond to the Accused's character as he knew it. When GET was bourgmestre after the genocide he got persistent reports about the Accused's participation, which persisted until they were followed up. Among Witness GET's informants was Prosecution Witness GEK.

26. Another hearsay that puts the Accused among those who were worried about the massacre of the Tutsi is Witness GKI's testimony that her brother was told that the Tutsi wife of the bourgmestre of Gikomero had met the Accused on 30 March 1994. The report stated that the Accused had warned the wife of the bourgmestre to flee because the Tutsi were going to be killed.

27. Prosecution Witness GEK, a Tutsi woman, was married to a close relative of the Accused. The Accused's sister was married to a close neighbour of Witness GEK. Witness GEK testified that between 5 April 1994 and 6 April 1994 the Accused had been at her home for short time. The Accused was on the way to see his brother-in-law. Witness GEK told the Chamber that she had met the Accused about four times.

28. Later on in the trial, the Accused admitted under cross-examination that he knew Witness GEK and her husband. But the Accused said he does not remember meeting or speaking to Witness GEK. The Accused's reaction when Witness GEK gave evidence (through questions put by his counsel) had been that Witness GEK was an impostor, and that she was not who she claimed to be. Thus details of her evidence were not directly challenged by the Defence – save showing that the Accused could not have been there. It came as a surprise to the Chamber when the Accused acknowledged her in his testimony.

29. In her evidence-in-chief, Witness GEK stated that the Accused came to her house alone, driving a white pickup between 6 April 1994 and 10 April 1994. Her husband told her to go into the adjacent room, in which she listened to their conversation. They were four men with the Accused in the room. The Accused complained that killings had not begun in the area. Those who were supposed to help were not doing so because they had married Tutsi women. The Accused said he would bring equipment to enable them to start. If their women were in the way they should eliminate them. This conversation lasted 30 minutes.

30. When Witness GEK went outside she saw firearms, grenades and machetes in the vehicle the Accused arrived in. Inside the house the Accused had distributed firearms and grenades. Her husband received four grenades from the Accused. The Accused went next door to Ngarambe's house, where he unloaded the weapons. The Accused said they should distribute them. The Accused said that he would come back to assist.

31. Between 10 April 1994 and 14 April 1994, the Accused came back, he went to Karekizi's house, and he was in a white van with a soldier and a driver. A blue Diahatsu carrying between 30 and 50 people – all armed with guns and machetes followed him. From Karekizi's house, the Accused drove off in the direction of Gikomero Primary

School. Witness GEK heard gunshots for 20 to 40 minutes. She saw children fleeing towards her – some of them wounded. Later that day when Interahamwe from Rubungo came for them, Witness GEK and others fled to Kibobo cellule.

32. After the Prosecution had called 25 more witnesses and after the Defence had called eight witnesses, Witness GEK was recalled by the Defence for further cross-examination. It was suggested to Witness GEK that between 9 April 1994 and 14 April 1994 she was not at her home. Witness GEK did not agree with that suggestion. She said that she went to Kibobo the day after the killing, and that they went with their husbands and came back the same day. Kibobo is in their secteur. Witness GEK denied the allegation by the Defence that she stayed at Eustache Kayumba's house from 9 April 1994 to 13 April 1994. At that time, Witness GEK had only one child. Cross-examination when Witness GEK had been recalled further revealed she had been sentenced to death for an act with her husband for events that occurred several months after giving evidence before the Chamber.

33. Witness GEK was never asked about the second child that the Defence alleged had been born at Kibobo on the day of the Gikomero massacre. Witnesses GPB, PCE, EM and Xaviera Mukaminani were later called by the Defence to state that Witness GEK could not have been at her house because on 12 April 1994, the day of the massacre, or 13 April 1994, and according to the Defence she was in Kibobo giving birth to her second child. The Defence challenged the accuracy of Prosecution Exhibit 49, a document originally brought by the Defence, in which Witness GEK had registered the child as having been born on 13 September 1994, five months later. What was unfair and strange was that the alleged issue of a second child born in Kibobo on 13 April 1994 had not been raised with Witness GEK even after her recall.

34. The only witness who identified the Accused from undisputed knowledge of him was Prosecution Witness GEK. The Accused's attack on the evidence of Witness GEK was not eventually that she does not know him, but rather that Witness GEK is not telling the truth when she says the Accused was in Gikomero after the shooting down of the President Habyarimana's Plane, that he distributed weapons, and that on 12 April 1994, the day of the massacre, the Accused led armed men toward the Gikomero Parish Primary School.

35. The Chamber was unanimous in not accepting the evidence of Witness GAB that between 9 April 1994 and 11 April 1994 he saw the Accused distributing weapons at the football field in the presence of the bourgmestre, the conseiller, the accountant and the police brigadier of the commune. This was despite the fact that Witness GAB claimed he knew the Accused. Witness GAB was a young Tutsi man and was known as such by his playmates. He had earlier seen the Accused at a political rally of the MRND in Kayanga secteur of the Gikomero commune. Witness GAB testified that the Accused at that meeting said: "Let the Tutsis not bother you because their fate is being considered by the appropriate authorities." A solution had been found in the not too distant future. In that meeting a person who was not Hutu could not have been invited to that meeting at which the Accused spoke as a guest of honour. A Tutsi would be in danger of being killed.

36. The Chamber for similar reasons had found the evidence of Witness GAC unbelievable because he claimed weapons were distributed by the Accused in his presence at Damien's bar although the people in the vicinity knew he was a Tutsi. Witnesses GET and GAD gave hearsay evidence about the Accused's weapon distribution, which the Chamber could not accept.

37. The result of the rejection of the evidence on weapon distribution of Witnesses GAB, GAC and hearsay from GET and GAD was that the only evidence which the Chamber could work with was that of Witness GEK alone. The evidence of Witness GEK on what she saw and heard at her house and the weapons distribution was believed. Whilst she could see what was happening at Karikezi's House, it was not clear how she heard what was being said. Since the Defence was claiming Witness GEK was not who she claimed she was, she was not pressed to clarify this issue.

38. The fact that Witness GEK later committed a crime which led to a sentence of death was not ignored in determining her credibility as a witness before the Chamber. The event though irrelevant was considered only in so far as it might affect her reliability as a witness. Furthermore, the Accused's evidence given several months before that crime remained unchanged. The Chamber was alive to the danger of the evidence of a single witness on the issue of weapon distribution. Consequently it scrutinized it with great care.

39. The baseless attack on Witness GEK's identity, and the attempt by the Defence to remove her from her home and put her at Kibobo, was considered by the Chamber, but her evidence was not shaken. In an attempt to prove that she was known by her full name, the Defence brought evidence in the form of a document certifying that her second child was born during September 1994. Yet, three witnesses were brought by the Defence to prove that her second child was born on 12 April 1994, which was the day of the Gikomero Church massacre. This allegation concerning the birth of the second child was not put to GEK to comment upon. Witness GEK was not shaken in cross-examination, her evidence was found credible and without any real demerits.

Presence of the Accused in Gikomero on 12 April 1994

40. Since the Accused claimed that between 7 April 1994 and 17 April 1994, he had been at his residence at Kacyiru, the Prosecution tried to demonstrate others saw that the Accused in the Gikomero area on or before 12 April 1994. The evidence of Witness GAD that on 9 April 1994 he briefly saw the Accused in a chauffeur driven Peugeot 604, sitting in a place of honour after a visit to his parents, was suspect because Witness GAD claimed the Accused normally came in a Peugeot 504 and sat in the front. This evidence was not satisfactory. The Witness claimed to know the Accused and his sisters, but he could not name them. Also, his evidence was largely hearsay.

41. Although the Chamber by a majority was satisfied by the evidence of Witness GEB, I was not. Witness GEB's opportunities of observation of the man he saw as being the Accused were poor, and brief. I was not satisfied that his evidence that he knows the Accused was real and credible. Witness GEB claims the Accused was from a

neighbouring secteur and that they were in fact neighbours. He said that he had known the Accused for three years and proceeded to identify him in the dock. The Witness claimed to have seen the Accused when he came to introduce his wife to the Accused's family. However, the Chamber heard evidence that this incident occurred in 1983, which was 11 years before 1994.

42. Witness GEB claimed to have seen a pickup vehicle carrying over twenty people in the back, and as it passed him he looked back and saw the Accused sitting between two people. Those twenty people, who were singing, were wearing Kitenge uniforms (normally worn by Interahamwe), and some were in military uniforms. They were singing Interahamwe songs, and they were armed- he saw Kalashnikov firearms. When Witness GEB saw this vehicle, it was one and a half kilometres from Gikomero. Thirty minutes later, he heard gun reports.

43. Witness GEB was specifically asked if the opening of the Kayanga Health Centre was the day the Accused had come to introduce his wife to the family – the Witness evaded the question. Pressed on when the Kayanga Health Centre was opened, the Witness did not know. All he could say was that, that was the last time he had seen the Accused. The Accused had come to introduce his wife to the family in 1983. In cross-examination it was put to him that in his prior statement to the Prosecution investigators, had said Asio told him that Kamuhanda was with the Interahamwe. Witness GEB gave no satisfactory answer. I do not believe this Witness. The majority in believing Witness GEB have overlooked the fact that the evidence of this witness conflicts with that of Witness GEK. The testimonies could only be reconciled had a longer time elapsed between the time Witness GEB saw the Accused and the time Witness GEK saw the Accused with a policeman just before he led the attackers to Gikomero Parish compound.

44. I am unable to join with the majority in believing that Prosecution Witness GAF was telling the truth when he said he saw the Accused at the Gikomero massacre, and that he gave the signal for the killings to start by saying “mukore” which means “work”. I am unable to believe this witness because he said that even before the vehicles stopped, Bucundura (the assistant of the Pastor) was shot at. In my view, once the firing began there would be pandemonium and people could not have stopped for the Accused to get down from the vehicle and tell the people in the first three vehicles to “mukore” (work), that is to begin the killing. Witness GAF, when asked if he saw the vehicles clearly, replied that “In actual fact, I did not come that close to the vehicles because I went away, say I was about 15 to 20 meters from the vehicles and but since there were lined up, there were those which were closer to me say about 10 metres away.” It was after Bucundura had fallen to the ground that the Accused alighted from one of vehicles with the markings UN. After he had made a dock identification of the Accused, the Witness was asked to clarify what happened and said: “They shot at Bucundura before the vehicles stopped. They were still in motion when they passed where I was.”

45. Asked if the people he came with obeyed the Accused's orders, Witness GAF contradicted himself and said: “No, but they had already agreed with the people he came with about what was to be done. He made that gesture, that was to incite people that were

there.” When the Accused made the gesture, the killings started almost immediately. In other words, the Accused made a gesture and the killings began. He did not give an order. When what Witness GAF had said was summarized to him to confirm, he said that it was the Accused who had brought the weapons to give to the people. Witness GAF had to admit that he was merely venturing an opinion. Later Witness GAF said for no apparent reason “these were policemen of Gikomero commune. They were there with us because we sought refuge with them. It was when Kamuhanda arrived that he ordered those to be killed be killed.”

46. Witness GAF is the only witness who says the first vehicle, a Pajero, left without its passengers alighting. The Accused left immediately after raising his arms and saying “mukore” – he spent only two minutes there, and then left for somewhere else. Asked specifically if the Accused was there when the killings started, Witness GAF said no. Amongst other unrelated things, Witness GAF said that the killings started as soon as he pronounced the word. The vehicle that was left behind, loaded meat from a cow that had been killed. When asked by the Prosecutor during examination-in-chief if the Accused was still there when the cow was killed and the meat loaded, Witness GAF responded: “Well, I had told you as soon as he uttered those words, he went back into to the vehicle and left at the same time as the Pajero and the Hilux pickup.” Witness GAF claims to have known the Accused as a prominent MRND politician, which every other witness agrees was false. Another fact just as false was that the Accused was well known in the area.

47. All indications make it suspect that Witness GAF was at Gikomero Parish on 12 April 1994 at the time of the killings. According to his account, he only got to the parish between 2:00pm and 3:00pm. He says that 20 to 30 minutes later, the vehicles of the killers arrived. If he was in fact there and that near the vehicles, he would, like other witnesses, have stated that the Accused got down from the vehicle, talked to Pastor Nkuranga, and then as he was leaving there would have been a gun report and Bucundura would have fallen. His account that Bucundura was shot and fell even before the vehicles stopped and the Accused alighted from the vehicle and talked to Pastor Nkuranga is inconsistent with the evidence of the Prosecution as a whole. The view I have is that people would have scattered even before the vehicles stopped had the shooting commenced when Witness GAF claims it did. Although it impressed the majority, for me the evidence of Witness GAF was untrue.

48. I accept that Witness GES, a public servant, must have known the Accused, who was a leading public servant at that time, and that he could have identified the Accused at Gikomero Protestant Parish. Witness GES’s identification of the Accused is not of a high quality because he was 50 meters away.

49. Witness GAA’s evidence of identification of the Accused at Gikomero Protestant Parish was somewhat hesitant because when he saw the Accused in the dock, he said: “I suppose he is that one” – later he said: “I have no doubt that is him”. He was being honest because the Accused had been approximately 100 metres from him when he saw him at the Parish. Witness GAA lived 500 meters from the home of the Accused’s sister.

Witness GAA had seen the Accused on two occasions. The first occasion when the Accused had brought gifts on the birth of his sister's first child. The second occasion was at the funeral of the aforementioned sister of the Accused who later died.

50. I was impressed with the evidence of Witness GAA because he did not artificially enhance the value of his identification of the Accused. He testified that he saw the Accused come out of the vehicle and throw his hands in the air. At that time, Pastor Nkuranga had come out of his house with Bucundura. People who were near him, were saying, "get to work, Kamuhanda is here now". There was a gun report and Bucundura fell, three other people were also shot. Pastor Nkuranga was shouting "I am Pastor Nkuranga, do not shoot at me". People ran in all directions. Some fled, some were killed. The poor quality identification of the Accused by Witness GAA was made stronger by the fact that he heard assailants shouting "get to work, Kamuhanda is here now" when the man he identified as the Accused arrived in the vehicle.

51. The Chamber was shown a photo of the Accused that was taken at the sister's funeral. In it the Accused did not look exactly the same as he looked in court. The Accused has considerably aged. In concluding his evidence-in-chief about the Accused, Witness GAA said that he had some doubt about identifying Kamuhanda when giving evidence because it had been a long time since he last saw him, but he had no doubt in identifying him when he arrived in the vehicle at the time of the massacre.

52. I noted the many witnesses (of different degrees of credibility) were saying they heard from others that Kamuhanda had come – their safety is threatened (or words to that effect). Witnesses such as GEE, GEA, GEV, and GEG are in my view credible when they say they did not know the Accused, but that they heard others exclaiming that Kamuhanda – the man who went to speak to Pastor Nkuranga - had come, and they were in danger. Regarding what some of the people shouted, I accept the evidence of Witness GEG as being corroborated by the others – despite Witness GEG's mistake that the Accused had a gun. As that man [the Accused] was going to his vehicle, witnesses agree that Bucundura (or an old man) was shot, and killings began. There are however witnesses such as GEP, GEC and GEI who were in the classrooms, but who claim to have seen or heard much more than their opportunities of seeing and hearing enabled them. Such witnesses I do not find credible. The behaviour of Pastor Nkuranga was interpreted as suspect before the killing – some witnesses claim or infer that he was in league with killers because he stopped them from fleeing when refugees from Jurwe told them an attack was imminent. The collective weight of this evidence does not prove this. In my view Pastor Nkuranga did what any reasonable person who believed in the inviolability of churches as sanctuaries should have done.

53. The evidence of Witness GAG, whose presence at Gikomero Protestant Parish is admitted both by the Defence and the Prosecution, is to me credible although Pastor Nkuranga's wife and son found her ungrateful and untruthful in the way she claimed she

lost property from the late Pastor Nkuranga. Witness GAG says that Pastor Nkuranga had looked after the refugees when they were only around fifty in number, however when they flocked to the parish in larger numbers his problems increased and his attitude changed. When on 12 April 1994 rumours of an impending attack became rife, Pastor Nkuranga called the refugees together and assured them that they were safe. He told the local people who were selling goods to the refugees to leave because they were spreading false rumours. It was at 2:00pm while the refugees were standing round the Pastor that a vehicle came and a man he did not know went towards Pastor Nkuranga. The Pastor went to meet him saying "I told you that you had nothing to fear, that your safety would be guaranteed." Bucundura remained with Witness GAG and the others. According to Witness GAG, the Interahamwe surrounded them and she thought they were going to protect them. As the man Pastor Nkuranga had gone to talk to walked back to one of the vehicles, someone shot Bucundura. There followed volleys of firing from guns. Grenades were also thrown. All Pastor Nkuranga could say was: "I am Pastor Nkuranga." According to Witness GAG, some of the refugees had said "there is Kamuhanda" when the Accused went to the Pastor.

54. Witness GAG had seen people in military uniform, Kitenge clothing, and others wearing banana leaves during the attack. Some had guns, grenades, machetes, and clubs. This account is in many respects similar to that of GAA who in my view is a credible Witness.

55. According to Witness GAG, at dawn Pastor Nkuranga came with a policeman called Nkarambe and Rutayiseri and she was taken out of the house. It was said that the Accused said all Tutsi including children were to be killed. Pastor Nkuranga said the God of the Tutsi had abandoned them. Nkarambe and Rutayisire took her to the bush, hit her on the head and left her for dead. The Witness refused to attempt a dock identification of the Accused on the ground that she saw him only once, and consequently does not believe that she could recognize the Accused. I believe the evidence of Witness GAG, her evidence and demeanour was impressive. She was telling the truth about what she experienced, saw and heard.

56. Although Pastor Nkuranga died before he could give evidence, he left behind an affidavit in which he avoided mentioning the presence of the Accused at Gikomero and his conversation with him. The Chamber concludes that he withheld this evidence deliberately. In my view although he was not involved in the genocide and genuinely did what he could for the refugees – he chose to protect the Accused and others for reasons that are not clear. Pastor Nkuranga's family gave evidence solely to clear his name, but not to tell the truth.

Conclusion

57. In short I differ from the majority who have accepted from witness testimony that, at the location of the killings, the Accused was actually heard giving an order for the killing to begin. Firstly, I disbelieve the entire evidence of Witness GAF. Consequently in my view there is no direct credible evidence that the Accused ordered the killing of the Tutsis

by saying “mukore” (work). Witness GAA, who in my view is a credible witness, only saw the Accused raise his hands at the time the killing commenced. As for the witnesses who were in classrooms, even if the Accused had actually said the word “mukore”, would not have been able to hear it in that noisy environment. Thus, on the question of whether or not the Accused gave a verbal order when he arrived at the Parish compound, I find that there is no credible evidence that he did.

58. I do however accept the evidence of Witness GAA, who stated that when their assailants saw the Accused, the assailants said, “Let us go to work, Kamuhanda has come”. From this evidence, there is an irresistible inference to be drawn that the Accused had sometime earlier said to the attackers (before they reached the Parish) that Tutsis should be killed. Consequently, because this must have come to be known, it is not surprising that it was known amongst those Tutsis who knew him, that his presence at Gikomero meant death to the Tutsis.

59. The cumulative effect of the circumstantial evidence is that, as Witness GEK stated, the Accused distributed weapons between 6 April 1994 and 10 April 1994. On the day of the massacre at the Gikomero Parish, Witness GEK saw the Accused go towards the Parish with a group of armed people. Shortly thereafter there were gun reports and explosions from the direction of the Parish. A man identified as the Accused from a distance by Witnesses GAA and GEL was seen going to Pastor Nkuranga before the killing began. Witness GAA heard some of the attackers saying they should work because the Accused had arrived. Some of the refugees (according to Witnesses GEK, GEA, GEG and GEV) said that now that the Accused had arrived their safety was threatened.

Verdict

60. I agree with the majority that the Accused led an armed group to commit the crimes of Genocide and Extermination as a Crime Against Humanity against the Tutsi people who were at Gikomero Protestant Parish. In that respect the verdict of the Chamber is unanimous.

Arusha, 22 January 2004

Winston C. M. Maqutu
Judge

(Seal of the Tribunal)