ICTR-96-4-T
2.9.1998
(2637-2344)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

CHAMBER I - CHAMBRE I

OR : ENG

Before: Judge Laïty Kama, Presiding
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Agwu U. Okali

Decision of: 2 September 1998

THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU

Case No. ICTR-96-4-T

JUDGEMENT

The Office of the Prosecutor:

Mr. Pierre-Richard Prosper

Counsel for the Accused:

Mr. Nicolas Tiangaye
Mr. Patrice Monthé

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1. INTRODUCTION

1.1. The International Tribunal

1. This judgment is rendered by Trial Chamber I of the International Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January and 31 December 1994 (the "Tribunal"). The judgment follows the indictment and trial of Jean Paul Akayesu, a Rwandan citizen who was bourgmestre of Taba commune, Prefecture of Gitarama, in Rwanda, at the time the crimes alleged in the indictment were perpetrated.

2. The Tribunal was established by the United Nations Security Council by its resolution 955 of 8 November 1994.[1] After having reviewed various official United Nations reports[2] which indicated that acts of genocide and other systematic, widespread and flagrant violations of international humanitarian law had been committed in Rwanda, the Security Council concluded that the situation in Rwanda in 1994 constituted a threat to international peace and security within the meaning of Chapter VII of the United Nations Charter. Determined to put an end to such crimes and " convinced that...the prosecution of persons responsible for such acts and violations ... would contribute to the process of national reconciliation and to the restoration and maintenance of peace", the Security Council, acting under the said Chapter VII established the Tribunal.[3] Resolution 955 charges all States with a duty to cooperate fully with the Tribunal and

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[1] UN Document S/RES/955 of 8 November 1994

[2] Preliminary Report of the Commission of Experts established pursuant to Security Council resolution 935 (1994) (UN Document S/1994/1125), Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994) (Document S/1994/1405) and Reports of the Special Rapporteur for Rwanda of the United Nations Commission of Human Rights (Document S/1994/1157, annexes I and II).

[3] The establishment of a special international tribunal was also requested by the Government of Rwanda (UN Document S/1994/1115). However, its representative at the Security Council later voted against resolution 955.

its organs in accordance with the Statute of the Tribunal (the "Statute"), and to take any measures necessary under their domestic law to implement the provisions of the Statute, including compliance with requests for assistance or orders issued by the Tribunal . Subsequently, by its resolution 978 of 27 February 1995, the Security Council "urge[d] the States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda".[4]

3. The Tribunal is governed by its Statute, annexed to the Security Council Resolution 955, and by its Rules of Procedure and Evidence (the "Rules"), adopted by the Judges on 5 July 1995 and amended subsequently.[5] The two Trial Chambers and the Appeals Chamber of the Tribunal are composed of eleven Judges in all, three sitting in each Trial Chamber and five in the Appeals Chamber. They are elected by the United Nations General Assembly and represent, in accordance with Article 12(3) (c) of the Statute, the principal legal systems of the world. The Statute stipulates that the members of the Appeals Chamber of the other special internatinal criminal tribunal, namely the Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 ("the Tribunal for the former Yugoslavia"), shall also serve as members of the Appeals Chamber of the Tribunal for Rwanda.

4. Under the Statute, the Tribunal has the power to prosecute persons responsible for serious violations of international human law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January and 31 December 1994. According to Articles 2 to 4 of the Statute relating to its *ratione materiae* jurisdiction, the Tribunal has the power to prosecute persons who committed genocide as defined in Article 2 of the Statute, persons responsible for crimes against humanity as defined in Article 3 of the Statute and persons responsible for serious

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[4] S/RES/978 of 27 February 1995, operative paragraph 1

[5] The Rules were successively amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997 and 8 June 1998.

violations of Article 3 Common to the Geneva Conventions of 12 August 1949 on the protection of victims of war[6], and of Additional Protocol II thereto of 8 June 1977, a crime defined in Article 4 of the Statute[7]. Article 8 of the Statute provides that the Tribunal has concurrent jurisdiction with national courts over which it, however, has primacy.

5. The Statute stipulates that the Prosecutor, who acts as a separate organ of the Tribunal, is responsible for the investigation and prosecution of the perpetrators of such violations. Upon determination that a prima facie case exists to proceed against a suspect, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged. Thereafter, he or she shall transmit the indictment to a Trial Judge for review and, if need be, confirmation. Under the Statute, the Prosecutor of the Tribunal for the former Yugoslavia shall also serve as the Prosecutor of the Tribunal for Rwanda. However, the two Tribunals maintain separate Offices of the Prosecutor and Deputy Prosecutors. The Prosecutor of the Tribunal for Rwanda is assisted by a team of investigators, trial attorneys and senior trial attorneys, who are based in Kigali, Rwanda. These officials travel to Arusha whenever they are expected to plead a case before the Tribunal.

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[6] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, United Nations Treaty Series, vol. 75, No.970 ("Geneva Convention I"); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, *ibid* No.971 ("Geneva Convention II"); Geneva Convention relative to the Treatment of Prisoners of War , 12 August 1949, *ibid*, No.972 ("Geneva Convention III"); Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, *ibid* No.973 (" Geneva Convention IV").

[7] Protocol Additional...relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, United Nations Treaty Series, vol. 1125, No. 17513

1.2. The Indictment

6. The Indictment against Jean-Paul Akayesu was submitted by the Prosecutor on 13 February 1996 and was confirmed on 16 February 1996. It was amended during the trial, in June 1997, with the addition of three counts (13 to 15) and three paragraphs (10A, 12A and 12B). The Amended Indictment is here set out in full:

"The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to his authority under Article 17 of the Statute of the Tribunal, charges:

JEAN PAUL AKAYESU

with **GENOCIDE, CRIMES AGAINST HUMANITY** and **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as set forth below:

Background

1. On April 6, 1994, a plane carrying President Juvénal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi crashed at Kigali airport, killing all on board. Following the deaths of the two Presidents, widespread killings, having both political and ethnic dimensions, began in Kigali and spread to other parts of Rwanda.

2. Rwanda is divided into 11 prefectures, each of which is governed by a prefect. The prefectures are further subdivided into communes which are placed under the authority of bourgmestres. The bourgmestre of each commune is appointed by the President of the Republic, upon the recommendation of the Minister of the Interior. In Rwanda, the bourgmestre is the most powerful figure in the commune. His *de facto* authority in the area is significantly greater than

that which is conferred upon him *de jure*.

The Accused

3. **Jean Paul AKAYESU**, born in 1953 in Murehe sector, Taba commune, served as bourgmestre of that commune from April 1993 until June 1994. Prior to his appointment as bourgmestre, he was a teacher and school inspector in Taba.

4. As bourgmestre, **Jean Paul AKAYESU** was charged with the performance of executive functions and the maintenance of public order within his commune, subject to the authority of the prefect. He had exclusive control over the communal police, as well as any gendarmes put at the disposition of the commune. He was responsible for the execution of laws and regulations and the administration of justice, also subject only to the prefect's authority.

General Allegations

5. Unless otherwise specified, all acts and omissions set forth in this indictment took place between 1 January 1994 and 31 December 1994, in the commune of Taba, prefecture of Gitarama, territory of Rwanda.

6. In each paragraph charging genocide, a crime recognized by Article 2 of the Statute of the Tribunal, the alleged acts or omissions were committed with intent to destroy, in whole or in part, a national, ethnic or racial group.

7. The victims in each paragraph charging genocide were members of a national, ethnic, racial or religious group.

8. In each paragraph charging crimes against humanity, crimes recognized by Article 3 of the Tribunal Statute, the alleged acts or omissions were committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic or racial grounds.

9. At all times relevant to this indictment, a state of internal armed conflict existed in Rwanda.

10. The victims referred to in this indictment were, at all relevant times, persons not taking an active part in the hostilities.

10A. In this indictment, acts of sexual violence include forcible sexual penetration of the vagina, anus or oral cavity by a penis and/or of the vagina or anus by some other object, and sexual abuse, such as forced nudity.

11. The accused is individually responsible for the crimes alleged in this indictment. Under Article 6(1) of the Statute of the Tribunal, individual criminal responsibility is attributable to one who plans, instigates, orders, commits or otherwise aids and abets in the planning, preparation or execution of any of the crimes referred to in Articles 2 to 4 of the Statute of the Tribunal.

Charges

12. As bourgmestre, **Jean Paul AKAYESU** was responsible for maintaining law and public order in his commune. At least 2000 Tutsis were killed in Taba between April 7 and the end of June, 1994, while he was still in power. The killings in Taba were openly committed and so widespread that, as bourgmestre, **Jean Paul AKAYESU** must have known about them. Although he had the authority and responsibility to do so, **Jean Paul AKAYESU** never attempted to prevent the killing of Tutsis in the commune in any way or called for assistance from regional or national authorities to quell the violence.

12A. Between April 7 and the end of June, 1994, hundreds of civilians (hereinafter "displaced civilians") sought refuge at the bureau communal. The majority of these displaced civilians were Tutsi. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Displaced civilians were also murdered frequently on or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant.

These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings.

12B. **Jean Paul AKAYESU** knew that the acts of sexual violence, beatings and murders were being committed and was at times present during their commission. **Jean Paul AKAYESU** facilitated the commission of the sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to occur on or near the bureau communal premises. By virtue of his presence during the commission of the sexual violence, beatings and murders and by failing to prevent the sexual violence, beatings and murders, **Jean Paul AKAYESU** encouraged these activities.

13. On or about 19 April 1994, before dawn, in Gishyeshye sector, Taba commune, a group of men, one of whom was named Francois Ndimubanzi, killed a local teacher, Sylvere Karera, because he was accused of associating with the Rwandan Patriotic Front ("RPF") and plotting to kill Hutus. Even though at least one of the perpetrators was turned over to **Jean Paul AKAYESU**, he failed to take measures to have him arrested.

14. The morning of April 19, 1994, following the murder of Sylvere Karera, **Jean Paul AKAYESU** led a meeting in Gishyeshye sector at which he sanctioned the death of Sylvere Karera and urged the population to eliminate accomplices of the RPF, which was understood by those present to mean Tutsis. Over 100 people were present at the meeting. The killing of Tutsis in Taba began shortly after the meeting.

15. At the same meeting in Gishyeshye sector on April 19, 1994, **Jean Paul AKAYESU** named at least three prominent Tutsis -- Ephrem Karangwa, Juvénal Rukundakuvuga and Emmanuel Sempabwa -- who had to be killed because of their alleged relationships with the RPF. Later that day, Juvénal Rukundakuvuga was killed in Kanyinya. Within the next few days, Emmanuel Sempabwa was clubbed to death in front of the Taba *bureau communal.*

16. **Jean Paul AKAYESU,** on or about April 19, 1994, conducted house-to-house searches

in Taba. During these searches, residents, including Victim V, were interrogated and beaten with rifles and sticks in the presence of **Jean Paul AKAYESU**. **Jean Paul AKAYESU** personally threatened to kill the husband and child of Victim U if she did not provide him with information about the activities of the Tutsis he was seeking.

17. On or about April 19, 1994, **Jean Paul AKAYESU** ordered the interrogation and beating of Victim X in an effort to learn the whereabouts of Ephrem Karangwa. During the beating, Victim X's fingers were broken as he tried to shield himself from blows with a metal stick.

18. On or about April 19, 1994, the men who, on **Jean Paul AKAYESU**'s instructions, were searching for Ephrem Karangwa destroyed Ephrem Karangwa's house and burned down his mother's house. They then went to search the house of Ephrem Karangwa's brother-in-law in Musambira commune and found Ephrem Karangwa's three brothers there. The three brothers -- Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome Gakuba -- tried to escape, but **Jean Paul AKAYESU** blew his whistle to alert local residents to the attempted escape and ordered the people to capture the brothers. After the brothers were captured, **Jean Paul AKAYESU** ordered and participated in the killings of the three brothers.

19. On or about April 19, 1994, **Jean Paul AKAYESU** took 8 detained men from the Taba *bureau communal* and ordered militia members to kill them. The militia killed them with clubs, machetes, small axes and sticks. The victims had fled from Runda commune and had been held by **Jean Paul AKAYESU**.

20. On or about April 19, 1994, **Jean Paul AKAYESU** ordered the local people and militia to kill intellectual and influential people. Five teachers from the secondary school of Taba were killed on his instructions. The victims were Theogene, Phoebe Uwineze and her fiance (whose name is unknown), Tharcisse Twizeyumuremye and Samuel. The local people and militia killed them with machetes and agricultural tools in front of the Taba *bureau communal*.

21. On or about April 20, 1994, **Jean Paul AKAYESU** and some communal police went to the house of Victim Y, a 68 year old woman. **Jean Paul AKAYESU** interrogated her about

the whereabouts of the wife of a university teacher. During the questioning, under **Jean Paul AKAYESU**'s supervision, the communal police hit Victim Y with a gun and sticks. They bound her arms and legs and repeatedly kicked her in the chest. **Jean Paul AKAYESU** threatened to kill her if she failed to provide the information he sought.

22. Later that night, on or about April 20, 1994, **Jean Paul AKAYESU** picked up Victim W in Taba and interrogated her also about the whereabouts of the wife of the university teacher. When she stated she did not know, he forced her to lay on the road in front of his car and threatened to drive over her.

23. Thereafter, on or about April 20, 1994, **Jean Paul AKAYESU** picked up Victim Z in Taba and interrogated him. During the interrogation, men under **Jean Paul AKAYESU**'s authority forced Victims Z and Y to beat each other and used a piece of Victim Y's dress to strangle Victim Z.

Counts 1-3

(Genocide)

(Crimes against Humanity)

By his acts in relation to the events described in paragraphs 12-23, **Jean Paul AKAYESU** is criminally responsible for:

COUNT 1: **GENOCIDE**, punishable by Article 2(3)(a) of the Statute of the Tribunal;

COUNT 2: Complicity in **GENOCIDE**, punishable by Article 2(3)(e) of the Statute of the Tribunal; and

COUNT 3: **CRIMES AGAINST HUMANITY** (extermination), punishable by Article 3(b) of the Statute of the Tribunal.

Count 4

(Incitement to Commit Genocide)

By his acts in relation to the events described in paragraphs 14 and 15, **Jean Paul AKAYESU** is criminally responsible for:

COUNT 4: Direct and Public Incitement to Commit **GENOCIDE**, punishable by Article 2(3)(c) of the Statute of the Tribunal.

Counts 5-6

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation the murders of Juvénal Rukundakuvuga, Emmanuel Sempabwa, Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome Gakuba, as described in paragraphs 15 and 18, **Jean Paul AKAYESU** committed:

COUNT 5: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 6: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

Counts 7-8

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation the murders of 8 detained men in front of the *bureau communal* as described in paragraph 19, **Jean Paul AKAYESU** committed:

COUNT 7: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 8: **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

Counts 9-10

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the murders of 5 teachers in front of the *bureau communal* as described in paragraph 20, **Jean Paul AKAYESU** committed:

COUNT 9: **CRIMES AGAINST HUMANITY** (murder) punishable by Article 3(a) of the Statute of the Tribunal; and

COUNT 10 **VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

Counts 11-12

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the beatings of U, V, W, X, Y and Z as described in paragraphs 16, 17, 21, 22 and 23, **Jean Paul AKAYESU** committed:

COUNT 11:**CRIMES AGAINST HUMANITY** (torture), punishable by Article 3(f) of the Statute of the Tribunal; and

COUNT 12:**VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS**, as incorporated by Article 4(a)(cruel treatment) of the Statute of the Tribunal.

In addition and/or in the alternative to his individual responsibility under Article 6(1) of the Statute of the Tribunal, the accused, is individually responsible under Article 6(3) of the Statute of the Tribunal for the crimes alleged in Counts 13 through 15. Under Article 6(3), an individual is criminally responsible as a superior for acts of a subordinate if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Counts 13-15

(Crimes Against Humanity)

(Violations of Article 3 common to the Geneva Conventions)

By his acts in relation to the events at the bureau communal, as described in paragraphs 12(A) and 12(B), **Jean Paul AKAYESU** committed:

COUNT 13:**CRIMES AGAINST HUMANITY** (rape), punishable by Article 3(g) of the Statute of the Tribunal; and

COUNT 14: **CRIMES AGAINST HUMANITY**, (other inhumane acts), punishable by Article 3(i) of the Statute of the Tribunal; and

COUNT 15:**VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ARTICLE 4(2)(e) OF ADDITIONAL PROTOCOL 2**, as incorporated by Article 4(e)(outrages upon personal dignity, in particular rape, degrading and humiliating treatment and indecent assault) of the Statute of the Tribunal.

(Signed)

Louise Arbour

Prosecutor

1.3. Jurisdiction of the Tribunal

7. The subject-matter jurisdiction of the ICTR is set out in Articles 2,3 and 4 of the Statute:

Article 2: Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. 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.

3. The following acts shall be punishable:

a) Genocide;
b) Conspiracy to commit genocide;
c) Direct and public incitement to commit genocide;
d) Attempt to commit genocide;
e) Complicity in genocide.

Article 3: Crimes against Humanity

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.

Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
b) Collective punishments;
c) Taking of hostages;

d) Acts of terrorism;

e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

f) Pillage;

g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples;

h) Threats to commit any of the foregoing acts.

8. In addition, Article 6 states the principle of individual criminal responsibility:

Article 6: Individual Criminal Responsibility

1. 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.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal

responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

1.4. The Trial

1.4.1. Procedural Background

9. Jean-Paul Akayesu was arrested in Zambia on 10 October 1995. On 22 November 1995, the Prosecutor of the Tribunal, pursuant to Rule 40 of the Rules, requested the Zambian authorities to keep Akayesu in detention for a period of 90 days, while awaiting the completion of the investigation.

10. On 13 February 1996, the then Prosecutor, Richard Goldstone[8], submitted an Indictment against Akayesu, which was subsequently amended on 17 June 1997. It contains a total of 15 counts covering genocide, crimes against humanity and violations of Article 3 Common to the 1949 Geneva Conventions and Additional Protocol II of 1977 thereto. More specifically, Akayesu was individually charged with genocide, complicity in genocide, direct and public incitement to commit genocide, extermination, murder, torture, cruel treatment, rape, other inhumane acts and outrages upon personal dignity, which he allegedly committed in Taba commune of which he was the bourgmestre at the time of the alleged acts.

11. The Indictment was confirmed and an arrest warrant, accompanied by an order for continued detention, was issued by Judge William H. Sekule on 16 February 1996. The following week, the Indictment was submitted by the Registrar to the Zambian authorities, to be served upon the Accused. Akayesu was transferred to the Detention Facilities of the Tribunal in Arusha on 26 May 1996, where he is still detained awaiting judgment.

12. The initial appearance of the Accused, pursuant to Rule 62 of the Rules, took place on 30 May 1996 in the presence of his counsel before Trial Chamber I, composed of Judge Laïty Kama, presiding, Judge Lennart Aspegren and Judge Navanethem Pillay. The prosecution team,

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8 On 1 October 1996, Louise Arbour succeeded Richard Goldstone as Prosecutor of the Tribunal.

led by Honoré Rakotomanana[9], Deputy Prosecutor of the Tribunal, was composed of Yacob Haile-Mariam, Mohamed Chande Othman and Pierre-Richard Prosper[10]. The Accused pleaded not guilty to all the counts against him. On the same date, the Chamber ordered the continued detention of the Accused while awaiting his trial[11]. Simultaneous interpretation in French and English, and where necessary Kinyarwanda, was provided at the hearings.

13. The Accused having been found indigent by the Tribunal, in accordance with the provisions of the Directive on Assignment of Defence Counsel[12], the Registrar of the Tribunal assigned Johan Scheers as defence counsel for the Accused and counsel's fees were paid by the Tribunal. By a decision of 31 October 1996, the Chamber directed the Registrar of the Tribunal to withdraw the assignment of Johan Scheers as defence counsel for Akayesu, pursuant to Article 19 of the Directive on Assignment of Defence Counsel, and to immediately assign Michael Karnavas as the new defence counsel for the Accused. In the same decision, the Chamber postponed the trial until 9 January 1997, at the request of the Accused[13]. On 20 November 1996, the Chamber granted a request for a further change of defence counsel filed by the Accused on 11 November 1996, pursuant to Article 19 of the Directive. On 9 January 1997, the Registrar assigned Nicolas Tiangaye and Patrice Monthé, who served as defence counsel for the Accused until the end of the trial. On 16 January 1997, the Chamber rejected a third motion for change

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9 On 26 April 1997, Bernard Acho Muna succeeded Honoré Rakotomanana as Deputy Prosecutor of the Tribunal.

10 Besides the people already mentioned, the Prosecutor was represented during the trial by Patricia Viseur Sellers, James K. Stewart, Luc Côté, Sara Dareshori and Rosette Muzigo-Morrison.

11 Decision: Order for Continued Detention Awaiting Trial, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 30 May 1996.

12 ICTR/2/L.2

13 Decision Concerning a Replacement of an Assigned Counsel and Postponement of the Trial, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 31 October 1996

of defence counsel filed by the Accused on 9 January 1997[14]. The decision of 16 January 1997 also put an end to the interim measures adopted by the Chamber on 13 January 1997; temporarily authorizing the Accused to cross-examine the witnesses himself, along with his two counsel.

14. On 27 May 1996, the then counsel for the Accused, Johan Scheers, filed a preliminary motion under Rule 73 of the Rules[15], requesting the Chamber to (i) rule that the criminal proceedings were inadmissible for reasons of flagrant violations of the rights of Defence; (ii) order the hearing of witnesses and that Defence investigations be conducted; (iii) exclude from the proceedings, all indirect witnesses to the acts for which the Accused is charged; and (iv) order the release of the Accused pending the trial on the merits. During the oral presentation of the motion at the hearing of 26 September 1996, however, the Defence raised issues beyond the framework of the said motion by advancing complaints regarding, on the one hand, the detention conditions of the Accused during his imprisonment in Zambia and, on the other hand, the delay by the Prosecutor in disclosing the Indictment and supporting material. In its decision of 27 September 1996[16], the Chamber rejected the entire motion on the grounds that the objections raised by the Defence and the manner in which they were presented, did not provide sufficient basis for the Chamber to rule on the merits under Rule 73 of the Rules. That same day, the Chamber adjourned the trial at the request of the Defence and set 31 October 1996[17] as the official opening date of the trial on the merits.

15. On 29 October 1996, the Chamber granted the Prosecutor's motion of 23 October 1996 for the transfer of a witness detained in Rwanda in order for him to testify before the Tribunal.

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14 Decision on the Request of the Accused for Replacement of Assigned Counsel, *The Prosecutor Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 16 January 1997.

15 As adopted on 5 July 1995

16 Decision on the Preliminary Motion Submitted by the Defence on the Form of the Indictment and Exclusion of Evidence. *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 27 September 1996.

17 Decision on Postponement of the Trial, *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 27 September 1996. However, at the hearing of 31 October, the beginning of the trial was postponed to 9 January 1997 at the request of the Defence.

A similar motion by the Defence, filed on 30 October 1997, was granted by the Chamber, it being ordered that three witnesses then detained in Rwanda be transferred to the Tribunal's Detention Facilities for a period of not more than two months so as to testify in the trial[18]. However, two subsequent requests by the Defence for the transfer and appearance in court of five and thirteen witnesses detained in Rwanda respectively were rejected, on the basis, *inter alia*, that the Defence was unable to demonstrate how the appearance of each witness was undoubtedly material in the discovery of the truth or that the conditions stipulated in Rule 90*bis* (b) of the Rules had been met[19].

16. Besides the above-mentioned motions, several pre-trial motions were filed by the Defence, including a motion for the defendant to sit at counsel table during trial, a motion for an expedited *in camera* hearing regarding Prosecutorial misconduct and a motion to compel the Prosecutor to conduct a fair and just investigation. These motions were not granted.

17. The trial of the Accused on the merits opened on 9 January 1997 before Trial Chamber I, composed of Judge Laïty Kama, presiding, Judge Lennart Aspegren and Judge Navanethem Pillay. Pursuant to Rule 84 of the Rules, Honoré Rakotomanana and Yacob Haile-Mariam made the opening statement for the Prosecutor, which was followed by the opening statement for the Defence, made by Nicolas Tiangaye and Patrice Monthé. During the initial phase of the trial which took place over 26 trial days until 24 May 1997, 22 witnesses, including five expert witnesses, testified for the Prosecutor. Subsequent to the presentation of the Prosecutor's evidence, an *in camera* status conference was held after which the Chamber, at the request of the Defence, adjourned the trial until 29 September 1997.

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18 Order for Temporary Transfer of Three Detained Witnesses Pursuant to Rule 90*bis* of the Rules of Procedure and Evidence, *The Prosecutor v. Jean-Paul Akayesu,* Case NO. ICTR-96-4-T, Trial Chamber I, 31 October 1997

19 Decison on a Motion for the Appearance and Protection of Witnesses Called by the Defence, *The Prosecutor v. Jean-Paul Akayesu*, Case NO. ICTR-96-4-T, Trial Chamber I, 9 February 1998, & Decision on the Motion for the Transfer and Protection of Defence Witnesses, *The Prosecutor v. Jean-Paul Akayesu*, Case NO. ICTR-96-4-T, Trial Chamber I, 26 February 1998

18. All Prosecutor and Defence eye-witnesses requiring protection benefited from measures guaranteeing the confidentiality of their testimony[20]. No information which could in any way identify the witnesses was given. During the hearings, letters of the alphabet were used as pseudonyms to refer to protected witnesses and screens isolated the said witnesses from the public, but not from the Accused and his counsel. One Defence witness was heard *in camera*.

19. On 13 January 1997, as an interim measure pending a Chamber decision on a request by the Accused for the replacement of his counsel, Akayesu was authorized by the Chamber to cross-examine, along with his assigned counsel, prosecution witnesses. The pertinent decision was rendered on 16 January 1997[21], whereby the request for replacement of Counsel was dismissed and the interim measure terminated.

20. Most of the Rwandan witnesses spoke in Kinyarwanda and their testimonies were interpreted into the two working languages of the Tribunal (French and English). By Decision of 9 March 1998, the Chamber dismissed a Defence motion, based on Rule 91 of the Rules, to direct the Prosecutor to investigate an alleged false testimony by prosecution witness "R". The Chamber found that for the Defence to raise doubts as to the reliability of statements made by a witness, was not by itself sufficient to establish strong grounds for believing that the witness may have knowingly and wilfully given false testimony[22].

21. During the hearing of 23 January 1997, the Chamber requested the Prosecutor, in view of the exceptional nature of the offences, to submit all written witness statements already made

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20 Decision on the preliminary motion submitted by the Prosecutor for protective measures for witnesses, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 27 September 1996.

21 *Ibid 14*

22 Oral decision. *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 9 March 1998, written decision issued on 24 March 1998.

available by her to the Defence. The Prosecutor objected to the request; hence the Chamber, by a decision rendered on 28 January 1997, pursuant to Rules 89(A), 89(C) and 98 of the Rules, ordered the Prosecutor to submit all available written witness statements to the Chamber in the case and that all such statements to which reference had been made by either the Prosecutor or the Defence shall be admitted as evidence and form part of the record. However, this was subject to the caveat that disclosure of all the written statements did not necessarily entail their admissibility as evidence[23].

22. On 4 February 1997, the Prosecutor, who had not yet complied with the order of 28 January 1997, filed a motion requesting the Chamber to reconsider and rescind the said order. The Prosecutor submitted, *inter alia*, that the order of 28 January 1997 represented an unjustified change in the established order for production of evidence and thus did not satisfy the provisions of Rule 85, that Rule 98 simply allows the Chamber to order the production of specific additional evidence and not the disclosure of all the evidence, that it involves the Chamber in the process of disclosure and, in actual fact, circumvents Rule 66 (A), and that the order is prejudicial to the parties. On 6 march 1997, the Chamber declared the Prosecutor's motion groundless, and expressed surprise, in the circumstances, at receiving a motion asking it to reconsider and rescind its order, instead of a motion for clarification. The Chamber specified in its decision that the order of 28 January 1997 could only be interpreted with respect to the witness statements already communicated to the Defence[24]. On 16 April 1997, the Prosecutor filed a notice of intent to comply with the Chamber's order to submit witness statements.

23. As stated above, 24 May 1997 marked the end of the first part of the trial of the Accused with the testimony of the last prosecution witness. However, on 16 June 1997, the Prosecutor submitted a request to bring an expedited oral motion before the Chamber seeking an amendment

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23 Decision by the Tribunal on its Request to the Prosecutor to Submit the Written Witness Statements, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 28 January 1997.

24 Decision on the Prosecutor's Motion to Reconsider and Rescind the Order of 18 January 1997, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 6 March 1997.

of the Indictment. During the hearing held to that end on 17 June 1997, the Prosecutor sought leave to add three further Counts, namely, Count 13: rape, a Crime Against Humanity, punishable under Article 3 (g) of the Statute, Count 14: inhumane acts, a Crime Against Humanity, punishable under Article 3 (i) of the Statute, and Count 15: outrages on personal dignity, notably rape, degrading and humiliating treatment and indecent assault, a Violation of Article 3 Common to the Geneva Conventions and of Article 4(2)(e) of Additional Protocol II, as incorporated in Article 4(e) of the Statute. The Chamber granted leave to the Prosecutor to amend the Indictment and postponed the date for resumption of the trial to 23 October 1997[25].

24. The second phase of the trial started on 23 October 1997 with the initial appearance of Akayesu for the new counts in a public session before the Chamber. The Accused pleaded not guilty to each of the new counts. The Prosecutor then proceeded to present six new witnesses, including an investigator with the Office of the Prosecutor. In all, the Prosecutor put 28 witnesses on the stand over 31 trial days. The Defence, for its part, presented its evidence over the course of 12 trial days between 4 November 1997 and 13 March 1998. It called 13 witnesses, including the Accused, to the stand. A total of 155 exhibits were submitted during the trial.

25. During the second phase of the trial, the Defence requested and obtained the issuance of a subpoena for Major-General Roméo Dallaire, former force Commander of UNAMIR (United Nations Assistance Mission in Rwanda), whose immunity had been partially lifted by the UN Secretary-General, to appear as a witness for the Defence[26]. The Chamber also granted leave to a representative of the United Nations Secretariat to appear as an Amicus Curiae to make a statement on the lifting of the immunity Major-General Roméo Dallaire enjoys by virtue of his position as former force Commander of UNAMIR[27].

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25 Leave to amend the Indictment, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 17 June 1997.

26 Decision on the Motion to Subpoena a Witness. *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-94-T, Trial Chamber I, 19 November 1997.

27 Order Granting Leave for Amicus Curiae to Appear, *The Prosecutor v. Jean-Paul Akayesu*, Trial

26. However, the Chamber did not grant the Defence motion for the issuance of a subpoena for two persons accused before the Tribunal to appear as Defence witnesses, on the grounds that their fundamental rights, as recognized by Article 20(4)(g) of the Statute, would perhaps be violated, and that there would be a risk that their appearance as witnesses in the case could cause prejudice to them[28]. A further Defence motion for the appearance of another accused as an expert witness was similarly dismissed[29]. The Chamber held therein that the impartiality of the potential expert witness, who is accused by the Tribunal for crimes related to those with which Akayesu is charged, could not be assured and consequently that he did not fulfil the requisite conditions for appearing as an expert witness. Furthermore, the Chamber found that for this particular Accused to be compelled to appear as an expert witness in the case would be prejudicial to him and could possibly violate his fundamental rights, as recognized by the provisions of Article 20(4)(g) of the Statute and Article 14(3)(g) of the International Covenant of Civil and Political Rights of 1966.

27. The Chamber dismissed a Defence motion for a site visit and the conduct of a forensic analysis of the remains of three alleged victims. The Chamber found that a new forensic analysis would not be appropriate nor, in any case, instrumental in the discovery of the truth, on the basis, *inter alia*, that a number of the purported mass graves, including, without a doubt, those supposedly in the vicinity of the Taba 'bureau communal' had been subject of previous exhumations. Moreover, the Chamber felt that the arguments of the Defence Counsel in support of the motion were pertinent mainly to evaluating the credibility of certain witness statements

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Chamber I, Case No. ICTR-96-4-T, 12 February 1998.

28 Oral decision on a Motion for Summonses and Protection of Witnesses Called by the Defence, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 17 February 1998, written decision 23 February 1998.

29 Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 9 March 1998.

and not to showing the necessity for an exhumation and forensic analysis, as requested[30].

28. None of the parties presented witnesses for rebuttal purposes. The Accused testified in his own defence on 12 March 1998 and was cross-examined the next day by the Prosecutor. The latter presented her final arguments on 19 and 23 March, and the Defence presented its closing arguments on 26 March 1998. The trial on the merits was held over a period of 60 days of hearings, since 9 January 1997. The case was adjourned on 26 March 1998 for deliberation on the Judgment by the Chamber.

1.4.2. The Accused's line of defence

29. The Accused has pleaded not guilty to all counts of the Indictment, both at his initial appearance, held on 30 May 1996, and at the hearing of 23 October 1997 when he pleaded not guilty to each of the new counts which had been added to the Indictment when it was amended on 17 June 1997.

30. In essence, the Defence case - insofar as the Chamber has been able to establish it - is that the Accused did not commit, order or participate in any of the killings, beatings or acts of sexual violence alleged in the Indictment. The Defence concedes that a genocide occurred in Rwanda and that massacres of Tutsi took place in Taba Commune, but it argues that the Accused was helpless to prevent them, being outnumbered and overpowered by one Silas Kubwimana and the Interahamwe. The Defence pointed out that, according to prosecution witness R, Akayesu had been so harassed by the Interahamwe that at one point he had had to flee Taba commune. Once the massacres had become widespread, the Accused was denuded of all authority and lacked the means to stop the killings.

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30 Oral decision on the Defence Motion Requesting an Inspection of the Site and the Conduct of a Forensic Analysis, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, 17 February 1998, written decision 3 March 1998.

31. The Defence claims that the Chamber should not require the Accused to be a hero, to have laid down his life - as, for example, did the bourgmestre of Mugina - in a futile attempt to prevent killings and beatings. The Defence alluded to the fact that General Dallaire, in charge of UNAMIR and 2,500 troops, was unable to prevent the genocide. How, then, was Akayesu, with 10 communal policemen at his disposal, to fare any better? Moreover, the Defence argue, no bourgmestre in the whole of Rwanda was able to prevent the massacres in his Commune, no matter how willing he was to do so.

32. As for acts of sexual violence, the Defence case is somewhat different from that for killings and beatings, in that, whereas for the latter the Defence does not contest that there were killings and beatings, it does deny that there were acts of sexual violence committed, at least at the Bureau Communal. During his testimony the Accused emphatically denied that any rapes had taken place at the Bureau Communal, even when he was not there. The Chamber notes the Accused's emphatic denial of facts which are not entirely within his knowledge.

33. As general remarks, the Defence alluded to the fragility of human testimony as opposed to documentary evidence, and specifically referred to the evidence of Dr. Mathias Ruzindana, who had testified about problems in relying on eye-witness accounts of Rwandans[31]. The Defence also raised problems associated with alleged "syndicates of informers", in which groups of Rwandans supposedly collaborated to concoct testimony against a person for revenge or other motives. This allegation is specifically dealt with below.

34. As regards the Accused, the Defence pointed out that, though the Prosecutor admitted that the Accused had opposed massacres before 18 April 1994, the Prosecutor could not demonstrate that he was a "genocidal ideologue", since one did not adopt the ideology of genocide overnight. Hence, the Defence argued, he could not be convicted of genocide.

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[31] See 'Evidentiary Matters'.

35. In general, the Defence argued that the Accused was a "scapegoat", who found himself Accused before the Chamber only because he was a Hutu and a bourgmestre at the time of the massacres.

36. Turning to the specific allegations contained in the Indictment, the Defence case is that there was no change in Akayesu's attitude or behaviour before and after the Murambi meeting of 18 April 1998. Both before and after, he attempted to save Tutsi lives. Witness DBB testified that the Accused gave a Tutsi woman (witness DEEX) a laissez-passer, although he could not say whether the accused knew at the time that the woman was a Tutsi or not. Witness DEEX confirmed that she was given a laissez-passer by the accused. Witnesses DIX and DJX also heard that Akayesu had saved Tutsi lives.

37. The Defence also challenged the premise that the Murambi meeting of 18 April 1994 was the key event which led to a complete change in the accused's behaviour. Since, the Defence argued, it had not been shown that orders for the extermination of the Tutsi were given at the Murambi meeting by the interim government, it follows that the accused could not have returned to his Commune a changed man because of those non-existent orders. The Defence pointed out that only one prosecution witness and one Defence witness had attended the Murambi meeting, and that neither testified that an explicit message to kill the Tutsi had been given.

38. Regarding the Gishyeshye meeting of 19 April 1994, the Defence argued that the accused was forced by the Interahamwe to read a document which allegedly mentioned the names of RPF accomplices, but that the accused tried to dissuade the population from being incited by the document, arguing that the mere appearance of names on a list did not mean that the persons named were accomplices of the RPF. The Defence also noted further "contradictions" in the accounts given by witnesses of the Gishyeshye meeting.

39. As regards the killings of the eight Runda refugees and the five teachers, the Defence pointed out that the only witness to these killings was witness K, and that the accused had, at the

time of his interview by the OTP in Zambia, cited witness K as a possible *Defence* witness. It begged credulity that the accused would contemplate calling as a Defence witness a person whom he knew had seen him order such killings.

40. Concerning the killings of the Karangwa brothers, the Defence argued that there was such uncertainty as to how they were killed, and by what instruments, that a conviction could not stand in the absence of these material averments. It was because of these inconsistencies and uncertainties that the Defence had asked for an exhumation of the bodies, which had not been granted.

41. The charges of beatings the Defence contested on the grounds that no medical examination had been conducted on the alleged victims to verify that the injuries which they claimed were sustained as a result of the accused's actions could genuinely be so attributed.

42. The charges of offences of sexual violence, the Defence argued, were added under the pressure of public opinion and were not credibly supported by the evidence. Witness J's account, for example, of living in a tree for one week after her family were killed and her sister raped, while several months pregnant, was simply not credible but rather the product of fantasy the Defence claimed - "of interest to psychiatrists, but not justice".[32]

43. The Chamber has considered the Defence case extremely carefully and it will be treated here in the course of making the various factual and legal findings. There is one aspect which, however, should be dealt with here.

Putting the case to a witness

44. In the Defence closing argument, Mr. Nicholas Tiangaye, made the suggestion that some, if not all, of the Prosecution witnesses who had testified against Jean-Paul Akayesu did so

[32] Hearing of 26 March 1998, p.61 (French version)

because they were colluding in a "syndicate of informers" which would denounce a particular individual for political reasons or in order to take over his property. In this connection, Mr. Tiangaye quoted Rene Degni-Segui, the Special Rapporteur of the Commission on Human Rights on Rwanda, who recounted a story of a demonstrably innocent Rwandan who had been denounced by 15 witnesses as a participant in the genocide. Mr. Tiangaye concluded thus:

> "... there were cases of calumny which existed and which enabled people to denounce others regarding their participation in genocide in order to be able to take over their property."

Mr. Tiangaye then went on to say:

> "So, what do we do, Mr. President, ladies and gentlemen, when witnesses come to tell lies before the Chamber, what do we do?"[33]

45. To the extent that Defence counsel invites the Chamber to disbelieve the testimony of Prosecution witnesses because they *may* belong to a syndicate of informers or that they *may* be denouncing Akayesu in order to take over his property, and that they have therefore lied before the Chamber, it is to be noted this is a very serious allegation of false testimony or perjury, which is a criminal offence. Indeed, Defence counsel during the course of the trial made a motion for a certain prosecution witness to be investigated for false testimony; which motion was rejected in a Decision of this Trial Chamber in which it gave its reasons.[34] That matter does not concern the Chamber here. What *is* of concern is whether the Chamber should give any weight, in its deliberations, to the possibility raised by Defence counsel that prosecution witnesses may have been lying for one of the above-mentioned motives.

46. The Chamber holds that, as a blanket allegation to undermine the credibility of

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[33] Transcript of hearing of 26 March 1998, p.17.

[34] See 'Procedural Background' as relates to Decision on False Testimony.

prosecution witnesses, this allegation can carry no weight, for two reasons. First, an attack on credibility which is not particularised with respect to individual witnesses is no attack at all on *those witnesses'* credibility; it is merely a generalised and unsubstantiated suspicion. Doubt can only arise where the criteria for doubt are fulfilled. To state that all prosecution witnesses should be disbelieved because some Rwandan witnesses elsewhere have lied is similar to saying, "some money is counterfeit, therefore all money might be counterfeit". If, and this is the second point, the Defence wish to challenge prosecution witnesses as members of an informer's syndicate, or to allege that they are lying in order to be able to confiscate the accused's property, then the Defence must *lay the foundations for that challenge and put the challenge to the witness in question during cross-examination.* This is both a matter of practicality and of principle. The practical matter is this: if the Defence does put to a witness the allegation that he is lying because he wishes to take the accused's property, then this may elicit a convincing admission or rebuttal. The witness may break down and reveal, by his words or demeanour, that he has indeed been lying for that purpose; alternatively, he may offer a convincing rebuttal, for example, by pointing out that the accused has no property which the witness could wish to misappropriate. Either way, the matter might be resolved. To never put the crucial question to the witness is to deprive the Chamber of such a possible resolution. As a matter of principle, it is only fair to a witness, whom the Defence wishes to accuse of lying, to give him or her an opportunity to hear that allegation and to respond to it. This is a rule in Common law,[35] but it is also simply a matter of justice and fairness to victims and witnesses, principles recognised in all legal systems throughout the world.

47. It is to be noted that during the trial the Defence did not put, nor even suggest, to a single prosecution witness that he or she was lying because he or she had been drawn into a syndicate of informers and instructed as to how to testify against the accused, or that the witness was lying because he or she wished to take the accused's property. In these circumstances, Defence counsel's attempt in his closing arguments to tar all prosecution witnesses with the same broad

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[35] See Adrian Keane, The Modern Law of Evidence, (Butterworths: 1989), p. 120: "A cross-examiner who wishes to suggest to the jury that the witness is not speaking the truth on a particular matter must lay a proper foundation by putting that matter to the witness so that he has an opportunity of giving any explanation which is open to him", noting, however, that this is not a "hard and fast" rule.

brush of suspicion cannot be accepted by the Chamber. Thus the credibility of each witness must be assessed on its merits, taking into account the witness's demeanour and the consistency and credibility or otherwise of the answers given by him or her under oath.

1.5. The Accused and his functions in Taba (paragraphs 3-4 of the Indictment)

48. Paragraphs 3 and 4 of the Indictment appear under the heading, "the Accused". Taking these paragraphs in turn, paragraph 3 reads as follows:

> The Accused
>
> 3. **Jean Paul AKAYESU**, born in 1953 in Murehe sector, Taba commune, served as bourgmestre of that commune from April 1993 until June 1994. Prior to his appointment as bourgmestre, he was a teacher and school inspector in Taba.

49. The Chamber confirms paragraph 3, which is common cause between the Prosecution and the Defence. On the basis of the evidence presented at trial, the Chamber finds the following facts have been established with regard to the Accused generally.

50. The Accused, Akayesu was born in 1953 in Murehe sector, Taba commune in Rwanda, where he also grew up. He was an active athlete in Taba and a member of the local football team. In 1978 he married a local woman from the same commune, whom he had then known for ten years. They are still married and have five children together.

51. Before being appointed bourgmestre in 1993, the Accused served as a teacher and was later promoted to Primary School Inspector in Taba. In this capacity he was in charge of inspecting the education in the commune and acted as head of the teachers. He would occasionally fill in as a substitute teacher and was popular among pupils and students of different educational levels in the commune. Generally speaking, the Accused was a well known and popular figure in the local community.

52. Akayesu became politically active within the commune in 1991 and on 1 July of the same year, following the transition into multipartyism, he was one of the signatories to the statute and a founding member of the new political party R called,Mouvement Démocratique Républicain MDR Politically the goal of the MDR was not to be an extension of the traditional MDR Parmehutu, but rather an updated version thereof, diametrically opposed to the MRND. The MDR focused on pointing out the errors of the MRND such as delays in the provision of infrastructure, roads, schools, health facilities, lack of electricity, etc.. Eventually, Akayesu was elected local president of the MDR in Taba commune. A sizeable proportion of the population in Taba became members of the MDR, and as the party grew, a certain animosity between members of the MDR and the MRND began to appear, resulting in several acts of violence. The other parties within the Commune, the Parti Social Démocratique, PSD and the Parti Libéral, PL cooperated with the MDR but, like the MDR, both parties experienced similar difficulties in cooperating with the MRND.

53. On a personal level, Akayesu was considered a man of high morals, intelligence and integrity, possessing the qualities of a leader, who appeared to have the trust of the local community. These abilities were in all likelihood the main reasons why different groups in the commune, among others the leaders of the MDR, communal representatives and religious leaders, considered Akayesu a suitable candidate for bourgmestre in Taba for the 1993 elections. The Accused himself admits to having been reluctant to run for the post of bourgmestre, but was pressured into candidacy by the aforementioned groups, according to several witnesses, including Akayesu himself.

54. In April 1993, Akayesu was elected bourgmestre after an election contested by four candidates. He then served as bourgmestre of Taba Commune from April 1993 until June 1994. According to the Accused, the duties of a bourgmestre were diverse. In short, he was in charge of the total life of the commune in terms of the economy, infrastructure, markets, medical care and the overall social life.Traditionally the role of the bourgmestre had always been to act as the representative of the President in the commune. Therefore the arrival of multipartyism did not particularly change the considerable amount of unofficial powers conferred upon the bourgmestre

by the people in the commune. The bourgmestre was the leader of the commune and commonly treated with great respect and deference by the population.

55. In Taba Commune, Akayesu played a major role in leading the people. He would give advice on various matters concerning security, economics or on the social well-being of the citizens. His advice would generally be followed and he was considered a father-figure or parent of the commune, to whom people would also come for informal advice. After a period of economic difficulties in Taba Commune due to corruption under the previous administration, a clear difference could be detected when Akayesu took office, as people would now settle their debts trusting the new administration. According to those of his colleagues appearing as witnesses before the Chamber, Akayesu was performing his task as bourgmestre well, prior to the period which is the subject of the Indictment.

56. Paragraph 4 of the Indictment reads as follows:

> 4. As bourgmestre, **Jean Paul AKAYESU** was charged with the performance of executive functions and the maintenance of public order within his commune, subject to the authority of the prefect. He had exclusive control over the communal police, as well as any gendarmes put at the disposition of the commune. He was responsible for the execution of laws and regulations and the administration of justice, also subject only to the prefect's authority.

57. The Chamber finds it necessary to explore in some detail the powers of the bourgmestre and, in particular, to distinguish between the *de facto* and *de jure* powers of a bourgmestre. In so doing, the Chamber will also deal with the allegation in paragraph 2 of the Indictment which reads, "In Rwanda, the bourgmestre is the most powerful figure in the commune. His *de facto* authority in the area is significantly greater than that which is conferred upon him *de jure*".

Background

58. A commune is governed by a bourgmestre in conjunction with the communal council which is composed of representatives of the different sectors in the commune. Below the sectors are the cellules and at the lowest level are the units of ten households. The latter two are really party structures, rather than administrative subdivisions.

59. Before the advent of multi-partyism, appointment and removal of a bourgmestre was the prerogative of the State President, political loyalty being the criterion. The bourgmestre was the representative of the central government in the commune but embodied at the same time the commune as a semi-autonomous unit. In that capacity, he would, for example, arrange contracts or represent the commune in court. He also had the authority to allocate the resources of the commune, including the land. He had the sole responsibility and authority over the communal police and could call upon the national gendarmerie to restore order. In addition, he was a judicial officer. Moreover, as the trusted representative of the President, he had a series of unofficial powers and duties, to such an extent that he was the central person in the daily life of the ordinary people. Citizens needed his protection in order to function in society. The bourgmestre held considerable sway over the communal council. Although an elected body, the council was less a representative body of the interest of the population than it was simply a channel for passing orders down to the people.

60. The introduction of multipartyism in 1991 had its effect on the local and national power structures from 1992 onwards. The MRND had to sacrifice the advantages which it enjoyed when it was the Siamese twin of the administration. A number of bourgmestres were removed on the advice of a pluralistic evaluation commission. The subsequent local elections were a clear victory for the opposition. Other bourgmestres were simply ousted by militia of an opposition party. Since then, the bourgmestres were no longer necessarily the representatives of the State President or of the central authority. Instead, they became primarily the representatives of their political party at the local level. But in any case, they would still remain the most important local representatives of power at the centre.

***De jure* powers**

61. The office of bourgmestre in Rwanda is similar to the office of maire in France or bourgmestre in Belgium[36]. It is an executive civilian position in the territorial administrative subdivision of commune. The primary function of the bourgmestre is to execute the laws adopted by the communal legislature, i.e., the elected communal council[37]. He "embodies the communal authority"[38].

The communal administration

62. The relationship between a bourgmestre and the communal workforce is spelt out in the body of law which is called administrative law in Civil Law countries (as opposed to labour law which regulates employment in the private sector). The bourgmestre has the power to hire (appoint) and fire (remove) communal employees after advice from the communal council[39]. The President of the Republic decrees by law the legal status (rights and duties) of the communal personnel. Although the legal situation (administrative law) may be very different from the private sector (labour law), it is very much a relationship of employer and employee and, therefore, strictly limited to the scope of the employment.

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36 In France, Belgium and Rwanda, the bourgmestre has basically a threefold function: (1) head of the communal administration; (2) officier de l'état civil; and (3) maintaining and/or restoring the peace.

37 Loi du 23 novembre 1963 sur l'organisation communale (reprinted in Codes et Lois du Rwanda, Reyntjens, F. et Gorus, J. (eds.), 1995).

Article 58: Le bourgmestre est, d'une manière générale, chargé d'exécuter les décisions du Conseil communal[...]

However, in case of urgency, the bourgmestre can issue police regulations and impose sanctions for violations (article 61). Furthermore, he always has the power to arrest, for a maximum of 48 hours, any person who breaches the peace (article 62).

38 Article 56: Le bourgmestre est à la foi représentant du pouvoir centrale dans la commune et personnification de l'autorité communale.

39 Article 93: Le pouvoir d'engagement, de suspension et de révocation appartient au bourgmestre après avis du Conseil communal conformément aux instructions du Ministre de l'intérieur.

The communal police

63. The bourgmestre, without being a part of the communal police, has ultimate authority over it and is entirely responsible for its organisation, functioning and control.[40]

64. The communal police is a civilian police whose members do not fall under the military penal code. Sanctions and procedures for sanctions are the subject of administrative law. A bourgmestre has only disciplinary jurisdiction (e.g. blame, suspension) over his communal police.

65. Although the law states that only the bourgmestre has authority over the police[41], he is, however, not its commander. Article 108 of the Loi sur l'organisation communale states, "Le commandement de la Police communale est assuré par un brigadier placé sous l'autorité du bourgmestre". Therefore, the relationship between the bourgmestre and the communal police is comparable to the relationship between a Minister of Defence and the High Command of the armed forces.

66. In case of public disturbances, the prefect can assume direct control over the communal

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[40] Loi sur la police communale du 4 octobre 1977 (arrêté présidentiel n° 285/03) (reprinted in Codes et Lois du Rwanda, Reyntjens, F. et Gorus, J. (eds.), 1995)

Article 1: La Police communale est une force constituée au niveau de la commune. Elle est placée sous l'autorité du bourgmestre qui l'utilise dans sa tâche de maintien et de rétablissement de l'ordre public et d'exécution des lois et des règlements.

Article 4: Le bourgmestre assume l'entière responsabilité de l'organisation, du fonctionnement et du contrôle du corps de la Police communale. Il est aidé dans cette tâche par le brigadier.

[41] Article 104 of the *Loi sur l'organisation communale*: Le bourgmestre a seul autorité sur les agents de la Police communale [...]

police.[42]

Gendarmerie Nationale

67. Paragraph 4 of the Indictment states that Akayesu as a bourgmestre had exclusive control over the communal police as well as any gendarmes put at the disposal of the commune.

68. The Gendarmerie Nationale is a military force whose task it is to maintain public order when it is requested to do so[43].

69. It is the prefect, not the bourgmestre who can request the intervention of the Gendarmerie[44]. The Gendarmes put at the disposal of the commune at the request of the prefect operate under the bourgmestre's authority[45]. It is far from clear, however, that in such circumstances a bourgmestre would have command authority over a military force.[46]

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[42] Article 104 [...] Toutefois, en cas de calamité publique ou lorsque des troubles menacent d'éclater ou ont éclaté, le préfet peut réquisitionner les agents de la Police communale et les placer sous son autorité directe.

[43] *Décret loi du 23 janvier 1974 sur la création de la Gendarmerie Nationale*

Article 3: La Gendarmerie Nationale est une force armée instituée pour assurer le maintien de l'ordre et de l'exécution des loi.

Article 4: Les fonctions de la Gendarmerie Nationale ont un caractère à la fois préventif et répressif. Elles se divisent en fonctions ordinaires et fonctions extraordinaires. Les fonctions ordinaires sont celles que la Gendarmerie Nationale remplit en vertu de la loi sans réquisition préalable de l'autorité.
Les fonctions extraordinaires sont celles que la Gendarmerie Nationale ne peut remplir que sur réquisition de l'autorité compétente.

[44] Article 103: [...] En outre, le préfet peut mettre à la disposition de la commune des éléments de la Police Nationale. [actuellement, il faut sans doute lire: la Gendarmerie Nationale]

[45] Article 104: Le bourgmestre a seul autorité sur les agents de la Police communale et, par délégation de préfet, sur les éléments de la Police Nationale [lire: Gendarmerie Nationale] mis à la disposition de la commune.

[46] Article 39 de la lois sur la Gendarmerie Nationale:

Powers of a bourgmestre in times of war or national emergency

70. Apart from asking the prefect to request the Gendarmerie to intervene (*supra*), there are few legal provisions on the powers of a bourgmestre in times of war or national emergency.

71. A decree of 20 October 1959 (by the Belgian authorities) on the state of emergency is apparently still on the books. It gives the bourgmestre the power, once the the state of emergency has been declared, to order the evacuation, removal and internment of persons.[47]

***De facto* powers**

72. A number of witnesses testified before the Chamber as to the *de facto* powers of the bourgmestre and there is indeed evidence to support the Prosecutor's assertion that the bourgmestre enjoyed significant *de facto* authority.

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[47] ÉTAT D'EXCEPTION - 20 octobre 1959 - Décret:

Article 1: En cas de guerre, de mobilisation en Belgique ou au Congo, de troubles ou de circonstances graves menaçant la sécurité ou l'intérêts publics, le gouverneur général peut déclarer l'état d'exception.

Article 4: Le gouverneur général, les autorités q'il désigne et leurs délégués peuvent:

(1) ordonner:

a) des perquisitions de jour et de nuit dans les domiciles;

b) l'évacution des personnes, leur éloignement, leur mise sous surveillance ou leur internement.

(2) interdire:

[...]

MESURES D'EXÉCUTION - 10 décembre 1959 - ordonnance n° 11/630

Article 1: Dans l'ensemble ou la partie du territoire déclarés en état d'exception:

a) le gouverneur de province, le commissaire de district, le premier bourgmestre, ou leurs délégués exercent les pouvoirs prévus à l'article 4 du décret sur l'état d'exception.

b) ...

73. The expert witness, Alison DesForges, testified that the bourgmestre was the most important authority for the ordinary citizens of a Commune, who in some sense exercised the powers of a chief in pre-colonial times.

74. Witness E said that the bourgmestre was considered as the "parent" of all the population whose every order would be respected. Witness S went further and stated that the people would normally follow the orders of the administrative authority, i.e. the bourgmestre, even if those orders were illegal or wrongful. Witness V said that the people could not disobey the orders of the bourgmestre.

75. On the other hand, Witness DAAX, who was the prefect of the Gitarama prefecture in which the accused was bourgmestre - and hence the Accused's hierarchical superior - testified that the bourgmestre had to work within the ambit of the law and could not exceed his *de jure* powers, and that if he did so, the prefect would intervene.

76. Witness R, himself a former bourgmestre, said that the duties and responsibilities of the bourgmestre were those prescribed and decreed by law, which the bourgmestre had to respect. The witness conceded, however, that the popularity of a bourgmestre might affect the extent to which his orders and advice were obeyed within the Commune. Witness R also admitted that, at least during the transitional period, certain bourgmestres exceeded their *de jure* powers with impunity, for example imprisoning their political rivals or embezzling from communal resources.

77. In light of the above, the Chamber finds it proved beyond a reasonable doubt that, as paragraph 4 of the Indictment states, "As bourgmestre, Jean Paul AKAYESU was charged with the performance of executive functions and the maintenance of public order within his commune, subject to the authority of the prefect". The Chamber does find it proved that "[the bourgmestre] had exclusive control over the communal police, [...][and authority over] any gendarmes put at the disposal of the commune". The Chamber does find it proved that "[the bourgmestre] was responsible for the execution of laws and regulations and the administration of justice, also subject only to the prefect's authority". The Chamber does find it proved that, "In Rwanda, the

bourgmestre is the most powerful figure in the commune. His *de facto* authority in the area is significantly greater than that which is conferred upon him *de jure*".

2. HISTORICAL CONTEXT OF THE EVENTS IN RWANDA IN 1994

78. It is the opinion of the Chamber that , in order to understand the events alleged in the Indictment, it is necessary to say, however briefly, something about the history of Rwanda, beginning from the pre-colonial period up to 1994.

79. Rwanda is a small, very hilly country in the Great Lakes region of Central Africa. Before the events of 1994, it was the most densely populated country of the African continent (7.1 million inhabitants for 26,338 square kilometres). Ninety per cent of the population lives on agriculture. Its per capita income is among the lowest in the world, mainly because of a very high population pressure on land.

80. Prior to and during colonial rule, first, under Germany, from about 1897, and then under Belgium which, after driving out Germany in 1917, was given a mandate by the League of Nations to administer it, Rwanda was a complex and an advanced monarchy. The monarch ruled the country through his official representatives drawn from the Tutsi nobility. Thus, there emerged a highly sophisticated political culture which enabled the king to communicate with the people.

81. Rwanda then, admittedly, had some eighteen clans defined primarily along lines of kinship. The terms Hutu and Tutsi were already in use but referred to individuals rather than to groups. In those days, the distinction between the Hutu and Tutsi was based on lineage rather than ethnicity. Indeed, the demarcation line was blurred: one could move from one status to another, as one became rich or poor, or even through marriage.

82. Both German and Belgian colonial authorities, if only at the outset as far as the latter are concerned, relied on an elite essentially composed of people who referred to themselves as Tutsi,

a choice which, according to Dr. Alison Desforges, was born of racial or even racist considerations. In the minds of the colonizers, the Tutsi looked more like them, because of their height and colour, and were, therefore, more intelligent and better equipped to govern.

83. In the early 1930s, Belgian authorities introduced a permanent distinction by dividing the population into three groups which they called ethnic groups, with the Hutu representing about 84% of the population, while the Tutsi (about 15%) and Twa (about 1%) accounted for the rest. In line with this division, it became mandatory for every Rwandan to carry an identity card mentioning his or her ethnicity. The Chamber notes that the reference to ethnic background on identity cards was maintained, even after Rwanda's independence and was, at last, abolished only after the tragic events the country experienced in 1994.

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

85. From the late 1940s, at the dawn of the decolonization process, the Tutsi became aware of the benefits they could derive from the privileged status conferred on them by the Belgian colonizers and the Catholic church. They then attempted to free themselves somehow from Belgian political stewardship and to emancipate the Rwandan society from the grip of the

Catholic church. The desire for independence shown by the Tutsi elite certainly caused both the Belgians and the church to shift their alliances from the Tutsi to the Hutu, a shift rendered more radical by the change in the church's philosophy after the second world war, with the arrival of young priests from a more democratic and egalitarian trend of Christianity, who sought to develop political awareness among the Tutsi- dominated Hutu majority.

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

87. In 1956, in accordance with the directives of the United Nations Trusteeship Council, Belgium organized elections on the basis of universal suffrage in order to choose new members of local organs, such as the grassroots representative Councils. With the electorate voting on strictly ethnic lines, the Hutu of course obtained an overwhelming majority and thereby became aware of their political strength. The Tutsi, who were hoping to achieve independence while still holding the reins of power, came to the realization that universal suffrage meant the end of their supremacy; hence, confrontation with the Hutu became inevitable.

88. Around 1957, the first political parties were formed and, as could be expected, they were ethnically rather than ideologically based. There were four political parties, namely the Mouvement démocratique répubicain, Parmehutu ("MDR Parmehutu"), which clearly defined

itself as the Hutu grassroots movement; the Union Nationale Rwandaise ("UNAR"), the party of Tutsi monarchists; and, between the two extremes, the two others, Aprosoma, predominantly Hutu, and the Rassemblement démocratique rwandais ("RADER"), which brought together moderates from the Tutsi and Hutu elite.

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

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

91. The dissensions that soon surfaced among the ruling Hutu led the regime to strengthen the primacy of the MDR Parmehutu party over all sectors of public life and institutions, thereby making it the *de facto* sole party. This consolidated the authority of President Grégoire Kayibanda as well as the influence of his entourage, most of who came from the same region as

he, that is the Gitarama region in the centre of the country. The drift towards ethnic and regional power became obvious. From then onwards, a rift took root within the Hutu political Establishment, between its key figures from the Centre and those from the North and South who showed great frustration. Increasingly isolated, President Kayibanda could not control the ethnic and regional dissensions. The disagreements within the regime resulted into anarchy, which enabled General Juvénal Habyarimana, Army Chief of Staff, to seize power through a coup on 5 July 1973. General Habyarimana dissolved the First Republic and established the Second Republic. Scores of political leaders were imprisoned and, later, executed or starved to death, as was the case with the former President, Grégoire Kayibanda.

92. Following a trend then common in Africa, President Habyarimana, in 1975, instituted the one-party system with the creation of the Mouvement révolutionnaire national pour le développement (MRND), of which every Rwandan was a member *ipso facto*, including the newborn. Since the party encompassed everyone, there was no room for political pluralism. A law passed in 1978 made Rwanda officially a one-party State with the consequence that the MRND became a "State-party", as it formed one and the same entity with the Government. According to Dr. Desforges, the local administrative authority was, at the same time, the representative of the party within his administrative unit. There was therefore a single centralized organization , both for the State and the party, which stretched from the Head of State down to basic units known as cellules, with even smaller local organs , each comprising ten households, below the cellules. The cellules and local organs were, indeed, more of party organs, than administrative units. They were the agencies for the implementation of Umuganda, the mobilization programme which required people to allocate half a day's labour per week to some communal project, such as the construction of schools or road repairs.

93. According to testimonies given before the Chamber, particularly that of Dr. Desforges, Habyarimana's accession to power aroused a great deal of enthusiasm and hope, both inside and outside the country, and also among members of the Tutsi ethnic group. Indeed, the regime at the outset did guard against pursuing a clearly anti-Tutsi policy. Many Tutsi were then prepared to reach a compromise. However, as the years went by, power took its toll and Habyarimana's

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

94. Faced with the worsening internal situation that attracted a growing number of Rwandans to the multi-party system, and pressured by foreign donors demanding not only economic but also political reforms in the form of much greater participation of the people in the country's management, President Habyarimana was compelled to accept the multi-party system in principle. On 28 December 1990, the preliminary draft of a political charter to establish a multi-party system was published. On 10 June 1991, the new constitution introducing the multi-party system was adopted, followed on 18 June by the promulgation of the law on political parties and the formation of the first parties, namely :

- the Mouvement démocratique républicain (MDR), considered to be the biggest party in terms of membership and claiming historical links with the *MDR*-Parmehutu of Grégoire Kayibanda; its power-base was mainly the centre of the country, around Gitarama;

- the Parti social démocrate (PSD), whose membership included a good number of intellectuals, recruited its members mostly in the South, in Butare;
- the Parti libéral(PL); and
- the Parti démocrate chrétien (PDC).

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

96. The above-mentioned RPF attack on 1 October 1991 sent shock waves throughout Rwanda. Members of the opposition parties formed in 1991, saw this as an opportunity to have an informal alliance with the RPF so as to further destabilize an already weakened regime. The regime finally accepted to share power between the MRND and the other political parties and, around March 1992, the Government and the opposition signed an agreement to set up a transitional coalition government headed by a Prime Minister from the MDR. Out of the nineteen ministries, the MRND obtained only nine. Pressured by the opposition, the MRND accepted that negotiations with the RPF be started. The negotiations led to the first cease-fire in July 1992 and the first part of the Arusha Accords[48]. The July 1992 cease-fire tacitly recognized RPF control over a portion of Rwandan territory in the north-east. The protocols signed following these accords included the October 1992 protocol establishing a transitional government and a transitional assembly and the participation of the RPF in both institutions. The political scene was now widened to comprise three blocs: the Habyarimana bloc, the internal opposition and the RPF. Experience showed that President Habyarimana accepted these accords only because he was compelled to do so, but had no intention of complying with what he himself

[48]Prosecution Exhibit No. 14

referred to as "un chiffon de papier", meaning a scrap of paper.

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

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

99. To make the economic, social and political conflict look more like an ethnic conflict, the President's entourage, in particular, the army, persistently launched propaganda campaigns which often consisted of fabricating events. Dr. Alison Desforges in her testimony referred to this as "mirror politics", whereby a person accuses others of what he or she does or wants to do. In this regard, in the morning hours of 5 October 1990, the Rwandan army simulated an attack on Kigali and, immediately thereafter, the Government claimed that the city had just been infiltrated by the RPF, with the help of local Tutsi accomplices. Some eight thousand Tutsi and members of the Hutu opposition were arrested the next morning. Several dozens of them died in jail. Another example of mirror politics is the March 1992 killings in Bugesera which began a week after a propaganda agent working for the Habyarimana government distributed a tract claiming that the Tutsi of that region were preparing to kill many Hutu. The MRND militia, known as Interahamwe, participated in the Bugesera killings. It was the first time that this party's militia participated in killings of this scale. They were later joined by the militia of other parties or wings of Hutu extremist parties, including, in particular, the CDR militia known as the Impuzamugambi.

100. Mirror politics was also used in Kibulira, in the north-west, and in the Bagoguye region. In both cases, the population was goaded on to defend itself against fabricated attacks supposed to have been perpetrated by RPF infiltrators and to attack and kill their Tutsi neighbours. In passing, mention should be made of the role that Radio Rwanda and, later, the RTLM, founded in 1993 by people close to President Habyarimana, played in this anti-Tutsi propaganda. Besides the radio stations, there were other propaganda agents, the most notorious of whom was a certain Léon Mugesera, vice-president of the MRND in Gisenyi Préfecture and lecturer at the National University of Rwanda, who published two pamphlets accusing the Tutsi of planning a genocide of the Hutu[49]. During an MRND meeting in November 1992, the same Léon Mugesera called for the extermination of the Tutsi and the assassination of Hutu opposed to the President. He made reference to the idea that the Tutsi allegedly came from Ethiopia and, hence, that after they had been killed, they should be thrown into the Rwandan tributaries of the Nile, so that they should return to where they are supposed to have come from[50]. He exhorted his listeners to avoid the error of earlier massacres during which some Tutsi, particularly children, were spared.

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

102. On 4 August 1993, the Government of Rwanda and the RPF signed the final Arusha Accords and ended the war which started on 1 October 1990. The Accords provided, *inter alia,* for the establishment of a transitional government to include the RPF, the partial demobilization and integration of the two opposing armies (13,000 RPF and 35,000 FAR troops), the creation of a demilitarized zone between the RPF-controlled area in the north and the rest of the country, the stationing of an RPF battalion in the city of Kigali, and the deployment, in four phases, of a

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[49] Prosecution Exhibits Nos. 68 and 69.

[50] Prosecution Exhibit No. 74.

UN peace-keeping force, the United Nations Assistance Mission for Rwanda (UNAMIR), with a two-year mandate.

103. On 23 October 1993, the President of Burundi, Melchior Ndadaye, a Hutu, was assassinated in the course of an attempted coup by Burundi Tutsi soldiers. Dr. Alison Desforges testified that in Rwanda, Hutu extremists exploited this assassination to prove that it was impossible to agree with the Tutsi, since they would always turn against their Hutu partners to kill them. A meeting held at the Kigali stadium at the end of October 1993 was entirely devoted to the discussion of the assassination of President Ndadaye, and in a very virulent speech, Froduald Karamira, senior national vice-President of the Interahamwe, is alleged to have called for unreserved solidarity among all the Hutu, solidarity transcending the divide of political parties. He reportedly concluded his speech with a call for "Hutu-Power".

104. The assassination of President Ndadaye gave President Habyarimana and the CDR the opportunity to denounce, in a joint MRND - CDR statement issued at the end of 1993, the Arusha Accords, calling them treason. However, a few days later, pursuing his policy of prevarication towards the international community, Habyarimana signed another part of the peace accords. Indeed, the Arusha Accords no longer existed, except on paper. The President certainly did take the oath of office, but the installation of a transitional government was delayed, mainly by divisions within the political parties and the ensuing infightings.

105. The leaders of the CDR and the PSD were assassinated in February 1994. In Kigali, in the days that followed, the Interahamwe and the Impuzamugambi massacred Tutsi as well as Habyarimana's Hutu opponents. The Belgian Foreign Minister informed his representative at the UN of the worsening situation which "could result in an irreversible explosion of violence"[51] . At the same time, as he stated in his testimony before the Tribunal, UNAMIR commander, Major-General Dallaire, alerted the United Nations in New York of the discovery of arms caches and requested a change in UNAMIR's engagement rules to enable him to seize the arms; but the

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[51] Prosecution Exhibit No.18

request was turned down. Meanwhile, anti-Tutsi propaganda on the media intensified. The RTLM constantly stepped up its attacks which became increasingly targeted and violent.

106. At the end of March 1994, the transitional government was still not set up and Rwanda was on the brink of bankruptcy. International donors and neighbouring countries put pressure on the Habyarimana government to implement the Arusha Accords.
On 6 April 1994, President Habyarimana and other heads of State of the region met in Dar-es-Salaam (Tanzania) to discuss the implementation of the peace accords. The aircraft carrying President Habyarimana and the Burundian President, Ntaryamirai, who were returning from the meeting, crashed around 8:30 pm near Kigali airport. All aboard were killed.

107. The Rwandan army and the militia immediately erected roadblocks around the city of Kigali. Before dawn on April 7 1994, in various parts of the country, the Presidential Guard and the militia started killing the Tutsi as well as Hutu known to be in favour of the Arusha Accords and power-sharing between the Tutsi and the Hutu. Among the first victims, were a number of ministers of the coalition government, including its Prime Minister, Agathe Uwilingiyimana (MDR), the president of the Supreme Court and virtually the entire leadership of the parti social démocrate (PSD). The constitutional vacuum thus created cleared the way for the establishment of the self-proclaimed Hutu-power interim government, mainly under the aegis of retired Colonel Théoneste Bagosora.

108. Soldiers of the Rwandan Armed Forces (FAR) executed ten Belgian blue helmets, thereby provoking the withdrawal of the Belgian contingent which formed the core of UNAMIR. On April 21 1994, the UN Security Council decided to reduce the peace-keeping force to 450 troops.

109. In the afternoon of 7 April 1994, RPF troops left their quarters in Kigali and their zone in the north, to resume open war against the Rwandan Armed Forces. Its troops from the north moved south, crossing the demilitarized zone, and entered the city of Kigali on April 12 1994, thus forcing the interim government to flee to Gitarama.

110. On April 12 1994, after public authorities announced over Radio Rwanda that "we need to unite against the enemy , the only enemy and this is the enemy that we have always known...it's the enemy who wants to reinstate the former feudal monarchy", it became clear that the Tutsi were the primary targets. During the week of 14 to 21 April 1994, the killing campaign reached its peak. The President of the interim government, the Prime Minister and some key ministers travelled to Butare and Gikongoro, and that marked the beginning of killings in these regions which had hitherto been peaceful. Thousands of people, sometimes encouraged or directed by local administrative officials, on the promise of safety, gathered unsuspectingly in churches, schools, hospitals and local government buildings. In reality, this was a trap intended to lead to the rapid extermination of a large number of people.

111. The killing of Tutsi which henceforth spared neither women nor children, continued up to 18 July 1994, when the RPF triumphantly entered Kigali. The estimated total number of victims in the conflict varies from 500,000 to 1,000,000 or more.

3. GENOCIDE IN RWANDA IN 1994?

112. As regards the massacres which took place in Rwanda between April and July 1994, as detailed above in the chapter on the historical background to the Rwandan tragedy, the question before this Chamber is whether they constitute genocide. Indeed, it was felt in some quarters[52] that the tragic events which took place in Rwanda were only part of the war between the Rwandan Armed Forces (the RAF) and the Rwandan Patriotic Front (RPF). The answer to this question would allow a better understanding of the context within which the crimes with which the accused is charged are alleged to have been committed.

113. According to paragraph 2 of Article 2 of the Statute of the Tribunal, which reflects verbatim the definition of genocide as contained in the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, "the Convention on Genocide")[53], genocide means any of the following acts referred to in said paragraph, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, namely, *inter alia*: killing members of the group; causing serious bodily or mental harm to members of the group.

114. Even though the number of victims is yet to be known with accuracy, no one can reasonably refute the fact that widespread killings were perpetrated throughout Rwanda in 1994.

115. Indeed, this is confirmed by the many testimonies heard by this Chamber. The testimony of Dr. Zachariah who appeared before this Chamber on 16 and 17 January 1997 is enlightening in this regard. Dr. Zachariah was a physician who at the time of the events was working for a non-governmental organisation, "Médecins sans frontières." In 1994 he was based in Butare and travelled over a good part of Rwanda upto its border with Burundi. He described in great detail

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[52] See the cross examination of Dr. Zachariah (witness) by one of the defence counsel.

[53] The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948.

the heaps of bodies which he saw everywhere, on the roads, on the footpaths and in rivers and, particularly, the manner in which all these people had been killed. At the church in Butare, at the Gahidi mission, he saw many wounded persons in the hospital who, according to him, were all Tutsi and who, apparently, had sustained wounds inflicted with machetes to the face, the neck, and also to the ankle, at the Achilles' tendon, to prevent them from fleeing. The testimony given by Major-General Dallaire, former Commander of the United Nations Assistance Mission for Rwanda (UNAMIR) at the time of the events alleged in the Indictment, who was called by the defence, is of a similar vein. Major-General Dallaire spoke of troops of the Rwandan Armed Forces and of the Presidential Guard going into houses in Kigali that had been previously identified in order to kill. He also talked about the terrible murders in Kabgayi, very near Gitarama, where the interim Government was based and of the reports he received from observers throughout the country which mentioned killings in Gisenyi, Cyangugu and Kibongo.

116. The British cameraman, Simon Cox, took photographs of bodies in many churches in Remera, Biambi, Shangi, between Cyangugu and Kibuye, and in Bisesero. He mentioned identity cards strewn on the ground, all of which were marked "Tutsi". Consequently, in view of these widespread killings the victims of which were mainly Tutsi, the Chamber is of the opinion that the first requirement for there to be genocide has been met, the killing and causing serious bodily harm to members of a group.

117. The second requirement is that these killings and serious bodily harm, as is the case in this instance, be committed with the intent to destroy, in whole or in part, a particular group targeted as such.

118. In the opinion of the Chamber, there is no doubt that considering their undeniable scale, their systematic nature and their atrociousness, the massacres were aimed at exterminating the group that was targeted. Many facts show that the intention of the perpetrators of these killings was to cause the complete disappearance of the Tutsi. In this connection, Alison Desforges, an expert witness, in her testimony before this Chamber on 25 February 1997, stated as follows: "on the basis of the statements made by certain political leaders, on the basis of songs and

slogans popular among the Interahamwe, I believe that these people had the intention of completely wiping out the Tutsi from Rwanda so that-as they said on certain occasions - their children , later on , would not know what a Tutsi looked like, unless they referred to history books". Moreover, this testimony given by Dr. Desforges was confirmed by two prosecution witnesses, witness KK and witness OO, who testified separately before the Tribunal that one Silas Kubwimana had said during a public meeting chaired by the accused himself that all the Tutsi had to be killed so that someday Hutu children would not know what a Tutsi looked like.

119. Furthermore, as mentioned above, Dr. Zachariah also testified that the Achilles' tendons of many wounded persons were cut to prevent them from fleeing. In the opinion of the Chamber, this demonstrates the resolve of the perpetrators of these massacres not to spare any Tutsi. Their plan called for doing whatever was possible to prevent any Tutsi from escaping and, thus, to destroy the whole group. Witness OO further told the Chamber that during the same meeting, a certain Ruvugama, who was then a Member of Parliament, had stated that he would rest only when no single Tutsi is left in Rwanda".

120. Dr. Alison Desforges testified that many Tutsi bodies were often systematically thrown into the Nyabarongo river, a tributary of the Nile. Indeed, this has been corroborated by several images shown to the Chamber throughout the trial. She explained that the underlying intention of this act was to "send the Tutsi back to their place of origin", to "make them return to Abyssinia", in keeping with the allegation that the Tutsi are foreigners in Rwanda, where they are supposed to have settled following their arrival from the Nilotic regions.[54]

121. Other testimonies heard, especially that of Major-General Dallaire, also show that there was an intention to wipe out the Tutsi group in its entirety, since even newborn babies were not spared. Even pregnant women, including those of Hutu origin, were killed on the grounds that

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[54] See *supra*, in the chapter on the history of Rwanda, the statements made by Léon Mugesera during the meeting of the MRND held on 22 November 1992, referred to the fact that Tutsi had supposedly come from Ethiopia and that, after they were killed, their bodies should be thrown into the Rwandan tributaries of the Nile, so that they can go back to where they supposedly came. See Prosecution Exhibit tendered and recorded as No. 74.

the foetuses in their wombs were fathered by Tutsi men, for in a patrilineal society like Rwanda, the child belongs to the father's group of origin. In this regard, it is worthwhile noting the testimony of witness PP, heard by the Chamber on 11 April 1997, who mentioned a statement made publicly by the accused to the effect that if a Hutu woman were impregnated by a Tutsi man, the Hutu woman had to be found in order "for the pregnancy to be aborted". According to prosecution witnesses KK, PP and OO, the accused expressed this opinion on other occasions in the form of a Rwandese proverb according to which 'if a snake wraps itself round a calabash, there is nothing that can be done, except to break the calabash' (" Iyo inzoka yiziritse ku gisabo, nta kundi bigenda barakimena)[55]. In the context of the period in question, this proverb meant that if a Hutu woman married to a Tutsi man was impregnated by him, the foetus had to be destroyed so that the Tutsi child which it would become should not survive. It should be noted in this regard that in Rwandese culture, breaking the "gisabo", which is a big calabash used as a churn was considered taboo. Yet, if a snake wraps itself round a *gisabo*, obviously, one has no choice but to ignore this taboo in order to kill the snake.

122. In light of the foregoing, it is now appropriate for the Chamber to consider the issue of specific intent that is required for genocide (*mens rea* or *dolus specialis*). In other words, it should be established that the above-mentioned acts were targeted at a particular group as such. In this respect also, many consistent and reliable testimonies , especially those of Major-General Dallaire, Dr. Zachariah, victim V, prosecution witness PP, defence witness DAAX, and particularly that of the accused himself unanimously agree on the fact that it was the Tutsi as members of an ethnic group which they formed in the context of the period[56] in question, who

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[55] These are the Kinyarwanda words used by witness PP

[56] The term *ethnic group* is, in general, used to refer to a group whose members speak the same language and/or have the same culture. Therefore, one can hardly talk of ethnic groups as regards Hutu and Tutsi, given that they share the same language and culture. However, in the context of the period in question, they were, in consonance with a distinction made by the colonizers, considered both by the authorities and themselves as belonging to two distinct ethnic groups; as such, their identity cards mentioned each holder's ethnic group. In its findings in chapter 7 of the judgment, the Chamber will come back to this issue.

were targeted during the massacres[57].

123. Two facts, in particular, which suggest that it was indeed the Tutsi who were targeted should be highlighted: Firstly, at the roadblocks which were erected in Kigali immediately after the crash of the President's plane on 6 April 1994 and, later on, in most of the country's localities, members of the Tutsi population were sorted out. Indeed, at these roadblocks which were manned, depending on the situation, either by soldiers, troops of the Presidential Guard and/or militiamen, the systematic checking of identity cards indicating the ethnic group of their holders, allowed the separation of Hutu from Tutsi, with the latter being immediately apprehended and killed, sometimes on the spot. Secondly, the propaganda campaign conducted before and during the tragedy by the audiovisual media, for example, "Radio Television des Milles Collines"(RTLM), or the print media, like the Kangura[58] newspaper. These various news media overtly called for the killing of Tutsi, who were considered as the accomplices of the RPF and accused of plotting to take over the power lost during the revolution of 1959. Some articles and cartoons carried in the *Kangura* newspaper, entered in evidence, are unambiguous in this respect. In fact, even exhibit 25A could be added to this lot. Exhibit 25A is a letter from the "GZ" staff headquarters dated 21 September 1992 and signed by Deofratas Nsabimana, Colonel, BEM, to which is annexed a document prepared by a committee of ten officers and which deals with the definition of the term enemy. According to that document, which was intended for the widest possible dissemination, the enemy fell into two categories, namely:" the primary enemy" and the "enemy supporter". The primary enemy was defined as "the extremist Tutsi within the country or abroad who are nostalgic for power and who have NEVER acknowledged and STILL DO NOT acknowledge the realities of the Social Revolution of 1959, and who wish to regain power

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[57] However, the Tutsi were not the sole victims of the massacres. Many Hutu were also killed, though not because they were Hutu, but simply because they were , for one reason or another, viewed as having sided with the Tutsi.

[58] It will be noted in this regard that in the *travaux preparatoires* of the Genocide Convention, the Yugoslav delegate indicated with regard to the genocide of Jews by the Nazis that the crimes began with the preparation and mobilization of the masses by means of the ideas spread by the necessary propaganda and in circles which financed this propaganda. See the Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September 1948-10 December 1948, Official Records of the General Assembly.

in RWANDA by all possible means, including the use of weapons". On the other hand, the primary enemy supporter was "anyone who lent support in whatever form to the primary enemy". This document also stated that the primary enemy and their supporters came mostly from social groups comprising, in particular, "Tutsi refugees", "Tutsi within the country", "Hutu dissatisfied with the current regime", "Foreigners married to Tutsi women" and the "Nilotic-hamitic tribes in the region".

124. In the opinion of the Chamber, all this proves that it was indeed a particular group, the Tutsi ethnic group, which was targeted. Clearly, the victims were not chosen as individuals but, indeed, because they belonged to said group; and hence the victims were members of this group selected as such. According to Alison Desforges's testimony, the Tutsi were killed solely on account of having been born Tutsi.

125. Clearly therefore, the massacres which occurred in Rwanda in 1994 had a specific objective, namely the extermination of the Tutsi, who were targeted especially because of their Tutsi origin and not because they were RPF fighters. In any case, the Tutsi children and pregnant women would, naturally, not have been among the fighters.

126. Consequently, the Chamber concludes from all the foregoing that genocide was, indeed, committed in Rwanda in 1994 against the Tutsi as a group. Furthermore, in the opinion of the Chamber, this genocide appears to have been meticulously organized. In fact, Dr. Alison Desforges testifying before the Chamber on 24 May 1997, talked of "centrally organized and supervised massacres". Indeed, some evidence supports this view that the genocide had been planned. First, the existence of lists of Tutsi to be eliminated is corroborated by many testimonies. In this respect, Dr. Zachariah mentioned the case of patients and nurses killed in a hospital because a soldier had a list including their names. There are also the arms caches in Kigali which Major-General Dallaire mentioned and regarding whose destruction he had sought the UN's authorization in vain. Lastly, there is the training of militiamen by the Rwandan Armed Forces and of course, the psychological preparation of the population to attack the Tutsi, which preparation was masterminded by some news media, with the RTLM at the forefront.

127. Finally, in response to the question posed earlier in this chapter as to whether the tragic events that took place in Rwanda in 1994 occurred solely within the context of the conflict between the RAF and the RPF, the Chamber replies in the negative, since it holds that the genocide did indeed take place against the Tutsi group, alongside the conflict. The execution of this genocide was probably facilitated by the conflict, in the sense that the fighting against the RPF forces was used as a pretext for the propaganda inciting genocide against the Tutsi, by branding RPF fighters and Tutsi civilians together, through dissemination via the media of the idea that every Tutsi was allegedly an accomplice of the Inkotanyi. Very clearly, once the genocide got under way, the crime became one of the stakes in the conflict between the RPF and the RAF. In 1994, General Kagame, speaking on behalf of the RPF, declared that a cease fire could possibly not be implemented until the massacre of civilians by the government forces[59] had stopped.

128. In conclusion, it should be stressed that although the genocide against the Tutsi occurred concomitantly with the above-mentioned conflict, it was, evidently, fundamentally different from the conflict. The accused himself stated during his initial appearance before the Chamber, when recounting a conversation he had with one RAF officer and Silas Kubwimana, a leader of the Interahamwe, that the acts perpetrated by the Interahamwe against Tutsi civilians were not considered by the RAF officer to be of a nature to help the government armed forces in the conflict with the RPF[60]. Note is also taken of the testimony of witness KK which is in the same vein. This witness told the Chamber that while she and the children were taken away, an RAF soldier allegedly told persons who were persecuting her that "instead of going to confront the Inkotanyi at the war front, you are killing children, although children know nothing; they have never done politics". The Chamber's opinion is that the genocide was organized and planned not only by members of the RAF, but also by the political forces who were behind the "Hutu-power",

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[59] See the " Report of the United Nations High Commissioner for Human Rights on his mission to Rwanda, 11-12 May 1994" (E/CN.4?s-3?3, 19 May 1994), reproduced in annex "The United Nations and Rwanda, 1993-1996", Department of Public Information, United Nations, New York, 1996, p. 287.

[60] See transcript of the hearing of 12 March 1998, p. 152

that it was executed essentially by civilians including the armed militia and even ordinary citizens, and above all, that the majority of the Tutsi victims were non-combatants, including thousands of women and children, even foetuses. The fact that the genocide took place while the RAF was in conflict with the RPF, can in no way be considered as an extenuating circumstance for it.

129. This being the case, the Chamber holds that the fact that genocide was indeed committed in Rwanda in 1994 and more particularly in Taba, cannot influence it in its decisions in the present case. Its sole task is to assess the individual criminal responsibility of the accused for the crimes with which he is charged, the burden of proof being on the Prosecutor[61]. In spite of the irrefutable atrocities of the crimes committed in Rwanda, the judges must examine the facts adduced in a most dispassionate manner, bearing in mind that the accused is presumed innocent Moreover, the seriousness of the charges brought against the accused makes it all the more necessary to examine scrupulously and meticulously all the inculpatory and exonerating evidence, in the context of a fair trial and in full resect of all the rights of the Accused.

[61]In the opinion of the Chamber, it is not only obvious that an accused person could be declared innocent of the crime of genocide even when it is established that genocide had indeed taken place, but also, in a case other than that of Rwanda, a person could be found guilty of genocide without necessarily having to establish that genocide had taken place throughout the country concerned.

4. EVIDENTIARY MATTERS

130. The Chamber will address certain general evidentiary matters of concern which arose in relation to the evidence produced by the parties during this trial. These matters include the assessment of evidence, the impact of trauma on witnesses, questions of interpretation from Kinyarwanda into French and English, and cultural factors which might affect an understanding of the evidence presented.

Assessment of Evidence

131. In its assessment of the evidence, as a general principle, the Chamber has attached probative value to each testimony and each exhibit individually according to its credibility and relevance to the allegations at issue. As commonly provided for in most national criminal proceedings, the Chamber has considered the charges against the accused on the basis of the testimony and exhibits offered by the parties to support or challenge the allegations made in the Indictment. In seeking to establish the truth in its judgment, the Chamber has relied as well on indisputable facts and on other elements relevant to the case, such as constitutive documents pertaining to the establishment and jurisdiction of the Tribunal, even if these were not specifically tendered in evidence by the parties during trial. The Chamber notes that it is not restricted under the Statute of the Tribunal to apply any particular legal system and is not bound by any national rules of evidence. In accordance with Rule 89 of its Rules of Procedure and Evidence, the Chamber has applied the rules of evidence which in its view best favour a fair determination of the matter before it and are consonant with the spirit and general principles of law.

Unus Testis, Nullus Testis

132. The Chamber notes that during trial, only one testimony was presented in support of

certain facts alleged in the Indictment; hence the question arises as to the principle found in Civil Law systems: *unus testis, nullus testis* (one witness is no witness) whereby corroboration of evidence is required if it is to be admitted.

133. Without wishing to delve into a debate on the applicability of the rule of corroboration of evidence in this judgment, the Chamber recalls that the proceedings before it are conducted in accordance solely with the Statute of the Tribunal and its Rules and, as provided for by Rule 89(A), it shall not be bound by national rules of evidence. Furthermore, where evidentiary matters are concerned, the Chamber is bound only to the application of the provisions of its Statute and Rules, in particular Rule 89 of the Rules which sets out the general principle of the admissibility of any relevant evidence which has probative value, provided that it is in accordance with the requisites of a fair trial.

134. Rule 96(i) of the Rules alone specifically deals with the issue of corroboration of testimony required by the Chamber. The provisions of this Rule, which apply only to cases of testimony by victims of sexual assault, stipulate that no corroboration shall be required. In the Tadić judgment rendered by the ICTY, the Trial Chamber ruled that this "Sub-rule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something which had long been denied to victims of sexual assault in common law [which] certainly does not [...] justify any inference that in cases of crimes other than sexual assault, corroboration is required. The proper inference is, in fact, directly to the contrary"[62].

135. In view of the above, the Chamber can rule on the basis of a single testimony provided such testimony is, in its opinion, relevant and credible.

136. The Chamber can freely assess the probative value of all relevant evidence. The Chamber had thus determined that in accordance with Rule 89, any relevant evidence having probative

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[62] See ICTY Tadić Judgment, 7 May 1997, paras. 535 to 539

value may be admitted into evidence, provided that it is being in accordance with the requisites of a fair trial. The Chamber finds that hearsay evidence is not inadmissible per se and has considered such evidence, with caution, in accordance with Rule 89.

Witness statements

137. During the trial, the Prosecutor and the Defence relied on pre-trial statements from witnesses for the purpose of cross-examination. The Chamber ordered that any such statements to which reference was made in the proceedings be submitted in evidence for consideration[63]. In many instances, the Defence has alleged inconsistencies and contradictions between the pre-trial statements of witnesses and their evidence at trial. The Chamber notes that these pre-trial statements were composed following interviews with witnesses by investigators of the Office of the Prosecution. These interviews were mostly conducted in Kinyarwanda, and the Chamber did not have access to transcripts of the interviews, but only translations thereof. It was therefore unable to consider the nature and form of the questions put to the witnesses, or the accuracy of interpretation at the time. The Chamber has considered inconsistencies and contradictions between these statements and testimony at trial with caution for these reasons, and in the light of the time lapse between the statements and the presentation of evidence at trial, the difficulties of recollecting precise details several years after the occurrence of the events, the difficulties of translation, and the fact that several witnesses were illiterate and stated that they had not read their written statements. Moreover, the statements were not made under solemn declaration and were not taken by judicial officers. In the circumstances, the probative value attached to the statements is, in the Chamber's view, considerably less than direct sworn testimony before the Chamber, the truth of which has been subjected to the test of cross-examination.

False testimony

138. Rule 91 of the Rules (False Testimony under Solemn Declaration) provides for, *inter alia*,

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[63] *Supra* 'Procedural Background',

the investigation and possible prosecution of a witness whom the Chamber believes may have knowingly and wilfully given false testimony. As held by the Chamber in its decision rendered thereon in relation to a Defence motion requesting the Chamber to direct the Prosecutor to investigate the alleged false testimony by a witness[64], Rule 91(B) provides:

> *Either* the Chamber establishes *proprio motu* that strong grounds exist for believing that a witness has knowingly and wilfully given false testimony, and thence directs the Prosecutor to investigate the matter with a view to the preparation and submission of an Indictment for false testimony;
>
> *Or*, at the request of a party, it invites the Prosecutor to investigate the matter with a view to the preparation and submission of an Indictment for false testimony; and in this case, the onus is on the party to convince the Chamber that there exist strong grounds for believing that a witness has knowingly and wilfully given false testimony;

139. Further, the Chamber held in the decision, that the onus is on the party pleading a case of false testimony to prove the falsehoods of the witness statements, that they were made with harmful intent, or at least that they were made by a witness who was fully aware that they were false, and their possible bearing upon the judge's decisions. The Chamber found that for the Defence to raise only doubts as to the credibility of the statements made by the witness was not sufficient to establish strong grounds for believing that the witness may have knowingly and wilfully given false testimony, and that the assessment of credibility pertains to the rendering of the final judgment.

140. The majority of the witnesses who appeared before the Chamber were eye-witnesses, whose testimonies were based on events they had seen or heard in relation to the acts alleged in the Indictment. The Chamber noted that during the trial, for a number of these witnesses, there appeared to be contradictions or inaccuracies between, on the one hand, the content of their

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[64] *Ibid*

testimonies under solemn declaration to the Chamber, and on the other, their earlier statements to the Prosecutor and the Defence. This alone is not a ground for believing that the witnesses gave false testimony. Indeed, an often levied criticism of testimony is its fallibility. Since testimony is based mainly on memory and sight, two human characteristics which often deceive the individual, this criticism is to be expected. Hence, testimony is rarely exact at to the events experienced. To deduce from any resultant contradictions and inaccuracies that there was false testimony, would be akin to criminalising frailties in human perceptions. Moreover, inaccuracies and contradictions between the said statements and the testimony given before the Court are also the result of the time lapse between the two. Memory over time naturally degenerates, hence it would be wrong and unjust for the Chamber to treat forgetfulness as being synonymous with giving false testimony. Moreover, false testimony requires the necessary *mens rea* and not a mere wrongful statement.

141. Were the Chamber to have strong grounds for believing that the witness had knowingly and wilfully given false testimony, with the intent to impede the due process of Justice, then Rule 91 of the Rules would be applied accordingly.

The impact of trauma on the testimony of witnesses

142. Many of the eye-witnesses who testified before the Chamber in this case have seen atrocities committed against their family members or close friends, and/or have themselves been the victims of such atrocities. The possible traumatism of these witnesses caused by their painful experience of violence during the conflict in Rwanda is a matter of particular concern to the Chamber. The recounting of this traumatic experience is likely to evoke memories of the fear and the pain once inflicted on the witness and thereby affect his or her ability fully or adequately to recount the sequence of events in a judicial context. The Chamber has considered the testimony of those witnesses in this light.

143. The Chamber is unable to exclude the possibility that some or all of these witnesses did actually suffer from post traumatic or extreme stress disorders, and has therefore carefully

perused the testimonies of these witnesses, those of the Prosecutor as well as those of the Defence, on the assumption that this might possibly have been the case. Inconsistencies or imprecisions in the testimonies, accordingly, have been assessed in the light of this assumption, personal background and the atrocities they have experienced or have been subjected to. Much as the Witness Protection Programme and the orders for protection of witnesses issued by the Chamber during this trial were designed primarily to reduce the danger for witnesses in coming to the Tribunal to testify, these measures may also have provided for some alleviation of stress. Reducing the physical danger to the witnesses in Rwanda, and ordering the non-disclosure of their identities to the media and the public, as well as accommodating them during their presence at the seat of the Tribunal in safe houses where medical and psychiatric assistance was available, are, in any event, measures conducive to easing the level of stress.

144. The Chamber has thanked each witness for his or her testimony during the trial proceedings and wishes to acknowledge in its judgment the strength and courage of survivors who have recounted their traumatic experiences, often reliving extremely painful emotions. Their testimony has been invaluable to the Chamber in its pursuit of truth regarding the events which took place in the commune of Taba in 1994.

Interpretation from Kinyarwanda into French and English

145. The majority of the witnesses in this trial testified in Kinyarwanda. The Chamber notes that the interpretation of oral testimony of witnesses from Kinyarwanda into one of the official languages of the Tribunal has been a particularly great challenge due to the fact that the syntax and everyday modes of expression in the Kinyarwanda language are complex and difficult to translate into French or English. These difficulties affected the pre-trial interviews carried out by investigators in the field, as well as the interpretation of examination and cross-examination during proceedings in Court. Most of the testimony of witnesses at trial was given in the language, Kinyarwanda, first interpreted into French, and then from French into English. This process entailed obvious risks of misunderstandings in the English version of words spoken in the source language by the witness in Kinyarwanda. For this reason, in cases where the

transcripts differ in English and French, the Chamber has relied on the French transcript for accuracy. In some cases, where the words spoken are central to the factual and legal findings of the Chamber, the words have been reproduced in this judgment in the original Kinyarwanda.

146. The words Inkotanyi, Inyenzi, Icyitso/Ibyitso, Interahamwe and the expressions used in Kinyarwanda for "rape", because of their significance to the findings of the Chamber, are considered particularly, as follows: The Chamber has relied substantially on the testimony of Dr. Mathias Ruzindana, an expert witness on linguistics, for its understanding of these terms. The Chamber notes that Dr. Ruzindana stated in his testimony that in ascertaining the specific meaning of certain words and expressions in Kinyarwanda, it is necessary to place them contextually, both in time and in space.

147. The origin of the term Inkotanyi can be traced back to the 19th Century, at which time it was the name of one of the warrior groups of a Rwandese king, King Rwabugiris. There is no evidence to suggest that this warrior group was monoethnic. Dr. Ruzindana suggested that the name Inkotanyi was borne with pride by these warriors. At the start of the war between the RPF and the Government of Rwanda, the RPF army wing was called Inkotanyi. As such, it should be assumed that the basic meaning of the term Inkotanyi is the RPF army. Based on the analysis of a number of Rwandan newspapers and RTLM cassettes, as well as his personal experiences during the conflict, Dr. Ruzindana believed the term Inkotanyi had a number of extended meanings, including RPF sympathizer or supporter, and, in some instances, it even seemed to make reference to Tutsi as an ethnic group.

148. The basic everyday meaning of the term *Inyenzi* is cockroach. Other meanings of the term stem from the history of Rwanda. During the 'revolution' of 1959, refugees, mainly Tutsi, fled the country. Throughout the 1960's incursions on Rwandan soil were carried out by some of these refugees, who would enter and leave the country under the cover of the night, only rarely to be seen in the morning. This activity was likened to that of cockroaches, which are rarely seen during the day but often discovered at night, and accordingly these attackers were called Inyenzi. A similar comparison, between insurgent Tutsi refugees and cockroaches, was made when the

RPF army carried out a number of attacks in Rwanda in 1990. It was thought that the Inyenzi of 1990 were the children of the Inyenzi of the 1960's. "The cockroach begets another cockroach and not a butterfly" was an article heading in the magazine Kangura. Another article in this publication made the reference even more explicitly, saying "The war between us and the Inyenzi-Inkotanyi has lasted for too long. It is time we told the truth. The present war is a war between Hutu and Tutsi. It has not started today, it is an old one."[65]

149. Unlike the term Inkotanyi, the term Inyenzi had a negative, even abusive, connotation. The radio station RTLM broadcast on 20 April 1994, "They are a gang of Tutsi extremists who called themselves Inkotanyi while they are no more than Inyenzi," and in a speech on 22 November 1992, Léon Mugesera said "Don't call them Inkotanyi, they are true Inyenzi". The term Inyenzi was widely used by extremist media, by those who had refused to accept the Arusha Peace Accords and those who wanted to exterminate the Tutsi, in whole or in part. It was often contained in RTLM broadcasts, a radio which, in the opinion of Dr. Ruzindana, was anti-Tutsi in its broadcastings.[66]

150. The term Icyitso, or Ibyitso in the plural, has been in usage in Kinyarwanda for quite some time. It is a common term which means accomplice. In ancient Rwandan history, a king wanting to launch an attack on neighbouring countries would send spies to the targeted country. These spies would recruit collaborators who would be known as Ibyitso. In Rwanda, the term has a negative connotation. Thus it should not be seen as being synonymous with 'supporter', a term which can be viewed both positively and negatively, but perhaps rather "collaborator". The term evolved, as early as 1991, to include not only collaborators, but all Tutsi. The editor of Kangura stated in 1993, "When the war started, Hutu talked openly about the Tutsi, or they referred to

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[65] Issue no. 10, page 10, 1993

[66] Dr. Ruzindana believed that RTLM broadcasted somewhat extremist messages, abusive by their very nature, for instance "Well you will know those to kill because you will look at their noses...We will look at their nose, and so, we know which ones to kill"

them, indirectly, calling them Ibyitso"[67].

151. The term Interahamwe derives from two words put together to make a noun, intera and hamwe. Intera comes from the verb 'gutera' which can mean both to attack and to work. It was documented that in 1994, besides meaning to work or to attack, the word gutera could also mean to kill. Hamwe means together. Therefore Interahamwe could mean to attack or to work together, and, depending on the context, to kill together. The Interahamwe were the youth movement of the MRND. During the war, the term also covered anyone who had anti-Tutsi tendencies, irrespective of their political background, and who collaborated with the MRND youth.

152. The terms gusambanya, kurungora, kuryamana and gufata ku ngufu were used interchangeably by witnesses and translated by the interpreters as "rape". The Chamber has consulted its official trial interpreters to gain a precise understanding of these words and how they have been interpreted. The word gusambanya means "to bring (a person) to commit adultery or fornication". The word kurungora means "to have sexual intercourse with a woman". This term is used regardless of whether the woman is married or not, and regardless of whether she gives consent or not. The word kuryamana means "to share a bed" or "to have sexual intercourse", depending on the context. It seems similar to the colloquial usage in English and in French of the term "to sleep with". The term gufata ku ngufu means "to take (anything) by force" and also "to rape".

153. The context in which these terms are used is critical to an understanding of their meaning and their translation. The dictionary entry for kurungora[68], the most generic term for sexual intercourse, includes as an example of usage of this word, the sentence "Mukantwali yahuye n'abasore batatu baramwambura baramurongora," for which the dictionary translation into French is "Mukantwali a recontré trois jeunes gens qui l'ont dévalisée et violée" (in English

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[67] Issue no. 45, page 3, July 1993.

[68] Dictionnaire Rwandais-Français de l'Institut National de Recherche Scientifique (Three Volumes), Edition abrégée et adaptée par Irenée JACOB.

"Mukantwali met three young men who robbed her of her belongings and raped her.")

154. The Chamber notes that the accused objected on one occasion to the translation of the words stated by Witness JJ ("Batangira kujya babafata ku ngufu babakoresha ibyo bashaka") as "They began to rape them." It was clarified that the witness said "they had their way with them." The Chamber notes that in this instance the term used, babafata ku ngufu, is the term which of the four terms identified in the paragraph above is the term most closely connected to the concept of force. Having reviewed in detail with the official trial interpreters the references to "rape" in the transcript, the Chamber is satisfied that the Kinyarwanda expressions have been accurately translated.

Cultural Factors Affecting the Evidence of Witnesses

155. Dr. Mathias Ruzindana noted that most Rwandans live in an oral tradition in which facts are reported as they are perceived by the witness, often irrespective of whether the facts were personally witnessed or recounted by someone else. Since not many people are literate or own a radio, much of the information disseminated by the press in 1994 was transmitted to a larger number of secondary listeners by word of mouth, which inevitably carries the hazard of distortion of the information each time it is passed on to a new listener. Similarly, with regard to events in Taba, the Chamber noted that on examination it was at times clarified that evidence which had been reported as an eyewitness account was in fact a second-hand account of what was witnessed. Dr. Ruzindana explained this as a common phenomenon within the culture, but also confirmed that the Rwandan community was like any other and that a clear distinction could be articulated by the witnesses between what they had heard and what they had seen. The Chamber made a consistent effort to ensure that this distinction was drawn throughout the trial proceedings.

156. According to the testimony of Dr. Ruzindana, it is a particular feature of the Rwandan culture that people are not always direct in answering questions, especially if the question is delicate. In such cases, the answers given will very often have to be "decoded" in order to be

understood correctly. This interpretation will rely on the context, the particular speech community, the identity of and the relation between the orator and the listener, and the subject matter of the question. The Chamber noted this in the proceedings. For example, many witnesses when asked the ordinary meaning of the term Inyenzi were reluctant or unwilling to state that the word meant cockroach, although it became clear to the Chamber during the course of the proceedings that any Rwandan would know the ordinary meaning of the word. Similar cultural constraints were evident in their difficulty to be specific as to dates, times, distances and locations. The Chamber also noted the inexperience of witnesses with maps, film and graphic representations of localities, in the light of this understanding, the Chamber did not draw any adverse conclusions regarding the credibility of witnesses based only on their reticence and their sometimes circuitous responses to questions.

5. FACTUAL FINDINGS

5.1. General allegations (Paragraphs 5-11 of the Indictment)

Events Alleged

157. Paragraphs 5 to 11 of the indictment appear under the heading, "General Allegations". These general allegations are, for the most part, mixed questions of fact and law relating to the general elements of genocide, crimes against humanity, and violations of international humanitarian law, the crimes set forth in Articles 2, 3 and 4 of the Statute of the Tribunal, under which the Accused is charged. Several witnesses testified before the Chamber with regard to historical background and the general situation in Rwanda prior to and during 1994. The Chamber has substantially relied on the testimonies of Dr. Ronie Zachariah, Ms. Lindsey Hilson, Mr. Simon Cox, Dr. Alison Desforges, who testified as an expert witness, and General Romeo Dallaire, the force commander of UNAMIR at the time of these events as well as United Nations reports of which it takes judicial notice, for its general findings on the factual allegations set forth in paragraphs 5-11 of the indictment.

158. Dr. Zachariah, the Chief Medical and Field Coordinator for Medecins sans frontieres ("MSF"), based in the Butare region, testified that he witnessed widespread massacres of civilians in Rwanda from 13 to 24 April 1994. He stated that he travelled from Butare to Gitarama on 13 April 1994 in order to provide medical supplies to a hospital in Gitarama which had received 40 to 50 injured people. From 25 kilometres outside Gitarama, Dr. Zachariah said he and his team began to see refugees on the road, who reported the killings of civilians at roadblocks. At one of these barriers, Dr. Zachariah stated that his driver was treated aggressively by a guard manning the roadblock, because the driver was Tutsi and the Tutsi were accused of helping the RPF. Dr. Zachariah testified that it soon became apparent upon arrival at Gitarama

Hospital that Tutsi civilians were being targeted for attack on a massive scale. Subsequently, Dr. Zachariah witnessed attacks on civilian populations, and killings of civilians. He recounted visiting Kibeho Church on 16 April 1994, where two to four thousand Tutsi civilians were apparently killed, and Butare on 17 April 1994, where a Burundian Tutsi was apparently beaten to death at a checkpoint, and where his purchase officer reported seeing the bodies of 5-10 dead civilians at every checkpoint on the road from Kigali. These checkpoints were apparently manned by well-armed, drunken soldiers and civilians. On the road from Butare to Burundi on 19 April 1994, Dr. Zachariah sated that saw civilians being massacred in villages throughout the countryside and at roadblocks. In his words:

> "All the way through we could see on the [...] hillside, where there were communities, people [...] being pulled out by people with machetes, and we could see piles of bodies. In fact the entire landscape was becoming spotted with corpses, with bodies, all the way from there until almost Burundi's border". (Hearing of 16 January 1997, pp 98-99)

159. At the Rwanda-Burundi border, on the same day, Dr. Zachariah testified that he saw a group of 60 to 80 civilians fleeing towards the Burundian border, from men armed with machetes. He stated that most of these civilians were hacked to death before they reached the border. Returning from the Burundian border, on 21 April 1994, Dr Zachariah stated that he had spoken to eye-witnesses who had informed him of the killings of approximately 40 Tutsi MSF personnel, in the Saga camps in Butare. He stated that his driver's entire family had been killed on the outskirts of Butare by *Interahamwe* and he had been informed of these killings by his driver who had managed to escape death. Dr. Zachariah testified that he had witnessed, on 22 April 1994, the aftermath of the massacre of the family of a moderate Hutu, Mr. Souphene, the sub-Prefect of Butare, by the Presidential Guard, and, on the same day, the killings of children in the Hotel Pascal in Butare and the executions of tens of Tutsi patients and nurses in Butare Hospital, including a Hutu nurse who was pregnant by a Tutsi man and whose child would therefore be Tutsi. Dr. Zachariah stated that he then decided to evacuate his team from Rwanda and he arrived at the Burundian border on 24 April 1994. On the way to the border and at the

border, he stated that he had crossed streams and rivers in which the mutilated corpses of men, women and children floated by at an estimated rate of five bodies every minute. Dr. Zachariah stated under cross-examination that in his opinion the attacks were both "organised and systematic".

160. Lindsey Hilson, a journalist, testified that she was in Kigali from 7 February 1994 to mid-April 1994. Following the aeroplane crash of 6 April 1994 in which the Presidents of Rwanda and Burundi were killed, she said she heard from others and saw for herself the ensuing killings of Tutsi in the capital. On the third day after the aeroplane crash, she toured Kigali with aid workers and saw victims suffering from machete and gunshot wounds. In Kigali central hospital, where she described the situation as "absolutely terrible", wounded men, women and children of all ages were packed into the wards, and hospital gutters were "running red with blood". At the morgue she saw "a big pile like a mountain of bodies outside and these were bodies with slash wounds, with heads smashed in, many of them naked, men and women". She estimated that the pile outside the morgue contained about five hundred bodies, with more bodies being brought in all the time by pickup trucks. She sated that she also saw teams of convicts around Kigali collecting bodies in the backs of trucks for mass burial, as well as groups of armed men roaming the city with machetes, clubs and sticks.

161. Simon Cox, a cameraman and photographer, testified that he was on an assignment in Rwanda during the time of the events set forth in the indictment. He said he entered Rwanda from Uganda, arriving in the border town of Mulindi, in the third week of April 1994. Thence he headed south with an RPF escort and found evidence of massacres of civilian men, women and children, whom it appeared from their identity cards were mostly Tutsi, in church compounds. En route to Rusumo, in the south-east of the country, he visited hospitals where Tutsi civilians suffering from machete wounds were being treated, some of whom he interviewed. At the Tanzanian border, near Rusumo, by the Kagera river which flows towards Lake Victoria, Mr. Cox saw and filmed corpses floating by at the rate of several corpses per minute. Later, at the beginning of May, he was in Kigali and saw more bodies of dead civilians on the roads. The Chamber viewed film footage taken by Mr. Cox.

162. On a second trip, in June 1994, Mr. Cox visited the western part of Rwanda, arriving in Cyangugu from Zaire (now the Democratic Republic of Congo) and travelling north towards Kibuye. On that journey, he visited orphanages populated by Tutsi children whose parents had been massacred or disappeared. He visited a church in Shangi where a Priest described how the whole of his congregation who had been Tutsi had been hiding inside the church, because they had heard disturbances, and they were eventually all killed by large armed gangs of people, some of whom were equipped with hand grenades. The church had previously survived five repeated attacks. Mr. Cox himself examined the church and outbuildings and found graves, much blood and other evidence of killings. On the way to Kibuye, he saw further evidence of freshly dug mass graves in churchyards. Later, in the hills of Bisesero, he saw some 800 Tutsi civilians "in a desperate, desperate state", many apparently starving and with severe machete and bullet wounds, and with a great many corpses strewn all over the hills.

163. The testimony of an expert witness, Alison Desforges, which has been referred to and summarised above in the "Context of the conflict" section, also indicates that Tutsi and so-called moderate Hutu civilians were targeted for attacks on a massive scale in Rwanda at the time of the events which are the subject of this indictment.

164. In addition, the Chamber heard the testimony of General Romeo Dallaire, who was the force commander of UNAMIR in April 1994. General Dallaire described before the Chamber the massacres of civilian Tutsi which took place in Rwanda in 1994. He also testified in relation to the armed conflict which took place between the RPF and the FAR at the same time as the massacres. This conflict appeared to be a civil war between two well-organised armies. In this context, General Dallaire referred to the FAR and the RPF as "two armies", "two belligerents" or "two sides to the conflict." He noted that the mandate of the UNAMIR was to assist these two parties in implementing the Arusha Peace Accords which were signed on 4 October 1993. Subsequently, other military agreements were signed between the parties, including cease-fire agreements and agreements for arms-free zones. General Dallaire testified that the FAR was under the control of the government of Rwanda and that the RPF was under the control of Paul

Kagame. The FAR and RPF occupied different sides of a clearly demarcated demilitarised zone, and according to General Dallaire, the RPF comprised 12,000-13,000 soldiers deployed in three groups: two groups for reaction in the western flank of the demilitarised zone and another group in the eastern flank with six independent battalions. The RPF headquartered in Mulundi, and had a lightweight battalion stationed in Kigali. General Dallaire testified that the RPF troops were disciplined and possessed a well-structured leadership which was answerable to authority and which respected instruction.

165. In addition to the testimony of these witnesses, the Chamber takes judicial notice of the following United Nations reports, which extensively document the massacres which took place in Rwanda in 1994: notably, the *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)*, U.N. Doc. S/1994/1405 (1994); *Report of the Special Rapporteur of the Commission on Human Rights on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye, on his mission to Rwanda from 8-17 April 1993*, U.N. Doc. E/CN.4/1994/7/Add.1 (1993); *Special Report of the Secretary-General on UNAMIR, containing a summary of the developing crisis in Rwanda and proposing three options for the role of the United Nations in Rwanda,* S/1994/470, 20 April 1994; *Report of the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, on his mission to Rwanda 11-12 May 1994*, U.N. Doc. E/CN.4/S-3/3 (1994). See also, generally, the collection of United Nations documents in *The United Nations and Rwanda, 1993-1996,* The United Nations Blue Books Series, Volume X, Department of Public Information, United Nations, New York.

166. The Chamber notes that witnesses from Taba also attested to the mass killings which took place around the country.

Factual Findings

167. Paragraph 5 of the indictment alleges, "Unless otherwise specified, all acts and omissions set forth in this indictment took place between 1 January 1994 and 31 December 1994, in the commune of Taba, prefecture of Gitarama, territory of Rwanda". This allegation, which supports

the legal finding that the Chamber has territorial and temporal jurisdiction over the crimes charged, is not contested, and the Chamber finds that it has been established by the evidence presented.

168. Paragraph 6 of the indictment alleges that the acts set forth in each paragraph of the indictment charging genocide, i.e. paragraphs 12-24, "were committed with intent to destroy, in whole or in part, a national, ethnic or racial group". That acts of violence committed in Rwanda during this time were committed with the intent to destroy the Tutsi population is evident not only from the testimony cited above of Dr. Zachariah, Ms. Hilson, Mr. Cox, Dr. Desforges and General Dallaire, but also from the witnesses who testified with regard to events in the commune of Taba. Witness JJ testified that she was driven away from her home, which was destroyed after a man came to the hill near where she lived and said that the bourgmestre had sent him so that no Tutsi would remain on the hill that night. At the meeting which was held on the morning of 19 April 1994, at which the Accused spoke, Witness OO testified that it was said by another speaker that all the Tutsi should be killed so that some day a child could be born who would have to ask what a Tutsi had looked like. She also quoted this speaker as saying "I will have peace when there will be no longer a Tutsi in Rwanda.". Witness V testified that Tutsi were thrown into the Nyabarongo river, which flows towards the Nile, and told to "meet their parents in Abyssinia", signifying that the Tutsi came from Abyssinia (Ethiopia) and that they "should go back to where they came from" (hearing of 24 January 1997, p.7)

169. In light of this evidence, the Chamber finds beyond a reasonable doubt that the acts of violence which took place in Rwanda during this time were committed with the intent to destroy the Tutsi population, and that the acts of violence which took place in Taba during this time were a part of this effort.

170. Paragraph 7 of the indictment alleges that the victims in each paragraph charging genocide were members of a national, ethnic, racial or religious group. The Chamber notes that the Tutsi population does not have its own language or a distinct culture from the rest of the Rwandan population. However, the Chamber finds that there are a number of objective indicators

of the group as a group with a distinct identity. Every Rwandan citizen was required before 1994 to carry an identity card which included an entry for ethnic group (*ubwoko* in Kinyarawanda and *ethnie* in French), the ethnic group being Hutu, Tutsi or Twa. The Rwandan Constitution and laws in force in 1994 also identified Rwandans by reference to their ethnic group. Article 16 of the Constitution of the Rwandan Republic, of 10 June 1991, reads, "All citizens are equal before the law, without any discrimination, notably, on grounds of race, colour, origin, ethnicity, clan, sex, opinion, religion or social position". Article 57 of the Civil Code of 1988 provided that a person would be identified by "sex, ethnic group, name, residence and domicile." Article 118 of the Civil Code provided that birth certificates would include "the year, month, date and place of birth, the sex, the ethnic group, the first and last name of the infant." The Arusha Accords of 4 August 1993 in fact provided for the suppression of the mention of ethnicity on official documents (see Article 16 of the Protocol on diverse questions and final dispositions).

171. Moreover, customary rules existed in Rwanda governing the determination of ethnic group, which followed patrilineal lines of heredity. The identification of persons as belonging to the group of Hutu or Tutsi (or Twa) had thus become embedded in Rwandan culture. The Rwandan witnesses who testified before the Chamber identified themselves by ethnic group, and generally knew the ethnic group to which their friends and neighbours belonged. Moreover, the Tutsi were conceived of as an ethnic group by those who targeted them for killing.

172. As the expert witness, Alison Desforges, summarised:

> "The primary criterion for [defining] an ethnic group is the sense of belonging to that ethnic group. It is a sense which can shift over time. In other words, the group, the definition of the group to which one feels allied may change over time. But, if you fix any given moment in time, and you say, how does this population divide itself, then you will see which ethnic groups are in existence in the minds of the participants at that time. The Rwandans currently, and for the last generation at least, have defined themselves in terms of these three ethnic groups. In addition reality is an interplay between the actual conditions and peoples'

subjective perception of those conditions. In Rwanda, the reality was shaped by the colonial experience which imposed a categorisation which was probably more fixed, and not completely appropriate to the scene. But, the Belgians did impose this classification in the early 1930's when they required the population to be registered according to ethnic group. The categorisation imposed at that time is what people of the current generation have grown up with. They have always thought in terms of these categories, even if they did not, in their daily lives have to take cognizance of that. ... This practice was continued after independence by the First Republic and the Second Republic in Rwanda to such an extent that this division into three ethnic groups became an absolute reality".

173. Paragraph 8 of the indictment alleges that the acts set forth in each paragraph of the indictment charging crimes against humanity, i.e. paragraphs 12-24, "were committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic or racial grounds". As set forth in the evidence, the scale of the attack was extraordinary. Defence counsel called the events which took place in Rwanda in 1994 "the greatest human tragedy" at the end of this century. Around the country, a massive number of killings took place within a very short time frame. Tutsi were clearly the target of the attack - at roadblocks, in shelters, and in their own homes. Hutu sympathetic to or supportive of Tutsi were also massacred. That the attack was systematic is evidenced by the unusually large shipments of machetes into the country shortly before it occurred. It is also evidenced by the structured manner in which the attack took place. Teachers and intellectuals were targeted first, in Taba as well as the rest of the country. Through the media and other propaganda, Hutu were encouraged systematically to attack Tutsi. For these reasons, the Chamber finds beyond a reasonable doubt that a widespread and systematic attack began in April 1994 in Rwanda, targeting the civilian Tutsi population and that the acts referred to in paragraphs 12-24 of the indictment were acts which formed part of this widespread and systematic attack.

174. Paragraph 9 of the indictment states, "At all times relevant to this indictment, a state of internal armed conflict existed in Rwanda". The Chamber notes the testimony of General

Dallaire, a witness called by the Defence, that the FAR was and the RPF were "two armies" engaged in hostilities, that the RPF had soldiers systematically deployed under a command structure headed by Paul Kagame, and that FAR and RPF forces occupied different sides of a clearly demarcated demilitarised zone. Based on the evidence presented, the Chamber finds beyond a reasonable doubt that armed conflict existed in Rwanda during the events alleged in the indictment, and that the RPF was an organised armed group, under responsible command, which exercised control over territory in Rwanda and was able to carry out sustained and concerted military operations.

175. Paragraph 10 of the indictment reads, "The victims referred to in this indictment were, at all relevant times, persons not taking an active part in the hostilities". The victims referred to in the indictment, several of whom testified before the Chamber, were farmers, teachers and refugees. The Chamber notes that the Defence did not challenge the civilian status of the victims by making any submissions or leading any evidence connecting any of the victims to the RPF or the hostilities that prevailed in 1994.Since the allegations in Paragraphs 13, 17 and those pertaining to Juvenal Rukundakuvuga and Emmanuel Sempabwa in paragraph 15 of the indictment have not been proved beyond a reasonable doubt, the Chamber finds that it is futile to determine whether these alleged victims were in fact civilians, taking no active part in the hostilities that prevailed in 1994. In light of the evidence presented by the Prosecutor, the Chamber finds beyond a reasonable doubt that all the other victims referred to in the indictment were civilians, not taking any active part in the hostilities that prevailed in 1994.

176. Paragraph 10A was added to the indictment when it was amended to include charges of sexual violence, set forth in Paragraphs 12A and 12B of the indictment. It is not an allegation of fact, rather it appears to be a definition of sexual violence proposed by the Prosecutor.

177. Paragraph 11 of the indictment sets forth the definition of individual criminal responsibility in Article 6(1) of the Statute of the Tribunal and alleges that the Accused is individually responsible for the crimes alleged in the indictment. The Chamber does not consider this to be a factual allegation but rather a matter of legal issue, which is addressed in the legal

findings on each count. The Chamber notes that no general allegation has been made by the Prosecution in connection with Counts 13, 14 and 15, under which the Accused is charged with individual criminal responsibility under Article 6(3), as well as Article 6(1) of the Tribunal's Statute.

5.2 Killings (Paragraphs 12, 13, 18, 19 & 20 of the Indictment)

5.2.1. Paragraph 12 of the Indictment

178. The Chamber now considers paragraph 12 of the Indictment, which alleges the responsibility of the Accused, his knowledge of the killings which took place in Taba between 7 April and the end of June 1994, and his failure to attempt to prevent these killings or to call for assistance from regional or national authorities.

179. Paragraph 12 of the Indictment reads as follows:

> 12. As bourgmestre, **Jean Paul AKAYESU** was responsible for maintaining law and public order in his commune. At least 2000 Tutsi were killed in Taba between April 7 and the end of June, 1994, while he was still in power. The killings in Taba were openly committed and so widespread that, as bourgmestre, **Jean Paul AKAYESU** must have known about them. Although he had the authority and responsibility to do so, **Jean Paul AKAYESU** never attempted to prevent the killing of Tutsi in the commune in any way or called for assistance from regional or national authorities to quell the violence.

180. Many witnesses testified regarding the responsibilities of the bourgmestre. Witness DZZ, a former police officer, testified that as bourgmestre, the Accused was responsible for maintaining law and public order in the commune. Witness R, a former bourgmestre, confirmed this testimony, as did Witness V and expert witness Alison DesForges. The responsibilities of the bourgmestre are set forth in Rwandese law, which provides in Article 108 of the Law on the Organization of the Commune that the brigadier has command of the communal police, under the authority of the bourgmestre. Moreover, according to the testimony of witness NN and others, the accused's authority over the communal police continued, and he continued to issue

them orders, throughout the period in question. Many witnesses testified as to their perception of the authority of the bourgmestre. Witness K and Witness NN both stated that as bourgmestre, the Accused was the leader of the commune, and Witness S, Witness V and Ephrem Karangwa, the current bourgmestre of Taba, all testified that the people of the commune respected and followed every order of the Accused, as bourgmestre. The bourgmestre was the most important person in the Commune and its "parent" according to Ephrem Karangwa. He was "paramount for the life of the whole commune" and the representative of the executive power in the commune, according to Witness R, himself a former bourgmestre The Accused himself acknowledged that he was responsible for the maintenance of law and order in the commune. Accordingly, the Chamber finds that this proposition has been established.

181. With regard to the allegation that at least 2000 Tutsi were killed in Taba from 7 April to the end of June 1994, the Chamber notes that while many witnesses testified to widespread killings in Taba, very few witnesses were able to estimate numbers of people killed. Ephrem Karangwa, the present bourgmestre of Taba, testified that the population of Taba has decreased by 7,000 persons since April 1994, and he described mass graves in each sector of the commune. While some part of the population decrease may be attributed to refugees leaving the commune, it is clear from the testimony of many witnesses that a substantial number of people were killed in Taba. The number 2000 has not been contested by the Defence, and it seems to the Chamber, based on the evidence of killing and mass graves, a modest estimate of the number of people killed in Taba during this period. The testimony also uniformly establishes that virtually all of these people were Tutsi. Accordingly, the Chamber finds that it has been established beyond a reasonable doubt that at least 2000 Tutsi were killed in Taba from 7 April to the end of June 1994. It has also been established that the accused remained bourgmestre throughout this period.

182. The Indictment alleges that the killings in Taba were openly committed and so widespread that the Accused must have known about them. A number of witnesses, including Witness PP and Witness V, testified that they informed the Accused of the killings which were taking place in Taba. Others, such as Witness NN, testified that the Accused was present at the bureau communal and elsewhere when killings took place, and that he witnessed these killings.

Others, including Witness KK, Witness NN, Witness G, Witness W, Witness J, Witness C, Witness JJ and Witness V, have testified that the Accused supervised and actively participated in the killings. The Accused himself acknowledged that he knew such killings were taking place. He testified that he was told that there were killings everywhere in Taba, and that it was the Tutsi who were being killed. He stated that on 19 April 1994, killings spread to most of the commune of Taba. The issue is not contested, and it has been established that the Accused knew that killings were taking place and were widespread in Taba during the period in question.

183. The final allegation of paragraph 12 is that although he had the authority and responsibility to do so, Jean Paul Akayesu never attempted to prevent the killing of Tutsi in the commune in any way or called for assistance from regional or national authorities to quell the violence. The Accused contends that he did not have the power necessary to prevent the killings from taking place. The Chamber notes that the issue to be addressed is whether he ever attempted to do so. In the light of the evidence, the Chamber considers that it is necessary to distinguish between the period before 18 April 1994, when the key meeting between members of the interim government and the bourgmestres took place in Murambi, in Gitarama, and the period after 18 April 1994. Indeed, on the Prosecution's own case, a marked change in the accused's personality and behaviour took place after 18 April 1994.

184. There is a substantial amount of evidence establishing that before 18 April 1994 the Accused did attempt to prevent violence from taking place in the commune of Taba. Many witnesses testified to the efforts of the Accused to maintain peace in the commune and that he opposed by force the Interahamwe's attempted incursions into the commune to ensure that the killings which had started in Kigali on 7 April 1994 did not spread to Taba. Witness W testified that on the order of the Accused to the population that they must resist these incursions, members of the Interahamwe were killed. Witness K testified that Taba commune was calm during the period when Akayesu wanted that there be calm. She said he would gather the population in a meeting and tell them that they had to be against the acts of violence in the commune. Witness A testified that when the Interahamwe tried to enter the commune of Taba, the bourgmestre did everything to fight against them, and called on the residents to go to the borders of the commune

to chase them away. The Accused testified that he intervened when refugees from Kigali were being shot at by the Interahamwe. The police returned fire and three Interahamwe were killed. The Accused testified that he confiscated their weapons and their vehicle.

185. The Accused testified that he asked for three gendarmes at the meeting with the Prime Minister in Gitarama on 18 April 1994, to help him maintain order and security and to stop the killing of Tutsi. The only witnesses to attend the Murambi meeting were prosecution witness R, an MDR bourgmestre in Gitarama prefecture like the accused, and Defence witness DAAX, the former prefect of Gitarama. Witness R recalled three meetings of the bourgmestres in Gitarama prefecture convened by the prefect after 6 April 1994, and in his statement to the Office of the Prosecutor he said that the accused did ask for gendarmes at one of those meetings. When testifying before the Chamber, Witness R did not remember the accused having spoken at the Murambi meeting of 18 April 1994, although in his earlier statement to the Office of the Prosecutor, he stated that the accused had spoken at that meeting. Because of these inconsistencies, Defence counsel submitted a motion requesting the Chamber to consider a prosecution for false testimony, which this Chamber rejected in a Decision of 9 March 1998. As the Chamber stated in that Decision, it did not deem the matter appropriate for an investigation into false testimony, but rather it was a matter for the evaluation of the credibility of the witness in question. In this case, the Chamber considers that, despite discrepancies between Witness R's testimony and his prior statement to the Prosecutor relating to the sequence of the meetings addressed by the accused, if taken in the light most favourable to the accused, it corroborates the accused's account that at some point after 6 April 1994, and in all likelihood at the Murambi meeting of 18 April 1994, the accused asked for gendarmes to assist with the problems of security in his commune. Given the accused's testimony on this point, and its corroboration in part by the sole prosecution witness who was present at the Murambi meeting, the accused's version of events - that he did call for assistance from the national and regional authorities - must be credited.

186. Moreover, Defence witness DAAX, the former prefect of Gitarama supports the accused's account. Witness DAAX testified that he convened three meetings of bourgmestres

between 6 April 1994 and 18 April 1994 - all of which were attended by the accused - the third meeting being the one which was moved from Gitarama to Murambi at the last minute at the request of the Prime Minister so that the Prime Minister and other Ministers could address the prefect and bourgmestres. At this third meeting, the prefect testified, the accused took the floor and complained of the problems of security in his commune, in common with the Prefect and other bourgmestres. Witness DAAX's testimony agrees with that of the accused that the Prime Minister did not reply directly to the bourgmestre's expressions of concern about security in their Communes, but that he rather read parts of a prepared policy speech and threatened the complaining bourgmestres with dismissal. Witness DAAX further testified that at least one bourgmestre, the bourgmestre of Mugina, was killed shortly after the meeting as a result. Witness DAAX also testified that the accused had to flee his commune due to pressure from the Interahamwe at some point between 6 April 1994 and 18 April 1994, and in any event after the first two meetings referred to above but before the third meeting. Witness DAAX said the Accused never officially requested gendarmes from him, unlike the bourgmestre of Mugina. Witness DAAX lost contact with the Accused after 18 April 1994. The Chamber notes that the Accused does not assert that he requested assistance from the prefect of Gitarama but rather from the Prime Minister, during the course of the meeting.

187. A substantial amount of evidence has been presented indicating that the conduct of the Accused did, however, change significantly after the meeting on 18 April 1994, and many witnesses, including Witnesses E, W, PP, V and G, testified to the collaboration of the Accused with the Interahamwe in Taba after this date. Witness A testified that he was surprised to see that the Accused had become a friend of the Interahamwe. The Accused contends that he was overwhelmed. Witness DAX and Witness DBB, both witnesses for the Defence, testified that the Interahamwe threatened to kill the Accused if he did not cooperate with them. The Accused testified that he was coerced by the Interahamwe and particularly by Silas Kubwimana, the head of the Interahamwe with whom he was seen quite frequently during this time. The Chamber notes that in his pre-trial written statement, the Accused gave a very different account of Silas Kubwimana, describing his mandate in the commune as that of a "peace-maker".

188. The Chamber recognises the difficulties a bourgmestre encountered in attempting to save lives of Tutsi in the period in question. Prosecution witness R, who was the bourgmestre of another commune, in Gitarama prefecture, testified that there was very little he or other bourgmestres could do to prevent massacres in his commune once killings became widespread after 18 April 1994. He averred that a bourgmestre could do nothing openly to combat the killings after that date or he would risk being killed; what little he could do had to be done clandestinely. The Defence case is that this is precisely what the accused did.

189. Defence witnesses, DAAX, DAX, DCX, DBB and DCC confirm that the accused failed to prevent killings after 18 April 1994 and expressed the opinion that it was not possible for him to do anything with ten communal policemen at his disposal against more than a hundred Interahamwe.

190. The Defence contends that, despite pressure from the Interahamwe, the Accused continued to save lives after 18 April 1994. There is some evidence on this matter, referred to in the section on "the accused's line of Defence".

191. There is also evidence indicating that after 18 April 1994, there were people that came to the Accused for help, and he turned them away, and there is evidence that the Accused witnessed, participated in, supervised, and even ordered killings in Taba. Witness JJ testified that after her arrival at the bureau communal, where she came to seek refuge, she went to the Accused on behalf of a group of refugees, begging him to kill them with bullets so that they would not be hacked to death with machetes. She said he asked his police officers to chase them away and said that even if there were bullets he would not waste them on the refugees.

192. The Chamber finds that the allegations set forth in paragraph 12 cannot be fully established. The Accused did take action between 7 April and 18 April to protect the citizens of his commune. It appears that he did also request assistance from national authorities at the meeting on 18 April 1994. Accordingly, the Accused did attempt to prevent the killing of Tutsi in his Commune, and it cannot be said that he never did so.

193. Nevertheless, the Chamber finds beyond a reasonable doubt that the conduct of the Accused changed after 18 April 1994 and that after this date the Accused did not attempt to prevent the killing of Tutsi in the commune of Taba. In fact, there is evidence that he not only knew of and witnessed killings, but that he participated in and even ordered killings. The fact that on one occasion he helped one Hutu woman protect her Tutsi children does not alter the Chamber's assessment that the Accused did not generally attempt to prevent the killings at all after 18 April. The Accused contends that he was subject to coercion, but the Chamber finds this contention greatly inconsistent with a substantial amount of concordant testimony from other witnesses. It is also inconsistent with his own pre-trial written statement. Witness C testified to having heard the accused say to an Interahamwe " I do not think that what we are doing is proper. We are going to have to pay for this blood that is being shed..",a statement which indicates the Accused's knowledge of the wrongfulness of his acts and his awareness of the consequences of his deeds. For these reasons, the Chamber does not accept the testimony of the Accused regarding his conduct after 18 April, and finds beyond a reasonable doubt that he did not attempt to prevent killings of Tutsi after this date. Whether he had the power to do so is not at issue, as he never even tried and as there is evidence establishing beyond a reasonable doubt that he consciously chose the course of collaboration with violence against Tutsi rather than shielding them from it.

5.2.2. Paragraph 13 of the Indictment

Alleged facts:

194. Paragraph 13 of the Indictment is worded as follows:

> "On or about 19 April 1994, before dawn, in Gishyeshye sector, Taba commune, a group of men, one of whom was named François Ndimubanzi, killed a local teacher, Sylvère Karera, because he was accused of associating with the Rwandan

Patriotic Front ("RPF") and plotting to kill Hutu. Even though at least one of the perpetrators was turned over to **Jean-Paul Akayesu**, he failed to take measures to have him arrested".

195. It is alleged that, by the acts with which he is charged in this paragraph, Akayesu is guilty of the offences which form the subject of three counts:

- Count 1 of the Indictment charges him with the crime of genocide, punishable under Article 2(3)(a) of the Statute;
- Count 2 charges him with the crime of complicity in genocide, punishable under Article 2(3)(e) of the Statute; and
- Count 3 charges him with the crime of extermination which is a Crime against Humanity, punishable under Article 3(b) of the Statute.

196. In order to prove the acts alleged against Akayesu under paragraph 13 of the Indictment, it is necessary to first establish that Sylvère Karera, a teacher, was killed in the Gishyeshye sector, Taba commune, on 19 April 1994, before dawn, by a group of men, one of whom was named François Ndimubanzi and that he was killed because he was accused of associating with the RPF and plotting to kill Hutu. The Chamber must then be satisfied that at least one of the perpetrators of this killing was indeed turned over to Jean-Paul Akayesu, and that he failed to take measures to have him arrested.

With regard to the killing of Sylvère Karera in the Gishyeshye sector, Taba commune, on or about 19 April 1994, before dawn:

197. Several Prosecution witnesses, particularly, those who appeared under the pseudonyms A, W, E and U, as well as Ephrem Karangwa, provided information on the killing of teacher Sylvère Karera in the night of 18 to 19 April 1994.

198. Witness A, a Hutu man, testified that, during the night of 18 to 19 April 1994, he heard

people shouting that thieves had killed people at Remera school and calling on the population to stop them. Witness A affirmed that, on 19 April 1994, he had gone to Remera school. There he learnt from the headmaster that the prefect of studies, who turned out to be Sylvère Karera, had been killed. The witness saw the body of the teacher before it was covered with a pink sheet at the request of the headmaster.

199. Ephrem Karangwa, a Tutsi man, called by the Prosecutor as a witness who, at the material time, performed the functions of Inspecteur de police judiciaire of the Taba commune, stated before the Chamber that Sylvère Karera, a teacher at the Remera Rukoma school complex, was killed in the night of 18 to 19 April 1994 by members of the Interahamwe.

200. Witness W, a Tutsi, who resided in Taba, where he worked as a teacher, testified that on returning from night patrols in which he had participated during the night of 18 to 19 April 1994, he learnt that the prefect of studies at the public primary school, Rukoma, had just been killed.

201. Questioned on the death of Sylvère Karera, witness E stated that he had gone, in the night of 18 to 19 April 1994, to the entrance of Remera school. He did not directly see Karera's body, but had heard that the body was in the school premises. No one stopped him from entering the school, but he had preferred to go to the place from where the noise came which had brought him out of his home.

202. Prosecution witness U also heard that a teacher, named Karera, had been killed. She stated that throughout the night, she had heard people shouting in the streets and announcing, particularly, that Karera had been killed.

203. The Defence has never disputed the killing of Sylvère Karera in the night of 18 to 19 April 1994. The accused has himself confirmed, during his appearance as witness before the Chamber, that the teacher Sylvère Karera had been killed in the night of 18 to 19 April 1994.

Concerning the allegation that Sylvère Karera was killed by a group of men, one of whom

was named François Ndimubanzi, and that he was killed because he was accused of associating with the RPF and plotting to kill Hutu:

204. The Chamber notes that though the Indictment alleges that Sylvère Karera was killed by a group of men, one of whom was named François Ndimubanzi, the Prosecutor has adduced no evidence to show number and identity of the perpetrators of the killing.

205. As for the reasons alleged by the Prosecutor for the killing of Sylvère Karera, that is, associating with the RPF and plotting to kill Hutu, the Defence stated, in its concluding arguments, that they should be dismissed on the ground that Sylvère Karera was, according to the Defence, Hutu and that the Prosecutor's allegations that this teacher was killed because he was accused of plotting to kill Hutu were therefore without merit.

Concerning the allegation that at least one of the perpetrators of the killing of Sylvère Karera was turned over to Jean-Paul Akayesu and that he failed to take measures to have him arrested:

206. Though the Indictment alleges that at least one of the perpetrators of the killing of Sylvère Karera was turned over to Akayesu, the Prosecutor has adduced no evidence to support this allegation.

207. Witness E stated that, in the night of 18 to 19 April 1994, after going to the school entrance where Sylvère Karera had been killed, he went to the place from where camethe noise which had brought him out of his home. At Gishyeshye, from where came the noise, near a roadblock, he saw the body of another person who had been killed. A crowd gathered. It was said that teacher Karera was killed and that the remains near the roadblock were those of the Interahamwe who had just killed Karera. Apart from that dead Interahamwe, no other person was held responsible for killing Karera. Witness E specified that he had heard that Sylvère Karera had been killed by that Interahamwe alone.

208. The witness called by the Prosecutor under the pseudonym Z, a Tutsi man, stated that, on or about 19 April 1994, in the early hours of the day following the killing of a Tutsi teacher in Remera and that of his murderer, who was killed by persons in charge of maintaining security, he and other persons stood near the body of the teacher's murderer. Akayesu, who was armed, separated members of the Interahamwe from the population. According to witness Z, Akayesu, in referring to the body on the spot, reportedly deplored the killing of this person.

209. Prosecution witness A testified that, in the night of 18 to 19 April 1994, an Interahamwe was killed. No investigation was conducted. He was simply buried immediately.

210. Prosecution witness U stated that some men told him, on 19 April 1994, that a person had been killed and that Akayesu had gone to where the body was and held a meeting there.

211. Several other witnesses indicated to the Chamber that a crowd had formed early in the morning of 19 April 1994, in Gishyeshye, around the body of a young member of the Interahamwe. That meeting is at the root of the allegations brought by the Prosecutor against Akayesu under paragraphs 14 and 15 of the Indictment. The factual findings of the Chamber on the holding of the said meeting are elaborated upon below.

212. The Prosecutor accepted this version of facts in her concluding arguments. She had then told the Chamber that, following the killing of the Tutsi teacher, Sylvère Karera, in the middle of the night of 18 to 19 April 1994, in Remera, by some members of the Interahamwe, the people of the commune had gone out into the streets to find out what was happening, wondering why a teacher had been killed. Later, according to the Prosecutor's statement, they caught one member of the Interahamwe in Gishyeshye and killed him.

213. In her concluding arguments, the Prosecutor did not mention any fact designed to show that one of the possible killers of Sylvère Karera was turned over to Jean-Paul Akayesu alive, contrary to what is alleged in paragraph 13 of the Indictment.

214. During cross-examination of the accused appearing as witness in his own trial, the Prosecutor had him confirm that Sylvère Karera was killed in the night of 18 to 19 April 1994 and that later, one member of the Interahamwe, the person who had killed Karera, was also killed. The Prosecutor added that Prosecution witnesses had indeed testified to that.

215. During his appearance before the Chamber as witness, the accused argued that during the night of 18 to 19 April 1994, he was sleeping in the *Bureau Communal*, when towards 4 a.m., a certain Augustin Sebazungu, MDR treasurer at Taba, residing in the Gishyeshye sector, came to inform him that the situation in the sector was tense, following the killing of a young man, a member of the Interahamwe. The *Bourgmestre* then immediately alerted the police and went to the scene, accompanied by two policemen. There he found a body stretched out on the ground, covered with traces of blood, as if it had been hit. The accused affirmed before the Chamber that he seized the opportunity of this gathering which formed as people came to see what was happening, to address the population. He noted that members of the region's Interahamwe had rushed and surrounded the body of their young member. Akayesu told the Chamber that he had condemned the killing of the young man because he felt that it was not in that manner that law and order would be maintained, and that he had indicated that his arrest would simply have been enough.

Factual findings

216. Prosecution witnesses appearing under the pseudonyms A, W, E and U, as well as Ephrem Karangwa, provided information which confirmed the Prosecutor's allegations as to the killing of teacher Sylvère Karera in the night of 18 to 19 April 1994. On the basis of such corroborative evidence, which was not substantially disputed by the Defence, the Chamber is satisfied that Sylvère Karera was actually killed, in Gishyeshye, in the night of 18 to 19 April 1994.

217. The Chamber notes however that the Prosecutor has not adduced conclusive evidence to support her allegations relating to the number and identity of the perpetrators of the killing of

Sylvère Karera as well as the reasons for this murder.

218. With regard to the allegation that at least one of the perpetrators of the killing of Sylvère Karera had been turned over to Jean-Paul Akayesu and that he failed to take any measures to have him arrested, for the reasons explained above and in the absence of pertinent evidence, the Chamber finds that the Prosecutor has not established beyond reasonable doubt that at least one of the perpetrators of the killing of Sylvère Karera was turned over alive to Akayesu, and that he failed to take any measures to have him arrested.

5.2.3. Paragraph 18 of the Indictment

219. Paragraph 18 of the Indictment reads as follows:

> 18. On or about April 19, 1994, the men who, on **Jean Paul AKAYESU**'s instructions, were searching for Ephrem Karangwa destroyed Ephrem Karangwa's house and burned down his mother's house. They then went to search the house of Ephrem Karangwa's brother-in-law in Musambira commune and found Ephrem Karangwa's three brothers there. The three brothers -- Simon Mutijima, Thaddée Uwanyiligira and Jean Chrysostome Gakuba -- tried to escape, but **Jean Paul AKAYESU** blew his whistle to alert local residents to the attempted escape and ordered the people to capture the brothers. After the brothers were captured, **Jean Paul AKAYESU** ordered and participated in the killing of the three brothers.

Events alleged

Testimony Of Ephrem Karangwa (Witness d)

220. Ephrem Karangwa was assigned the pseudonym D and placed under the Tribunal's Witness Protection Unit, pursuant to an order of 26 September 1996, but he waived witness protection and elected to testify under his own name.

221. Karangwa testified that he resided in Taba and in April 1994 he was the Inspecteur de Police Judiciaire (IPJ) in the Ministry of Justice for the Prosecutor in Taba commune having taken office in August 1984. As IPJ he investigated criminal complaints and transmitted case files to the Prosecutor. The witness's office was situated in the bureau communal in Taba. The witness testified that the head of any commune was the bourgmestre. The Accused who was the bourgmestre of Taba during the events of April 1994. The witness had known the Accused for about twenty years. The witness did not belong to any political party and he was not allowed to do so by the Minister of Justice. He testified that there was never any tension between him and the Accused and they had a good working relationship.

222. Karangwa testified that in his role as IPJ he became aware that there were problems of a political nature between the political parties in Taba, especially the MDR and the MRND. The MDR had a greater following in Taba and this party was led by the Accused. On one occasion in 1992 there was a demonstration by the MDR which led to violence when the demonstrators tried to forcibly enter the bureau communal. The MDR wanted the bourgmestre at that time removed from office. The matter was investigated by the witness and referred to the Prosecutor for prosecution. The witness did not have any knowledge of the eventual out come of this matter, at the time of testifying. The witness said that he knew of Silas Kubwimana and that he often complained about the Accused and the MDR officials. He said that there existed a file on this complaint at the Prosecutor's office. The witness said that he had become aware of the existence of this file in his official capacity as IPJ.

223. Karangwa testified that on the morning of 7 April 1994, while preparing to go to work he heard an announcement on the radio that the President had been killed. He also heard an announcement calling on people to remain wherever they were and he therefore decided not to go to work.

224. Karangwa testified that he had spoken to many people about the security situation in Taba. On 14 April 1994, he saw a blue Toyota Minibus pass him. He was informed that this motor vehicle and a white "pick up" were confiscated from the Interahamwe by the people of Kamembe. He was further informed that a police officer was killed and an Interahamwe wounded in this process.

225. Karangwa testified that on the night of 18 April 1994 he was outside his house because he had heard that Tutsi in Runda commune were being killed and since he was a tutsi he was afraid. He stated that Runda and Taba were neighbouring communes. At approximately 1 am on 19 April 1994, a person came to the witness's house and informed him that he had just attended a meeting led by the Accused where plans were being made to kill the witness and to commence killings in Taba in a similar manner to killings that were happening in Runda. This person advised the witness to flee with his family. The witness and his family hid on a hill and at dawn the witness's sisters, mother and wife went on foot to his wife's sisters house in Musambira and he and his brothers stayed behind because they wanted to verify the information that had been given to him. The witness said that he wondered why someone would want to kill him and his family, since they had no problem with anyone.

226. Karangwa testified that from his hiding place on the hill, he could see his house on the opposite hill about 150 metres away. The witness stated that he saw three vehicles drive up to his house between the hours of eight and nine o'clock in the morning. The Accused came in a blue Toyota mini bus, the one that the people had taken away from the Interahamwe. The witness was uncertain as to whether the Accused was driving the blue Toyota Hiace minibus. The witness described the other two vehicles as a white Toyota and a red Toyota. The witness could not see what the Accused had in his hands, but he did see the Accused wearing a military jacket. The Accused and the other people alighted from the motor vehicles and went down to the witness's house. The witness's dogs barked and someone in this group of people fired a round from a firearm and the dogs ran away. The witness stated that he saw this group of people then destroy his house and his mother's house. The witness stated that the houses were looted and burnt. The

witness identified prosecution exhibits 50 and 51 as being photographs of the remains of these houses.

227. Karangwa testified that this event confirmed the information that he had received and he then decided to join his family in Musambira. He arrived at Musambira at about 3 o'clock in the afternoon. He saw his family at the house of his brother in law, Laurent Kamondo and they immediately left for Kabgayi, whilst he awaited the arrival of his younger brothers. He stated that he could not stay in the house because he was afraid that the Accused would look for him there. Instead, he hid in an eucalyptus bush on the side of a hill approximately eighty metres from the house.

228. Karangwa testified that he saw two motor vehicles, a blue Toyota Hiace minibus and a red Toyota Hilux approach the house. These vehicles stopped approximately twenty five metres away from the house. This was the same minibus that was taken away from the Interahamwe and the Accused was using it at that time. Many people alighted from the vehicles and walked towards Laurent Kamondo's house. The witness recognised some of these people as the bourgmestre of Musambira, the Accused, a police officer named Emanuel Mushumba from the Taba commune, Mutiji Masivere, Winima Boniface and Munir Yarangaclaude who was the secretary of the MDR party in the commune of Taba (phonetic spelling). The Accused was wearing a military jacket and he had a gun in his hand.

229. Karangwa testified that he heard shouts and whistles as this group of people approached Laurent Kamondo's house. He saw people running and, thereafter, he saw his younger brothers in the court yard with these people. The witness stated that it was then that he realised that his brothers were in Musambira. The witness continued to hear shouts from these people and then he heard the Accused say that his brothers must be shot. The witness heard gun shots and concluded that his brothers were killed and that the Accused had fired the gun. When asked by the Prosecutor whether he saw the gun that was used to kill his brothers, the witness replied that he saw the Accused carrying a gun when he arrived and that he heard the shots.

230. Karangwa testified that after the killing of his brothers, he fled to Kabgayi, and on arrival at the cathedral, the witness stated that he saw the Accused in a 'pick up' drive up to the cathedral. The Accused was in the company of two police officers from the Taba commune named Emanuel Mushumba (phonetic spelling) and Ooli Musakarani (phonetic spelling) and a group of people. The witness said that he saw the Accused and these other people alight from the vehicle and look around the courtyard of the cathedral but they did not go inside. They then got back into the motor vehicle and left. The witness was informed by Witness V that the Accused was making enquiries about his whereabouts and he was advised to hide. The witness stayed in the seminary until the end of the war.

231. Karangwa testified that he was not able to leave the seminary but that he heard from many people that the Accused was outside the seminary on many occasions. The Accused was able to come into the compound of the seminary from 30 May 1994. The witness recalled that he remembered that day clearly, because it was on that day that the Accused came to take him away, and he was saved by someone.

232. Karangwa testified that he stayed in Kabgayi from 21 April 1994 to 2 June 1994. At the beginning of 1995 the witness went to work as IPJ in the public prosecutor's office in Gitarama and on 3 January 1996 became the bourgmestre of Taba. The witness said that at that time Tutsi were killed and the only reason the Accused looked for him was because he had worked in the commune and he was Tutsi.

233. In response to a question from the bench, Karangwa stated that the fact that the Accused was present made him responsible for the death of his brothers. When asked for clarification as to whether the Accused ordered the shooting, the witness reaffirmed that the Accused ordered their shooting.

234. Under cross examination, Karangwa testified that he had a very good working relationship with the Accused. The witness stated that the Accused dealt with civil disputes and he referred all criminal matters to the witness. The witness stated that he was generally invited

to meetings pertaining to security in Taba. He testified that he saw the Accused between 6 and 10 April 1994 in Kamembe. The Accused was there assessing the security situation, since there was an influx of people that were fleeing Kigali. The Accused sent commune police officers to ensure the security of these people. The Accused at this stage was opposed to any killing.

235. In clarification of an averment in his written statement made to the Office of the Prosecutor (exhibit 105), the witness testified that the Accused held meetings on 18 and 19 April 1994 with a view to planning the genocide. The witness stated that he had not attended any of these meetings but he heard of them. The witness stated that at these meetings a decision was taken that the MDR and the MRND should not fight the Interahamwe and the CDR but they should fight the tutsi. This decision according to the witness, was taken at communal level by the bourgmestre. Although the bourgmestre belonged to the MDR all the political parties at communal level were under his authority. The witness did not go to work from 7 April 1994. The witness stated that he knew that there were major security problems in the commune and expressed the view that if the bourgmestre believed that the witness was competent to resolve these problems, the bourgmestre would have provided the witness with transport to go to work.

236. The witness acknowledged the fact that the Accused fought against the Interahamwe after 6 April 1994 and went on to say that if the Accused had not done so the killing in Taba would have started much earlier. The Defence Counsel pointed out that in his written statement to the Office of the Prosecutor, the witness stated that he was about a kilometre away from his house when he saw the Accused come to his house with a group of people. The witness denied this and reaffirmed his testimony that he was 150 metres away from his house, on the opposite hill. According to the witness, he was able to identify the Accused by the way that he walked and the clothes that he was wearing. The witness could also hear what was spoken by the Accused and the group of people when they were at his house, although he was 150 metres away. The witness identified the people with the Accused as assistant bourgmestre Civil Mootijima (phonetic spelling), assistant bourgmestre Wimina Boniface (phonetic spelling), manager of a popular bank Aloyce Kubunda (phonetic spelling), businessman Daniel Gasiba (phonetic spelling) and some communal police officers.

237. Karangwa testified under cross-examination, that when the Accused arrived at Laurent Kamondo's house at Musambira he immediately searched the house and found his three brothers. The Accused then killed the witness's three brothers by shooting them. The Defence Counsel pointed out that, in his written statement, the witness had stated that the Accused killed his brother, Jean Kististan (phonetic spelling), by shooting him and when his other two brothers tried to escape they were attacked and killed with machetes by the men who were with the Accused. The Defence Counsel requested an explanation from the witness in respect of this discrepancy. The witness denied that he stated this and maintained that all three of his brothers were shot.

238. Karangwa testified under cross examination, that he left Musambira immediately after his brothers were killed and when he was asked whether he buried is brothers, his response was that he did not have the time to do so. The Defence Counsel pointed out that the witness had stated in his written statement that he had buried his brothers near the house of Laurent Kamondo and requested the witness to explain this discrepancy. The witness denied this and maintained that his brothers were buried by Laurent Kamondo.

Testimony of Witness S

239. Witness S testified that he is a Hutu farmer. In April 1994, he lived in the commune of Musambira. There was safety and security in Musumbira even after 6 April 1994 when the President's plane had crashed but this had changed on 19 April 1994. Witness S was in his house on 19 April 1994. In the morning of the same day, between 9am and 10 am, Ephrem Karangwa's wife, sisters and mother went to Witness S's home. Witness S spoke to these people on their arrival and they had informed him that killings had begun in the Taba commune and many people were leaving their homes and fleeing.

240. Witness S testified that Ephrem Karangwa arrived at his home between 11 am and 12 noon on the same day. On his arrival, his wife, mother and sisters immediately left for Kabgayi.

Witness S spoke to Ephrem Karangwa who also informed him that killings had began in Taba. Witness S stepped out of his house and he stated that when he looked in the direction of Taba he could see columns of smoke. Witness S stated that Karangwa left saying that he was waiting for his brothers and on their arrival they would set off for Kabgayi to join the rest of their family.

241. Witness S testified that Ephrem Karangwa's three brothers arrived at his house between 4 and 5 o'clock in the afternoon of 19 April 1994. The three brothers went into the witness's home and asked for their mother and sisters. Witness S informed them that they had already left. He also informed them that Ephrem Karangwa was waiting for them but that he did not know where. The witness said that the three brothers were wearing civilian clothes and they did not have any weapons in their possession. The three brothers together with Witness S went into the house. Whilst in the house, the witness heard the sound of cars. The three brothers went behind the house. Witness S went into the front court yard and he saw the motor vehicle that belonged to the commune of Musumbira. The witness described this motor vehicle as a red dual cab Hilux "pickup". Witness S then saw the bourgmestre of Musumbira, Justin Nyangwe and the assistant bourgmestre, Martin Kalisa, on the path that led to his house. He also saw the Accused with the assistant bourgmestre of Taba and a few police officers. Witness S did not know all the police officers that were in the group but he recognised them as police officers by the fact that they were wearing police uniforms and they were in possession of firearms. The witness recognised two of these police officers as being from the commune of Musambira. He did not know or recognise the other people in the group. These people were wearing civilian clothes.

242. Witness S testified that he had known the Accused before the events of April 1994. When the witness visited Ephrem Karangwa at his office in the bureau communal, he often saw the Accused. According to Witness S, the Accused was wearing a long military jacket and he had a grenade in his hand. Witness S's father was also in the group of people that came to his house and the witness noticed that his father was injured in his face and he was bleeding. By this time this group of people had arrived and were standing about three metres away from the house. Witness S's father said to him if Ephrem Karangwa was in the house he should hand him over

or else they will be killed by this group of people. The Accused at this time was standing next to the bourgmestre of Musambira. The bourgmestre of Musambira asked Witness S if Ephrem Karangwa was in the house. According to the witness he responded by saying that he was not in the house and invited the bourgmestre to search the house if he so wished. The assistant bourgmestre of Musumbira, Martin Kalisa, together with two police officers from Taba searched the house. Witness S was not allowed into the house whilst the search was being conducted and he stood outside. The Accused during this search ordered the police officers to surround the house, to prevent Ephrem Karangwa from running away. By this time many people from the general population of Musambira had gathered to see what was going on and they also acted on the Accused's instruction and surrounded the house.

243. Witness S testified that the people searching the house did not find Ephrem Karangwa. Instead they came out with some cans of sardines and Accused the witness and his family of being "Inyenzi". At this time Ephrem Karangwa's brothers were behind the house with the witness's sister. The witness said he did not see this but he was informed by his sister that the brothers fled. The police officers blew their whistles and said stop these "Inyenzi" from running away and a group of people pursued the three brothers.

244. Witness S testified that he heard people shouting "...stop that Inyenzi..." About ten minutes later, the mob of people returned with the three Karangwa brothers. According to Witness S, they had been beaten and although he did not see the beatings he saw the injuries sustained as a result of the beating. The brothers had certain open wounds that were bleeding and their clothes were torn. The three brothers were made to sit on the lawn about two metres from the entrance to the court yard, in the presence of the Accused. The bourgmestre of Musambira, Justin Nyangwe asked the Accused if he knew these three brothers. The Accused replied that they were from his commune. Justin Nyangwe then asked the Accused what must be done with them and the Accused responded by saying "we need to finish these people off..." and he confirmed this response by saying, they need to be shot. The police officers from Musambira made the three brothers lie on their stomachs. There was a crowd of people that had now gathered and they were asked to step back. All three brothers were shot at close range behind their heads, by two police

officers from Musambira. Monzatina (phonetic spelling) shot two of the brothers and Albert shot one of the brothers.

245. Witness S testified that he and his family were told by Justin Nyangwe, the bourgmestre of Musambira, to get into the commune motor vehicle. Whilst they were being taken, Witness S heard people say that they were going to destroy his home because he and his family were "Inyenzi". The Accused and a group of people got into their motor vehicle and drove in the direction of Taba. The motor vehicle that Witness S was in started to move first and as it passed the motor vehicle of the Accused, the witness could see a person tied in the Accused's motor vehicle. Witness S and his family were taken to the bureau communal of Musambira where they were detained. He later managed to escape, but his three sisters were killed.

246. Under cross-examination, Witness S testified that he met the Accused when he went to the bureau communal in Taba to visit Ephrem Karangwa who worked as an IPJ in the commune. He often visited Ephrem Karangwa at the bureau communal. Witness S also met the assistant bourgmestre of Taba, although he did not know his name.

247. Witness S testified that before the Accused came to his house he went to his grand father's house and that was where he found Witness S's father. On arrival at Witness S's house, the Accused parked his motor vehicle on the tarred road and the bourgmestre of Musumbira parked his motor vehicle outside Witness S's house. Witness S was sitting inside his house at this time and he heard the sound of the engine of this motor vehicle the bourgmestre of Musambira travelled in, which was approximately 25 metres away from the house. The motor vehicle the Accused travelled in was approximately three to four hundred metres away on the tarred road. Witness S reiterated that he did not hear the sound of the engine of the Accused's motor vehicle but rather that of the motor vehicle the bourgmestre of Musumbira travelled in. Witness S realised that the Accused was looking for Ephrem Karangwa when the bourgmestre of Musumbira asked if Ephrem Karangwa was there and also when his father asked him to hand over Ephrem Karangwa to the Accused if he was in the house.

248. Under cross-examination Witness S confirmed that he had made a statement to the Prosecutor of Gitarama. This statement was tendered into evidence by the Defence as part of exhibit 104. Witness S stated that this statement did not pertain to the Accused but rather to the former bourgmestre of Musumbira, who was now in prison as a result of his conduct as mentioned in this statement. Witness S stated that he was asked specific questions about the bourgmestre of Musumbira. The Defence Counsel pointed out to Witness S that this statement mentioned that the Accused was with Kalisa Martin, the bourgmestre of Musambira and Justin Nyandwi. Witness S recalled that he had mentioned the Accused's involvement in respect of the killing of the Karangwa brothers to the Prosecutor of Gitarama but this was omitted from this statement.

249. Witness S testified under cross-examination that he saw the Accused with a grenade in his hand. He recognised this item in the Accused's hand as being a grenade because he saw soldiers with it before the war. Defence Counsel pointed out to Witness S that in his statement to the investigators at the Office of the Prosecutor he stated that the Accused came to his house with a gun and a grenade, whilst in his evidence in chief before the Chamber the witness testified that the Accused only had a grenade. Witness S denied making this statement to the investigators and maintained that he had only seen the Accused with a grenade.

250. Witness S testified that police officers in Musambira normally used whistles to indicate that the market was closing. Whistles were also used when there was a security problem in the region. He stated that the Karangwa brothers were chased by the people because at that time there was a search of homes for hidden people. The Police Officers blew their whistles and shouted "catch these Inyenzi, don't let them get away". The people immediately chased after the Karangwa brothers. The witness stated that the people acted in this manner because it was an order from the authorities. The people generally followed orders given by the authorities even if the order leads to any wrongful conduct. Defence Counsel pointed out that the Karangwa brothers were not armed and they did not pose any threat to the people of Musambira and despite this they were assaulted by the mob of people chasing them, even though they were not ordered to do so. This illustrated that the people committed wrongful acts even if they were not ordered

to do so. Witness S did not tender an explanation in response to this issue raised by Defence Counsel.

The Testimony of Witness DAX

251. Witness DAX testified on behalf of the Defence. He stated that he knew Ephrem Karangwa and they are friends. He also knew Ephrem Karangwa's family. He stated that he did not hear anybody say that Ephrem Karangwa was to be killed or that someone was attempting to kill Ephrem Karangwa. Witness DAX testified that he had heard of the destruction of Ephrem Karangwa's house and the killing of his brothers. The witness had heard that Ephrem Karangwa's brothers were making their way to Kabgayi when they were killed in Kivumu in the Nyakabunda Commune (phonetic spelling). The witness stated that the Interahamwe were responsible for the deaths of the Karangwa brothers. The witness stated that he had since met Ephrem Karangwa several times in Kigali and although they did not discuss the details of his brothers death, the witness offered his condolences to Ephrem Karangwa.

252. Witness DAX testified that on 19 April 1994, Ephrem Karangwa's house was destroyed by neighbours. He stated that in a poor country like Rwanda it is difficult for a rich person to stay with poor neighbours. It was the Abaghi family, more specifically a person called Gahibi who destroyed the Karangwa house. A person named Gasimba Daniels, who was an enemy of Ephrem Karanga also participated in destroying the Karangwa house. Gasimba Daniels had purchased and distributed the petrol to the neighbours of Ephrem Karangwa, for the purpose of destroying Ephrem Karangwa's house. This petrol was used to set Ephrem Karangwa's house on fire. A certain person known as Usuri (phonetic spelling) also participated in destroying Ephrem Karangwa's house. The witness stated that he knew all the people responsible for the destruction of Ephrem Karangwa's house and the Accused was not involved.

253. Witness DAX admitted under cross-examination that he did not see Ephrem Karangwa's house being destroyed but he had spoken to the people responsible for such destruction immediately after the house was set on fire. He observed that they were carrying doors that they

had removed from Ephrem Karangwa's house and they were boasting about their actions.

The Testimony of the Accused

254. The Accused testified that on 19 April 1994 at about 4 o' clock in the afternoon, he went to Musambira. He stated that the bourgmestre of Musambira promised to give him some fabric that he had intended to use to make a uniform for the new police officer he had employed. The Accused also stated that on 20 April 1994 he went to Kabgayi. He said that his reason for going to Kabgayi was to see one Kayibanda Alfred to ask him for shelter because he thought about fleeing. The Accused said that he saw Ephrem Karangwa's sister at Kabgayi. She greeted the Accused and he did the same. The Accused said that when he saw Karangwa's sister he realised that Karangwa was in Kabgayi. The Accused said that Karangwa abandoned him during the events of 1994. He stated that he had written to Karangwa on two occasions during the events of April 1994 and Karangwa had failed to respond. The Accused also stated that during the events of 1994 he saw Karangwa at Kamonyi. On this occasion he had spoken to Karangwa and asked Karangwa why he had abandoned him. That was all the Accused said in his testimony that was relevant to the allegations in paragraph 18 of the Indictment.

Factual Findings

255. The Chamber finds that on 19 April 1994, the Accused was searching for Ephrem Karangwa. At approximately 1am, on that day, Karangwa received a report that at a meeting led by the Accused, plans were made to kill him and other Tutsi. Karangwa's evidence that the Accused was in pursuit of him and his family, is corroborated by many witnesses. Witnesses V, E and Z were present at the meeting in the morning of 19 April 1994 at Gishyeshye, addressed by the Accused, when Karangwa's name was mentioned as being on a list of people to be killed; and the Accused named the IPJ as working with the RPF and told the people to look for him. Witness V reported this meeting to Karangwa, later in Kabgayi. Witness V saw the Accused in Kabgayi twice and on one of these times, on 20 April 1994, the Accused asked him to find Karangwa and bring Karangwa to him. Witness K, in the morning of 19 April 1994, saw the

Accused get into his vehicle at the Bureau Communal and instruct others to also get in so that Ephrem Karangwa would not escape them. Witness KK also heard the Accused refer to Tutsi and Ephrem Karangwa and say, "we now have to hunt them and kill all of them". Defence witness DCC confirmed under cross-examination that the Accused had wasted no time in pursuing Ephrem Karangwa

256. Karangwa and his family left their house and went into hiding. His sisters, mother and wife went to his wife's sister's house in Musambira and he and his brothers hid on a hill opposite his house. Karangwa saw the Accused arrive at his house on the morning of 19 April 1994 in a blue Toyota Hiace mini bus, accompanied by men in two other Toyota vehicles, one red and the other white. The Accused was wearing a military jacket. A gun was fired which frightened the dogs away. The houses of Karangwa and his mother were burnt and looted. The Accused and the group of people then left. The fact that the Accused was wearing a military jacket during this time is corroborated by other witnesses. Witness S saw him in that military jacket later that day; Witness V saw him at Kabgayi on 20 April 1994 in the military uniform of the Rwandan army; defence Witness DAAX saw the Accused in a military jacket and warned him against it's use. Defence witness DFX confirmed that the Accused wore a soldier's shirt. The Accused testified that he wore a military jacket in May, given to him by a colonel of the Rwandan army.

257. Karangwa hid on a hill approximately 80 metres from the house of witness S in Musambira, to await his brothers. The Accused, together with the bourgmestre of Musambira, a police officer named Emanuel Musumba and others arrived in two motor vehicles that were blue and red in colour. Karangwa heard shouts and whistles, and thereafter saw his brothers in the courtyard with these people. He heard the Accused say that his brothers must be shot and he heard gun-shots. His three brothers whom he names in his written statement to the prosecutor as; Simon Mutijima, Thadée Uwanyiligira, and Jean Chrysostome were shot dead.

258. Karangwa fled to Kabgayi where the Accused continued to look for him. Witness V told Karangwa that the Accused was looking for him in Kabgayi and he himself saw the Accused on

two occasions and evaded arrest. Karangwa remained in Kabgayi from 21 April to 21 June 1994. In cross-examination the witness denied various statements attributed to him in his written statement to the prosecutor and adhered to his testimony before the Chamber. He re-affirmed that he had not seen the shooting of his brothers but heard the Accused give the order that they be shot, and the fact that he was there made him responsible for their deaths.

259. The Defence Counsel submitted that because of the uncertainties and inconsistencies in the evidence before the Chamber on how the Karangwa brothers were killed and more specifically what weapons were used, material averments in respect of this allegation were not proved.

260. The Defence Counsel cross-examined Karangwa on the discrepancy between his evidence that his brothers were shot and his prior statement to the Office of the Prosecutor that two of his brothers died from injuries sustained from machete blows. Karangwa denied stating this to the Office of the Prosecutor and reaffirmed his testimony that all three of his brothers were shot. This explanation was not subjected to further cross-examination by Defence Counsel.

261. As noted else where, the Chamber places greater reliance on direct testimony rather than untested prior statements made under variable circumstances. The Chamber accepts Karangwa's explanation for the inconsistent prior statement and notes that his evidence that his brothers died of injuries inflicted by gun shots is consistent throughout his testimony and is corroborated by the testimony of witness S.

262. The Chamber finds that Karangwa gave a truthful account of events actually witnessed by him and that he did so without exaggeration or hostility. The Chamber is satisfied that the witness could reasonably have seen and heard the matters to which he testified. Witness S confirmed Karangwa's evidence in all material respects. Karangwa's three brothers came to Witness S's house on the afternoon of 19 April 1994. They were not armed and wore civilian clothes. They heard vehicles and the brothers hid behind the house. A red Hilux "pick-up" belonging to the commune of Musambira was outside his house. A group of people came to his

house; among them was the bourgmestre and assistant bourgmestre of Musambira, the Accused, whom he knew as the bourgmestre of Taba, the assistant bourgmestre of Taba, men in police uniforms carrying firearms, two of whom he knew as police from Musambira, and civilians.

263. The Accused held a grenade in his hand. The Chamber notes that this is in contradiction to Karangwa's observation that the Accused carried a gun. While it is clear from both their testimony that the Accused held a weapon in his hand, Witness S's identification thereof is more reliable, as he was in close proximity to the Accused in the courtyard of his house.

264. Witness S's house was searched by the assistant bourgmestre of Musambira and two policemen from Taba. During the search, the Accused ordered the police to surround the house to prevent Karangwa escaping. People from Musambira also acted on this instruction.

265. The brothers of Karangwa tried to flee, and the police officers blew their whistles and said stop those "Inyenzi" from running away. A mob of people took up the call, chased after the brothers and brought them back. The brothers were bleeding from open wounds and their clothing was torn. They were made to sit on the ground about 2 metres from the entrance to the courtyard. The bourgmestre of Musambira asked the Accused if he knew the men and what should be done with them. The Accused said they came from his commune and said we need to finish these people off-they need to be shot. All three brothers were then shot dead at close range in the back of their heads by two policemen from Musambira, in the Accused's presence.

266. After the killing, the Accused and his group drove off in the direction of Taba. Witness S saw a person tied up in the Accused's vehicle. Witness S and his family were detained at the bureau communal in Musambira, from where he later escaped. In cross-examination, the witness confirmed his direct testimony and he explained that he had omitted to give an account of the Accused's's involvement , in his statement to the prosecutor of Gitarama because he was asked specific questions related to the bourgmestre of Musambira. The chamber finds this to be a reasonable explanation and accepts the direct, eye-witness testimony of Witness S on these events and rejects the hearsay evidence of defence witness DXX.

267. The Accused confirmed his presence in Musambira on the afternoon of 19 April 1994 and in Kabgayi on 20 April 1994 ,but offered explanations for his appearance that are beyond belief, in the light of overwhelming testimony to the effect that he was at that time in hot pursuit of Karangwa. The defence did not specifically address allegations, and failed to challenge the evidence of witnesses S, Karangwa and others on material issues, such as his hunt for Karangwa, orders to look for Karangwa and other tutsi to be killed, his presence at the houses of Karangwa and witness S, his carrying of a grenade and his participation in the killing of the Karangwa's brothers by ordering their deaths and being present when they were killed.

268. The Chamber has not found any evidence that the Accused blew the whistle to alert local residents to the attempted escape of the brothers but finds as proven beyond a reasonable doubt that the Accused was present at both houses, that he was searching for Karangwa, that the houses of Karangwa and his mother were destroyed in his presence by men under his control, that he went to search the house of Karangwa's brother-in-law in Musimbira and found Karangwa's brothers at this house, that he participated in the killings of the three brothers, named, Simon Mutijima, Thadee Uwanyiligira, and Jean Chrysostome Gakuba, by ordering their deaths and being present when they were killed by policemen, under the immediate authority of the Accused as bourgmestre of Taba commune and in response to his order made to the bourgmestre of Musambira.

5.2.4. Paragraph 19 and 20 of the Indictment

The Events Alleged

269. Paragraphs 19 and 20 of the Indictment read as follows:

> 19. On or about April 19, 1994, **Jean Paul Akayesu** took 8 detained men from

the Taba bureau communal and ordered militia members to kill them. The militia killed them with clubs, machetes, small axes and sticks. The victims had fled from Runda commune and had been held by **Jean Paul Akayesu.**

20. On or about April 19, 1994, **Jean Paul Akayesu** ordered the local people and militia to kill intellectual and influential people. Five teachers from the secondary school of Taba were killed on his instructions. The victims were Theogene, Phoebe Uwineze and her fiancé (whose name is unknown), Tharcisse Twizeyumuremye and Samuel. The local people and militia killed them with machetes and agricultural tools in front of the Taba bureau communal.

270. For his alleged participation in the acts described in paragraphs 19 and 20, Akayesu is charged under seven counts, namely:

- Count 1, Genocide, punishable by Article 2(3)(a) of the Statute of the Tribunal;
- Count 2, Complicity in Genocide, punishable by Article 2(3)(e) of the Statute of the Tribunal;
- Count 3, Crimes against Humanity (extermination), punishable by Article 3(b) of the Statute of the Tribunal;
- Count 7, Crimes against Humanity (murder), punishable by Article 3(a) of the Statute of the Tribunal;
- Count 8, Violations of Article 3 common to the Geneva Conventions, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal;
- Count 9, Crimes against Humanity (murder) punishable by Article 3(a) of the Statute of the Tribunal; and
- Count 10, Violations of Article 3 common to the Geneva Conventions, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

271. The Chamber noted, during the presentation of evidence in this case, that the events alleged occurred during a distinct period on or about 19 April 1994 at the bureau communal.

Consequently, both paragraphs will be treated together.

272. A number of specific acts can be identified in the events set out in paragraphs 19 and 20. It is alleged, as pertains to paragraph 19, firstly, that Akayesu took eight refugees from the bureau communal, secondly, that he ordered militia members to kill them, thirdly, that the refugees were consequently killed with clubs, machetes, small axes and sticks, and fourthly, that the victims had fled from Runda commune and had been held by Akayesu. As regards paragraph 20, firstly, Akayesu is accused of having ordered local people and militia to kill intellectual and influential people, and secondly, five teachers, named in the Indictment, from the secondary school of Taba were killed on his instructions by the local people and militia with machetes and agricultural tools in front of Taba bureau communal. With these specific allegations in mind, the Chamber shall proceed in determining whether the participation of the accused in the events enunciated in paragraphs 19 and 20 of the Indictment has been proved beyond reasonable doubt.

273. The first witness to appear for the Prosecutor to testify in relation to the events alleged in paragraphs 19 and 20 was Witness K, a Tutsi woman, married to a Hutu, who was an accountant/cashier at the bureau communal in Taba from 1990 until 1994. She had worked under the authority of Akayesu whilst he was bourgmestre of the commune at the time of the events alleged in the Indictment. Witness K testified as follows.

274. On 19 April 1994, between 9h00 and 10h00, she had gone to the bureau communal following a demand from Akayesu who requested her services as the accountant/cashier of the commune. On arriving that morning, she encountered the accused, whose mood appeared to have changed, outside the bureau communal. She said he spoke to her harshly, asking her why she was no longer coming to work. Witness K told him she was scared, and that she had come to the bureau communal on this occasion only because he had asked her. She said Akayesu then told her that she would know why she had come.

275. After this exchange, witness K, who was still standing next to the accused, testified that Akayesu called over a certain Etienne, and instructed him to bring the 'youths'. She saw Etienne

drive off in the direction of Remera, and return with a number of 'youths' who were armed with traditional weapons, such as machetes and small axes[69]. Witness K said they all gathered close to Akayesu who told them "Messieurs, if you knew what the Tutsi who live with you are doing, I inform you that what I heard during the meeting is sufficient. Right now, I can no longer have pity for the Tutsi, especially the intellectuals. Even those who are with us, those we have kept here, I want to deliver them to you so that you can render a judgment unto them"[70]. The witness said Akayesu then proceeded to release the refugees from Runda held in the communal prison, and handed them - with the words 'here they are' - to the Interahamwe, whom she also called the 'killers'.

276. Witness K affirmed that there were eight refugees, all men, three of whom she personally knew to be Tutsi. She explained that they did not have their hands tied and that they all looked fine. She said the Interahamwe escorted the eight refugees to the fence of the bureau communal, where they were made to sit on the ground, in a line, their backs to the fence and their legs straight out in front of them. According to the witness, the refugees pleaded for mercy as the Interahamwe prepared to kill them. Witness K testified that Akayesu then said "Do it quickly", at which point they were killed rapidly by a large group of people who used whatever weapon they had on them.

277. After the eight refugees had been killed, witness K said she heard Akayesu instruct a communal policeman to open the communal prison and release the persons who had been imprisoned for Common law offences so that they could bury the dead refugees. She said the persons who had been released from the prison by Akayesu put the bloody bodies of the victims onto a wheelbarrow and took them away to be buried.

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[69] The witness identified Trial Exhibits 31, 33 & 37, as types of weapons carried by the 'youths'.

[70] Kinyarwanda "Yarababwiye ngo: 'Burya abatutsi mubana nabo, ngo ntabwo muzi ibyo bakora, ngo ibyo naraye menyeye mu nama I Gitarama birahagije. Ubu nta mpuhwe na nkeya nagirira abatutsi, cyane cyane abize. Ngo Nabariya bari hariya twari twarabitse, ngiye kubabaha mubacire urubanza'."

278. Witness K testified she heard Akayesu tell those present to fetch the one who remained. She said this person was a professor by the name of Samuel. Witness K said that they fetched him and she saw him being killed with a machete blow to the neck.

279. According to the witness, Akayesu then gave instructions for the release of all those who had broken the law, and told them to go into the hills with their whistles so as to sensitize the youth. Witness K understood this to mean go to your sectors, increase public awareness of the population and kill with them. Witness K testified she heard the accused tell the 'killers' that she would be killed after she had been interrogated about the Inkotanyi secrets. She said Akayesu put her into her office, took her keys and locked her up. The witness said she saw Akayesu get into a car, instructing others to also get in so that Ephrem Karangwa wouldn't escape them .

280. Witness K said she had other keys on her person, thus enabling her to access the meeting room in the bureau communal from where she was able to see the events occurring outside. She testified she saw many people being brought to the bureau communal and killed, some of the victims only making it as far as the front of the entrance of the bureau communal before being killed. According to the witness, amongst those killed were professors from Remera school. She said the bodies of the victims, even those still alive, were put into wheelbarrows and taken for burial.

281. When questioned about the use of whistles, Witness K said she saw persons go behind the bureau communal to get a professor who lived there. She said that these persons used whistles so as to terrorize this professor, and to attract the attention of others nearby.

282. Pursuant to a question from the Chamber as to the killing of teachers, witness K stated she was unsure how many were killed, but that she knew the names of some of them, Theogene, Tharcisse, a woman called Phoebe (the gérante of Remera secondary school), and her fiancé whose name she didn't know. She explained that the woman was killed because it was alleged a radio for communicating with the Inkotanyi had been found at her house. She further stated that the true reason for the killings of the teachers and the refugees was because they were Tutsi.

283. Under cross-examination, questioned about where the teachers she saw being killed had come from, witness K stated that some of the teachers had been brought from the direction of Remera and another from behind the bureau communal. Asked if Akayesu was then still present, she stated that she had explained that Akayesu wasn't present when the actual killings of the professors took place. She reasserted being next to Akayesu when he gave the order to kill the teachers.

284. Under cross-examination, witness K further testified she had heard the refugees had been locked up in the prison of the bureau communal by Akayesu at the request of the bourgmestre of Runda, but that she hadn't heard whether this bourgmestre had asked for these refugees to be killed. She said she had found out the refugees were from Runda by speaking to at least two other individuals from Runda whom she knew. The witness testified not knowing why exactly the refugees had been locked up in the communal prison, but was adamant they had been killed because of their Tutsi ethnicity. Witness K also confirmed that she was next to Akayesu at the bureau communal when he gave the instructions to fetch the youths/Interahamwe and that she heard Akayesu order the killing of the refugees from Runda.

285. Witness KK for the Prosecutor, a Hutu woman married to a Tutsi and residing in Taba commune in 1994, also testified in relation to the events alleged in paragraphs 19 and 20. She said that shortly after April 6 1994, the houses of Tutsi including her own were pillaged, and that she sought refuge at the bureau communal with her Tutsi husband and nine children. She said many refugees came to the bureau communal, but that they were treated differently depending on their ethnicity. According to the witness, the atmosphere changed a few days later with the arrival of a number of Interahamwe from Remera. She said the Interahamwe addressed the refugees in the presence of Akayesu in front of the bureau communal. According to witness KK, the Interahamwe stated that they had uncovered a Tutsi plan to kill the Hutu, but as their God was never far, and because they had discovered the plan, they were going to put the Tutsi where the Tutsi had planned to put the Hutu.

286. According to the testimony of witness KK, Akayesu then went to his office. On his return, she asserted he was angry and brandished a document which he read to the refugees, by saying "We lived with Tutsi, there was a hatred between us. The IPJ, Karangwa Ephrem had planned to kill me so that he could replace me in my function as bourgmestre. We now have to hunt them and find all of them"[71]. The witness testified Akayesu continued by talking of a landmine planted by the Tutsi that had exploded at the primary school. This landmine, she heard the accused state, was the beginning of the planned killings of Hutu. She said the accused then stated that as schoolchildren of all ethnicities were in this school, when the explosion happened, it was aimed at all Rwandans.

287. Witness KK testified Akayesu said further "there are many accomplices in our commune. There is an accomplice who is to be found behind the bureau communal, who is called Tharcisse. He was a professor"[72]. She said Akayesu then told the policemen and Interahamwe to fetch him. The witness saw Tharcisse and his wife being made to sit in the mud. She said the wife was undressed and told to go and die elsewhere. She also heard Akayesu ask Tharcisse for information on the Inkotanyi. She said Tharcisse replied "do what you will because I know no secrets". She testified Tharcisse was killed by the Interahamwe on the road outside the bureau communal. She testified Akayesu was standing near to where the victim was sitting.

288. Witness KK said she also heard Akayesu order the Interahamwe to bring the teachers who taught in Remera, and say that the intellectuals were the source of all of the misery. She testified that she saw the Interahamwe return very angry with the teachers. She saw the teachers, the number of which she was unsure of being made to sit in the mud on the road outside the bureau communal, where Tharcisse had been killed. According to the witness, it was alleged that these teachers had communicated by radio with Inkotanyi. Witness KK said a young couple who

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[71] Kinyarwanda: "Ngo twabanaga n'abatutsi ari inzigo. Ngo IPJ Karangwa Ephrem ngo yari yarateganyije kuzanyica; ngo kugira ngo ansimbure abe burugumesitiri; ngo none natwe tubahigire kutababura."

[72] Kinyarwanda: "Ibyitso tubifite ari byinshi muri Komini yacu. Ngo inyuma ya komini hari icyitso cyitwa Tharcisse. Ubwo yari umuprofeseri."

were soon to be married was killed first. She said that all the teachers were killed on the road in front of the bureau communal with little hoes and clubs and that she had heard it being stated that to kill them with a bullet or grenade would be inflicting a less atrocious death. The witness added that no one could ask for help because Tutsi were not allowed to live in Taba commune. She said the bodies of the teachers were then taken to makeshift ditches, and covered in earth and grass. According to witness KK, some of the teachers were still breathing when buried.

289. Under cross-examination, witness KK asserted that no teachers had taken up refuge at the bureau communal, but that the massacres had started with the killing of the teachers. The Defence attempted to discredit the witness by raising doubts as to the various dates she spoke of during her testimony, however she explained that considering all that happened to her in April 1994, it was very difficult for her to remember with certainty the specific dates. She also confirmed never having seen Akayesu kill anyone himself, save that it was he who ordered the killings which took place before his eyes.

The case for the Defence

290. Witness DCC for the Defence, detained in Rwanda at the time of his appearance before the Chamber, was a driver at the Taba bureau communal from 1 July 1993 until the events in 1994. During his examination-in-chief, he stated that he had not heard of Akayesu being an anti-Tutsi in the month of April, 1994. He also testified he came every day to the bureau communal during the massacres. During cross-examination, he added he had seen a substantial number of persons being killed at the bureau communal. According to the witness, the bodies of those killed were taken next to the primary school, however he said he never personally witnessed any burials of cadavers because he was not part of the people who took the bodies away. He maintained this statement even though he testified that he walked past the school every day on his way home. The Chamber notes thereupon, that in answer to questions put to him by the Chamber, pertaining to there being mass graves in the vicinity of the bureau communal, the witness said that he rarely went to the bureau communal during 1994 and that he had never seen any mass graves.

291. Witness DCC testified that after 6 April 1994, refugees from Runda and Shyorongi started arriving at the bureau communal of Taba, where they were welcomed by the authorities and lodged in various premises. He said the refugees were all free and none were locked up in the prison. Witness DCC testified he saw Interahamwe on two occasions come to the bureau communal and kill people. On the first of these occasions, he said the Interahamwe were from Taba but that he did not personally see Akayesu. On the second of these occasions, he saw the Interahamwe from Runda with military personnel search the office of Akayesu after having forced him out of the bureau communal. He said the Interahamwe terrorised the people at the bureau communal and asked for identity cards. According to witness DCC, the Interahamwe took the Tutsi away to be killed. He also said that Akayesu did not have a good understanding with the Interahamwe who accused him at times of being an Inkotanyi as he was welcoming refugees at the bureau communal.

292. Reference was also made by the Defence to the statement given by witness DCC to the Prosecutor[73], in which he stated "What I know, Akayesu was only present at the commune office one time when four people were killed at the entrance of the office. Akayesu did not do anything about it. Akayesu knew that the killings of Tutsi took place in the commune. The killers were Interahamwe". According to the witness, Akayesu did nothing to stop the Interahamwe because he was powerless to do so.

293. During cross-examination, the witness asserted that he was 34 years old, that in 1994, he did not flee Taba or go to Uganda, and that he did not have knowledge of and never saw Akayesu searching for Karangwa. Witness DCC said he was arrested in Rwanda on 30 April 1996. The Prosecutor produced a report, "Witness to Genocide", of an interview given by witness DCC to an NGO named Africa Rights[74]. Witness DCC confirmed speaking to a Human Rights Organization in 1996. The Prosecutor summarized extracts of the said document which stated

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[73] See Exhibit 120

[74] See Exhibit 134

that at the time of the interview, Witness DCC was 33 years old, that he had been recruited as the driver of the commune on 1 July 1993, that he had returned to Rwanda and was arrested on 30 April 1996. The Prosecutor read out another extract: "According to Akayesu's driver, [...] Akayesu lost no time in pursuing Ephrem. 'On 19 April, Akayesu, assistant bourgmestre Mutijima and a communal policeman, Mushumba, went to Kamonyi to look for the IPJ of the commune, Ephrem Karangwa, saying that he was a great accomplice of the RPF. Akayesu and his team came back in the afternoon'". Witness DCC confirmed that Akayesu had not wasted any time in pursuing Karangwa, but denied having spoken of Kamonyi, of Akayesu's return or that Akayesu had called Karangwa an accomplice of the RPF.

294. Witness DZZ for the Defence, a Hutu policeman in 1994 detained in Rwanda at the time of his appearance before the Chamber, testified manning barriers in the commune of Taba and guarding the bureau communal at the time of the events alleged. He said massacres had become widespread in the commune of Taba after 18 April 1994 and that he had heard of massacres at the bureau communal. He said he went to the bureau communal on a regular basis and manned a barrier nearby, but asserted that he did not personally witness any crimes at the bureau communal. He testified that he had not heard of Akayesu participating in the massacres, and that the accused had preached peace amongst the refugees. The witness said that Akayesu saved certain Tutsi, namely witness K and Karangwa, during the massacres. In his mind, they had been saved because, had Akayesu supported the killings, Akayesu would also have targeted Karangwa and witness K.

295. Akayesu testified going to the bureau communal on 19 April 1994. On his arrival within the vicinity of the bureau communal, he said he saw the refugees running everywhere. In the courtyard of the bureau communal, according to Akayesu, the Interahamwe were killing the refugees who had fled from Runda and Shyorongi. He said he parked the car and saw the cashier, witness K. Akayesu said he was perplexed at seeing her and wondered from where she had come. He testified that he called out to her, ordering her to go into her office. He said he had to stop someone with a machete from attacking her and subsequently escorted her personally into the office of the bureau communal. According to Akayesu, he went back into the courtyard and saw

refugees who had been killed, and noted that others had managed to escape. However, at a later stage during his examination-in-chief, when asked whether anyone had ever been killed in the courtyard of the bureau communal, Akayesu stated that when he was at the bureau communal or when there had been Interahamwe attacks during his absence, no one had been killed in the courtyard. After these events, Akayesu said he departed with the communal police in the direction of Mbizi, consequent upon receiving information that some of the killers had gone to Mbizi.

296. During cross-examination, the Prosecutor presented tape recordings of interviews of Akayesu carried out by the Office of the Prosecutor on 10 and 11 April 1996 in Zambia[75]. The Prosecutor questioned the credibility of Akayesu's testimony before the Chamber regarding answers he had given about the refugees at the bureau communal on 18, 19 and 20 April 1994. During his testimony, Akayesu stated he was unable to distinguish intellectuals from the rest of the refugees on the basis that there was no criteria to make it possible to tell an intellectual apart from other persons. However, in the said interviews, the accused said he was surprised not to have seen intellectuals of the commune amongst the refugees who, in his opinion, appeared to be farmers, old women, children, and old people. The Chamber questioned Akayesu as to the differences in the answers given in court, on the one hand, and before the Office of the Prosecutor, on the other. Akayesu said he had not seen anyone who could be categorized as an intellectual/teacher, but that he was able to find out by speaking with the refugees whether or not there were any intellectuals/teachers amongst them.

297. Furthermore the accused confirmed that in the context of the events in 1994, had he told the population to fight the enemy, this would have been understood as meaning fight the Tutsi. He also asserted not having control of the population after 18 April 1994. He said witness KK was at the bureau communal on 19 April 1994. Questioned as to the killings at the bureau communal on 19 April 1994, Akayesu said he did not see anyone killed with a machete because he was in the courtyard of the bureau communal attending to witness K. Akayesu added that he

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[75] Exhibits 144, 144(a), 145 and 145(a)

never saw any bodies either outside or inside the perimeter of the bureau communal and never went behind the primary school. Further, Akayesu testified never personally seeing cadavers save for the bodies of two dead children in his sector. In answer to questions on the fate of the schoolteachers whom he said he knew, Akayesu stated only hearing of their killings near the bureau communal three days after their deaths.

298. In support of its case, the Defence recalled that at least 19 witnesses in this case had never seen Akayesu either personally kill or order killings, and that only one witness, witness K, had been called to testify in relation to the events in paragraphs 19 and 20 of the Indictment. The Defence questioned the credibility of witness K on the grounds that Akayesu, during the said interviews of 1996, had cited this particular witness as a potential defence witness. If witness K had really lived through all the events she testified on, argued the Defence, why would Akayesu have named her as a defence witness.

Factual Findings

299. The testimonies of witnesses K and KK evidenced, on the one hand, events which both K and KK witnessed, and on the other hand, events that only one of the two had witnessed. The Chamber recalls that the requirement of corroboration of a witness' testimony unique to certain events, i.e. the principle of *unus testis nullus testis,* is not applicable under the Rules of the Tribunal[76]. The Chamber found both witness K and witness KK to be credible. Their testimonies were not marked by hostility and were confirmed under cross-examination. The Defence attempted to discredit witness KK on the basis of her inability to remember specific dates and times. However, the Chamber considers that these lapses of memory were not significant and an inability to recall dates and times with specificity - particularly in the light of the traumatic experience of this witness - is not by itself a basis for discrediting the witness[77].

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[76] See 'Evidentiary Matters, *Unus testis nullus testis*'.

[77] See further 'Evidentiary Matters, assessment of evidence'

300. Further, the Defence contested the credibility of witness K on the premise that Akayesu had indicated to the Prosecutor in April 1996 that she was a potential defence witness. The Chamber finds this to be a mere affirmation by Akayesu of his intent to call a certain witness, and that it does not constitute a defence *per se* as to the allegations contained in paragraphs 19 and 20 of the Indictment. Further the Defence claimed the Prosecutor had called only one witness in respect of the events alleged in the said paragraphs. In light of the testimonies of two witnesses, namely K and KK, the Chamber finds the latter to be an erroneous submission by the Defence.

301. In view of the aforementioned, the Chamber finds the testimonies of witnesses K and KK both to be credible on their own, and that when dealt with together they offer sufficient correlation as to events, dates and locations for the Chamber to base its findings thereon.

302. During their respective testimonies before the Chamber, both witnesses DCC and DZZ were evasive in answering questions in relation to the events alleged in paragraphs 19 and 20 of the Indictment. However, the Chamber notes that the reluctance of these witnesses in answering certain questions was limited either to their individual participation in the acts, or to events they had personally seen. The Chamber recalls that both witnesses DCC and DZZ were at the time of their testimonies, detained in prisons in Rwanda, hence it is understandable that neither wished to present self-incriminating evidence. The Chamber has considered the probative value of their testimonies in light of the above, and finds that the evasiveness and reluctance which punctuated their oral testimony reduced their credibility.

303. Witnesses K and KK for the Prosecution, testified that they witnessed massacres at the bureau communal. Witness K specified seeing the massacres on 19 April 1994 at the bureau communal, and witness KK testified that the massacres started with the killing of teachers.

304. Both witnesses presented by the Defence, witness DCC and DZZ, also testified that killings took place at the bureau communal. Witness DCC went to the bureau communal

everyday during the events. He saw people, mainly Tutsi, being massacred by the Interahamwe and taken to be buried behind the primary school. Furthermore, the Defence presented as evidence the statement given by witness DCC to the Prosecutor[78]. The section quoted by the Defence clearly indicates that Akayesu was at the bureau communal when four people were killed at the entrance of the office and that he knew the killing of Tutsi was taking place in the commune. Questioned as to why Akayesu did nothing to stop these acts perpetrated by the Interahamwe, witness DCC said Akayesu was powerless to do so. The Chamber notes that the testimony of witness DCC supports the prosecution's evidence that people were killed at the bureau communal, in the presence of the accused; and conflicts with Akayesu's testimony that no killings took place at the bureau communal and that the only dead bodies he saw were those of two children

305. Witness DZZ testified that he went regularly to the bureau communal but that he never personally saw any massacres or crimes he had heard of being perpetrated. He added that Akayesu never participated in the massacres and even preached peace amongst the refugees. He also affirmed that massacres in Taba had become widespread after 18 April 1994. However, the Chamber notes that for witness DZZ to stipulate on the occasions he went to the bureau communal he did not see any of the massacres, and further that he had not heard of Akayesu's participation in massacres, does not refute the specific allegations in paragraphs 19 and 20. Indeed, it is alleged killings occurred at the bureau communal in the presence and under the instructions of Akayesu. DZZ had heard there were massacres at the bureau communal but never personally witnessed any. The Chamber notes thereon that the defence presented by the testimony of witness DZZ supports the fact that there were massacres at the bureau communal but that it does not specifically address the events in the said paragraphs, as the witness was not present when the killings he had heard of took place.

306. Akayesu admitted during his examination-in-chief that he saw massacres of refugees at the bureau communal on 19 April 1994. This is corroborated by the testimonies of witnesses

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[78] Exhibit No. 120

DZZ, DCC, K and KK in relation to there being massacres at the bureau communal. The Chamber finds it has been proved beyond reasonable doubt that, firstly, there were refugees at the bureau communal and, secondly, that massacres did occur at the bureau communal on or about 19 April 1994.

307. Akayesu confirmed under cross-examination that he was able to identify intellectuals, teachers being an example he put to the Chamber, from the rest of the refugees. Witnesses K and KK both stated that Akayesu ordered the killing of certain intellectuals and other refugees. The Defence did not specifically address these allegations. Under cross-examination, questioned as to these allegations, Akayesu said he never saw anyone killed in the courtyard with a machete because he was attending to witness K, that he never saw any bodies inside or outside the courtyard of the bureau communal and that he heard of the deaths of the teachers three days after their killings. The Chamber finds that the veracity of these answers can be doubted. Indeed, Akayesu affirmed himself during his examination-in-chief that, on 19 April 1994, he saw refugees being attacked at the bureau communal, and that he saw some killed and others escape. Further, the Chamber finds implausible the assertion that he heard of the deaths of the Remera teachers three days later. Witnesses, including himself, have placed Akayesu at the bureau communal on 19 April 1994. Akayesu testified to seeing and hearing of searches of various intellectuals in Taba throughout the day of 19 April 1994, yet he somehow did not hear of killings that took place at the bureau communal the same day. The Chamber cannot accept Akayesu's assertion with regard to the killing of teachers. Further, the Chamber notes that Akayesu did not specifically contest the allegations that he ordered the militia and local population to kill intellectuals and influential people.

Paragraph 19

308. As pertains to the allegations in paragraph 19, evidence set out above has demonstrated that refugees from Runda had been held at the bureau communal by Akayesu. Evidence has established that Akayesu told the Interahamwe he had sent for that "[...] he could no longer have pity for the Tutsi. Even those who we have kept here, I want to deliver them to you so that you

can render a judgment unto them". It has been demonstrated that he then ordered the release of the refugees and handed them over to the Interahamwe with the words 'here they are'. Evidence has demonstrated that these refugees were made to sit next to the fence of the bureau communal and that when they begged for mercy, Akayesu said to the Interahamwe 'do it quickly'. It has been established that immediately after Akayesu had said this, the refugees were killed in his presence, by persons nearby who used whatever weapons they had on them. It has been established that the refugees were killed because they were Tutsi.

309. The Chamber finds that it has been proved beyond reasonable doubt that Akayesu released eight detained men of Runda commune whom he was holding in the bureau communal and handed them over to the Interahamwe. It has also been proved beyond reasonable doubt that Akayesu ordered the local militia to kill them. It has been proved beyond reasonable doubt that the eight refugees were killed by the Interahamwe in the presence of Akayesu. The Chamber also finds that it has been proved beyond reasonable doubt that traditional weapons, including machetes and small axes, were used in the killings, though it is has not been proved beyond reasonable doubt that sticks and clubs were used in the killings. It has been proved beyond reasonable doubt that the eight refugees were killed because they were Tutsi.

Paragraph 20

310. Evidence has demonstrated that after the killing of the refugees, Akayesu instructed people near him to 'fetch the one who remained', and that consequent to this instruction, a certain professor by the name of Samuel was brought to the bureau communal. It has been established that Samuel was then killed with a machete blow to the neck.

311. Evidence has demonstrated that on or about 19 April 1994, Akayesu addressed refugees and Interahamwe in front of the bureau communal, calling for all Tutsi within the commune to be hunted and found. It has been established that Akayesu stated that there were accomplices in the commune, one of whom lived behind the bureau communal. It has been established that Akayesu cited a professor by the name of Tharcisse as the accomplice and ordered the

Interahamwe and communal policemen to fetch him. Evidence has established that persons using whistles fetched Tharcisse and his wife from behind the bureau communal. Tharcisse and his wife were made to sit in the mud on the road outside the bureau communal, whereupon his wife was undressed and told to leave. It has been established that Akayesu asked Tharcisse for information on the Inkotanyi, after which the Interahamwe killed Tharcisse in the presence of Akayesu.

312. Evidence has shown that Akayesu said to the Interahamwe that the intellectuals were the source of all the misery, and that he ordered the Interahamwe to bring the teachers from Remera. It has been demonstrated that a number of teachers from Remera school were brought to the road outside the bureau communal and killed with traditional weapons, including hoes and clubs. Evidence identified the victims to be Theogene and Phoebe Uwineze and her fiancé.

313. The Chamber finds that it has been proved beyond reasonable doubt that on or about 19 April 1994, Akayesu ordered the local people and Interahamwe to kill 'intellectual people'. It has been proved beyond reasonable doubt that, after the killing of the refugees, Akayesu instructed the local people and Interahamwe near him at the bureau communal to fetch 'the one who remains', a professor by the name of Samuel, and that consequent to this instruction, a certain professor by the name of Samuel was brought to the bureau communal. It has been proved beyond reasonable doubt that Samuel was then killed by the local people and Interahamwe with a machete blow to the neck. The Chamber finds that it has been proved beyond reasonable doubt that teachers from the commune of Taba were killed pursuant to the instructions of Akayesu. The Chamber finds it has been proved beyond reasonable doubt that amongst the teachers who were killed were Tharcisse, Theogene, Phoebe Uwineze and her fiancé. It has been proved beyond reasonable doubt that Tharcisse was killed in the presence of Akayesu. The Chamber finds it has been proved beyond reasonable doubt that the victims were all killed by local people and Interahamwe using machetes and agricultural tools on the road in front of the bureau communal. The Chamber finds that it has not been proved beyond reasonable doubt that Akayesu ordered the killing of influential people, nor that the victims were teachers from the secondary school of Taba.

314. The Chamber finds that it has been proved beyond reasonable doubt that the teachers were killed because they were Tutsi.

5.3 Meeting

5.3.1. Paragraphs 14 and 15 of the Indictment

315. Paragraph 14 of the Indictment reads as follows: "The morning of April 19, 1994, following the murder of Sylvère Karera, Jean Paul Akayesu led a meeting in Gishyeshye sector at which he sanctioned the death of Sylvère Karera and urged the population to eliminate accomplices of the RPF, which was understood by those present to mean Tutsi. Over 100 people were present at the meeting. The killing of Tutsi in Taba began shortly after the meeting".

316. It is alleged that by the acts with which he is charged in this paragraph, the Accused is guilty of offences covered under four counts:

- Count 1 of the Indictment charges him with the crime of genocide, punishable under Article 2 (3)(a) of the Statute;

- Count 2 charges him with the crime of complicity in genocide, punishable under Article 2 (3)(e) of the Statute;

- Count 3 charges him with the crime of extermination which constitutes a crime against humanity, punishable under Article 3 (b) of the Statute; and

- Count 4 charges him with the crime of direct and public incitement to commit genocide, punishable under Article 2 (3)(c) of the Statute.

317. The Chamber deems that, in order to derive clear and articulate factual findings regarding the acts alleged in paragraph 14 of the Indictment, it is necessary to consider, separately, the facts relating to:

firstly, the holding on the morning of 19 April 1994 of a meeting in Gishyeshye sector, alleged to have been attended by over 100 people and led by the Accused alone following the death of Mr. Karera;

secondly, the fact during that meeting, the Accused is alleged to have sanctioned the death of Sylvère Karera;

thirdly, the fact during that meeting, the Accused is alleged to have urged the population to eliminate the accomplices of the RPF, which was understood by those present to mean Tutsi; and

Fourthly, the killing of Tutsi in Taba is alleged to have begun shortly after the said meeting.

318. With regard to the facts in paragraph 14 of the Indictment detailed as follows:

"The morning of April 19, 1994, following the murder of Sylvère Karera, Jean Paul Akayesu led a meeting in Gishyeshye sector. (.....) Over 100 people were present at the meeting."

319. The Chamber finds a substantial disparity between the French and English versions of paragraph 14 of the Indictment. While in the French version it is said that " Jean Paul Akayesu alone led a meeting," the English version only indicates that "Jean Paul Akayesu led a meeting,'' without specifying whether he led the meeting alone. The Chamber is of the opinion that the French version should be accepted in this particular case, because the Indictment was read to the Accused in French at his initial appearance, because the Accused and his counsel spoke French during the hearings and, above all, because the general principles of law stipulate that, in

criminal matters, the version favourable to the Accused should be selected. In the present case and in accordance with the French version of the Indictment, the Prosecution must not only establish that the Accused led the meeting, but also that he led it alone.

320. The murder of Sylvère Karera, a teacher killed on the night of 18 to 19 April 1994, and the subsequent events, alleged under paragraph 13 of the Indictment, have already been discussed *supra*.

321. Prosecution witness A testified that after he saw the remains of Sylvère Karera at the Remera school, he went to Gishyeshye on 19 April 1994, towards 6 or 7 o'clock in the morning, where he found a large gathering of 300 to 400 people at a crossroads. The witness stated that no one had convened the meeting but that it was rather a gathering of people attracted by the events. The crowd stood near to the body of a person identified as an Interahamwe from Gishyeshye, who was alleged to have killed Sylvère Karera. A small group of people, including the bourgmestre , the Accused, sector council members and four armed members of the Interahamwe, who could be identified by the MRND coat of arms on their caps, faced the crowd in such a way that enabled them to address it. The sector councillors called on the crowd to pay attention to the speech by the . Witness A pointed out that the Interahamwe stood near a blue minibus in which the Accused had arrived, and that they seemed to have been escorting the latter, which was a surprise to the crowd.

322. A Tutsi man, appearing as a Prosecution witness under the pseudonym Z, testified that on or about 19 April 1994, in the early hours of the day following the murder of a Tutsi teacher in Remera, the murderer of this teacher was killed by persons responsible for maintaining law and order. Witness Z and other people gathered around the body of the teacher's murderer. The crowd Accused the Interahamwe present of having caused the death of the teacher. The Accused, who was armed, separated the rest of the population from members of the Interahamwe and then addressed the crowd.

323. Prosecution witness V, a teacher in Taba for nearly 30 years, went to Gishyeshye sector

where he attended a meeting, at the place where the body of a Hutu man lay. He confirmed that a meeting was then held on the road in Gishyeshye, in the presence of the Accused, who was carrying a gun, and who organized the said meeting. The witness estimated that it was attended by some 500 people. The people were standing in front of a house. The Accused himself stood in the middle of the road with the Interahamwe next to him, across the road from the people.

324. Ephrem Karangwa, a Tutsi man, called as witness for the Prosecution, who, at the time of the acts alleged in the Indictment, was the Inspecteur de police judiciaire (Senior law enforcement Officer, criminal investigation department) of the Taba commune, testified before the Chamber that on 19 April, the Accused held a meeting in Gishyeshye sector.

325. Men, who had gone to inquire after Sylvère Karera, told witness U that a person had been killed following the murder of Karera and that the Accused himself had gone to where the body was and held a meeting there.

326. The holding of the said meeting was confirmed by the Accused himself, who told the Chamber during his testimony as witness, that at about 4 a.m., on the night of 18 to 19 April 1994, a certain Augustin Sebazungu, treasurer of the MDR in Taba and a resident of Gishyeshye sector, came to see him at the Bureau communal, where he had been sleeping, to inform him that the situation in Gishyeshye sector was tense, following the murder of a young man who was a member of the Interahamwe. The bourgmestre immediately alerted the police and went to the scene with two policemen, in a blue minibus. In Gishyeshye, he found a body stretched out on the ground, covered with traces of blood, as if it had been hit. The Accused affirmed before the Chamber that since people were coming to see what was happening, he took advantage of the fact that a crowd had gathered there to address the population. He noted that the Interahamwe of the region had flocked around the body of their young member. The Accused puts the crowd at the meeting at about 100 to 200 people, including Hutu and Tutsi, members of the Interahamwe, members of the MDR and probably other political parties. The Accused admitted before the Chamber that he asked the crowd to draw closer, and then addressed the crowd, while the two policemen accompanying him stood behind him.

327. In his closing arguments, the Defence counsel underscored that the Accused never convened the Gishyeshye meeting, but that a crowd had spontaneously gathered after a man had been killed. The Accused, as bourgmestre, reportedly found himself among the crowd thus assembled which included members of the Interahamwe.

328. With regard to the facts in paragraph 14 of the Indictment detailed as follows:

" Jean Paul Akayesu (...) sanctioned the death of Sylvère Karera"

329. According to Prosecution witness V, the Accused stated that Sylvère Karera died because he was working with the Inkotanyi. The bourgmestre further stated that the person whose body lay at the meeting place had been wrongly killed, but that Sylvère Karera had been justly killed. Under cross-examination by the Defence, witness V reiterated that the Accused stated that Karera had been killed because he was working with the Inkotanyi.

330. Witness Z, a Tutsi man, testified that at the meeting which followed the murder of the Remera teacher, the Accused, who was armed, separated the rest of the population from the members of the Interahamwe and, speaking of the body on the ground, he reportedly deplored the murder of the person and stated that this person was dead and yet the enemy was still alive. According to witness Z, the Accused told the crowd that papers detailing Tutsi plans to exterminate the Hutu had been seized at the home of the teacher.

331. The Accused told the Chamber, during his testimony, that he had inquired of the crowd standing around the body of the young Interahamwe, why the young man had been killed. The people gathered there, answered that he had looted and that he had been justly punished. The bourgmestre then stayed on to speak to the people, trying to explain to them that killing as a habit must stop and making them aware of the consequences. He condemned the murder of the young man because he felt that such was not a way of maintaining law and order, and explained that it would have been enough to arrest the young man. The Accused told the Chamber that he

had asked Augustin Sebazungu why he, as a prominent figure and an educated man, had failed to stop the population from killing the young man, to which Sebazungu reportedly replied that there was nothing he could do.

332. With regard to the facts in paragraph 14 of the Indictment detailed as follows:

> " Jean Paul Akayesu (...) urged the population to eliminate the accomplices of the RPF, which was understood by those present to mean Tutsi."

333. Prosecution witness A testified that, during the said meeting, the Accused held papers which he allegedly showed to the crowd saying that the papers had been seized at the home of an Inkotanyi accomplice. He also said the papers detailed what the Inkotanyi accomplices were to do. The Accused showed the papers to the public. He stated that things had changed and that the Inkotanyi and their accomplices wanted to seize power. According to witness A, the bourgmestre stated that everyone should do everything possible to fight against those people because they were seeking to restore the former regime. He said that he was personally going to search for some of the people. A teacher then told the Accused that he knew of an accomplice to which the Accused replied: "Go fetch this person". Witness A also stated that the Interahamwe allegedly told the Accused he was to put the people of the commune at their disposal. The bourgmestre then told the crowd to fight against the Inkotanyi and their accomplices. The witness stated that the crowd remained rather calm even though it was stunned by the unusual statement made by the Accused. Witness A was personally surprised, just as, in his words, the rest of the people present, to see that the bourgmestre had changed and that he seemed, among other things, to have become friends with the Interahamwe.

334. Prosecution witness V told the Chamber that at the Gishyeshye meeting of 19 April 1994, the Accused asked the population to collaborate with the Interahamwe in the fight against the Tutsi, the sole enemy of the Hutus. According to witness V, the Accused brandished documents which he said contained a list of names of Hutu that the Tutsi wanted to kill. He

read the papers and said that the Tutsi were holding meetings to exterminate the Hutu. Witness V felt that the bourgmestre wanted to make the population understand that the Tutsi were their enemies. The Accused said the Tutsi, the real and only enemies of the Hutu, must be killed. He called on the population to work with the Interahamwe to search for the sole enemy. He also said that there were well-known Tutsi people living in the commune, who were working with the RPF. Witness V stated that apart from the Accused, only a certain François took the floor, to state that a list of receipts for contributions, allegedly made by the Tutsi to the Inkotanyi, had been seized.

335. According to Prosecution witness C, during that meeting, showed the Accused the crowd documents which included a list of the names of Hutu whom the Inkotanyi and the Tutsi inhabitants of Taba wanted to kill and a list of the names of Tutsi who had paid their contributions to the RPF. The witness noted that, while the Interahamwe seemed to be happy, the crowd was stunned by the change in the behaviour of the bourgmestre. Witness C stated that the Accused said during the meeting that the Tutsi was the sole enemy of the Hutu. He confirmed that he did hear the Accused say the Tutsi must be killed.

336. Witness Z, a Tutsi man, testified that at the meeting which followed the murder of the Remera teacher, the Accused, who was armed, called on all those present to bury their political differences and unite to fight the enemy, the enemy being the Tutsi, the accomplices of the Inkotanyi. Witness Z stated that the Accused, speaking of the body of the young Interahamwe believed to have killed Sylvère Karera, deplored the murder of the person and said that he was dead whereas the enemy was still alive. Witness Z further testified that, at the meeting, the Accused had in his possession papers which included a list of names. The Accused read the papers and stated that the Tutsi were holding meetings to exterminate the Hutu. In addition to the Accused, a member of the Interahamwe, named François, also took the floor, holding papers his hands. He showed the papers and said they had been seized at the home of the teacher killed in Remera. The documents included a list of the names of Tutsi who had paid their contributions to the Inkotanyi. The crowd was surprised to see that the Accused then seemed to be cooperating

with the Interahamwe. Witness Z felt that, during the said meeting, the Accused was addressing the Hutu and telling them to kill the Tutsi.

337. A certain Ephrem Karangwa, who was the Inspecteur de police judiciaire of Taba Commune at the time of the events, testified before the Chamber that at the Gishyeshye meeting, the Accused told the population to kill the Tutsi in Taba. The bourgmestre told the people that whether they supported the MDR, MRND or the PSD, they should unite and understand that there was only one enemy, namely the Tutsi. The Accused told the people not to fear the Interahamwe. According to the witness the people who attended the said meeting affirmed to him that, during the meeting, the Accused showed a list of people to be killed, which included the name of Ephrem Karangwa. Allegations that the Accused, *inter alia*, named Ephrem Karangwa during the said meeting, are included in paragraph 13 of the Indictment and elaborated upon here *infra*.

338. Men reportedly told Prosecution witness U that, at the meeting held by the Accused near the body of Sylvère Karera's murderer, it was said that the only enemy was the Tutsi and that all Tutsi must be killed. According to witness U, the crowd then allegedly said that the "plane" had been shot by the Inkotanyi, and that the Inkotanyi were the Tutsi.

339. Several Prosecution witnesses confirmed the Prosecution allegation that, when the Accused called on the people to fight against the enemy, the people present took it to mean that the Tutsi must be killed. Witness C, a male Hutu farmer like witness N, a female Hutu farmer, told the Chamber that, at the time of the alleged events, the "Inkotanyi" and the "Inyenzi" meant the Tutsi. Witness N specified that the Accused himself, as a leader, took the Tutsi to mean the Inkotanyi and the Inyenzi. Witness V also pointed out that, at the time of the events, the words Inkotanyi and Tutsi, were interchangeable in the countryside. He specified that, while all Inkotanyi were not Tutsi, everyone understood at the time that all Tutsi were Inkotanyi. Witness V also confirmed that the words Tutsi and Inkotanyi were synonymous and stated that the Tutsi had been pursued with such shouts as " There they are, those Inkotanyi, those Tutsi." He explained that the Tutsi were assimilated to the Inkotanyi.

340. Dr. Mathias Ruzindana, Professor of Linguistics at the University of Rwanda, appearing as expert witness for the Prosecution, explained to the Chamber that, based on his own analyses of Rwandan publications and broadcasts by the RTLM and on his personal experience, he was of the opinion that, at the time of the events alleged in the Indictment, the term Inkotanyi had several extended meanings, from an RPF sympathizer to members of the Tutsi group, depending on the context.

341. According to witness DIX, a Hutu woman, appearing as a Defence witness, explained that in her opinion, the Interahamwe started to kill people because they thought that their neighbours had in their midst accomplices of enemies from outside the country.

342. A certain Joseph Matata, a Defence witness, testified before the Chamber that the contention that when the Accused called on the people to fight against the enemy, those present took it to mean that the Tutsi must be killed, had to rebutted. According to him, the latter's speech must be interpreted with two factors in mind, namely the context of RPF incursions into the Rwandan territory and the fact that people who knew the bourgmestre could not have construed his speech as a call to kill the Tutsi.

343. A Defence witness appearing under the pseudonym DZZ, denied that the Accused ever held a meeting in Taba commune at the time of the alleged acts.

344. During his testimony before the Chamber, the Accused stated that the Interahamwe began to shout when the crowd had gathered at Gishyeshye. He called on them to calm down, stating that it was necessary to work in an orderly fashion. The Interahamwe then reportedly informed the bourgmestre that soldiers, the Inkotanyi, were allegedly infiltrating the commune. The Accused maintained before the Chamber that he had replied that if they knew of a family harbouring an RPF militant, they could reveal such information to a councillor, an officer of the Cellule, a policeman or the bourgmestre , who would then take up the case and follow it up. The Accused denied that he himself told the crowd that people, the accomplices of the Inkotanyi,

should be flushed out, but admitted that it was said in the crowd that certain families were harbouring RPF soldiers.

345. In response to Prosecution questions regarding the lists of names mentioned by several Prosecution witnesses, the Accused stated under cross-examination, that a certain François had given him papers he rapidly read through silently for his personal edification. Those papers included the names of people and their functions. The Accused testified that the Interahamwe ordered him twice to read out the list and he refused to do so. According to him, members of the Interahamwe then said that the list, which included the names of RPF soldiers and their supporters, had been seized in the office of an "Inspecteur de police judiciaire" in Runda, a member of the RPF, who had been killed while he was shooting at the soldiers and the communal police.

346. The Accused testified before the Chamber that he refused to read the list aloud to the crowd because he had had time to recognize certain names on the list such as those of Karangwa, Charlotte, Rukundakuvuga and Mutabazi. According to the Accused, he allegedly explained to the assembled population that the list contained names which included that of Ephrem Karangwa, and that such a list constituted a real danger since anyone could someday find their name on such a list. Thus, he reportedly cautioned the people against such documents.

347. The Accused then specifically admitted before the Chamber that mentioning a name on such a list was seriously damaging to the person thus named and jeopardized their life. He also confirmed that made by a public official, such as the bourgmestre , such a statement would have so much more impact on the people, who would understand that the person was thus being denounced and that they would certainly be killed.

The position of the Defence as stated, particularly, during the closing arguments, regarding the documents read by the Accused, is that overexcited members of the Interahamwe allegedly forced the bourgmestre to read a document in their possession, which included the names of a certain number of people considered to be accomplices of the RPF. The Accused

allegedly tried to dissuade the demonstrators from denouncing anyone in such a manner , by explaining that there was no proof that the people whose names appeared on the list were indeed RPF supporters.

348. With regard to the facts in paragraph 14 of the Indictment detailed as follows:

" The killing of Tutsi in Taba began shortly after the meeting."

349. With regard to the allegation made in paragraph 14 of the Indictment, the Chamber feels that it is not sufficient to simply establish a possible coincidence between the Gishyeshye meeting and the beginning of the killing of Tutsi in Taba, but that there must be proof of a possible causal link between the statement made by the Accused during the said meeting and the beginning of the killings.

350. Witness Ephrem Karangwa, who was the "Inspecteur de police judiciaire" of Taba commune, at the time of the events testified that until 18 April 1994, the people of Taba were united and there were no killings in Taba at that time.

351. According to Prosecution witness C, the Taba population followed the instructions given by the bourgmestre at the Gishyeshye meeting and began thereafter to destroy houses and to kill. The witness recalled that the people once again complied with the instructions of the Accused as they always had.

352. Prosecution witness W, a Tutsi, clearly stated that the attacks began on 19 April 1994. The first attack he witnessed took place on 19 April 1994 at about 2:00 p.m. Just before that, his younger brother, who had gone to find out what had happened in Rukoma, told him that a list of "Collaborators" had allegedly been discovered in the home of Sylvère Karera, and that the name of witness W was allegedly on the list. The witness then immediately went into hiding and later sought refuge in Kayenzi commune.

353. Prosecution witness A, a Tutsi man, testified before the Chamber that five Tutsi were killed on the day of the meeting. From that date, witness A personally observed that the people were destroying houses, taking away corrugated iron sheets, doors and anything they could carry, and killing cows which they ate. Some of the people tried to run away when the killings began. Most of the victims were Tutsi. Witness A said that in his opinion when the Accused began to have good relations with the Interahamwe, the latter did whatever they wanted with the commune. He felt that the people were thus subjected to propaganda designed to make one part of the population hate the other. The people were believed to have changed because of repeated statements and promises made to them and that, as a result, they allegedly began to kill.

354. Witness N, a 69-year old female Hutu farmer, also explained that the destruction of houses, the killing of cows and even the killings, began following said meeting. She attributed the scale of the killings to the Accused's fiery mood during said meeting and his urging to wage war against the Inkotanyi and the Tutsi. She felt that had the Accused not held the meeting in question, the killings would never have started at that very moment, even if the Interahamwe were more powerful than the bourgmestre .

355. The Accused himself confirmed to the Chamber that killings started in Taba on 19 April 1994. He said that, on that day, after addressing the crowd at Gishyeshye, he went to the Bureau communal where he noted that the Interahamwe had killed a good number of people, who had sought refuge there, including elderly people, women and children.

356. During its closing arguments, the Defence pointed out that Prosecution witness V had testified before the Chamber that many Tutsi had sought refuge at the Bureau communal on the night of 19 April 1994. It therefore expressed doubt as to the reliability of Prosecution Witness V who had also stated, during his testimony, that on the morning of the same 19 April 1994, the Accused had ordered the Tutsi to be killed.

357. A certain Joseph Matata, called as a Defence witness, explained to the Chamber that, in his opinion and according to testimonies he had allegedly collected in Taba, the militia began

to neutralize the Accused as from 19 April 1994. He therefore concluded that the beginning of the massacres was not linked to the Gishyeshye meeting, but that it was an unfortunate coincidence.

358. Factual findings:

359. On the basis of consistent evidence and the facts confirmed by the Accused himself, the Chamber is satisfied beyond a reasonable doubt that the Accused was present in Gishyeshye, during the early hours of 19 April 1994, that he joined the crowd gathered around the body of a young member of the Interahamwe militia, and that he took that opportunity to address the people. The Chamber finds that the Accused did not convene the meeting, but that he joined an already formed gathering. Furthermore, on the basis of consistent evidence, the Chamber is satisfied beyond a reasonable doubt that on that occasion, the Accused, by virtue of his functions as bourgmestre and the authority he held over the population, did lead the crowd and the ensuing proceedings.

360. With regard to the Prosecution allegation that the Accused sanctioned the death of Sylvère Karera, the Chamber finds that the Accused himself admitted to having condemned the death of a young Interahamwe who had allegedly killed Karera, but failing to mention that he also condemned the death of Karera. The Chamber nevertheless points out that failure to condemn is not tantamount to approval in this case. However, on the basis of testimonies by witnesses V and Z, the Chamber finds that the Accused could very well have attributed the death of Sylvère Karera to his alleged complicity with the Inkotanyi and may have added that Karera had been justly killed. The Chamber however finds that no other evidence corroborated the testimony of witness V, whereas some ten witnesses had been questioned about facts relating to the murder of Sylvestre Karera and the ensuing meeting at which the Accused spoke. Consequently, the Chamber holds that in the absence of conclusive evidence, the Prosecution has failed to establish beyond a reasonable doubt that the Accused publicly sanctioned the death of Sylvère Karera at the Gishyeshye gathering.

361. With regard to the allegation that the Accused urged the population, during the said gathering, to eliminate the accomplices of the RPF, after considering the weight of all supporting and corroborative evidence, the Chamber is satisfied beyond a reasonable doubt that the Accused clearly called on the population to unite and eliminate the sole enemy: accomplices of the Inkotanyi. On the basis of consistent evidence heard throughout the trial and the information provided by Dr. Ruzindana, appearing as an expert witness on linguistic issues, the Chamber is satisfied beyond a reasonable doubt that the population construed the Accused's call as a call to kill the Tutsi. The Chamber is satisfied beyond a reasonable doubt that the Accused was himself fully aware of the impact of his statement on the crowd and of the fact that his call to wage war against Inkotanyi accomplices could be construed as one to kill the Tutsi in general.

362. Finally, relying on substantial evidence which was not essentially called into question by the Defence, and as it was confirmed by the Accused, the Chamber is satisfied beyond a reasonable doubt that there was a causal link between the statement of the Accused at the 19 April 1994 gathering and the ensuing widespread killings in Taba.

The events alleged

363. Paragraph 15 reads as follows:

> At the same meeting in Gishyeshye sector on April 19, 1994, **Jean Paul Akayesu** named at least three prominent Tutsis -- Ephrem Karangwa, Juvénal Rukundakuvuga and Emmanuel Sempabwa -- who had to be killed because of their alleged relationships with the RPF. Later that day, Juvénal Rukundakuvuga was killed in Kanyiya. Within the next few days, Emmanuel Sempabwa was clubbed to death in front of Taba *bureau communal*.

It is the alleged that by his participation in relation to these acts the accused committed offences charged in six counts:

- Count 1, Genocide, punishable by Article 2(3)(a) of the Statute of the Tribunal;
- Count 2, Complicity in Genocide, punishable by Article 2(3)(e) of the Statute of the Tribunal;
- Count 3, Crimes against Humanity (extermination), punishable by Article 3(b) of the Statute of the Tribunal;
- Count 4, Direct and Public Incitement to Commit Genocide, punishable by virtue of Article 2(3)(c) of the Statute of the Tribunal;
- Count 5, Crimes against Humanity (murder), punishable by Article 3(a) of the Statute of the Tribunal; and
- Count 6, Violations of Article 3 common to the Geneva Conventions of 1949, as incorporated by Article 4(a)(murder) of the Statute of the Tribunal.

364. Paragraph 15 of the Indictment alleges that, at a meeting held on 19 April 1994 in Gishyeshye sector, the accused called for the killing of three prominent Tutsi due to their alleged relationships with the RPF. As a supposed consequence of being named, at least two of them, namely Juvénal Rukundakuvuga and Emmanuel Sempabwa, were subsequently killed. The acts which were allegedly further perpetrated as regards to Ephrem Karangwa are the subject of paragraphs 16, 17 and 18 of the Indictment.

365. It has already been established beyond reasonable doubt, as alleged in paragraph 14 of the Indictment, that Akayesu was present at an early morning gathering in Gishyeshye sector on April 19 1994. The Chamber found that Akayesu urged those present to unite to eliminate the only enemy, the accomplice of the Inkotanyi. The Chamber also found the terms Inkotanyi and accomplice during the said meeting to refer to Tutsi and that the accused was conscious that his utterances to the crowd would be understood as calls to kill the Tutsi in general.

366. It now needs to be established whether during this gathering, Akayesu specifically named

Ephrem Karangwa, Juvénal Rukundakuvuga and Emmanuel Sempabwa who had to be killed because of their alleged relationships with the RPF. If it is proved beyond a reasonable that Akayesu named the said three, the Chamber will consider evidence presented in relation to their subsequent fates as alleged in the second and third sentences of paragraph 15 of the Indictment.

The Role, if any, of the Accused

367. A number of the witnesses, namely witnesses V, C, A, Z and Akayesu, who testified in relation to the events alleged in paragraph 14 of the Indictment, also testified in relation to the specific allegations contained in paragraph 15 of the Indictment. Hence, the Chamber will limit itself to recalling the testimonies of these witnesses only as pertains to the paragraph 15 of the Indictment, i.e. the naming of three individuals and their subsequent fates, factual findings having already been made above to there having been a gathering in Gishyeshye and the pertinent general allegations.

368. Witness Z, a Tutsi man, testified that on or about 19 April 1994, in the early hours of the morning, he was present at the Gishyeshye sector gathering, which was attended by Akayesu. He said Akayesu separated the crowd from the Interahamwe and called for all those present to forget their political differences until the enemy had been eliminated, the enemy being the Tutsi, the accomplices of the Inkotanyi.

369. Witness Z said Akayesu, who was holding documents, cited Ephrem Karangwa as someone wanting to kill him and replace him as bourgmestre. He said the accused did not name anyone else in particular. According to witness Z, Akayesu said that he didn't want to give the names of the other persons because they lived nearby and someone might warn and help them escape. The witness said an Interahamwe by the name of François spoke about papers. According to the witness, the Interahamwe said the papers had been seized from the dead professor's house (see factual findings on paragraphs 13 and 14 of the Indictment) and contained details of monies paid by the Tutsi to the Inkotanyi.

370. Witness Z testified Akayesu announced on leaving that he was going so that those persons who are to be found between Taba and Kayenzi did not escape him. He said the accused left in a vehicle with the Interahamwe. Once back at his house which was on a neighboring hill, the witness said he observed the persons who had been in the vehicle with Akayesu break down the door of Rukundakuvuga's house. He later heard that Rukundakuvuga was arrested. Under cross-examination, witness Z confirmed that Akayesu had not named Rukundakuvuga but added that Akayesu read from documents at the gathering.

371. Witness V, a Tutsi teacher in Taba in Taba commune for nearly 28 years, testified he was present at the gathering at the Gishyeshye sector. He said that, during this gathering, Akayesu asked the population to collaborate with the Interahamwe in the fight against the only enemy of the Hutu, namely the Tutsi. The witness said Akayesu brandished documents on which there was a list of names of Hutu who were to be killed by the Inkotanyi and the Tutsi, and a list of RPF collaborators. The witness affirmed Akayesu said he knew of a number of people in the commune, namely three teachers, to be RPF collaborators who lived in Kanyenzi, and a fourth person, the "inspecteur de police judiciaire" who worked at the office of the commune. Witness V said the accused told the crowd that these people had to be sought to prevent them from escaping. The witness testified the accused named Ephrem Karangwa during the meeting, and by reference to where they lived also implicitly spoke of Juvénal Rukundakuvuga and Emmanuel Sempabwa, who were both Tutsi. According to the witness, the crowd understood that Akayesu was looking for these people as they were supposedly RPF accomplices.

372. Witness V testified that of the four individuals spoken of by the accused, he saw two of the bodies at the bureau communal, and the body of Rukundakuvuga on the Kanyiya road as he fled the commune of Taba. The fourth person named at the meeting was able to escape.

373. Under cross-examination, witness V asserted that Akayesu brandished three documents during the gathering. He said there was a list of people who were financing the RPF, a list of Hutu who had to be killed by the Tutsi, and a list of Tutsi RPF collaborators. The witness

testified that Akayesu only named Karangwa. Questioned as to the identification of other individuals, witness V said they weren't expressly cited, but Akayesu pointed to where they lived and said that they were teachers. According to witness V, as people immediately went to search for them it had been possible for individuals at the gathering to guess about whom Akayesu was speaking.

374. Witness E, a Hutu man from Taba testified that he was present at the Gishyeshye gathering on the morning of 19 April 1994. He said Akayesu arrived in a car and addressed the crowd. According to the witness, Akayesu, who was armed with a rifle, pointed to the Interahamwe who were alongside him and told the crowd that the Interahamwe and the MRND, the party to which belonged the Interahamwe, meant them no harm. Witness E said Akayesu told the crowd that all of the political parties were at present one and the same, and that the only enemy was the accomplice of the Inkotanyi. The witness said a certain François gave Akayesu some documents which had allegedly been found at the residence of a RPF accomplice. He said Akayesu told the crowd that all of the Inkotanyi accomplices had to be sought. Questioned as to any names being cited by Akayesu, the witness said only that of Ephrem Karangwa was mentioned.

375. Witness A, a Hutu man who worked with Akayesu from April 1993 up until 7 April 1994, testified that he attended the Gishyeshye gathering in the early hours of 19 April 1994. He said that on arriving, around 06h00 and 07h00 in the morning, he saw a crowd gathered around a body. According to the witness, amongst the people present were the bourgmestre, conseillers, the local population who had heard the noise the night before and Interahamwe. The witness said the members of the cellules and the conseillers asked the crowd to listen to the bourgmestre. Witness A declared Akayesu showed a number of documents to the people, and told the crowd that things had changed, that the Inkotanyi and their accomplices wanted to take power. Questioned as to the citing of names, the witness stated that Akayesu mentioned only Ephrem Karangwa, the "inspecteur de police judiciaire", as someone who had a plan to replace him. The witness added that Akayesu told the crowd that everyone had to do whatever they could to fight these people so as not to return to the previous regime, and that he too would personally search

for these people. Witness A testified that a teacher in the crowd informed Akayesu that he knew of another accomplice, in response to which Akayesu ordered that this person be found.

376. Under cross-examination, witness A affirmed that during the gathering in Gishyeshye, Akayesu named only Ephrem Karangwa, and mentioned no other names.

377. Witness C, a Hutu farmer, testified that he attended the Gishyeshye gathering. He said Akayesu addressed the crowd. According to the witness, the accused took documents from his jacket and stated that he was going to read the contents of the documents found at the Professor's house who had been killed in Remera. He said that Akayesu called for the crowd to listen attentively and to put into practice the contents of the documents. Witness C declared that thereafter Akayesu read out the documents.

378. Akayesu testified that on the morning of 19 April 1994 in Gishyeshye sector, a number of people, including Interahamwe, had assembled around the cadaver of an Interahamwe. Akayesu explained that during his discussions on commune security with the crowd at this gathering, a certain François, who had arrived with the Interahamwe, gave him a number of documents on which there figured names and occupations of supposed RPF accomplices and told him to read them. Though François told him to read out the names on the lists, the accused asserted that he did not do so, save for citing, reluctantly so, that of Ephrem Karangwa. In so doing he said he explained to those present at the gathering "there is on this list Ephrem Karangwa, tomorrow you may find yourselves on the list; will it then be said that you too are housing elements of the RPF, a soldier of the RPF?".

379. Under cross-examination, Akayesu declared that he did not read out any names but that he did cite that of Ephrem Karangwa. He added that he had summarized the contents of the documents in his possession by saying there was a list of names on which figured Ephrem Karangwa, tomorrow others could appear on the list, would it then be said that they too are hiding RPF soldiers. Akayesu said the Rukundakuvuga was also on the list, but denied having read it out. Akayesu stated it would be dangerous to publicly designate an individual as an

accomplice of the RPF

380. The Defence argued that Akayesu never convened the gathering at Gishyeshye. Instead, the accused was amongst a group of people who had gathered there after a man had been killed. The Defence submitted that Interahamwe were angry, and forced Akayesu to read a document, which contained the names of persons they believed to be accomplices of the RPF. The Defence averred that Akayesu tried to dissuade the Interahamwe from denouncing people in this manner as there was nothing to prove on the list that these people were accomplices of the RPF.

Findings of fact

381. The Chamber has already found beyond a reasonable doubt that Akayesu was present and did speak at the gathering in Gishyeshye sector on the morning of 19 April 1994. This has been developed in the factual findings pertaining to paragraph 14 of the Indictment.

382. Akayesu admitted to having been given a number of documents by the Interahamwe François, and that he did cite the name of Ephrem Karangwa during this gathering, as a forewarning to those present that they too could be deemed RPF accomplices if their names figured on the list. Akayesu also admitted it would be dangerous to cite the name of an individual as an RPF accomplice. However, he was adamant that at he did not read out the documents as such, but summarized them for the crowd. Akayesu confirmed names, save that of Ephrem Karangwa, also appeared on the list. Further, the Defence submitted in its closing arguments that Akayesu had been forced to read out the documents given to him by the Interahamwe.

383. Akayesu's testimony, as regards the naming of Ephrem Karangwa, is supported by the evidence presented by witnesses Z, V, E and A in this matter. All four affirmed that only the name of Ephrem Karangwa had been cited during the Gishyeshye gathering. Witnesses V and Z added that in their opinions it was possible to infer, from Akayesu's gestures and subsequent conduct, reference to Sempabwa and Rukundakuvuga.

384. The Chamber finds that it has been proved beyond reasonable doubt that Akayesu did cite Ephrem Karangwa during the Gishyeshye meeting. It has also been established beyond a reasonable doubt he did so knowing of the consequences of naming someone as an RPF accomplice in the temporal context of the events alleged in the Indictment.

385. However, the Chamber is of the opinion that the evidence presented in this matter does not support the specific allegations that Akayesu named Juvénal Rukundakuvuga and Emmanuel Sempabwa. The evidence presented shows only an implicit, yet remote, allusion by Akayesu during the Gishyeshye gathering to these two individuals, and does not demonstrate that Akayesu expressly named them. Hence, the Chamber finds that it has not been proved beyond reasonable doubt that Akayesu named Juvénal Rukundakuvuga or Emmanuel Sempabwa during the Gishyeshye gathering on 19 April 1994, and that their fates were consequent upon the utterances of Akayesu at the Gishyeshye gathering.

5.4 Beatings (Torture/Cruel Treatment) (Paragraphs 16, 17, 21, 22 & 23 of the Indictment)

Charges Set Forth in the Indictment

16. Jean Paul Akayesu, on or about April 19, 1994, conducted house-to-house searches in Taba. During these searches, residents, including Victim V, were interrogated and beaten with rifles and sticks in the presence of Jean Paul Akayesu. Jean Paul Akayesu personally threatened to kill the husband and child of Victim U if she did not provide him with information about the activities of the Tutsi he was seeking.

17. On or about April 19,1994, Jean Paul Akayesu ordered the interrogation and beating of Victim X in an effort to learn the whereabouts of Ephrem Karangwa. During the beating, Victim X's fingers were broken as he tried to shield himself from blows with a metal stick.

21. On or about April 20, 1994, Jean Paul Akayesu and some communal police went to the house of Victim Y, a 68 year old woman. Jean Paul Akayesu interrogated her about the whereabouts of the wife of a university teacher. During the questioning, under Jean Paul Akayesu's supervision, the communal police hit Victim Y with a gun and sticks. They bound her arms and legs and repeatedly kicked her in the chest. Jean Paul Akayesu threatened to kill her if she failed to provide the information he sought.

22. Later that night, on or about April 20, 1994, Jean Paul Akayesu picked up Victim W in Taba and interrogated her also about the whereabouts of the wife of the university teacher. When she stated she did not know, he forced her to lay on the road in front of his car and threatened to drive over her.

23. Thereafter, on or about April 20, 1994, Jean Paul Akayesu picked up Victim Z in Taba and interrogated him. During the interrogation, men under Jean Paul Akayesu's authority forced Victims Z and Y to beat each other and used a piece of Victim Y's dress to strangle Victim Z.

Events Alleged

386. The Chamber notes that paragraph 16 of the Indictment includes allegations with respect to Victim V and Victim U. As the evidence which was given by and about Victim V (Witness A) relates to events which are described in paragraphs 21, 22 and 23 of the Indictment, the Chamber will consider this component of paragraph 16 together with the allegations set forth in paragraphs 21, 22 and 23.

387. Witness K (Victim U), a Tutsi woman married to a Hutu man, was an accountant who worked for the Accused in the office of the bureau communal in Taba, during the events of April 1994. Witness K testified that on the morning of 19 April 1994 she went to the bureau communal at the request of the Accused and that she found him there outside the office with many people, changed in mood and in temper. She said he asked her why she had not been coming to work and she told him that she was afraid and had come only at his request. After then witnessing the killing of Tutsi at the bureau communal, which she said was ordered by the Accused, Witness K said the killers asked the Accused why she had not been killed as well. She said he told them that they were going to kill her after questioning her about the secrets of the Inkotanyi. According to Witness K, the Accused then took her keys, locked her in her office and left, saying he was going to search for Ephrem Karangwa, the Inspector of Judicial Police.

388. The Accused returned, said Witness K, with other men whom she referred to as "killers", and they questioned her. She said they asked her to explain how she was cooperating with the Inkotanyi, which she denied. She said the Accused insisted and said that if she did not tell them how she worked with the Inkotanyi, they would kill her. After further discussion, she said the Accused again threatened her, saying she should tell them what she knew or they would kill her,

and then left. At this time she estimated it was about three o'clock in the afternoon. Witness K testified that the Accused returned at around midnight with a police officer and asked her whether she had decided to tell them what she knew. When she said she knew nothing, she said he told her, "I wash my hands of your blood." She said he then told her to leave the office and go home and when she expressed concern about the late hour, he asked the driver and the police to accompany her home.

389. Under cross-examination, Witness K stated that her husband was a friend of the Accused. When asked why she was not killed, she said that Tutsi women married to Hutu men were not killed. In his testimony, the Accused confirmed that he saw Witness K at the bureau communal on 19 April 1994 and said that he had wondered why she was there. He said that he saw a man behind her with a machete and that he came between them and escorted her to the office, and told her to keep the door closed.

390. Witness Q (Victim X), a Tutsi man who lived in Musambira, testified that on the same day, 19 April 1994, while he was there visiting, the Accused came to the home of his parents, looking for Ephrem Karangwa, the Inspector of Judicial Police for the commune of Taba. Witness Q told the Chamber that the four people who came - one of whom was a policeman armed with a gun, another armed with grenades and another with a small hatchet - made him, his brother, his sister and his brother-in-law sit down in the courtyard at the entrance of the house. He said they asked where Ephrem Karangwa was, and after a discussion in French, entered the house to search, leaving the policeman with them in the courtyard, his gun charged and ready to shoot. Witness Q said he recognized the policeman, who told his brother-in-law that it was Akayesu, the bourgmestre of Taba, who had come to his house. He said that Akayesu was wearing a long military jacket. Witness Q had not previously met the Accused but was able to identify him in court. He said the Accused and two other people came out of the house with boxes, papers and photographs, which they scattered in the courtyard, saying the photographs of family members in Uganda had been sent by Inkotanyis. Witness Q said he and his relatives were then beaten and kicked by the two men who were with the Accused, and he was hit with a small axe on his right hand. He said his brother-in-law was hit and wounded in the head. The witness

displayed in court his right hand with a bent index finger, which he said had been broken from the beating when he raised his hand to ward off the blows. Witness Q testified that the Accused was present during this beating and watched it. He said the Accused was the one apparently responsible.

391. The other house-to-house searches referred to in the relevant paragraphs of the Indictment appear to have taken place on the next day and relate to the search by the Accused for Alexia, the wife of Pierre Ntereye, a university teacher. Witness N (Victim Y), a Hutu farmer, testified that she knew where Alexia was hiding. She said the Accused, whom she had known for two years, came to her house with three Interahamwe - Mugenzi, Francois and Singuranayo - at nine o'clock in the evening, the day after the meeting in the commune (i.e. 20 April), looking for Alexia. She said the Accused stayed in his vehicle, near the entrance of her home. The others broke down the door and pointed their guns at her, ordering her to show them the Inkotanyi hiding in her house. She said she told them to search the house, and one of them went to search while the other one stayed at the door. Witness N testified that Mugenzi, who was a communal police officer, took her by the arm to the door and hit her on her head with the barrel of his rifle. She said Francois, who had gone into the house, found a young girl whom he told to open her mouth. According to Witness N, Singuranayo then forced open her mouth and struck her with the barrel of the gun.

392. Witness N said that when she told them that she did not know where Alexia was, she was lifted by her arms and legs by the three men and taken outside to the Accused. She said the Accused told her to lie down, which she did. She said Mugenzi then stepped on her neck and pushed the butt of his rifle into her neck. She said he stomped on her with a lot of force, and that the Accused then hit her with a club on her back. When she shouted, she said the Accused told her to be quiet, calling her the mother-in-law of the Inkotanyi and a "poisonous woman." Witness N testified that they then took her in the vehicle to a partially opened mine at a place called Buguli. She said the Accused ordered her to lie down in front of the vehicle, got into the driver's seat and told her that he was going to run her over. Mugenzi told her to tell them where the people she was hiding were or they would kill her. She said she told them that she did not

know and that they should kill her if they wanted. Witness N said Mugenzi then bound her arms and legs with a piece of cloth, pushed her to the ground and stomped on her with his foot. She said the others also joined in and stomped on her.

393. Witness N said she was then put in the vehicle and taken to the house of Ntereye's sisters. When they arrived, she said Francois called for Ntereye's niece Tabita (Victim W) and they questioned her. According to Witness N, the Accused remained in the vehicle and called Tabita from there. He asked her where Alexia was, and she said she did not know. Witness N testified that Tabita was then taken in the vehicle back to the mine. There, she said, they made her get out and told her to get in front of the vehicle. The Accused threatened to run her over and again asked her for the whereabouts of the people in question. She said Tabita was afraid and said that they had hidden in a sorghum field but that she did not know where they were. According to her testimony, Witness N was then told by the Accused that she was a "poisonous woman" and that she had hidden these people. She said they then began to strike her with their gun[s].

394. Witness N said that she and Tabita were then taken in the vehicle to a roadblock, where they picked up Victim Z, and they were then taken to Gishyeshye Sector. Witness N testified that she was at this time "almost dead" from the beating she had suffered. When they arrived, Witness N said she was thrown on the road, next to Victim Z, and they began to beat him with a club. She said the Accused then instructed Victim Z to beat her. She said Victim Z stood up and began to beat her, and that he beat her several times on her leg with a club. During this time, she testified that the Accused was standing next to them near the vehicle. Witness N said her hands were then tied in the back with a piece of cloth, the other end of which was used to strangle Victim Z. She said they tightened the cloth, and his eyes almost came out of their sockets. Victim Z then said that he thought he knew who had hidden Alexia. She said [they] then started hitting him again, very hard, and the Accused asked [him] to hit her hard, to make her talk. Witness N said she threatened to bite [him] if [he] continued to hit her.

395. Witness N testified that she was then taken in the vehicle with Victim Z to a roadblock and there they picked up a person identified as Victim V(Witness A). She said they were taken

to Victim V's house, where they were taken out of the vehicle and thrown on the ground. According to the testimony, they started beating Victim Z again with the club and they also beat Victim V and told him to bring out the person he was hiding. Victim V said he was not hiding anybody. On direct examination, Witness N said the Accused told Victim V to raise his arms so that they could shoot him. On cross-examination, Witness N testified that Mugenzi told Victim V to raise his arms so that they could shoot him. She said they did not shoot him, and that the Accused told Victim V that they would continue searching for Alexia and that if they did not find her he would have to die.

396. Witness N testified that as a result of the beatings she received, her arm is limp. She said that she can no longer walk as she did before and that she needs help to get dressed. She testified that she can no longer work on the farm. The Trial Chamber notes that Witness N walked with difficulty, aided by a walking stick.

397. Witness C (Victim Z), a Hutu farmer, testified that he knew Alexia, that she was a Tutsi teacher and the wife of Ntereye. He said that she hid in his house during April 1994 and that she had come to his house because she realized that he had not participated in the killings. Witness C testified that some Interahamwe came to his house while he was out harvesting coffee. He said one of his children came to look for him after the child had been beaten and asked where Alexia was. Witness C returned to his house and found the Interahamwe at the entrance, carrying machetes and clubs. He said some also had grenades. According to the testimony, the Interahamwe surrounded Witness C and accused him of hiding Alexia. Witness C said that Alexia was not in his house, and one of them started beating him on his back with the blunt side of a machete. He said he then told them that Alexia sometimes hid in his house and sometimes in another person's house. They continued to beat him, and Witness C testified that when he realized that he was about to be killed he said that Alexia was in another [room]. He said the Interahamwe took him to Victim Y's house, and when they arrived they continued beating him. He said they asked Victim Y where Alexia was, and she said that Alexia had gone to her husband's relatives. Witness C said that the Interahamwe then left the house, taking him with them, and after a distance released him, saying that they had from him what they needed.

398. Witness C (Victim Z) testified that one week after this incident, while participating in a night patrol, he saw the Accused, whom he had known for a long time, with three Interahamwes, Victim Y (Witness N) and Tabita, the niece of Ntereye, in a white twin cab. He said the Accused was driving and stopped at the roadblock, got out of his car and told the Interahamwe that they should bring Witness C to him. He said the Accused told him to get into the vehicle, which he did, and they drove to the forest. In the middle of the forest, Witness C said they stopped and asked him to get out and lie down in front of the vehicle. He said the Accused then stepped on his face, causing his lips to bleed, and kept his foot on Witness C's face while two of the Interahamwe - Francois and Mugenzi - began to beat him with the butt of their guns. During this time, he said he was asked repeatedly where Alexia was hiding.

399. Witness C said that during the beating, Victim Y(Witness N), who was in the vehicle, urged him to tell them where Alexia was, and when he realized that they were going to kill him, he told them that she was at his home. Concerned that they would find her there, Witness C said he then told them she was somewhere else and Victim Y told them that Victim V could advise them of her whereabouts. Witness C testified that he was then made to sit next to Victim Y and they were bound together, side by side, with a rope by the Interahamwe Mugenzi. He said the rope was put around his neck. Under cross-examination, Witness C clarified that the rope was in fact a piece of cloth that he had been wearing. When he began to vomit, Witness C said they were untied and the Accused then told them to get back into the vehicle. Witness C also testified on examination that he was asked by Francois to hit Victim Y and given a cudgel, with which he struck her once on the leg. He said he was told to tell Victim Y to tell them where Alexia was hiding. After this, Witness C testified that the Accused told them to get back into the vehicle and they were taken to the roadblock.

400. At the roadblock, Witness C testified that they picked up Victim V and the Accused drove them to Victim V's house. When they arrived, he said the Accused asked his Interahamwes to search the house. He said two of them went in and came back, saying that Alexia was not in the house. According to Witness C, the Accused then told Victim V twice to

step aside and raise his arms in the air so that they could shoot at him. One of the Interahamwe told him a third time to raise his arms so that they could shoot him. Witness C said they did not shoot at Victim V, but they again beat him, Witness C, on the back with the blunt side of a machete. He said they were then asked to get back in the vehicle and went near the home of Victim Y, who was dropped off. They continued, he said, dropping one Interahamwe off at a roadblock and stopping at another roadblock, where the members of Ntereye's family had been arrested. Witness C testified that the Accused asked them to get in the vehicle - a woman, three children and three men. He said they then went to a commercial center near Remera Rukoma, and the people were taken to a prison there. Witness C and Victim V were left to wait in the vehicle while the Accused, Francois and Mugenzi went to drink beer at a place about fifteen feet from the vehicle. From the vehicle, Witness C testified that he heard the Accused say to the Interahamwe "I do not think that what we are doing is proper. We are going to have to pay for this blood that is being shed." After the Accused and the Interahamwe drank beer and returned to the vehicle, Witness C said they were taken near the school of Remera Rukoma, dropped off there and told to be at the office the next morning at 7:00.

401. Witness C showed the Trial Chamber the scars he said he had from this beating, on the left side of his back. He said that he did not have scars on his lips but that he did have wounds on his head and a scar on his nose. He testified that he has continuing health problems such as a bleeding nose and pains in his head, and that his body is no longer what it was before.

402. Witness A (Victim V), a Hutu man, testified that he knew Alexia and that he was the person who had found the hiding place for her. He said he saw the Accused, whom he had known for ten years and worked with, one night while he was on patrol, sometime between 7:00 and 9:00. He said the Accused was alone in a white pickup truck, and while they were talking, he saw people, including the Interahamwe Francois and a commune police officer, coming from the house of an elderly woman, who lived near him. He said they put this woman in the vehicle and took her to the forest, and shouts were heard as they beat her. Later, he said the Accused came back and took away another of his neighbours who was doing the night patrol, and he also heard this person crying out as he was being beaten. Witness A said they came back and picked

him up and went to his house. He said the Accused was driving the vehicle. He said they came into his house and searched for people they said were hiding there, in particular Alexia. Witness A said they had guns, and that after they searched the house they took him and the others to the gate of the house, and the commune police officer and Francois began to beat them with the butt of a rifle and a stick, asking them where Alexia was. At this time, he said the Accused was standing next to them and watching. He said when they discovered that Alexia was not in the house, they stopped the beating and put them in the vehicle. He said they released the elderly woman and sent her back to her house, and they continued to detain him and Victim Z.

403. Witness A testified that near his house, they found nine people from families who had been stopped by night patrols. He said these people were presented to the Accused who put them in the vehicle and took them to a prison near Remera Hospital. He said the Accused and Francois went to have drinks and he was left in the vehicle with Victim Z and a young girl, guarded by the commune police officer. Afterwards, he said they went back to the bureau communal and on the way the Accused told them to go home but come back to the bureau communal early the next morning. At this time, he said it was approximately 2:00 in the morning. On cross-examination, Witness A said that he did not sustain serious injuries from the beatings apart from a broken rib which was treated.

404. The Accused testified that after Ntereye was killed on 10 May 1994, people were saying that they still did not know where his wife was. The Accused said he knew that she was being sought, and he said he was determined to save her. He said that Ntereye had told him that she was going from house to house. He said he found an Interahamwe called Francois and told him that he had someone to save. He said he asked Francois to help him for a price and gave him twenty thousand. He said he then went to Ntereye's sister's house and found his niece who told him that Alexia was living in the house of an elderly woman. He said he knew her to be a tough old lady and asked the niece to come with him to reassure her. He said they left - himself, a police officer and Francois. He said they called for the lady and she came, and he spoke to her. He said she told him that Alexia had been there but left and gone to Kayenzi. He said when he asked her whether she was telling the truth, she told him "I cannot lie because you are going to

do good for Alexia and then I have also heard that you tried to save Ntereye." He said he left with the niece and drove to Buguli and that he spoke to her and her sisters, warning them not to let the children go outside because they would be killed. In his testimony, the Accused then moved on to other events. The Accused later testified that when he went to look for Alexia, there were two or three people at the roadblock near the home of the old lady, but that neither Victim V nor Victim Z was there, and he did not see them on this occasion. He testified that Victim Y, Victim Z and Victim V were known to him. He also said there were no mines in Buguli.

Factual Findings

405. The Chamber finds that on 19 April 1994, Victim U (Witness K) was threatened by the Accused at the bureau communal. She went to the bureau communal because she had been summoned there by the Accused. She was questioned by the Accused in the presence of men whom she had just seen killing Tutsi at the bureau communal. In response to a question from the killers, Victim U heard the Accused tell them that she would be killed after she was questioned about the secrets of the Inkotanyi. The Accused then questioned Victim U and threatened that she would be killed if she did not divulge information about her cooperation with the Inkotanyi. The Accused then locked Victim U in her office and left. When he returned in the afternoon, he resumed questioning Victim U and again threatened that she would be killed if she did not provide information about the Inkotanyi. He left again and returned at midnight with a police officer. The Accused asked her whether she would tell them what she knew and when she said she knew nothing, he said, "I wash my hands of your blood." He then asked the driver and the police to accompany her home.

406. The Chamber found Victim U to be a very credible witness whose testimony was not marked by anger or hostility and whose testimony was confirmed under cross-examination. The Chamber notes that the Accused in his testimony confirmed the presence of Victim U at the bureau communal on 19 April 1994. The Chamber does not accept his explanation of her presence there or his actions. If he intended to protect her, as he suggested, why did he take her key from her, why did he question her about the Inkotanyi, and why did he leave her there until

midnight? The Accused did not address any of these questions or specifically deny that he did any of these things. He did not even deny specifically that he told the others in her presence that she would be killed after questioning or that he threatened her when he questioned her. The Chamber notes that there is no evidence to suggest that the Accused threatened the husband or child of Victim U.

407. With regard to the allegations set forth in paragraph 17 of the Indictment, the Chamber is unable to find, beyond a reasonable doubt, that the Accused ordered the interrogation and beating of Victim X (Witness U) on 19 April 1994. The evidence presented in support of the allegation relies entirely on a single witness, the credibility of whom the Defence has successfully challenged. In cross-examination, the Defence questioned Witness Q regarding the details of the incident at his father's home, as they had been described by him in his pre-trial written statement. When asked about his prior statement that the Accused had been accompanied by two policemen rather than one, Witness Q explained that one of the policeman was from Taba and the other from Musambira. He said the second policeman had remained on the main road, and he had not actually seen this policeman which is why he did not mention him in his testimony. When asked about his prior statement that the Accused was armed rather than unarmed, Witness Q said that he had said that the Accused was wearing a military jacket and that he had heard that another policeman had a gun. When asked about his prior statement that he had been beaten by a policeman with a metal bar, Witness Q said that he was beaten by a man in civilian clothes, whom he assumed was a policeman because he was carrying a grenade. He said he was beaten with a metal instrument which had a pointed end. When asked about his prior statement that the Accused arrived in a red Toyota and that he saw a man lying in the rear seat of the vehicle with his hands tied, Witness Q said that he did not see the man in the back seat but that he heard about him. He said he did not see the vehicle as it was 500 meters away, but that he had heard that it was red.

408. While the Chamber has been cautious in allowing the contents of pre-trial written statements to impeach the testimony of witnesses before it, in this case the inconsistencies between the testimony and the written statement of Victim X are many and too significant to

justify a finding of credibility without corroboration of other testimony. The Chamber notes that even if it were to accept the testimony of Victim X in full, it would not be able to find, beyond a reasonable doubt, that the Accused ordered the interrogation and beating of Victim X. The witness testified that the Accused was present and watched the beatings, but there is no evidence that he gave any orders. There is only evidence that words were spoken in French. No evidence has been presented as to what was said and by whom.

409. With regard to the search for Alexia, wife of Ntereye, the Chamber finds that at on the evening of 20 April 1994, the Accused went with two Interahamwe named Francois and Singuranayo and one communal police officer named Mugenzi to the house of Victim Y (Witness N), a [68] year old woman at the time. Mugenzi took her by the arm to the door and hit her on the head with the barrel of his rifle. Victim Y was then forcibly taken to the Accused, who ordered her to lie down. In the presence of the Accused, Victim Y was beaten by the communal police officer Mugenzi who stepped on her neck, pushed the butt of his rifle into her neck, and stomped on her. Victim Y was also beaten by the Accused, who hit her with a club on her back. She was interrogated by Mugenzi and the Accused about the whereabouts of Alexia, the wife of Ntereye, a university professor. She was then taken to Buguli, where the Accused made her lie down in front of the vehicle and threatened to run her over. At the mine, in the presence of the Accused, she was also threatened and interrogated by Mugenzi, who bound her arms and legs and stomped on her with his foot. The others stomped on her as well.

410. Later that night, the Accused picked up Tabita (Victim W) and interrogated her also about the whereabouts of Alexia, the wife of Ntereye. She was then taken in the vehicle back to the mine. She was asked to get in front of the vehicle, and the Accused threatened to run her over and again interrogated her about the whereabouts of Alexia.

411. Thereafter, on the same evening, the Accused picked up Victim Z (Witness C) and took him to a forest in Gishyeshye Sector, where the Accused stepped on his face, causing his lips to bleed, and kept his foot on Victim Z's face while the Interahamwe Francois and the commune police officer Mugenzi beat him with the butt of their guns. Victim Z was tied to Victim Y with

a piece of cloth by Mugenzi, which was used to choke him. Victim Z was also forced by Francois to beat Victim Y with a cudgel he was given. During this time, Victim Z was interrogated, but it is unclear who actually did the interrogation.

412. Following the interrogation of Victim Y and Victim Z, the Accused picked up Victim V at a roadblock and took him, with Victim Y and Victim Z, to his house, which was searched by Interahamwe at the direction of the Accused. The Accused then told Victim V to raise his arms in the air and threatened to shoot him. In the presence of the Accused, Victim V was then beaten under interrogation by the Interahamwe Francois and the commune police officer Mugenzi with the butt of a rifle and a stick. Victim Z was beaten on the back with the blunt side of a machete. Victim Y, Victim Z and Victim V were then taken away in the vehicle and, after Victim Y was released near her home, Victim Z and Victim V were kept in the vehicle while the Accused and the others drank beer. Victim Z and Victim V were released at approximately 2:00 in the morning.

413. As a result of the beatings, Victim Y has trouble walking. Victim Z has scars on his back and continuing health problems. Victim V sustained a broken rib from the beatings.

414. The Chamber notes that the testimony of Witness N, Witness C and Witness A closely correlate in all material respects and even with regard to minor details. There were very few inconsistencies, of an extremely minor nature. Witness N said, for example, that Victim Z (Witness C) was beaten with a club. Victim Z testified that he was beaten with the butt of a gun. It is clear that there was a club, as it was used by Victim Z to hit Victim Y (Witness N) when he was forced to do so. It is understandable that Victim Y may have therefore mistaken the instrument used on Victim Z. Victim Z initially testified that he was tied to Victim Y with a rope, whereas Victim Y testified that it was a piece of cloth. On cross-examination, however, Victim Z clarified that in fact it was a piece of cloth that was used.

415. The Chamber finds these facts have been established beyond a reasonable doubt. In making its factual findings, the Chamber has carefully considered the cross-examination by the

Defence of Prosecution witnesses and the evidence presented by the Defence in the form of testimony by the Accused. With regard to cross-examination, the Chamber notes that the Prosecution witnesses substantially confirmed their direct testimony. In his testimony, the Accused confirmed that he picked up the niece of Ntereye, with the Interahamwe Francois and his police officer, and went with her to the house of Victim Y. He confirmed that he drove with Ntereye's niece to Buguli, stating only that there were no mines in Buguli. The Accused also confirmed that he was looking for Alexia, the wife of Ntereye, but he maintained that he was determined to save her. He said that he paid Francois to help him in this effort. The Accused testified that he did not see Victim Z or Victim V at the roadblock near the home of Victim Y, although they all testified that they saw him and each other. According to the testimony of the Accused, the search for Alexia took place after the death of Ntereye on 10 May 1994. All the prosecution witnesses, however, date this search to 20 April 1994. The Defence in its cross-examination did not question the evidence given by the Prosecution witnesses about the date. The Accused also testified that when he spoke to Victim Y, she said "I cannot lie because you are going to do good for Alexia and then I have also heard that you tried to save Ntereye." Having heard Victim Y's (Witness N's) testimony, the Chamber finds it highly unlikely that she would have made such a statement and notes that the statement was not put to her by the Defence on cross-examination, in which the Accused himself participated. Moreover, the Accused's account of his efforts to find and save Alexia simply tapered off in his testimony, without any explanation as to whether he continued the search or gave it up and if so, why. The Chamber also notes the testimony of Witness PP, which it has accepted as credible, that when Alexia and her nieces were brought to the bureau communal, the Accused said to the Interahamwe, "Take them to Kinihira. Don't you know where killings take place, where the others have been killed?" The actions of the Accused were incompatible with a desire to save Alexia, and the Chamber does not accept the testimony of the Accused on these events as credible.

5.5 Sexual Violence (Paragraphs 12A & 12B of the Indictment)

Charges Set Forth in the Indictment

12A. Between April 7 and the end of June, 1994, hundreds of civilians (hereinafter "displaced civilians") sought refuge at the bureau communal. The majority of these displaced civilians were Tutsi. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Displaced civilians were also murdered frequently on or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings.

12B. Jean Paul Akayesu knew that the acts of sexual violence, beatings and murders were being committed and was at times present during their commission. Jean Paul Akayesu facilitated the commission of the sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to occur on or near the bureau communal premises. By virtue of his presence during the commission of the sexual violence, beatings and murders and by failing to prevent the sexual violence, beatings and murders, Jean Paul Akayesu encouraged these activities.

Events Alleged

416. Allegations of sexual violence first came to the attention of the Chamber through the testimony of Witness J, a Tutsi woman, who stated that her six year-old daughter had been raped

by three Interahamwe when they came to kill her father. On examination by the Chamber, Witness J also testified that she had heard that young girls were raped at the bureau communal. Subsequently, Witness H, a Tutsi woman, testified that she herself was raped in a sorghum field and that, just outside the compound of the bureau communal, she personally saw other Tutsi women being raped and knew of at least three such cases of rape by Interahamwe. Witness H testified initially that the Accused, as well as commune police officers, were present while this was happening and did nothing to prevent the rapes. However, on examination by the Chamber as to whether Akayesu was aware that the rapes were going on, she responded that she didn't know, but that it happened at the bureau communal and he knew that the women were there. Witness H stated that some of the rapes occurred in the bush area nearby but that some of them occurred "on site". On examination by the Chamber, she said that the Accused was present during one of the rapes, but she could not confirm that he saw what was happening. While Witness H expressed the view that the Interahamwe acted with impunity and should have been prevented by the commune police and the Accused from committing abuses, she testified that no orders were given to the Interahamwe to rape. She also testified that she herself was beaten but not raped at the bureau communal.

417. On 17 June 1997, the Indictment was amended to include allegations of sexual violence and additional charges against the Accused under Article 3(g),Article 3(i) and Article 4(2)(e) of the ICTR Statute. In introducing this amendment, the Prosecution stated that the testimony of Witness H motivated them to renew their investigation of sexual violence in connection with events which took place in Taba at the bureau communal. The Prosecution stated that evidence previously available was not sufficient to link the Accused to acts of sexual violence and acknowledged that factors to explain this lack of evidence might include the shame that accompanies acts of sexual violence as well as insensitivity in the investigation of sexual violence. The Chamber notes that the Defence in its closing statement questioned whether the Indictment was amended in response to public pressure concerning the prosecution of sexual violence. The Chamber understands that the amendment of the Indictment resulted from the spontaneous testimony of sexual violence by Witness J and Witness H during the course of this trial and the subsequent investigation of the Prosecution, rather than from public pressure.

Nevertheless, the Chamber takes note of the interest shown in this issue by non-governmental organizations, which it considers as indicative of public concern over the historical exclusion of rape and other forms of sexual violence from the investigation and prosecution of war crimes. The investigation and presentation of evidence relating to sexual violence is in the interest of justice.

418. Following the amendment of the Indictment, Witness JJ, a Tutsi woman, testified about the events which took place in Taba after the plane crash. She that she was driven away from her home, which was destroyed by her Hutu neighbours who attacked her and her family after a man came to the hill near where she lived and said that the bourgmestre had sent him so that no Tutsi would remain on the hill that night. Witness JJ saw her Tutsi neighbours killed and she fled, seeking refuge in a nearby forest with her baby on her back and her younger sister, who had been wounded in the attack by a blow with an axe and two machete cuts. As she was being chased everywhere she went, Witness JJ said she went to the bureau communal. There she found more than sixty refugees down the road and on the field nearby. She testified that most of the refugees were women and children.

419. Witness JJ testified that the refugees at the bureau communal had been beaten by the Interahamwe and were lying on the ground when she arrived. Witness JJ encountered four Interahamwe outside the bureau communal, armed with knives, clubs, small axes and small hoes. That afternoon, she said, approximately forty more Interahamwe came and beat the refugees, including Witness JJ. At this time she said she saw the Accused, standing in the courtyard of the communal office, with two communal police officers who were armed with guns, one of whom was called Mushumba. Witness JJ said she was beaten on the head, the ribs and the right leg, which left her disabled. That evening, she said, the Accused came with a policeman to look for refugees and ordered the Interahamwe to beat them up, calling them "wicked, wicked people" and saying they "no longer had a right to shelter." The refugees were then beaten and chased away. Witness JJ said she was beaten by the policeman Mushumna, who hit her with the butt of his gun just behind her ear.

420. Witness JJ testified that she spent the night in the rain in a field. The next day she said she returned to the bureau communal and went to the Accused, in a group of ten people representing the refugees, who asked that they be killed as the others had been because they were so tired of it all. She said the Accused told them that there were no more bullets and that he had gone to look for more in Gitarama but they had not yet been made available. He asked his police officers to chase them away and said that even if there were bullets they would not waste them on the refugees. As the refugees saw that death would be waiting for them anywhere else, Witness JJ testified they stayed at the bureau communal.

421. Witness JJ testified that often the Interahamwe came to beat the refugees during the day, and that the policemen came to beat them at night. She also testified that the Interahamwe took young girls and women from their site of refuge near the bureau communal into a forest in the area and raped them. Witness JJ testified that this happened to her - that she was stripped of her clothing and raped in front of other people. At the request of the Prosecutor and with great embarrassment, she explicitly specified that the rapist, a young man armed with an axe and a long knife, penetrated her vagina with his penis. She stated that on this occasion she was raped twice. Subsequently, she told the Chamber, on a day when it was raining, she was taken by force from near the bureau communal into the cultural center within the compound of the bureau communal, in a group of approximately fifteen girls and women. In the cultural center, according to Witness JJ, they were raped. She was raped twice by one man. Then another man came to where she was lying and he also raped her. A third man then raped her, she said, at which point she described herself as feeling near dead. Witness JJ testified that she was at a later time dragged back to the cultural center in a group of approximately ten girls and women and they were raped. She was raped again, two times. Witness JJ testified that she could not count the total number of times she was raped. She said, "each time you encountered attackers they would rape you," - in the forest, in the sorghum fields. Witness JJ related to the Chamber the experience of finding her sister before she died, having been raped and cut with a machete.

422. Witness JJ testified that when they arrived at the bureau communal the women were hoping the authorities would defend them but she was surprised to the contrary. In her testimony

she recalled lying in the cultural center, having been raped repeatedly by Interahamwe, and hearing the cries of young girls around her, girls as young as twelve or thirteen years old. On the way to the cultural center the first time she was raped there, Witness JJ said that she and the others were taken past the Accused and that he was looking at them. The second time she was taken to the cultural center to be raped, Witness JJ recalled seeing the Accused standing at the entrance of the cultural center and hearing him say loudly to the Interahamwe, "Never ask me again what a Tutsi woman tastes like," and "Tomorrow they will be killed" (Ntihazagire umbaza uko umututsikazi yari ameze, ngo kandi mumenye ko ejo ngo nibabica nta kintu muzambaza. Ngo ejo bazabica). According to Witness JJ, most of the girls and women were subsequently killed, either brought to the river and killed there, after having returned to their houses, or killed at the bureau communal. Witness JJ testified that she never saw the Accused rape anyone, but she, like Witness H, believed that he had the means to prevent the rapes from taking place and never even tried to do so. In describing the Accused and the statement he made regarding the taste of Tutsi women, she said he was "talking as if someone were encouraging a player" (Yavugaga nk'ubwiriza umukinnyi) and suggested that he was the one "supervising" the acts of rape. Witness JJ said she did not witness any killings at the bureau communal, although she saw dead bodies there.

423. When Witness JJ fled from the bureau communal, she left her one year-old child with a Hutu man and woman, who said they had milk for the child and subsequently killed him. Witness JJ spoke of the heavy sorrow the war had caused her. She testified to the humiliation she felt as a mother, by the public nudity and being raped in the presence of children by young men. She said that just thinking about it made the war come alive inside of her. Witness JJ told the Chamber that she had remarried but that her life had never been the same because of the beatings and rapes she suffered. She said the pain in her ribs prevents her from farming because she can no longer use a hoe, and she used to live on the food that she could grow.

424. Witness OO, a young Tutsi woman, testified that she and her family sought refuge at the bureau communal in April 1994 and encountered many other Tutsi refugees there, on the road outside the compound. While she was there, she said, some Interahamwe arrived and started

killing people with machetes. She and two other girls tried to flee but were stopped by the Interahamwe who went back and told the Accused that they were taking the girls away to "sleep with" them. Witness OO told the Chamber that standing five meters away from the Accused, she heard him say in reply, "take them". She said she was then separated from the other girls and taken to a field by one Interahamwe called Antoine. When she refused to sit down, he pushed her to the ground and put his "sex" into hers, clarifying on examination that he penetrated her vagina with his penis. When she started to cry, she said he warned her that if she cried or shouted, others might come and kill her.

425. According to Witness OO, Antoine left her in the field and returned that night to take her to the house of a woman called Zimba, where she spent three nights. On the fourth night, she said Antoine returned and took her to another Interahamwe called Emanuel. She said that Antoine did the same thing he had done before to her, and that Emanuel followed him in turn. Witness OO told the Chamber she spent three days and nights at the house of Emanuel where every day she was sexually violated by both Antoine and Emanuel. Afterwards, she said she was chased away by them.

426. Witness OO returned to the bureau communal when she heard that an order had been given to stop the killing of women and children, but after hearing the Accused, Kubwimana and Ruvugama all call for the killing of Tutsi, she left and went back into hiding. Subsequently, she and her seven year-old sister were apprehended by Interahamwe and taken to a roadblock. Her sister and two other people were imprisoned overnight and killed in the morning. At the time of these events, Witness OO was fifteen years old. When asked how it was that the Accused had the authority to protect her from rape, Witness OO replied that if he had told the Interahamwe not to take her from the bureau communal, they would have listened to him because he was the bourgmestre. Witness OO was unable to identify the Accused in the courtroom. She told the Chamber that someone had pointed him out to her at the bureau communal as the bourgmestre but that she had not looked at him closely and that it had been a long time ago.

427. Witness KK, a Hutu woman married to a Tutsi man, also sought refuge at the bureau

communal in Taba after her home was destroyed. She testified that the Tutsi refugees there were beaten often by the police and the Accused, whom she described as "supervising." She recalled the Accused publicly name a teacher called Tharcisse as an accomplice and send the police to find him. They brought Tharcisse and his wife and made them sit in the mud. With the Accused standing nearby they then killed Tharcisse. They took off his wife's clothing and told her to go and die somewhere else. Witness KK testified that on the same day, on the orders of the Accused, the Interahamwe brought teachers from Remera, who were also forced to sit in the mud. She said they started by clubbing a young teacher who had been brought with his fiancee, and that during this time the Accused was walking around and supervising the police, who were beating refugees. The teachers were critically wounded with small hoes and taken in a wheelbarrow to a mass grave, many still breathing, left to die a slow death.

428. Witness KK testified that her husband was beaten at the bureau communal and injured on the head. After escaping, he was captured by Interahamwe, and Witness KK received a message from him requesting to speak to her before he died. She found him behind the bureau communal with Interahamwes armed with clubs and spears, who then took him away between the two buildings of the bureau communal. She learned later that he was killed. Witness KK later went to the Accused and asked him for an attestation to help her keep her children alive. She said he replied that it was not he who had made them be born Tutsi and that "when rats are killed you don't spare rats that are still in the form of fetus." Witness KK testified that she had been pregnant and miscarried after being beaten by police and Interahamwe. Of her nine children, only two survived the events of this period.

429. Witness KK also recalled seeing women and girls selected and taken away to the cultural center at the bureau communal by Interahamwes who said they were going to "sleep with" these women and girls. Witness KK testified regarding an incident in which the Accused told the Interahamwe to undress a young girl named Chantal, whom he knew to be a gymnast, so that she could do gymnastics naked. The Accused told Chantal, who said she was Hutu, that she must be a Tutsi because he knew her father to be a Tutsi. As Chantal was forced to march around naked in front of many people, Witness KK testified that the Accused was laughing and happy with

this. Afterwards, she said he told the Interahamwes to take her away and said "you should first of all make sure that you sleep with this girl." (*Ngo kandi nababwiye ko muzajya mubanza mukirwanaho mukarongora abo bakobwa.)* Witness KK also testified regarding the rape of Tutsi women married to Hutu men. She described, after leaving the bureau communal, encountering on the road a man and woman who had been killed. She said the woman, whom she knew to be a Tutsi married to a Hutu, was "not exactly dead" and still in agony. She described the Interahamwes forcing a piece of wood into the woman's sexual organs while she was still breathing, before she died. In most cases, Witness KK said that Tutsi women married to Hutu men "were left alone because it was said that these women deliver Hutu children." She said that there were Hutu men who married Tutsi women to save them, but that these women were sought, taken away forcibly and killed. She said that she never saw the Accused rape a woman.

430. Witness NN, a Tutsi woman and the younger sister of JJ, described being raped along with another sister by two men in the courtyard of their home, just after it was destroyed by their Hutu neighbours and her brother and father had been killed. Witness NN said one of the men told her that the girls had been spared so that they could be raped. She said her mother begged the men, who were armed with bludgeons and machetes, to kill her daughters rather than rape them in front of her, and the man replied that the "principle was to make them suffer" and the girls were then raped. Witness NN confirmed on examination that the man who raped her penetrated her vagina with his penis, saying he did it in an "atrocious" manner, mocking and taunting them. She said her sister was raped by the other man at the same time, near her, so that they could each see what was happening to the other. Afterwards, she said she begged for death.

431. According to the testimony of Witness NN, after these men left, two other men who were neighbours came and one of them raped her, while the other took her sister a little further away and raped her sister. She recalled that the neighbour said that marriage had been refused to them, but now they were going to sleep with the girls without penalty (peine). She said the men left afterwards, warning the girls that they would kill them if they did not stay where they were. That evening, she said two other younger men, around the age of 15 or 16, came and asked them to "teach them because they didn't know how it was done". After these two men raped the girls,

Witness NN said their mother asked her daughters to leave rather than continue to be tortured in front of her. The girls left and went into hiding with a relative.

432. After hiding for a week and one half, Witness NN said she heard that Akayesu had stopped the killings, and she went with her sister towards the bureau communal. On the way, having taken a different route from her sister, Witness NN said she met two men who said they would accompany her to the bureau communal and that they had been given orders by the bourgmestre. She said the two men then took her a short distance away and raped her, each of them in turn, leaving her there afterwards lying naked. Subsequently, she said four men herding cattle came upon her, and two of them raped her. These incidents took place in the countryside, not very far from the bureau communal, according to Witness NN. After the rapes, Witness NN said she could not move - she was unable to get up and unable to dress herself. She said her sister found her and brought her some ghee to put in her lower parts to relieve the muscles. When she was able to get up, Witness NN said she continued on her way to the bureau communal with her sister.

433. Witness NN estimated that she arrived at the bureau communal some time in the beginning of May, and she said she found about three hundred refugees there, mostly women and children. The morning after she arrived, she said she saw the Accused with a towel around his neck, moving to the place where two Interahamwes were driving a woman to rape her, between the bureau communal and the cultural center. She said she saw the Accused standing watching the men drag the woman and later on he entered the office. She said she saw the Interahamwe circle this woman and saw them on top of her but did not see them penetrate her. She also said there were many refugees watching while this was happening. During the rape, she said there were two commune policemen who were in front of the office of the bourgmestre, one called Mushumba and one called Nsengiyumva who was in plain clothes. She said they did nothing to prevent the rape from happening and that the Accused did nothing as well - only watched and entered his office. She said after the rape she saw that the naked woman was hungry and cold, and the woman was pregnant. She said she was told by an Interahamwe that the woman died at the bureau communal. Witness NN said she did not see anyone raped inside the cultural center

but that the Interahamwe did come at night and take some girls away.

434. Two days after arriving at the bureau communal, Witness NN recounted seeing an Interahamwe called Rafiki, whom she had known previously and who had previously told her that he wanted to live with her. When he saw her at the bureau communal, she said he told her that he was going to rape her and not marry her. She said Rafiki took her to his home not far from the bureau communal and locked her up there for two days, during which time he raped her repeatedly day and night, a total of approximately six times. She said often when he came to rape her, he had been smoking herbs or drinking alcohol. When she returned to the bureau communal, Witness NN said she found her sister, who told her that she also had been raped again, at the bureau communal. Witness NN testified that her sister was hungry and cold, and could not move. Her sister died and when they went to bury her, they found her body had been eaten by dogs.

435. Witness NN said she saw the Accused often at the bureau communal and that she heard him tell police to remove the refugees, citing one occasion where a policeman named Mushuba beat and chased them away after receiving such an order from the Accused. She also recalled seeing the Accused when Ntereye was taken from the prison and killed. She did not witness this killing but heard a gunshot and later saw the corpse of Nteyere, his head crushed as if by a hammer. Subsequently, Witness NN said on two consecutive days she was taken with a group of several hundred people, mostly women and children, to a hole near the bureau communal where the Interahamwe were intending to kill them with a grenade. The first day they were apparently unable to find a grenade. On the second day, they were beaten and brought back to the hole. At that time Witness NN said Rafiki, the Interahamwe who had locked her in his house, took her out of the group and said that she was his wife. According to her testimony, the Interahamwe then started stabbing the group of people, beating them with machetes and throwing them into the hole while she was standing by. Witness NN said she closed her eyes but could hear people crying and shouting. She estimated that the killing of the group took twenty minutes, and recalled feeling as if she were dead, apart from the fact that she was still breathing.

436. Witness NN said she was then taken by the younger brother of Rafiki back to his home

where she stayed for one week. While she was there, she said she was locked up by Rafiki, who gave the key to other young men who came and "slept with" her, which she explained meant that they took their "sex" and put it into hers. She did not recall how many times this happened, stating that they came every day but that sometimes they did not rape her. After a week, Witness NN told the Chamber that she ran away and hid in the bush. Witness NN expressed the opinion in her testimony that the Accused had the power to oppose the killings and rapes and that by not giving refuge to anybody at the bureau communal, he authorized the rapes which took place. She testified that as a result of the rapes she has had recurring vaginal discharge and pain which require treatment in hospital.

437. Witness PP, a Tutsi woman married to a Hutu man, lived very near the bureau communal. Witness PP testified that she saw three women - Alexia, the wife of Ntereye, and her two nieces Nishimwe and Louise - raped and killed at Kinihira, a basin near the bureau communal. Witness PP said that the women were brought by the Interahamwe, at the direction of the Accused, in a vehicle of the bureau communal driven by Mutabaruka, the driver of the commune of Taba. She said she first saw the women in the vehicle at the bureau communal, where she heard the Accused say to the Interahamwe, "Take them to Kinihira. Don't you know where killings take place, where the others have been killed?" According to Witness PP, who then went to Kinihira herself, the three women were forced by the Interahamwe to undress and told to walk, run and perform exercises "so that they could display the thighs of Tutsi women." All this took place, she said, in front of approximately two hundred people. After this, she said the women were raped. She described in particular detail the rape of Alexia by Interahamwe who threw her to the ground and climbed on top of her saying "Now, let's see what the vagina of a Tutsi woman feels like." According to Witness PP, Alexia gave the Interahamwe named Pierre her Bible before he raped her and told him, "Take this Bible because it's our memory, because you do not know what you're doing." Then one person held her neck, others took her by the shoulders and others held her thighs apart as numerous Interahamwe continued to rape her - Bongo after Pierre, and Habarurena after Bongo. According to the testimony, Alexia was pregnant. When she became weak she was turned over and lying on her stomach, she went into premature delivery during the rapes. Witness PP testified that the Interahamwe then went on to rape Nishimwe, a young girl,

and recalled lots of blood coming from her private parts after several men raped her. Louise was then raped by several Interahamwe while others held her down, and after the rapes, according to the testimony, all three women were placed on their stomachs and hit with sticks and killed.

438. Witness PP said that no one tried to rape her because they did not know which ethnic group she belonged to. She also said she was protected from rape by an Interahamwe named Bongo because she had given him a sandwich and tea, and he told the other Interahamwe not to harm her. Witness PP testified that some women and children were able to escape from the bureau communal in April 1994 but that they had to "sacrifice themselves" in order to survive. By sacrifice she said she meant that they submitted to rape and she said that she helped to care for one of these women who subsequently came to her house for a week. On cross-examination, Witness PP described her encounter with a woman called Vestine, whom she had rescued from the pit at Kinihira where people were being thrown and where Vestine had just given birth. Witness PP said she brought Vestine to stay in the house of Emmanuel, a man she knew, and when she went back two days later, he told her that Vestine had been taken by an Interahamwe called Habarurena to a sorghum field in a place known as Kanyinya. According to Witness PP, Habarurena kept Vestine in the sorghum field for a week and raped her repeatedly. When she next saw Vestine there was a liquid flowing from her private parts and Vestine told her, "I think it would be better to go Kinihira to be killed." The next day Witness PP said she saw Vestine being raped, together with other women, and there was nothing she could do. On the following day, from the church where she went to pray, Witness PP said she saw Vestine being killed with a machete, by an Interahamwe called Bongo, and thrown into the pit, having been brought back there by the Interahamwe Habarurena.

439. Defence Witness DBB, a former student of the Accused currently in detention in Rwanda, testified that he went to the bureau communal on the 17 April 1994. Thereafter he went into hiding during the massacres and did not go to the bureau communal at all. Witness DBB testified that he never heard of or saw violence perpetrated against women during the events which took place in 1994, and that no women in his sector were raped. Subsequently he did say that he heard people saying that women were being raped in the commune of Taba, outside of

his sector, but he said he did not witness this. Witness DBB said he did not hear the name of the Accused mentioned in connection with sexual violence and that it was being attributed to the people who were participating in the massacres and looting. Witness DBB expressed the view that these incidents were being done out of sight of the Accused. On cross-examination he said he did not know anything about the Accused allowing women to be taken away and raped at the bureau communal.

440. Defence Witness DCC, the driver of Taba commune, testified that he never heard about violence perpetrated against women in Taba commune, that the Accused perpetrated violence against women in the commune or that the Accused gave orders for women to be raped. He said that during the period he was at the bureau communal, in April and throughout May, there were refugees there and he was there every day. He said nothing happened to the women refugees, and that he did not witness any of them being beaten or taken away to be raped. He said he did not know Alexia, Ntereye's wife, and denied going to look for her, finding her, and driving her in the communal vehicle to the bureau communal and then to Kinihira. He said the bureau communal vehicle had broken down before the massacres started

441. Defence Witness DZZ , a former Taba communal policeman currently in detention in Rwanda, testified that he went to the bureau communal every day and that incidents of sexual violence did not take place there. Witness DZZ also testified that he saw no crimes of any type being committed at the bureau communal. Witness DZZ was quite insistent that he heard of no cases of rape in the entire commune of Taba during this period. Defence Witness DCX in a similar statement said that when he was in Taba he heard no mention of sexual violence. He stated categorically that there was no rape. Defence Witness DAX when asked whether he had heard that the Interahamwe had committed crimes of sexual violence against women stated that nobody talked about such things where he was. He said he could not affirm that elsewhere maybe such things were heard or took place.

442. Defence Witness Matata, called as an expert witness, noted only one case he had heard of in Taba, an attempted rape of two girls aged fourteen and fifteen. He expressed his opinion that

the bourgmestre would not have been aware of this case as it was in a region, Buguri sector, which the bourgmestre had never gone to. Witness Matata noted that there is a cultural factor which prevented people from talking about rape, but also suggested that the phenomenon of rape was introduced afterwards for purposes of blackmail. He said he had come across incidents of rape in other parts of the country but suggested that cases of rape were not frequent and not related to an ethnic group. Witness Matata expressed the opinion that rapists were more interested in satisfying their physical needs, that there were spontaneous acts of desire even in the context of killing. He noted that Tutsi women, in general, are quite beautiful and that raping them is not necessarily intended to destroy an ethnic group, but rather to have a beautiful woman.

443. Defence Witness DIX testified that her father lent his vehicle to the Accused and helped him ensure security in the commune during this period. Witness DIX testified that she was at home in Taba and heard all the news but that she did not hear anything about rape or sexual violence during the killings which took place. However, she said that she received all her information from her parents and neighbours and did not once go to the bureau communal after the killings started. She said that she herself saw the Accused just one time, in April. According to her testimony, she did not speak to him at that time, and has never spoken to him at any other time. Nevertheless, Witness DIX expressed the opinion that the Accused had committed no crime, and she was surprised that he was in prison. Defence Witness DJX, a minor and the brother of Witness DIX, also testified that he did not hear anything about rape and he did not see any cases of rape. The Chamber notes that the written statements of these two witnesses, prepared and submitted by the Defence, are identical. Witness DJX was twelve years old at the time of the events, and like Witness DIX, he testified that he did not go to the bureau communal during this period. He said he saw the Accused two times.

444. Witness DFX testified that she was never a witness to acts of rape or sexual violence in Taba and that she never even heard anyone talk about them. The Chamber notes that this witness, who is a protected witness, has a close personal relationship to the Defendant. She testified, on examination by the Chamber, that the Accused did not tell her what was happening at the bureau communal, that she did not ask him, and that her source of information was from other people.

On cross-examination by the Prosecution, she testified that she herself never went to the bureau communal during this period for security reasons. On examination by the Chamber, the Witness acknowledged that in her written statement submitted by the Defence she had mentioned reports that the Interahamwe were abducting beautiful Tutsi girls and taking them home as mistresses. She conceded that such conduct could be considered sexual violence as it was not consensual.

445. Defence Witness DEEX, a Tutsi woman, testified that before killing women the Interahamwes raped them. Asked whether the Accused encouraged or authorized them in this sexual violence, she said she did not know. On cross-examination, she said that she did not personally witness sexual violence, although she heard that the girls at the house of the family where she had taken refuge were raped by the Interahamwe. Witness DEEX testified that she was given a laissez-passer by the Accused, which helped her to move around safely.

446. The Accused himself testified that he was completely surprised by the allegations of rape in Taba during the events which took place. He asserted that anyone saying that even a single woman was raped at the bureau communal was lying. While he acknowledged that some witnesses had testified that they were raped at the bureau communal, he swore, in the name of God, that the charge was made up. He said he never saw, and never heard from his policemen, that any woman was raped at the bureau communal. He said that he heard about rape accusations over Radio Rwanda and that women's associations had organized demonstrations and a march from Kigali to Taba. He suggested that perhaps this was intended to make the Chamber understand that in Taba women were raped at the bureau communal, but he insisted that women were never raped within the premises of the bureau communal or on land belonging to the bureau communal or the commune.

447. In his testimony, the Accused recalled the allegation that he had forced a young girl, Chantal, to march naked. He said he did not know her and that it never took place. He said he would not do something like that. He referred to the account of a woman raped with a wooden stick as "savagery", questioning how a woman could witness such a thing, and he referred to the statement he had been accused of making at the entrance to the cultural center as "too much". He

also testified that the cultural center building is such that it would be difficult to see what was going on inside from the door and that it would be difficult for a woman lying down inside to know who is at the door. The Accused testified that there were women taking refuge all over and outside the bureau communal and that there were women in the cultural center. He denied that the Interahamwe brought women to the cultural center. He said that some of the women who took refuge at the bureau communal were killed and others escaped.

448. On examination by the Chamber, the Accused stated that he did hear about rapes in Kigali but only after he was out of the country. When asked by the Chamber for a reaction to the testimony of sexual violence, the Accused noted that rape was not mentioned in the pre-trial statements of Witness J and Witness H, although Witness H said on examination by the Chamber that she had mentioned her rape to investigators. The Accused suggested that his Indictment was amended because of pressure from the women's movement and women in Rwanda, whom he described as "worked up to agree that they have been raped." On examination by the Chamber, the Accused acknowledged that it was possible that rape might have taken place in the commune of Taba, but he insisted that no rape took place at the bureau communal. He said he first learned of the rape allegations in Taba at the Chamber and maintained that the charges were an "invented accusation.

Factual Findings

449. Having carefully reviewed the testimony of the Prosecution witnesses regarding sexual violence, the Chamber finds that there is sufficient credible evidence to establish beyond a reasonable doubt that during the events of 1994, Tutsi girls and women were subjected to sexual violence, beaten and killed on or near the bureau communal premises, as well as elsewhere in the commune of Taba. Witness H, Witness JJ, Witness OO, and Witness NN all testified that they themselves were raped, and all, with the exception of Witness OO, testified that they witnessed other girls and women being raped. Witness J, Witness KK and Witness PP also testified that they witnessed other girls and women being raped in the commune of Taba. Hundreds of Tutsi, mostly women and children, sought refuge at the bureau communal during this period and many rapes

took place on or near the premises of the bureau communal - Witness JJ was taken by Interahamwe from the refuge site near the bureau communal to a nearby forest area and raped there. She testified that this happened often to other young girls and women at the refuge site. Witness JJ was also raped repeatedly on two separate occasions in the cultural center on the premises of the bureau communal, once in a group of fifteen girls and women and once in a group of ten girls and women. Witness KK saw women and girls being selected and taken by the Interahamwe to the cultural center to be raped. Witness H saw women being raped outside the compound of the bureau communal, and Witness NN saw two Interahamwes take a woman and rape her between the bureau communal and the cultural center. Witness OO was taken from the bureau communal and raped in a nearby field. Witness PP saw three women being raped at Kinihira, the killing site near the bureau communal, and Witness NN found her younger sister, dying, after she had been raped at the bureau communal. Many other instances of rape in Taba outside the bureau communal - in fields, on the road, and in or just outside houses - were described by Witness J, Witness H, Witness OO, Witness KK, Witness NN and Witness PP. Witness KK and Witness PP also described other acts of sexual violence which took place on or near the premises of the bureau communal - the forced undressing and public humiliation of girls and women. The Chamber notes that much of the sexual violence took place in front of large numbers of people, and that all of it was directed against Tutsi women.

450. With a few exceptions, most of the rapes and all of the other acts of sexual violence described by the Prosecution witnesses were committed by Interahamwe. It has not been established that the perpetrator of the rape of Witness H in a sorghum field and six of the men who raped Witness NN were Interahamwe. In the case of Witness NN, two of her rapists were neighbours, two were teenage boys and two were herdsmen, and there is no evidence that any of these people were Interahamwe. Nevertheless, with regard to all evidence of rape and sexual violence which took place on or near the premises of the bureau communal, the perpetrators were all identified as Interahamwe. Interahamwe are also identified as the perpetrators of many rapes which took place outside the bureau communal, including the rapes of Witness H, Witness OO, Witness NN, Witness J's daughter, a woman near death seen by Witness KK and a woman called Vestine, seen by Witness PP. There is no suggestion in any of the evidence that the Accused or

any communal policemen perpetrated rape, and both Witness JJ and Witness KK affirmed that they never saw the Accused rape anyone.

451. In considering the role of the Accused in the sexual violence which took place and the extent of his direct knowledge of incidents of sexual violence, the Chamber has taken into account only evidence which is direct and unequivocal. Witness H testified that the Accused was present during the rape of Tutsi women outside the compound of the bureau communal, but as she could not confirm that he was aware that the rapes were taking place, the Chamber discounts this testimony in its assessment of the evidence. Witness PP recalled the Accused directing the Interahamwe to take Alexia and her two nieces to Kinihira, saying "Don't you know where killings take place, where the others have been killed?" The three women were raped before they were killed, but the statement of the Accused does not refer to sexual violence and there is no evidence that the Accused was present at Kinihira. For this reason, the Chamber also discounts this testimony in its assessment of the evidence.

452. On the basis of the evidence set forth herein, the Chamber finds beyond a reasonable doubt that the Accused had reason to know and in fact knew that sexual violence was taking place on or near the premises of the bureau communal, and that women were being taken away from the bureau communal and sexually violated. There is no evidence that the Accused took any measures to prevent acts of sexual violence or to punish the perpetrators of sexual violence. In fact there is evidence that the Accused ordered, instigated and otherwise aided and abetted sexual violence. The Accused watched two Interahamwe drag a woman to be raped between the bureau communal and the cultural center. The two commune policemen in front of his office witnessed the rape but did nothing to prevent it. On the two occasions Witness JJ was brought to the cultural center of the bureau communal to be raped, she and the group of girls and women with her were taken past the Accused, on the way. On the first occasion he was looking at them, and on the second occasion he was standing at the entrance to the cultural center. On this second occasion, he said, "Never ask me again what a Tutsi woman tastes like." Witness JJ described the Accused in making these statements as "talking as if someone were encouraging a player." More generally she stated that the Accused was the one "supervising" the acts of rape. When Witness OO and two

other girls were apprehended by Interahamwe in flight from the bureau communal, the Interahamwe went to the Accused and told him that they were taking the girls away to sleep with them. The Accused said "take them." The Accused told the Interahamwe to undress Chantal and march her around. He was laughing and happy to be watching and afterwards told the Interahamwe to take her away and said "you should first of all make sure that you sleep with this girl." The Chamber considers this statement as evidence that the Accused ordered and instigated sexual violence, although insufficient evidence was presented to establish beyond a reasonable doubt that Chantal was in fact raped.

453. In making its factual findings, the Chamber has carefully considered the cross-examination by the Defence of Prosecution witnesses and the evidence presented by the Defence. With regard to cross-examination, the Chamber notes that the Defence did not question the testimony of Witness J or Witness H on rape at all, although the Chamber itself questioned both witnesses on this testimony. Witness JJ, OO, KK, NN and PP were questioned by the Defence with regard to their testimony of sexual violence, but the testimony itself was never challenged. Details such as where the rapes took place, how many rapists there were, how old they were, whether the Accused participated in the rapes, who was raped and which rapists used condoms were all elicited by the Defence, but at no point did the Defence suggest to the witnesses that the rapes had not taken place. The main line of questioning by the Defence with regard to the rapes and other sexual violence, other than to confirm the details of the testimony, related to whether the Accused had the authority to stop them. In cross-examination of the evidence presented by the Prosecution, specific incidents of sexual violence were never challenged by the Defence.

454. The Defence has raised discrepancies between the pre-trial written statements made by witnesses to the Office of the Prosecutor and their testimony before this Chamber, to challenge the credibility of these witnesses. The Chamber has considered the discrepancies which have been alleged with regard to the witnesses who testified on sexual violence and finds them to be unfounded or immaterial. For example, the Defence challenged Witness PP, quoting from her pre-trial statement that she stayed home during the genocide and recalling her testimony that she went out often as a contradiction. The Chamber pointed out to the Defence that elsewhere in her pre-

trial statement, Witness PP had also said "I went out of my house often." The Chamber established that during this period, Witness PP stayed, generally speaking, in the Taba commune, but that she went out of her house often. Selectively quoting from the pre-trial statements, the Defence often suggested inconsistencies which, upon examination or with further explanation, were found not to be inconsistencies.

455. With regard to the inconsistencies which were established by the Defence, the Chamber finds them to be immaterial. For example, Witness OO said in her pre-trial statement that she went to the bureau communal four days after the plane crash which killed President Habyarimana. In her testimony, she said she went to the bureau communal one week after the plane crash. Witness PP said in her pre-trial statement that when she rescued Vestine, Vestine was thereafter taken from her by Habarurena. In her testimony, Witness PP said she left Vestine at the house of Emmanuel, from which Vestine was taken by Habarurena. Whether Tutsi women were stripped on the way to or at Kinihira is the core of another discrepancy between the pre-trial statement and testimony of Witness PP. The Chamber considers that these inconsistencies are not of material consequence and that they are not substantial enough to impeach the credibility of the witnesses. The Chamber is of the view that the inconsistencies between pre-trial statements and witness testimony can be explained by the difficulties of recollecting precise details several years after the occurrence of the events, the trauma experienced by the witnesses to these events, the difficulties of translation, and the fact that several witnesses were illiterate and stated that they had not read their written statements.

456. The Defence in its closing argument used the example of Witness J to demonstrate the dishonesty of Prosecution witnesses. He recalled that Witness J testified that she was six months pregnant, and that when her brother was killed she climbed up a tree and stayed there for an entire week in her condition, without any food. In fact, the Defence is misrepresenting Witness J's testimony. She did not say that she stayed in a tree for a whole week without food. Witness J testified that when she got hungry she came down and went to a neighbour's house for food and that subsequently her neighbour brought food to her and then she would spend the night in the tree. Under cross-examination, Witness J testified that she came down from the tree every night.

What the Defence characterized as the "fantasy" of this witness, which may be "of interest to psychologists and not justice", the witness characterized as desperation, answering his challenge with the suggestion, "If somebody was chasing you, you would be able to climb a tree."

457. Of the twelve witnesses presented by the Defence, other than the Accused only two - DZZ and DCC - testified that they went regularly to the bureau communal after the killings began in Taba. These two witnesses contradicted each other on what they saw and heard. Witness DZZ, a former communal policeman currently in detention in Rwanda, testified that he heard of no cases of rape in the entire commune during this period. He testified that he was at the bureau communal every day and that no sexual violence took place there. He also testified that no crimes of any sort took place at the bureau communal - a categorical statement which, in the light of all the other witnesses who have testified that killings took place at the bureau communal, is highly implausible. The Accused himself testified that killings took place at the bureau communal. Witness DCC, who is currently in detention in Rwanda, also testified that killings took place at the bureau communal. Witness DCC was the driver of the commune during this time, and he testified that he never heard that violence was perpetrated against women in Taba. He denied bringing Alexia, the wife of Ntereye, in the communal vehicle to the bureau communal and then to Kinihira, and he testified that this vehicle had broken down before the massacres started Yet Defence Witness DAX testified that the communal vehicle was in use between April and June. Witness PP also testified that she saw the driver in this vehicle within this time frame. For these reasons the Chamber does not accept the testimony of Witness DZZ and DCC with regard to sexual violence.

458. Most of the Defence witnesses did not go to the bureau communal during the period from 7 April 1994 to the end of June 1994. Witness DCX , who testified that he did not hear any mention of sexual violence, only went to the bureau communal two times during this period, for personal reasons, and passed by the bureau several times. Witness DEEX, a Tutsi woman, who testified that she went once to the bureau communal, did hear that women were being raped by the Interahamwe before they were killed. The other Defence witnesses who testified that they had not heard any mention of sexual violence stated that they did not go to the bureau communal at

any time after the killings started. Witness DBB, Witness DAX, Witness DAAX, Witness DIX, Witness DJX, Witness DFX and Witness Matata never went to the bureau communal during this period. Witness DAAX and Witness Matata, who was called as an expert, were not in the commune of Taba during this period, and Witness DBB was in hiding after 17 April 1994. The Chamber considers that these witnesses were not in a position to know what occurred at the bureau communal. By their own accounts none of them, with the exception of Witness DAAX, had any conversation with the Accused regarding what was happening there. Witness DAAX, a prefet, testified that he lost contact with the Accused after 18 April 1994, before the killings began. The testimony of these witnesses therefore does not discredit the evidence presented by the Prosecution witnesses.

459. With regard to the testimony of the Accused, the Chamber finds very little concrete evidence or argument on sexual violence other than his bare denial that it occurred. The only specific incident referred to by the Accused on direct examination was the forced undressing and parading of Chantal, which he denied. On examination by the Chamber, the Accused subsequently referred to other incidents and a statement he was said to have made outside the cultural center, suggesting that it would be difficult for a person standing at the entrance to see what was happening inside, and that it would be difficult for a person inside lying down to see who was at the entrance. The Accused did not assert that this was impossible, and these comments were made in an offhand manner rather than as a serious defence. The Accused simply stated that there was very little to say about the allegations of sexual violence, that unlike the killings this was impossible and not even for discussion.

460. Faced with first-hand personal accounts from women who experienced and witnessed sexual violence in Taba and at the bureau communal, and who swore under oath that the Accused was present and saw what was happening, the Chamber does not accept the statement made by the Accused. The Accused insists that the charges are fabricated, but the Defence has offered the Chamber no evidence to support this assertion. There is overwhelming evidence to the contrary, and the Chamber does not accept the testimony of the Accused. The findings of the Chamber are based on the evidence which has been presented in this trial. As the Accused flatly denies the

occurrence of sexual violence at the bureau communal, he does not allow for the possibility that the sexual violence may have occurred but that he was unaware of it.

6. THE LAW

6.1 Cumulative Charges

461. In the amended Indictment, the accused is charged cumulatively with more than one crime in relation to the same sets of facts, in all but count 4. For example the events described in paragraphs 12 to 23 of the Indictment are the subject of three counts of the Indictment - genocide (count 1), complicity in genocide (count 2) and crimes against humanity/extermination (count 3). Likewise, counts 5 and 6 of the Indictment charge murder as a crime against humanity and murder as a violation of common article 3 of the Geneva Conventions, respectively, in relation to the same set of facts; the same is true of counts 7 and 8, and of counts 9 and 10, of the Indictment. Equally, counts 11 (crime against humanity/torture) and 12 (violation of common article 3/cruel treatment) relate to the same events. So do counts 13 (crime against humanity/rape), 14 (crimes against humanity/other inhumane acts) and 15 (violation of common article 3 and additional protocol II/rape).

462. The question which arises at this stage is whether, if the Chamber is convinced beyond a reasonable doubt that a given factual allegation set out in the Indictment has been established, it may find the accused guilty of all of the crimes charged in relation to those facts or only one. The reason for posing this question is that it might be argued that the accumulation of criminal charges offends against the principle of double jeopardy or a substantive *non bis in idem* principle in criminal law. Thus an accused who is found guilty of both genocide and crimes against humanity in relation to the same set of facts may argue that he has been twice judged for the same offence, which is generally considered impermissible in criminal law.

463. The Chamber notes that this question has been posed, and answered, by the Trial Chamber of the ICTY in the first case before that Tribunal, *The Prosecutor v. Dusko Tadić*. Trial Chamber II, confronted with this issue, stated:

"In any event, since this is a matter that will only be relevant insofar as it might affect penalty, it can best be dealt with if and when matters of penalty fall for consideration. What can, however, be said with certainty is that penalty cannot be made to depend upon whether offences arising from the same conduct are alleged cumulatively or in the alternative. What is to be punished by penalty is proven criminal conduct and that will not depend upon technicalities of pleading". (Prosecutor v. Tadić, Decision on Defence Motion on Form of the Indictment at p.10 (No. IT-94-1-T, T.Ch.II, 14 Nov, 1995)

464. In that case, when the matter reached the sentencing stage, the Trial Chamber dealt with the matter of cumulative criminal charges by imposing *concurrent* sentences for each cumulative charge. Thus, for example, in relation to one particular beating, the accused received 7 years' imprisonment for the beating as a crime against humanity, and a 6 year concurrent sentence for the same beating as a violation of the laws or customs of war.

465. The Chamber takes due note of the practice of the ICTY. This practice was also followed in the *Barbie* case, where the French *Cour de Cassation* held that a single event could be qualified both as a crime against humanity and as a war crime.[79]

466. It is clear that the practice of concurrent sentencing ensures that the accused is not twice punished for the same acts. Notwithstanding this absence of prejudice to the accused, it is still necessary to justify the prosecutorial practice of accumulating criminal charges.

467. The Chamber notes that in Civil Law systems, including that of Rwanda, there exists a principle known as *concours ideal d'infractions* which permits multiple convictions for the same act under certain circumstances. Rwandan law allows multiple convictions in the following circumstances:

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79 Judgment of 20 December 1985, *Bulletin des arrets de la Cour de Cassation*, 1985, p. 1038 e.s)

Code pénal du Rwanda: Chapitre VI - Du concours d'infractions:

Article 92.- Il y a concours d'infractions lorsque plusieurs infractions ont été commises par le même auteur sans qu'une condamnation soit intervenue entre ces infractions.

Article 93.- Il y concours idéal:
1° lorsque le fait unique au point de vue matériel est susceptible de plusieurs qualifications;
2° lorsque l'action comprend des faits qui, constituant des infractions distinctes, sont unis entre eux comme procédant d'une intention délictueuse unique ou comme étant les uns des circonstances aggravantes des autres.

Seront seules prononcées dans le premier cas les peines déterminées par la qualification la plus sévère, dans le second cas les peines prévues pour la répression de l'infraction la plus grave, mais dont le maximum pourra être alors élevé de moitié.

468. On the basis of national and international law and jurisprudence, the Chamber concludes that it is acceptable to convict the accused of two offences in relation to the same set of facts in the following circumstances: (1) where the offences have different elements; or (2) where the provisions creating the offences protect different interests; or (3) where it is necessary to record a conviction for both offences in order fully to describe what the accused did. However, the Chamber finds that it is not justifiable to convict an accused of two offences in relation to the same set of facts where (a) one offence is a lesser included offence of the other, for example, murder and grievous bodily harm, robbery and theft, or rape and indecent assault; or (b) where one offence charges accomplice liability and the other offence charges liability as a principal, e.g. genocide and complicity in genocide.

469. Having regard to its Statute, the Chamber believes that the offences under the Statute - genocide, crimes against humanity, and violations of article 3 common to the Geneva Conventions and of Additional Protocol II - have different elements and, moreover, are intended to protect

different interests. The crime of genocide exists to protect certain groups from extermination or attempted extermination. The concept of crimes against humanity exists to protect civilian populations from persecution. The idea of violations of article 3 common to the Geneva Conventions and of Additional Protocol II is to protect non-combatants from war crimes in civil war. These crimes have different purposes and are, therefore, never co-extensive. Thus it is legitimate to charge these crimes in relation to the same set of facts. It may, additionally, depending on the case, be necessary to record a conviction for more than one of these offences in order to reflect what crimes an accused committed. If, for example, a general ordered that all prisoners of war belonging to a particular ethnic group should be killed, with the intent thereby to eliminate the group, this would be both genocide and a violation of common article 3, although not necessarily a crime against humanity. Convictions for genocide and violations of common article 3 would accurately reflect the accused general's course of conduct.

470. Conversely, the Chamber does not consider that any of genocide, crimes against humanity, and violations of article 3 common to the Geneva Conventions and of Additional Protocol II are lesser included forms of each other. The ICTR Statute does not establish a hierarchy of norms, but rather all three offences are presented on an equal footing. While genocide may be considered the gravest crime, there is no justification in the Statute for finding that crimes against humanity or violations of common article 3 and additional protocol II are in all cricumstances alternative charges to genocide and thus lesser included offences. As stated, and it is a related point, these offences have different constituent elements. Again, this consideration renders multiple convictions for these offences in relation to the same set of facts permissible.

6.2. Individual criminal responsibility (Article 6 of the Statute)

471. The Accused is charged under Article 6(1) of the Statute of the Tribunal with individual criminal responsibility for the crimes alleged in the Indictment. With regard to Counts 13, 14 and 15 on sexual violence, the Accused is charged additionally, or alternatively, under Article 6(3) of the Statute. In the opinion of the Tribunal, Articles 6(1) and 6(3) address distinct principles of criminal liability and should, therefore, be considered separately. Article 6(1) sets forth the basic principles of individual criminal liability, which are undoubtedly common to most national criminal jurisdictions. Article 6(3), by contrast, constitutes something of an exception to the principles articulated in Article 6(1), as it derives from military law, namely the principle of the liability of a commander for the acts of his subordinates or "command responsibility".

472. Article 6(1) provides that:

> "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".

Thus, in addition to responsibility as principal perpetrator, the Accused can be held responsible for the criminal acts of others where he plans with them, instigates them, orders them or aids and abets them to commit those acts.

473. Thus, Article 6(1) covers various stages of the commission of a crime, ranging from its initial planning to its execution, through its organization. However, the principle of individual criminal responsibility as provided for in Article 6(1) implies that the planning or preparation of the crime actually leads to its commission. Indeed, the principle of individual criminal

responsibility for an attempt to commit a crime obtained only in case of genocide[80]. Conversely, this would mean that with respect to any other form of criminal participation and, in particular, those referred to in Article 6(1), the perpetrator would incur criminal responsibility only if the offence were completed.

474. Article 6 (1) thus appears to be in accord with the Judgments of the Nuremberg Tribunal which held that persons other than those who committed the crime, especially those who ordered it, could incur individual criminal responsibility.

475. The International Law Commission, in Article 2 (3) of the Draft Code of Crimes Against the Peace and Security of Mankind, reaffirmed the principle of individual responsibility for the five forms of participation deemed criminal referred to in Article 6 (1) and consistently included the phrase "which in fact occurs", with the exception of aiding and abetting, which is akin to complicity and therefore implies a principal offence.

476. The elements of the offences or, more specifically, the forms of participation in the commission of one of the crimes under Articles 2 to 4 of the Statute, as stipulated in Article 6 (1) of the said Statute, their elements are inherent in the forms of participation *per se* which render the perpetrators thereof individually responsible for such crimes. The moral element is reflected in the desire of the Accused that the crime be in fact committed.

477. In this respect, the International Criminal Tribunal for the former Yugoslavia found in the Tadić case that:

> "a person may only be criminally responsible for conduct where it is determined that he knowingly participated in the commission of an offence" and that "his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident."[81]

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[80] See Virginia Morris & Michael P. Scharpf, Ibid., p.235

[81] Para. 692, page 270, The Prosecutor v. Dusko Tadić, Case No. IT-94-1-T, 7 May 1997, ICTY.

478. This intent can be inferred from a certain number of facts, as concerns genocide, crimes against humanity and war crimes, for instance, from their massive and/or systematic nature or their atrocity, to be considered *infra* in the judgment, in the Tribunal's findings on the law applicable to each of the three crimes which constitute its *ratione materiae* jurisdiction.

479. Therefore, as can be seen, the forms of participation referred to in Article 6 (1), cannot render their perpetrator criminally liable where he did not act knowingly, and even where he should have had such knowledge. This greatly differs from Article 6 (3) analyzed here below, which does not necessarily require that the superior acted knowingly to render him criminally liable; it suffices that he had reason to know that his subordinates were about to commit or had committed a crime and failed to take the necessary or reasonable measures to prevent such acts or punish the perpetrators thereof. In a way, this is liability by omission or abstention.

480. The first form of liability set forth in Article 6 (1) is **planning** of a crime. Such planning is similar to the notion of *complicity* in Civil law, or *conspiracy* under Common law, as stipulated in Article 2 (3) of the Statute. But the difference is that planning, unlike complicity or plotting, can be an act committed by one person. Planning can thus be defined as implying that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.

481. The second form of liability is **'incitation'** (in the french version of the Statute) to commit a crime, reflected in the English version of Article 6 (1) by the word *instigated* . In English, it seems the words incitement and instigation are synonymous[82]. Furthermore, the word "instigated" or "instigation" is used to refer to incitation in several other instruments[83]. However, in certain

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[82] See, for example, the "Lexique Anglais-Français (principalement juridique) of the Council of Europe, Strasbourg, January 1997, which translates "incitement" by *incitation, instigation ou provocation* or the "Dictionnaire Français/ Anglais" Larousse, or the "Dictionnaire Francais/ Anglais" Super Senior Robert Collins.

[83] Article 6 of the Nuremberg Charter, Article 7(1) of the ICTY Statute and Article 2(3)(b) of the Draft Code of Crimes Against the Peace and the Security of Mankind.

legal systems and, under Civil law, in particular, the two concepts are very different[84]. Furthermore, and even assuming that the two words were synonymous, the question would be to know whether instigation under Article 6 (1) must include the direct and public elements, required for incitement, particularly, incitement to commit genocide (Article 2 (3)(c) of the Statute) which, in this instance, translates *incitation* into English as "incitement" and no longer "instigation". Some people are of that opinion[85]. The Chamber also accepts this interpretation [86].

482. That said, the form of participation through instigation stipulated in Article 6 (1) of the Statute, involves prompting another to commit an offence; but this is different from incitement in that it is punishable only where it leads to the actual commission of an offence desired by the instigator[87].

483. By **ordering** the commission of one of the crimes referred to in Articles 2 to 4 of the Statute, a person also incurs individual criminal responsibility. Ordering implies a superior-subordinate relationship between the person giving the order and the one executing it. In other words, the person in a position of authority uses it to convince another to commit an offence. In certain legal systems, including that of Rwanda [88], ordering is a form of complicity through instructions given to the direct perpetrator of an offence. Regarding the position of authority, the Chamber considers that sometimes it can be just a question of fact.

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[84] See, for instance, Article 91 of the Rwandan Penal Code, quoted and analyzed above under Chapter 6.3.2.

[85] See Virginia Morris and Michael P. Scharpf, *Ibid.* p.239. Comments on Article 2 (3)(f) of the Draft Code on Crimes Against the Peace and the Security of Mankind by the International Law Commission, which article considers incitement to commit a crime in the same way as Article 6(1) of the Tribunal's Statute.

[86] See *infra* the findings of the Chamber on the crime of direct and public incitement to commit genocide.

[87] On this issue, also see *infra* the findings of the Chamber on the crime of direct and public incitement to commit genocide.

[88] See Article 91 of the Penal Code, in "Codes et Lois du Rwanda", Université nationale du Rwanda, 31 December 1994 update, Volume I, 2nd edition: 1995, p.395.

484. Article 6 (1) declares criminally responsible a person who "(...) or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 (...)". **Aiding** and **abetting**, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto. The issue here is to whether the individual criminal responsibility provided for in Article 6(1) is incurred only where there was aiding and abetting at the same time. The Chamber is of the opinion that either aiding or abetting alone is sufficient to render the perpetrator criminally liable. In both instances, it is not necessary for the person aiding or abetting another to commit the offence to be present during the commission of the crime.

485. The Chamber finds that, in many legal systems, aiding and abetting constitute acts of complicity. However, though akin to the constituent elements of complicity, they themselves constitute one of the crimes referred to in Articles 2 to 4 of the Statute, particularly, genocide. The Chamber is consequently of the opinion that when dealing with a person Accused of having aided and abetted in the planning, preparation and execution of genocide, it must be proven that such a person did have the specific intent to commit genocide, namely that, he or she acted with the intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such; whereas, as stated *supra*, the same requirement is not needed for complicity in genocide[89].

486. Article 6(3) of the Statute deals with the responsibility of the superior, or command responsibility. This principle, which derives from the principle of individual criminal responsibility as applied in the Nuremberg and Tokyo trials, was subsequently codified in Article 86 of the Additional Protocol I to the Geneva Conventions of 8 June 1977.

487. Article 6 (3) stipulates that:

> "The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal

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[89] See *infra* the findings of the Chamber on the crime of direct and public incitement to commit genocide.

responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof".

488. There are varying views regarding the *Mens rea* required for command responsibility. According to one view it derives from a legal rule of strict liability, that is, the superior is criminally responsible for acts committed by his subordinate, without it being necessary to prove the criminal intent of the superior. Another view holds that negligence which is so serious as to be tantamount to consent or criminal intent, is a lesser requirement. Thus, the "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949" stated, in reference to Article 86 of the Additional Protocol I, and the *mens rea* requirement for command responsibility that:

> "[...] the negligence must be so serious that it is tantamount to malicious intent, apart from any link between the conduct in question and the damage that took place. This element in criminal law is far from being clarified, but it is essential, since it is precisely on the question of intent that the system of penal sanctions in the Conventions is based"[90].

489. The Chamber holds that it is necessary to recall that criminal intent is the moral element required for any crime and that, where the objective is to ascertain the individual criminal responsibility of a person Accused of crimes falling within the jurisdiction of the Chamber, such as genocide, crimes against humanity and violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II thereto, it is certainly proper to ensure that there has been malicious intent, or, at least, ensure that negligence was so serious as to be tantamount to acquiescence or even malicious intent.

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[90] Claude Pilloud et al., "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949", 1987, p.1036.

490. As to whether the form of individual criminal responsibility referred to Article 6 (3) of the Statute applies to persons in positions of both military and civilian authority, it should be noted that during the Tokyo trials, certain civilian authorities were convicted of war crimes under this principle. Hirota, former Foreign Minister of Japan, was convicted of atrocities - including mass rape - committed in the "rape of Nanking", under a count which charged that he had " recklessly disregarded their legal duty by virtue of their offices to take adequate steps to secure the observance and prevent breaches of the law and customs of war".The Tokyo Tribunal held that:

> "Hirota was derelict in his duty in not insisting before the Cabinet that immediate action be taken to put an end to the atrocities, failing any other action open to him to bring about the same result. He was content to rely on assurances which he knew were not being implemented while hundreds of murders, violations of women, and other atrocities were being committed daily. His inaction amounted to criminal negligence".

It should, however, be noted that Judge Röling strongly dissented from this finding, and held that Hirota should have been acquitted. Concerning the principle of command responsibility as applied to a civilian leader, Judge Röling stated that:

> "Generally speaking, a Tribunal should be very careful in holding civil government officials responsible for the behaviour of the army in the field. Moreover, the Tribunal is here to apply the general principles of law as they exist with relation to the responsibility for 'omissions'. Considerations of both law and policy, of both justice and expediency, indicate that this responsibility should only be recognized in a very restricted sense".

491. The Chamber therefore finds that in the case of civilians, the application of the principle of individual criminal responsibility, enshrined in Article 6 (3), to civilians remains contentious. Against this background, the Chamber holds that it is appropriate to assess on a case by case basis the power of authority actually devolved upon the Accused in order to determine whether or

not he had the power to take all necessary and reasonable measures to prevent the commission of the alleged crimes or to punish the perpetrators thereof.

6.3. Genocide (Article 2 of the Statute)

6.3.1. Genocide

492. Article 2 of the Statute stipulates that the Tribunal shall have the power to prosecute persons responsible for genocide, complicity to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

493. In accordance with the said provisions of the Statute, the Prosecutor has charged Akayesu with the crimes legally defined as genocide (count 1), complicity in genocide (count 2) and incitement to commit genocide (count 4).

Crime of Genocide, punishable under Article 2(3)(a) of the Statute

494. The definition of genocide, as given in Article 2 of the Tribunal's Statute, is taken verbatim from Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention")[91]. It states:

> " 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;

[91] The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly, on 9 December 1948.

(e) Forcibly transferring children of the group to another group."

495. The Genocide Convention is undeniably considered part of customary international law, as can be seen in the opinion of the International Court of Justice on the provisions of the Genocide Convention, and as was recalled by the United Nations' Secretary-General in his Report on the establishment of the International Criminal Tribunal for the former Yugoslavia[92].

496. The Chamber notes that Rwanda acceded, by legislative decree, to the Convention on Genocide on 12 February 1975[93]. Thus, punishment of the crime of genocide did exist in Rwanda in 1994, at the time of the acts alleged in the Indictment, and the perpetrator was liable to be brought before the competent courts of Rwanda to answer for this crime.

497. Contrary to popular belief, the crime of genocide does not imply the actual extermination of group in its entirety, but is understood as such once any one of the acts mentioned in Article 2(2)(a) through 2(2)(e) is committed with the specific intent to destroy "in whole or in part" a national, ethnical, racial or religious group.

498. Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

499. Thus, for a crime of genocide to have been committed, it is necessary that one of the acts

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[92] Secretary General's Report pursuant to paragraph 2 of resolution 808 (1993) of the Security Council, 3 May 1993, S/25704.

[93] Legislative Decree of 12 February 1975, Official Gazette of the Republic of Rwanda, 1975, p.230. Rwanda acceded to the Genocide Convention but stated that it shall not be bound by Article 9 of this Convention.

listed under Article 2(2) of the Statute be committed, that the particular act be committed against a specifically targeted group, it being a national, ethnical, racial or religious group. Consequently, in order to clarify the constitutive elements of the crime of genocide, the Chamber will first state its findings on the acts provided for under Article 2(2)(a) through Article 2(2)(e) of the Statute, the groups protected by the Genocide Convention, and the special intent or *dolus specialis* necessary for genocide to take place.

Killing members of the group (paragraph (a)):

500. With regard to Article 2(2)(a) of the Statute, like in the Genocide Convention, the Chamber notes that the said paragraph states "*meurtre*" in the French version while the English version states "killing". The Trial Chamber is of the opinion that the term "killing" used in the English version is too general, since it could very well include both intentional and unintentional homicides, whereas the term "*meurtre*", used in the French version, is more precise. It is accepted that there is murder when death has been caused with the intention to do so, as provided for, incidentally, in the Penal Code of Rwanda which stipulates in its Article 311 that "Homicide committed with intent to cause death shall be treated as murder".

501. Given the presumption of innocence of the accused, and pursuant to the general principles of criminal law, the Chamber holds that the version more favourable to the accused should be upheld and finds that Article 2(2)(a) of the Statute must be interpreted in accordance with the definition of murder given in the Penal Code of Rwanda, according to which "*meurtre*" (killing) is homicide committed with the intent to cause death. The Chamber notes in this regard that the *travaux préparatoires* of the Genocide Convention[94], show that the proposal by certain delegations that premeditation be made a necessary condition for there to be genocide, was rejected, because some delegates deemed it unnecessary for premeditation to be made a requirement; in their

[94]Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September-10 December 1948, Official Records of the General Assembly.

opinion, by its constitutive physical elements, the very crime of genocide, necessarily entails premeditation.

Causing serious bodily or mental harm to members of the group (paragraph b)

502. Causing serious bodily or mental harm to members of the group does not necessarily mean that the harm is permanent and irremediable.

503. In the Adolf Eichmann case, who was convicted of crimes against the Jewish people, genocide under another legal definition, the District Court of Jerusalem stated in its judgment of 12 December 1961, that serious bodily or mental harm of members of the group can be caused

> " by the enslavement, starvation, deportation and persecution [...] and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture"[95].

504. For purposes of interpreting Article 2 (2)(b) of the Statute, the Chamber takes serious bodily or mental harm, without limiting itself thereto, to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (paragraph c):

505. The Chamber holds that the expression deliberately inflicting on the group conditions of

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[95] "Attorney General of the Government of Israel vs. Adolph Eichmann", "District Court" of Jerusalem, 12 December 1961, quoted in the "The International Law Reports", vol. 36,1968, p.340.

life calculated to bring about its physical destruction in whole or in part, should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.

506. For purposes of interpreting Article 2(2)(c) of the Statute, the Chamber is of the opinion that the means of deliberate inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or part, include, *inter alia*, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.

Imposing measures intended to prevent births within the group (paragraph d):

507. For purposes of interpreting Article 2(2)(d) of the Statute, the Chamber holds that the measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group.

508. Furthermore, the Chamber notes that measures intended to prevent births within the group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.

Forcibly transferring children of the group to another group (paragraph e)

509. With respect to forcibly transferring children of the group to another group, the Chamber is of the opinion that, as in the case of measures intended to prevent births, the objective is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another.

510. Since the special intent to commit genocide lies in the intent to "destroy, in whole or in part, a national, ethnical, racial or religious group, as such", it is necessary to consider a definition of the group as such. Article 2 of the Statute, just like the Genocide Convention, stipulates four types of victim groups, namely national, ethnical, racial or religious groups.

511. On reading through the *travaux préparatoires* of the Genocide Convention[96], it appears that the crime of genocide was allegedly perceived as targeting only "stable" groups, constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more "mobile" groups which one joins through individual voluntary commitment, such as political and economic groups. Therefore, a common criterion in the four types of groups protected by the Genocide Convention is that membership in such groups would seem to be normally not challengeable by its members, who belong to it automatically, by birth, in a continuous and often irremediable manner.

512. Based on the *Nottebohm* decision[97] rendered by the International Court of Justice, the Chamber holds that a national group is defined as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.

513. An ethnic group is generally defined as a group whose members share a common language or culture.

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[96] Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly.

[97] International Court of Justice, 1995

514. The conventional definition of racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.

515. The religious group is one whose members share the same religion, denomination or mode of worship.

516. Moreover, the Chamber considered whether the groups protected by the Genocide Convention, echoed in Article 2 of the Statute, should be limited to only the four groups expressly mentioned and whether they should not also include any group which is stable and permanent like the said four groups. In other words, the question that arises is whether it would be impossible to punish the physical destruction of a group as such under the Genocide Convention, if the said group, although stable and membership is by birth, does not meet the definition of any one of the four groups expressly protected by the Genocide Convention. In the opinion of the Chamber, it is particularly important to respect the intention of the drafters of the Genocide Convention, which according to the *travaux préparatoires,* was patently to ensure the protection of any stable and permanent group.

517. As stated above, the crime of genocide is characterized by its *dolus specialis*, or special intent, which lies in the fact that the acts charged, listed in Article 2 (2) of the Statute, must have been "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

518. Special intent is a well-known criminal law concept in the Roman-continental legal systems. It is required as a constituent element of certain offences and demands that the perpetrator have the clear intent to cause the offence charged. According to this meaning, special intent is the key element of an intentional offence, which offence is characterized by a

psychological relationship between the physical result and the mental state of the perpetrator[98].

519. As observed by the representative of Brazil during the *travaux préparatoires* of the Genocide Convention,

> "genocide [is] characterised by the factor of particular intent to destroy a group. In the absence of that factor, whatever the degree of atrocity of an act and however similar it might be to the acts described in the convention, that act could still not be called genocide."[99]

520. With regard to the crime of genocide, the offender is culpable only when he has committed one of the offences charged under Article 2(2) of the Statute with the clear intent to destroy, in whole or in part, a particular group. The offender is culpable because he knew or should have known that the act committed would destroy, in whole or in part, a group.

521. In concrete terms, for any of the acts charged under Article 2 (2) of the Statute to be a constitutive element of genocide, the act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of genocide is the group itself and not only the individual[100].

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[98] See in particular: Roger Merle et André Vitu, " Traité de droit criminel", Cujas, 1984, (first edition, 1967), p.723 *et seg.*

[99] Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1994, op. cit., p.109.

[100] Concerning this issue, see in particular Nehemiah Robinson, "The Genocide Convention. Its Origins as Interpretation", p.15, which states that victims as individuals *"are important not per se but as members of the group to which they belong"*.

522. The perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or part, the group of which the individual is just one element.

523. On the issue of determining the offender's specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.

524. Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia also stated that the specific intent of the crime of genocide

> " may be inferred from a number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the repetition of destructive and discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate the very foundation of the group- acts which are not in themselves covered by the list in Article 4(2) but which are committed as part of the same pattern of conduct"[101].

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[101] International Criminal Tribunal for the former Yugoslavia, Decision of Trial Chamber 1, Radovan Karadzic, Ratko Mladic case (Cases Nos. IT-95-5-R61 and IT-95-18-R61), Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence, paragraph 94.

Thus, in the matter brought before the International Criminal Tribunal for the former Yugoslavia, the Trial Chamber, in its findings, found that

> "this intent derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group".[102]

6.3.2. Complicity in Genocide

The Crime of Complicity in Genocide, punishable under Article 2(3)e) of the Statute

525. Under Article 2(3)e) of the Statute, the Chamber shall have the power to prosecute persons who have committed complicity in genocide. The Prosecutor has charged Akayesu with such a crime under count 2 of the Indictment.

526. Principle VII of the "Nuremberg Principles"[103] reads

> "complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

Thus, participation by complicity in the most serious violations of international humanitarian law was considered a crime as early as Nuremberg.

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[102] Ibid. Paragraph 95.

[103] "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal," adopted by the International Law Commission of the United Nations, 1950.

527. The Chamber notes that complicity is viewed as a form of criminal participation by all criminal law systems, notably, under the Anglo-Saxon system (or Common Law) and the Roman-Continental system (or Civil Law). Since the accomplice to an offence may be defined as someone who associates himself in an offence committed by another[104], complicity necessarily implies the existence of a principal offence.[105]

528. According to one school of thought, complicity is 'borrowed criminality' (criminalité d'emprunt). In other words, the accomplice borrows the criminality of the principal perpetrator. By borrowed criminality, it should be understood that the physical act which constitutes the act of complicity does not have its own inherent criminality, but rather it borrows the criminality of the act committed by the principal perpetrator of the criminal enterprise. Thus, the conduct of the accomplice emerges as a crime when the crime has been consummated by the principal perpetrator. The accomplice has not committed an autonomous crime, but has merely facilitated the criminal enterprise committed by another.

529. Therefore, the issue before the Chamber is whether genocide must actually be committed in order for any person to be found guilty of complicity in genocide. The Chamber notes that, as stated above, complicity can only exist when there is a punishable, principal act, in the commission of which the accomplice has associated himself. Complicity, therefore, implies a predicate offence committed by someone other than the accomplice.

530. Consequently, the Chamber is of the opinion that in order for an accused to be found guilty of complicity in genocide, it must, first of all, be proven beyond a reasonable doubt that the crime

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[104] The Osborn's Concise Law Dictionary defines an accomplice as :"any person who, either as a principal or as an accessory, has been associated with another person in the commission of any offence.", Sweet and Maxwell, 1993, p.6

[105] It appears from the *travaux préparatoires* of the Genocide Convention that only complicity in the completed offence of genocide was intended for punishment and not complicity in an attempt to commit genocide, complicity in incitement to commit genocide nor complicity in conspiracy to commit genocide, all of which were, in the eyes of some states, too vague to be punishable under the Convention.

of genocide has, indeed, been committed.

531. The issue thence is whether a person can be tried for complicity even where the perpetrator of the principal offence himself has not being tried. Under Article 89 of the Rwandan Penal Code, accomplices

> "may be prosecuted even where the perpetrator may not face prosecution for personal reasons, such as double jeopardy, death, insanity or non-identification"[unofficial translation].

As far as the Chamber is aware, all criminal systems provide that an accomplice may also be tried, even where the principal perpetrator of the crime has not been identified, or where, for any other reasons, guilt could not be proven.

532. The Chamber notes that the logical inference from the foregoing is that an individual cannot thus be both the principal perpetrator of a particular act and the accomplice thereto. An act with which an accused is being charged cannot, therefore, be characterized both as an act of genocide and an act of complicity in genocide as pertains to this accused. Consequently, since the two are mutually exclusive, the same individual cannot be convicted of both crimes for the same act.

533. As regards the physical elements of complicity in genocide (*Actus Reus*), three forms of accomplice participation are recognized in most criminal Civil Law systems: complicity by instigation, complicity by aiding and abetting, and complicity by procuring means[106]. It should be noted that the Rwandan Penal Code includes two other forms of participation, namely, incitement to commit a crime through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or

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[106] See, for example, Article 46 of the Senegalese Penal Code, Article 121-7 of the *Nouveau code pénal français* (New French Penal Code).

printed matter in public places or at pubic gatherings, or through the public display of placards or posters, and complicity by harbouring or aiding a criminal. Indeed, according to Article 91 of the Rwandan Penal Code:

> "An accomplice shall mean:
>
> 1. A person or persons who by means of gifts, promises, threats, abuse of authority or power, culpable machinations or artifice, directly incite(s) to commit such action or order(s) that such action be committed.
>
> 2. A person or persons who procure(s) weapons, instruments or any other means which are used in committing such action with the knowledge that they would be so used.
>
> 3. A person or persons who knowingly aid(s) or abet(s) the perpetrator or perpetrators of such action in the acts carried out in preparing or planning such action or in effectively committing it.
>
> 4. A person or persons who, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at pubic gatherings or through the public display of placards or posters, directly incite(s) the perpetrator or perpetrators to commit such an action without prejudice to the penalties applicable to those who incite others to commit offences, even where such incitement fails to produce results.
>
> 5. A person or persons who harbour(s) or aid(s) perpetrators under the circumstances provided for under Article 257 of this Code."[107] [unofficial translation]

534. The Chamber notes, first of all, that the said Article 91 of the Rwandan Penal Code draws

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[107] See Article 91 of the Penal Code in "Codes et lois du Rwanda", Université nationale du Rwanda, 31 December 1994 update, volume 1, 2nd edition: 1995, p. 395.

a distinction between "*instigation*" (instigation), on the one hand, as provided for by paragraph 1 of said Article, and "*incitation*" (incitement), on the other, which is referred to in paragraph 4 of the same Article. The Chamber notes in this respect that, as pertains to the crime of genocide, the latter form of complicity, i.e. by incitement, is the offence which under the Statute is given the specific legal definition of "direct and public incitement to commit genocide," punishable under Article 2(3)c), as distinguished from "complicity in genocide." The findings of the Chamber with respect to the crime of direct and public incitement to commit genocide will be detailed below. That said, instigation, which according to Article 91 of the Rwandan Penal Code, assumes the form of incitement or instruction to commit a crime, only constitutes complicity if it is accompanied by, "gifts, promises, threats, abuse of authority or power, machinations or culpable artifice"[108]. In other words, under the Rwandan Penal Code, unless the instigation is accompanied by one of the aforesaid elements, the mere fact of prompting another to commit a crime is not punishable as complicity, even if such a person committed the crime as a result.

535. The ingredients of complicity under Common Law do not appear to be different from those under Civil Law. To a large extent, the forms of accomplice participation, namely "aid and abet, counsel and procure", mirror those conducts characterized under Civil Law as "l'aide et l'assistance, la fourniture des moyens".

536. Complicity by aiding or abetting implies a positive action which excludes, in principle, complicity by failure to act or omission. Procuring means is a very common form of complicity. It covers those persons who procured weapons, instruments or any other means to be used in the commission of an offence, with the full knowledge that they would be used for such purposes.

537. For the purposes of interpreting Article 2(3)e) of the Statute, which does not define the concept of complicity, the Chamber is of the opinion that it is necessary to define complicity as per the Rwandan Penal Code, and to consider the first three forms of criminal participation

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[108] See especially *Cour de cassation française* (French Court of Cassation): Crim. 24 December 1942. JCP 19 944, ruling out prosecuting an individual as an accomplice who simply gave advice on committing a crime.

referred to in Article 91 of the Rwandan Penal Code as being the elements of complicity in genocide, thus:

- complicity by procuring means, such as weapons, instruments or any other means, used to commit genocide, with the accomplice knowing that such means would be used for such a purpose;

- complicity by knowingly aiding or abetting a perpetrator of a genocide in the planning or enabling acts thereof;

- complicity by instigation, for which a person is liable who, though not directly participating in the crime of genocide crime, gave instructions to commit genocide, through gifts, promises, threats, abuse of authority or power, machinations or culpable artifice, or who directly incited to commit genocide.

538. The intent or mental element of complicity implies in general that, at the moment he acted, the accomplice knew of the assistance he was providing in the commission of the principal offence. In other words, the accomplice must have acted knowingly.

539. Moreover, as in all criminal Civil law systems, under Common law, notably English law, generally, the accomplice need not even wish that the principal offence be committed. In the case of National Coal Board v. Gamble[109], Justice Devlin stated

> "an indifference to the result of the crime does not of itself negate abetting. If one man deliberately sells to another a gun to be used for murdering a third, he may be indifferent about whether the third lives or dies and interested only the cash profit to be made out of the sale, but he can still be an aider and abettor."

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[109] *National Coal Board v. Gamble*, [1959] 1 QB 11.

In 1975, the English House of Lords also upheld this definition of complicity, when it held that willingness to participate in the principal offence did not have to be established[110]. As a result, anyone who knowing of another's criminal purpose, voluntarily aids him or her in it, can be convicted of complicity even though he regretted the outcome of the offence.

540. As far as genocide is concerned, the intent of the accomplice is thus to knowingly aid or abet one or more persons to commit the crime of genocide. Therefore, the Chamber is of the opinion that an accomplice to genocide need not necessarily possess the *dolus specialis* of genocide, namely the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.

541. Thus, if for example, an accused knowingly aided or abetted another in the commission of a murder, while being unaware that the principal was committing such a murder, with the intent to destroy, in whole or in part, the group to which the murdered victim belonged, the accused could be prosecuted for complicity in murder, and certainly not for complicity in genocide. However, if the accused knowingly aided and abetted in the commission of such a murder while he knew or had reason to know that the principal was acting with genocidal intent, the accused would be an accomplice to genocide, even though he did not share the murderer's intent to destroy the group.

542. This finding by the Chamber comports with the decisions rendered by the District Court of Jerusalem on 12 December 1961 and the Supreme Court of Israel on 29 May 1962 in the case of Adolf Eichmann[111]. Since Eichmann raised the argument in his defence that he was a "small cog" in the Nazi machine, both the District Court and the Supreme Court dealt with accomplice liability and found that,

> "[...] even a small cog, even an insignificant operator, is under our criminal law

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[110] *DPP for Northern Ireland v. Lynch*, [1975] AC 653.

[111] Eichmann, *Op. Cit.*, p. 340.

liable to be regarded as an accomplice in the commission of an offence, in which case he will be dealt with as if he were the actual murderer or destroyer".[112]

543. The District Court accepted that Eichmann did not personally devise the "Final Solution" himself, but nevertheless, as the head of those engaged in carrying out the "Final Solution" - "acting in accordance with the directives of his superiors, but [with] wide discretionary powers in planning operations on his own initiative," he incurred individual criminal liability for crimes against the Jewish people, as much as his superiors. Likewise, with respect to his subordinates who actually carried out the executions, "[...] the legal and moral responsibility of he who delivers up the victim to his death is, in our opinion, no smaller, and may be greater, than the responsibility of he who kills the victim with his own hands"[113]. The District Court found that participation in the extermination plan with knowledge of the plan rendered the person liable "as an accomplice to the extermination of all [...] victims from 1941 to 1945, irrespective of the extent of his participation"[114].

544. The findings of the Israeli courts in this case support the principle that the *mens rea*, or special intent, required for complicity in genocide is *knowledge* of the genocidal plan, coupled with the *actus reus* of participation in the execution of such plan. Crucially, then, it does not appear that the specific intent to commit the crime of genocide, as reflected in the phrase "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such," is required for complicity or accomplice liability.

545. In conclusion, the Chamber is of the opinion that an accused is liable as an accomplice to genocide if he knowingly aided or abetted or instigated one or more persons in the commission of genocide, while knowing that such a person or persons were committing genocide, even though the accused himself did not have the specific intent to destroy, in whole or in part, a national,

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[112] *Ibid*, p. 323.

[113] District Court judgment, p. 179.

[114] *Ibid* p. 14.

ethnical, racial or religious group, as such.

546. At this juncture, the Chamber will address another issue, namely that which, with respect to complicity in genocide covered under Article 2(3)(e) of the Statute, may arise from the forms of participation listed in Article 6 of the Statute entitled, "Individual Criminal Responsibility," and more specifically, those covered under paragraph 1 of the same Article. Indeed, under Article 6(1), "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." Such forms of participation, which are summarized in the expression "[...] or otherwise aided or abetted [...]," are similar to the material elements of complicity, though they in and of themselves, characterize the crimes referred to in Articles 2 to 4 of the Statute, which include namely genocide.

547. Consequently, where a person is accused of aiding and abetting, planning, preparing or executing genocide, it must be proven that such a person acted with specific genocidal intent, i.e. the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, whereas, as stated above, there is no such requirement to establish accomplice liability in genocide.

548. Another difference between complicity in genocide and the principle of abetting in the planning, preparation or execution a genocide as per Article 6(1), is that, in theory, complicity requires a positive act, i.e. an act of commission, whereas aiding and abetting may consist in failing to act or refraining from action. Thus, in the Jefferson and Coney cases, it was held that "The accused [...] only accidentally present [...] must know that his presence is actually encouraging the principal(s)"[115]. Similarly, the French Court of Cassation found that,

> "A person who, by his mere presence in a group of aggressors provided moral support to the assailants, and fully supported the criminal intent of the group, is

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[115] *Jefferson* case (1994) 1 All ER 270 - *Coney* case (1882) 8 QDB 534; See Blackstone A5.7, p. 72.

liable as an accomplice"[116] [unofficial translation].

The International Criminal Tribunal for the Former Yugoslavia also concluded in the Tadić judgment that :

> "if the presence can be shown or inferred, by circumstantial or other evidence, to be knowing and to have a direct and substantial effect on the commission of the illegal act, then it is sufficient on which to base a finding of participation and assign the criminal culpability that accompanies it."[117]

6.3.3. Direct and Public Incitement to commit Genocide

THE CRIME OF DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, PUNISHABLE UNDER ARTICLE 2(3)(c) OF THE STATUTE

549. Under count 4, the Prosecutor charges Akayesu with direct and public incitement to commit genocide, a crime punishable under Article 2(3)(c) of the Statute.

550. Perhaps the most famous conviction for incitement to commit crimes of international dimension was that of Julius Streicher by the Nuremberg Tribunal for the virulently anti-Semitic articles which he had published in his weekly newspaper *Der Stürmer*. The Nuremberg Tribunal found that: "Streicher's incitement to murder and extermination, at the time when Jews in the East were being killed under the most horrible conditions, clearly constitutes persecution on political and racial grounds in connection with War Crimes, as defined by the Charter, and constitutes a

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[116] Crim, 20 January 1992: *Dr. pénal* 1992, 194.

[117] See Judgment of the International Criminal Tribunal for the Former Yugoslavia, Case No. IT-94-1-T, "The Prosecutor versus Dusko Tadić", 7 May 1997, paragraph 689.

Crime against Humanity". [118]

551. At the time the Convention on Genocide was adopted, the delegates agreed to expressly spell out direct and public incitement to commit genocide as a specific crime, in particular, because of its critical role in the planning of a genocide, with the delegate from the USSR stating in this regard that, "It was impossible that hundreds of thousands of people should commit so many crimes unless they had been incited to do so and unless the crimes had been premeditated and carefully organized. He asked how in those circumstances, the inciters and organizers of the crime could be allowed to escape punishment, when they were the ones really responsible for the atrocities committed".[119]

552. Under Common law systems, incitement tends to be viewed as a particular form of criminal participation, punishable as such. Similarly, under the legislation of some Civil law countries, including Argentina, Bolivia, Chili, Peru, Spain, Uruguay and Venezuela, provocation, which is similar to incitement, is a specific form of participation in an offence[120]; but in most Civil law systems, incitement is most often treated as a form of complicity.

553. The Rwandan Penal Code is one such legislation. Indeed, as stated above, in the discussion on complicity in genocide, it does provide that direct and public incitement or provocation is a form of complicity. In fact, Article 91 subparagraph 4 provides that an accomplice shall mean " A person or persons who, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings or through the public display of placards or posters, directly incite(s) the perpetrator or perpetrators to commit such an action without prejudice to the penalties applicable to those who incite others to commit offences, even

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[118] Nuremberg Proceedings, Vol. 22, p. 502

[119] Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly, statements by Mr. Morozov, p. 241.

[120] Cf. Jean Pradel, *Droit pénal comparé* (Comparative Penal Law), Précis Dalloz: 1995, p. 277-278.

where such incitement fails to produce results".[121]

554. Under the Statute, direct and public incitement is expressly defined as a specific crime, punishable as such, by virtue of Article 2(3)(c). With respect to such a crime, the Chamber deems it appropriate to first define the three terms: incitement, direct and public.

555. Incitement is defined in Common law systems as encouraging or persuading another to commit an offence[122]. One line of authority in Common law would also view threats or other forms of pressure as a form of incitement[123]. As stated above, Civil law systems punish direct and public incitement assuming the form of provocation, which is defined as an act intended to directly provoke another to commit a crime or a misdemeanour through speeches, shouting or threats, or any other means of audiovisual communication[124]. Such a provocation, as defined under Civil law, is made up of the same elements as direct and public incitement to commit genocide covered by Article 2 of the Statute, that is to say it is both direct and public.

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[121] Penal Code in, "*Codes et Lois du Rwanda*" (Codes and Laws of Rwanda), National University of Rwanda, 31 December 1994 update, Volume I, 2nd Edition: 1995, p. 395.[*unofficial translation*]

[122] "... someone who instigates or encourages another person to commit an offence should be liable to conviction for those acts of incitement, both because he is culpable for trying to cause a crime and because such liability is a step towards crime prevention." Andrew Ashworth, *Principles of Criminal Law*, Clarendon Press, Oxford: 1995, p. 462.

[123] "The conduct required for incitement is some form of encouragement or persuasion to commit an offence, although there is authority which would regard threats or other forms of pressure as incitement." *Ibid*, p. 462.

[124] See for example the French Penal Code, which defines provocation as follows: "Anyone, who whether through speeches, shouting or threats uttered in public places or at public gatherings or through the sale or dissemination, offer for sale or display of written material, printed matter, drawings, sketches, paintings, emblems, images or any other written or spoken medium or image in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication" shall have directly provoked the perpetrator(s) to commit a crime or misdemeanour, shall be punished as an accomplice to such a crime or misdemeanour; L No. 72-546 of 1 July 1972 and L. No. 85-1317 of 13 December 1985.[*Unofficial translation*]

556. The public element of incitement to commit genocide may be better appreciated in light of two factors: the place where the incitement occurred and whether or not assistance was selective or limited. A line of authority commonly followed in Civil law systems would regard words as being public where they were spoken aloud in a place that were public by definition[125]. According to the International Law Commission, public incitement is characterized by a call for criminal action to a number of individuals in a public place or to members of the general public at large by such means as the mass media, for example, radio or television[126]. It should be noted in this respect that at the time Convention on Genocide was adopted, the delegates specifically agreed to rule out the possibility of including private incitement to commit genocide as a crime, thereby underscoring their commitment to set aside for punishment only the truly public forms of incitement[127].

557. The "direct" element of incitement implies that the incitement assume a direct form and specifically provoke another to engage in a criminal act, and that more than mere vague or indirect suggestion goes to constitute direct incitement[128]. Under Civil law systems, provocation, the equivalent of incitement, is regarded as being direct where it is aimed at causing a specific offence to be committed. The prosecution must prove a definite causation between the act

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[125] French Court of Cassation, Criminal Tribunal, 2 February 1950, Bull, crim. No. 38, p. 61.

[126] The[...] Element of public incitement requires communicating the call for criminal action to a number of individuals in a public place or to members of the general public at large. Thus, an individual may communicate the call for criminal action in person in a public place or by technical means of mass communication, such as by radio or television.", Draft Code of Crimes Against the Peace and Security of Mankind, art. 2(3)(f); Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10(1996).

[127] See Yearbook of the United Nations, UN Fiftieth Edition, 1945-1995, Martinus Nijhoff Publishers, 1995 and the Summary Records of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly.

[128] "The element of direct incitement requires specifically urging another individual to take immediate criminal action rather than merely making a vague or indirect suggestion." Draft Code of Crimes Against the Peace and Security of Mankind, art. 2(3)(f); Report of the International Law Commission to the General Assembly, 51 U.N. ORGA Supp. (No. 10), at 26, U.N. Doc. A/51/10(1996).

characterized as incitement, or provocation in this case, and a specific offence[129]. However, the Chamber is of the opinion that the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as "direct" in one country, and not so in another, depending on the audience[130]. The Chamber further recalls that incitement may be direct, and nonetheless implicit. Thus, at the time the Convention on Genocide was being drafted, the Polish delegate observed that it was sufficient to play skillfully on mob psychology by casting suspicion on certain groups, by insinuating that they were responsible for economic or other difficulties in order to create an atmosphere favourable to the perpetration of the crime.[131]

558. The Chamber will therefore consider on a case-by-case basis whether, in light of the culture of Rwanda and the specific circumstances of the instant case, acts of incitement can be viewed as direct or not, by focusing mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.

559. In light of the foregoing, it can be noted in the final analysis that whatever the legal system, direct and public incitement must be defined for the purposes of interpreting Article 2(3)(c), as directly provoking the perpetrator(s) to commit genocide, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication.

560. The *mens rea* required for the crime of direct and public incitement to commit genocide

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[129] Article 23 of the French Law of 29 July 1881 on the provoking of crimes and offenses. See especially the analysis of André Vitu, *Traité de Droit criminel, Droit pénal spécial*, 1982.

[130] On this subject, see above, in the findings of the Chamber on Evidentiary Matters, the developments pertaining to the analysis of the Kinyarwanda language presented by the expert witness Professor Mathias Ruzindana.

[131] Summary Records of the Sixth Committee of the General Assembly, 21 September- 10 December 1948, Official Records of the General Assembly.

lies in the intent to directly prompt or provoke another to commit genocide. It implies a desire on the part of the perpetrator to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. That is to say that the person who is inciting to commit genocide must have himself the specific intent to commit genocide, namely, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

561. Therefore, the issue before the Chamber is whether the crime of direct and public incitement to commit genocide can be punished even where such incitement was unsuccessful. It appears from the *travaux préparatoires* of the Convention on Genocide that the drafters of the Convention considered stating explicitly that incitement to commit genocide could be punished, whether or not it was successful. In the end, a majority decided against such an approach. Nevertheless, the Chamber is of the opinion that it cannot thereby be inferred that the intent of the drafters was not to punish unsuccessful acts of incitement. In light of the overall *travaux,* the Chamber holds the view that the drafters of the Convention simply decided not to specifically mention that such a form of incitement could be punished.

562. There are under Common law so-called inchoate offences, which are punishable by virtue of the criminal act alone, irrespective of the result thereof, which may or may not have been achieved. The Civil law counterparts of inchoate offences are known as [*infractions formelles*] (acts constituting an offence per se irrespective of their results), as opposed to [*infractions matérielles*] (strict liability offences). Indeed, as is the case with inchoate offenses, in [*infractions formelles*], the method alone is punishable. Put another way, such offenses are "deemed to have been consummated regardless of the result achieved [*unofficial translation*]"[132] contrary to [*infractions matérielles*]. Indeed, Rwandan lawmakers appear to characterize the acts defined under Article 91(4) of the Rwandan Penal Code as so-called [*infractions formelles*], since provision is made for their punishment even where they proved unsuccessful. It should be noted, however, that such offences are the exception, the rule being that in theory, an offence can only be punished in relation to the result envisaged by the lawmakers. In the opinion of the Chamber,

[132] Merle and Vitu, *Ibid*, p. 619

the fact that such acts are in themselves particularly dangerous because of the high risk they carry for society, even if they fail to produce results, warrants that they be punished as an exceptional measure. The Chamber holds that genocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator.

6.4. Crimes against Humanity (Article 3 of the Statute)

Crimes against Humanity - Historical development

563. Crimes against humanity were recognized in the Charter and Judgment of the Nuremberg Tribunal, as well as in Law No. 10 of the Control Council for Germany. Article 6(c) of the Charter of Nuremberg Tribunal defines crimes against humanity as

> "..murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connexion with any crime within the jurisdiction of the Chamber, whether or not in violation of the domestic law of the country where perpetrated."

564. Article II of Law No. 10 of the Control Council Law defined crimes against humanity as:

> "Atrocities and Offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population or persecution on political, racial or religious grounds, whether or not in violation of the domestic laws of the country where perpetrated."[133]

565. Crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an armed conflict, international or internal in character[134]. In fact, the concept of crimes against humanity had been recognised long before Nuremberg. On 28

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[133] International Law Reports, Volume 36, p. 31.

[134] Secretary General's Report on the ICTY Statute, (S/25704), paragraph 47.

May 1915, the Governments of France, Great Britain and Russia made a declaration regarding the massacres of the Armenian population in Turkey, denouncing them as "crimes against humanity and civilisation for which all the members of the Turkish government will be held responsible together with its agents implicated in the massacres".[135] The 1919 Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties formulated by representatives from several States and presented to the Paris Peace Conference also referred to "offences against ... the laws of humanity".[136]

566. These World War I notions derived, in part, from the Martens clause of the Hague Convention (IV) of 1907, which referred to "the usages established among civilised peoples, from the laws of humanity, and the dictates of the public conscience". In 1874, George Curtis called slavery a "crime against humanity". Other such phrases as "crimes against mankind" and "crimes against the human family" appear far earlier in human history (see 12 N.Y.L. Sch. J. Hum. Rts 545 (1995)).

567. The Chamber notes that, following the Nuremberg and Tokyo trials, the concept of crimes against humanity underwent a gradual evolution in the *Eichmann, Barbie, Touvier* and *Papon* cases.

568. In the *Eichmann* case, the accused, Otto Adolf Eichmann, was charged with offences under Nazi and Nazi Collaborators (punishment) Law, 5710/1950, for his participation in the implementation of the plan know as 'the Final Solution of the Jewish problem'. Pursuant to Section I (*b*) of the said law:

> "Crime against humanity means any of the following acts: murder, extermination, enslavement, starvation or deportation and other inhumane acts committed against

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[135] Roger Clark, Crimes against Humanity at Nuremberg, The Nuremberg and International Lawpage 177, Ginburgs and Kudriavtsev

[136] Id. p 178

any civilian population , and persecution on national, racial, religious or political grounds."[137]

The district court in the Eichmann stated that crimes against humanity differs from genocide in that for the commission of genocide special intent is required. This special intent is not required for crimes against humanity[138]. Eichmann was convicted by the District court and sentenced to death. Eichmann appealed against his conviction and his appeal was dismissed by the supreme court.

569. In the *Barbie* case, the accused, Klaus Barbie, who was the head of the Gestapo in Lyons from November 1942 to August 1944, during the wartime occupation of France, was convicted in 1987 of crimes against humanity for his role in the deportation and extermination of civilians. Barbie appealed in cassation, but the appeal was dismissed. For the purposes of the present Judgment, what is of interest is the definition of crimes against humanity employed by the Court. The French Court of Cassation, in a Judgment rendered on 20 December 1985, stated:

> Crimes against humanity, within the meaning of Article 6(c) of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945, which were not subject to statutory limitation of the right of prosecution, even if they were crimes which could also be classified as war crimes within the meaning of Article 6(b) of the Charter, *were inhumane acts and persecution committed in a systematic manner in the name of a State practising a policy of ideological supremacy, not only against persons by reason of their membership of a racial or religious community, but also against the opponents of that policy, whatever the form of their opposition.* (Words italicized by the Court)[139]

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[137] International Law Report; volume 36; 1968 at p.30

[138] *ILR*, Volume 36, Part 4, p5 at 41

[139] 78 *ILR* 136 at 137

570. This was affirmed in a Judgment of the Court of Cassation of 3 June 1988, in which the Court held that:

> The fact that the accused, who had been found guilty of one of the crimes enumerated in Article 6(c) of the Charter of the Nuremberg Tribunal, in perpetrating that crime took part in the execution of a common plan to bring about the deportation or extermination of the civilian population during the war, or persecutions on political, racial or religious grounds, constituted not a distinct offence or an aggravating circumstance but rather *an essential element of the crime against humanity, consisting of the fact that the acts charged were performed in a systematic manner in the name of a State practising by those means a policy of ideological supremacy.*[140] (Emphasis added)

571. The definition of crimes against humanity developed in *Barbie* was further developed in the *Touvier* case. In that case, the accused, Paul Touvier, had been a high-ranking officer in the Militia (*Milice*) of Lyons, which operated in "Vichy" France during the German occupation. He was convicted of crimes against humanity for his role in the shooting of seven Jews at Rillieux on 29 June 1994 as a reprisal for the assassination by members of the Resistance, on the previous day, of the Minister for Propaganda of the "Vichy" Government.

572. The Court of Appeal applied the definition of crimes against humanity used in *Barbie*, stating that:

> The specific intent necessary to establish a crime against humanity was the intention to take part in the execution of a common plan by committing, in a systematic manner, inhuman acts or persecutions in the name of a State practising a policy of ideological supremacy.[141]

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140 ILR pp.332 and 336. *Gaz. Pal.* 1988, II, p. 745)

141 ILR, pp. 340 and 352-5.

573. Applying this definition, the Court of Appeal held that Touvier could not be guilty of crimes against humanity since he committed the acts in question in the name of the "Vichy" State, which was not a State practising a policy of ideological supremacy, although it collaborated with Nazi Germany, which clearly did practice such a policy.

574. The Court of Cassation allowed appeal from the decision of the Court of Appeal, on the grounds that the crimes committed by the accused had been committed at the instigation of a Gestapo officer, and to that extent were linked to Nazi Germany, a State practising a policy of ideological supremacy against persons by virtue of their membership of a racial or religious community. Therefore the crimes could be categorised as crimes against humanity. Touvier was eventually convicted of crimes against humanity by the *Cour d'Assises des Yvelines* on 20 April 1994.[142]

575. The definition of crimes against humanity used in *Barbie* was later affirmed by the ICTY in its *Vukovar* Rule 61 Decision of 3 April 1996 (IT-95-13-R61), to support its finding that crimes against humanity applied equally where the victims of the acts were members of a resistance movement as to where the victims were civilians:

> "29. ... Although according to the terms of Article 5 of the Statute of this Tribunal ... combatants in the traditional sense of the term cannot be victims of a crime against humanity, this does not apply to individuals who, at one particular point in time, carried out acts of resistance. As the Commission of Experts, established pursuant to Security Council resolution 780, noted, "it seems obvious that Article 5 applies first and foremost to civilians, meaning people who are not combatants. This, however, should not lead to any quick conclusions concerning people who at one particular point in time did bear arms. ... Information of the overall circumstances is relevant for the interpretation of the provision in a spirit consistent with its purpose." (Doc S/1994/674, para. 78).

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142 *Le Monde*, 21 April 1994.

576. This conclusion is supported by case law. In the Barbie case, the French Cour de Cassation said that:

> "inhumane acts and persecution which, in the name of a State practising a policy of ideological hegemony, were committed systematically or collectively not only against individuals because of their membership in a racial or religious group but also against the adversaries of that policy whatever the form of the opposition" could be considered a crime against humanity. (Cass. Crim. 20 December 1985).

577. Article 7 of the Statute of the International Criminal Court defines a crime against humanity as any of the enumerated acts committed as part of a widespread of systematic attack directed against any civilian population, with knowledge of the attack. These enumerated acts are murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this article or any other crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering , or serious injury to body or mental or physical health.[143]

Crimes against Humanity in Article 3 of the Statute of the Tribunal

578. The Chamber considers that Article 3 of the Statute confers on the Chamber the

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[143] Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Court on 17 July 1998.

jurisdiction to prosecute persons for various inhumane acts which constitute crimes against humanity. This category of crimes may be broadly broken down into four essential elements, namely :

(i) the act must be inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health;
(ii) the act must be committed as part of a wide spread or systematic attack;
(iii) the act must be committed against members of the civilian population;
(iv) the act must be committed on one or more discriminatory grounds, namely, national, political, ethnic, racial or religious grounds.

The act must be committed as part of a wide spread or systematic attack.

579. The Chamber considers that it is a prerequisite that the act must be committed as part of a wide spread or systematic attack and not just a random act of violence. The act can be part of a widespread or systematic attack and need not be a part of both.[144]

580. The concept of 'widespread' may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. The concept of 'systematic' may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There

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144 In the original French version of the Statute, these requirements were worded cumulatively: "Dans le cadre dune adieux generalise *et* systematic", thereby significantly increasing the threshold for application of this provision. Since Customary International Law requires only that the attack be either widespread or systematic, there are sufficient reasons to assume that the French version suffers from an error in translation.

must however be some kind of preconceived plan or policy.[145]

581. The concept of 'attack' maybe defined as a unlawful act of the kind enumerated in Article 3(a) to (I) of the Statute, like murder, extermination, enslavement etc. An attack may also be non violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.

The act must be directed against the civilian population

582. The Chamber considers that an act must be directed against the civilian population if it is to constitute a crime against humanity. Members of the civilian population are people who are not taking any active part in the hostilities, including members of the armed forces who laid down their arms and those persons placed *hors de combat* by sickness, wounds, detention or any other cause.[146] Where there are certain individuals within the civilian population who do not come within the definition of civilians , this does not deprive the population of its civilian character.[147]

The act must be committed on discriminatory grounds

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[145] Report on the International Law Commission to the General Assembly, 51 U.N. GAOR Supp. (No 10) at 94 U.N.Doc. A/51/10 (1996)

[146] Note that this definition assimilates the definition of "civilian" to the categories of person protected by Common Article 3 of the Geneva Conventions; an assimilation which would not appear to be problematic. Note also that the ICTY *Vukovar* Rule 61 Decision, of 3 April 1996, recognised that crimes against humanity could be committed where the victims were captured members of a resistance movement who at one time had borne arms, who would thus qualify as persons placed *hors de combat* by detention.

[147] Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict; Article 50.

583. The Statute stipulates that inhumane acts committed against the civilian population must be committed on 'national, political, ethnic, racial or religious grounds.' Discrimination on the basis of a person's political ideology satisfies the requirement of 'political' grounds as envisaged in Article 3 of the Statute. For definitions on national, ethnic, racial or religious grounds see supra.

584. Inhumane acts committed against persons not falling within any one of the discriminatory categories could constitute crimes against humanity if the perpetrator's intention was to further his attacks on the group discriminated against on one of the grounds mentioned in Article 3 of the Statute. The perpetrator must have the requisite intent for the commission of crimes against humanity. [148]

The enumerated acts

585. Article 3 of the Statute sets out various acts that constitute crimes against humanity, namely: murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political, racial and religious grounds; and; other inhumane acts. Although the category of acts that constitute crimes against humanity are set out in Article 3, this category is not exhaustive. Any act which is inhumane in nature and character may constitute a crime against humanity, provided the other elements are met. This is evident in (i) which caters for all other inhumane acts not stipulated in (a) to (h) of Article 3.

586. The Chamber notes that the accused is indicted for murder, extermination, torture, rape and other acts that constitute inhumane acts. The Chamber in interpreting Article 3 of the Statute, shall focus its discussion on these acts only.

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[148]The Judgment of Prosecutor v. Duško Tadić, case no. IT94-I-T, addressed this issue, citing the case the Federation Nationale des Deportes et Internes Resistant et Patriot and Other v. Barbie 78 Int'L. Rep.124, 125 (1995). On Appeal the Cour de Cassation quashed and annulled the judgment in part, holding that members of the resistance could be victims of crimes against humanity as long as the necessary intent for crimes against humanity was present. (Para. 641)

Murder

587. The Chamber considers that murder is a crime against humanity, pursuant to Article 3 (a) of the Statute. The International Law Commission discussed the inhumane act of murder in the context of the definition of crimes against humanity and concluded that the crime of murder is clearly understood and defined in the national law of every state and therefore there is no need to further explain this prohibited act.

588. The Chamber notes that article 3(a) of the English version of the Statute refers to "Murder", whilst the French version of the Statute refers to "Assassinat". Customary International Law dictates that it is the act of "Murder" that constitutes a crime against humanity and not "Assassinat". There are therefore sufficient reasons to assume that the French version of the Statute suffers from an error in translation.

589. The Chamber defines murder as the unlawful, intentional killing of a human being. The requisite elements of murder are :

1. the victim is dead;
2. the death resulted from an unlawful act or omission of the accused or a subordinate;
3. at the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensures or not.

590. Murder must be committed as part of a widespread or systematic attack against a civilian population. The victim must be a member of this civilian population. The victim must have been murdered because he was discriminated against on national, ethnic, racial, political or religious grounds.

Extermination

591. The Chamber considers that extermination is a crime against humanity, pursuant to Article 3 (c) of the Statute. Extermination is a crime which by its very nature is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction which is not required for murder.

592. The Chamber defines the essential elements of extermination as the following :

1. the accused or his subordinate participated in the killing of certain named or described persons;
2. the act or omission was unlawful and intentional.
3. the unlawful act or omission must be part of a widespread or systematic attack;
4. the attack must be against the civilian population;
5. the attack must be on discriminatory grounds, namely: national, political, ethnic, racial, or religious grounds.

Torture

593. The Chamber considers that torture is a crime against humanity pursuant to Article 3(f) of the Statute. Torture may be defined as :

> '..any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official

capacity.'[149]

594. The Chamber defines the essential elements of torture as :

(i) The perpetrator must intentionally inflict severe physical or mental pain or suffering upon the victim for one or more of the following purposes:
   (a) to obtain information or a confession from the victim or a third person;
   (b) to punish the victim or a third person for an act committed or suspected of having been committed by either of them;
   (c) for the purpose of intimidating or coercing the victim or the third person;
   (d) for any reason based on discrimination of any kind.

(ii) The perpetrator was himself an official, or acted at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity.

595. The Chamber finds that torture is a crime against humanity if the following further elements are satisfied :

(a) Torture must be perpetrated as part of a widespread or systematic attack;
(b) the attack must be against the civilian population;
(c) the attack must be launched on discriminatory grounds, namely: national, ethnic, racial, religious and political grounds.

Rape

596. Considering the extent to which rape constitute crimes against humanity, pursuant to Article 3(g) of the Statute, the Chamber must define rape, as there is no commonly accepted

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[149] Convention against Torture and Other Cruel , Inhuman or Degrading Treatment or Punishment, Article 1

definition of this term in international law. While rape has been defined in certain national jurisdictions as non-consensual intercourse, variations on the act of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual.

597. The Chamber considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual frame work of state sanctioned violence. This approach is more useful in international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

598. The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive. This act must be committed :

(a) as part of a wide spread or systematic attack;

(b) on a civilian population;

(c) on certained catalogued discriminatory grounds, namely: national, ethnic, political, racial, or religious grounds.

6.5. Violations of Common Article 3 and Additional Protocol II (Article 4 of the Statute)

Article 4 of the Statute

599. Pursuant to Article 4 of the Statute, the Chamber shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

a) violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

b) collective punishments;

c) taking of hostages;

d) acts of terrorism;

e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

f) pillage;

g) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples;

h) threats to commit any of the foregoing acts.

600. Prior to developing the elements for the above cited offences contained within Article 4 of the Statute, the Chamber deems it necessary to comment upon the applicability of common Article 3 and Additional Protocol II as regards the situation which existed in Rwanda in 1994 at the time of the events contained in the Indictment.

Applicability of Common Article 3 and Additional Protocol II

601. The four 1949 Geneva Conventions and the 1977 Additional Protocol I thereto generally apply to international armed conflicts only, whereas Article 3 common to the Geneva Conventions extends a minimum threshold of humanitarian protection as well to all persons affected by a non-international conflict, a protection which was further developed and enhanced in the 1977 Additional Protocol II. In the field of international humanitarian law, a clear distinction as to the thresholds of application has been made between situations of international armed conflicts, in which the law of armed conflicts is applicable as a whole, situations of non-international (internal) armed conflicts, where Common Article 3 and Additional Protocol II are applicable, and non-international armed conflicts where only Common Article 3 is applicable. Situations of internal disturbances are not covered by international humanitarian law.

602. The distinction pertaining to situations of conflicts of a non-international character emanates from the differing intensity of the conflicts. Such distinction is inherent to the conditions of applicability specified for Common Article 3 or Additional Protocol II respectively. Common Article 3 applies to "armed conflicts not of an international character", whereas for a conflict to fall within the ambit of Additional Protocol II, it must "take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". Additional Protocol II does not in itself establish a criterion for a non-international

conflict, rather it merely develops and supplements the rules contained in Common Article 3 without modifying its conditions of application.[150]

603. It should be stressed that the ascertainment of the intensity of a non-international conflict does not depend on the subjective judgment of the parties to the conflict. It should be recalled that the four Geneva Conventions, as well as the two Protocols, were adopted primarily to protect the victims, as well as potential victims, of armed conflicts. If the application of international humanitarian law depended solely on the discretionary judgment of the parties to the conflict, in most cases there would be a tendency for the conflict to be minimized by the parties thereto. Thus, on the basis of objective criteria, both Common Article 3 and Additional Protocol II will apply once it has been established there exists an internal armed conflict which fulfills their respective pre-determined criteria[151].

604. The Security Council, when delimiting the subject-matter jurisdiction of the ICTR[152], incorporated violations of international humanitarian law which may be committed in the context of both an international and an internal armed conflict:

> " Given the nature of the conflict as non-international in character, the Council has incorporated within the subject-matter jurisdiction of the Tribunal violations of international humanitarian law which may either be committed in both international and internal armed conflicts, such as the crime of genocide and crimes against humanity, or may be committed only in internal armed conflicts, such as violations of article 3 common to the four Geneva Conventions, as more

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[150] See Article 1 (Material field of application) of Additional Protocol II.

[151] *Ibid* and International Committee of the Red Cross Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, para. 4438, (hereinafter the "Commentary on Additional Protocol II").

[152] See the Secretary General's Report on practical arrangements for the effective functioning of the International Tribunal for Rwanda, recommending Arusha as the seat of the Tribunal, UN Doc. S/1995/134, of 13 February 1995.

fully elaborated in article 4 of Additional Protocol II.

In that latter respect, the Security Council has elected to take a more expansive approach to the choice of the applicable law than the one underlying the Statute of the Yugoslav Tribunal, and included within the subject-matter jurisdiction of the Rwanda Tribunal international instruments regardless of whether they were considered part of customary international law or whether they have customarily entailed the individual criminal responsibility of the perpetrator of the crime. Article 4 of the Statute, accordingly, includes violations of Additional Protocol II, which, as a whole, has not yet been universally recognized as part of customary international law, for the first time criminalizes common article 3 of the four Geneva Conventions."[153]

605. Although the Security Council elected to take a more expansive approach to the choice of the subject-matter jurisdiction of the Tribunal than that of the ICTY, by incorporating international instruments regardless of whether they were considered part of customary international law or whether they customarily entailed the individual criminal responsibilty of the perpetrator of the crime, the Chamber believes, an essential question which should be addressed at this stage is whether Article 4 of the Statute includes norms which did not, at the time the crimes alleged in the Indictment were committed, form part of existing international customary law. Moreover, the Chamber recalls the establishment of the ICTY[154], during which the UN Secretary General asserted that in application of the principle of *nullum crimen sine lege* the International Tribunal should apply rules of International Humanitarian law which are beyond any doubt part of customary law.

606. Notwithstanding the above, a possible approach would be for the Chamber not to look at the nature of the building blocks of Article 4 of the Statute nor for it to categorize the conflict as

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[153] *Ibid* paragraphs 11 - 12

[154] See the Secretary General's Report to the Security Council on establishment of the ICTY, UN Doc. S/25704, of 3 May 1993, para 34.

such but, rather, to look only at the relevant parts of Common Article 3 and Additional Protocol II in the context of this trial. Indeed, the Security Council has itself never explicitly determined how an armed conflict should be characterised. Yet it would appear that, in the case of the ICTY, the Security Council, by making reference to the four Geneva Conventions, considered that the conflict in the former Yugoslavia was an international armed conflict, although it did not suggest the criteria by which it reached this finding. Similarly, when the Security Council added Additional Protocol II to the subject matter jurisdiction of the ICTR, this could suggest that the Security Council deemed the conflict in Rwanda as an Additional Protocol II conflict. Thus, it would not be necessary for the Chamber to determine the precise nature of the conflict, this having already been pre-determined by the Security Council. Article 4 of the Statute would be applicable irrespective of the 'Additional Protocol II question', so long as the conflict were covered, at the very least, by the customary norms of Common Article 3. Findings would thus be made on the basis of whether or not it were proved beyond a reasonable doubt that there has been a serious violation in the form of one or more of the acts enumerated in Article 4 of the Statute.

607. However, the Chamber recalls the way in which the Prosecutor has brought some of the counts against the accused, namely counts 6, 8, 10, 12 and 15. For the first four of these, there is mention only of Common Article 3 as the subject matter jurisdiction of the particular alleged offences, whereas count 15 makes an additional reference to Additional Protocol II. To so add Additional Protocol II should not, in the opinion of the Chamber, be dealt with as a mere expansive enunciation of a *ratione materiae* which has been pre-determined by the Security Council. Rather, the Chamber finds it necessary and reasonable to establish the applicability of both Common Article 3 and Additional Protocol II individually. Thus, if an offence, as per count 15, is charged under both Common Article 3 and Additional Protocol II, it will not suffice to apply Common Article 3 and take for granted that Article 4 of the Statute, hence Additional Protocol II, is therefore automatically applicable.

608. It is today clear that the norms of Common Article 3 have acquired the status of customary law in that most States, by their domestic penal codes, have criminalized acts which if committed during internal armed conflict, would constitute violations of Common Article 3. It was also held

by the ICTY Trial Chamber in the Tadić judgment[155] that Article 3 of the ICTY Statute (Customs of War), being the body of customary international humanitarian law not covered by Articles 2, 4, and 5 of the ICTY Statute, included the regime of protection established under Common Article 3 applicable to armed conflicts not of an international character. This was in line with the view of the ICTY Appeals Chamber stipulating that Common Article 3 beyond doubt formed part of customary international law, and further that there exists a corpus of general principles and norms on internal armed conflict embracing Common Article 3 but having a much greater scope[156].

609. However, as aforesaid, Additional Protocol II as a whole was not deemed by the Secretary-General to have been universally recognized as part of customary international law. The Appeals Chamber concurred with this view inasmuch as "[m]any provisions of this Protocol [II] can now be regarded as declaratory of existing rules or as having crystallised in emerging rules of customary law[ ]", but not all.[157]

610. Whilst the Chamber is very much of the same view as pertains to Additional Protocol II as a whole, it should be recalled that the relevant Article in the context of the ICTR is Article 4(2) (Fundamental Guarantees) of Additional Protocol II[158]. All of the guarantees, as enumerated in Article 4 reaffirm and supplement Common Article 3[159] and, as discussed above, Common Article 3 being customary in nature, the Chamber is of the opinion that these guarantees did also at the time of the events alleged in the Indictment form part of existing international customary law.

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[155] See ICTY Tadić Judgment of 7 May 1997, paragraph 609

[156] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, paragraphs 116 and 134.

[157] *Ibid* paragraph 117

[158] Save for 4(2)(f) slavery and the slave trade in all their forms

[159] As regards Collective Punishments' note should be taken of commentary thereon, para 4535 - 4536 Commentary on Additional Protocol II

Individual Criminal Responsibility

611. For the purposes of an international criminal Tribunal which is trying individuals, it is not sufficient merely to affirm that Common Article 3 and parts of Article 4 of Additional Protocol II - which comprise the subject-matter jurisdiction of Article 4 of the Statute - form part of international customary law. Even if Article 6 of the Statute provides for individual criminal responsibility as pertains to Articles 2, 3 and 4 of the Statute, it must also be shown that an individual committing serious violations of these customary norms incurs, as a matter of custom, individual criminal responsibility thereby. Otherwise, it might be argued that these instruments only state norms applicable to States and Parties to a conflict, and that they do not create crimes for which individuals may be tried.

612. As regards individual criminal responsibility for serious violations of Common Article 3, the ICTY has already affirmed this principle in the Tadić case. In the ICTY Appeals Chamber, the problem was posed thus:

> " Even if customary international law includes certain basic principles applicable to both internal and international armed conflicts, Appellant argues that such provisions do not entail individual criminal responsibility when breaches are committed in internal armed conflicts; these provisions cannot, therefore, fall within the scope of the International Tribunal's jurisdiction.[160]"

613. Basing itself on rulings of the Nüremberg Tribunal, on "elements of international practice which show that States intend to criminalise serious breaches of customary rules and principles on internal conflicts", as well as on national legislation designed to implement the Geneva Conventions, the ICTY Appeals Chamber reached the conclusion:

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[160] Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, paragraph 128

" All of these factors confirm that customary international law imposes criminal liability for serious violations of common Article 3, as supplemented by other general principles and rules on protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife.[161]"

614. This was affirmed by the ICTY Trial Chamber when it rendered in the Tadić judgment[162].

615. The Chamber considers this finding of the ICTY Appeals Chamber convincing and dispositive of the issue, both with respect to serious violations of Common Article 3 and of Additional Protocol II.

616. It should be noted, moreover, that Article 4 of the ICTR Statute states that, "The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed *serious violations* of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977" (emphasis added). The Chamber understands the phrase "serious violation" to mean "a breach of a rule protecting important values [which] must involve grave consequences for the victim", in line with the above-mentioned Appeals Chamber Decision in Tadić, paragraph 94. The list of serious violations which is provided in Article 4 of the Statute is taken from Common Article 3 - which contains fundamental prohibitions as a humanitarian minimum of protection for war victims - and Article 4 of Additional Protocol II, which equally outlines "Fundamental Guarantees". The list in Article 4 of the Statute thus comprises *serious* violations of the fundamental humanitarian guarantees which, as has been stated above, are recognized as part of international customary law. In the opinion of the Chamber, it is clear that the authors of such egregious violations must incur individual criminal responsibility for their deeds.

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[161] *Ibid* paragraph 134

[162] See ICTY Tadić Judgment of 7 May 1997, paragraph 613

617. The Chamber, therefore, concludes the violation of these norms entails, as a matter of customary international law, individual responsibility for the perpetrator. In addition to this argument from custom, there is the fact that the Geneva Conventions of 1949 (and thus Common Article 3) were ratified by Rwanda on 5 May 1964 and Additional Protocol II on 19 November 1984, and were therefore in force on the territory of Rwanda at the time of the alleged offences. Moreover, all the offences enumerated under Article 4 of the Statute constituted crimes under Rwandan law in 1994. Rwandan nationals were therefore aware, or should have been aware, in 1994 that they were amenable to the jurisdiction of Rwandan courts in case of commission of those offences falling under Article 4 of the Statute.

The nature of the conflict

618. As aforesaid, it will not suffice to establish that as the criteria of Common Article 3 have been met, the whole of Article 4 of the Statute, hence Additional Protocol II, will be applicable. Where alleged offences are charged under both Common Article 3 and Additional Protocol II, which has a higher threshold, the Prosecutor will need to prove that the criteria of applicability of, on the one hand, Common Article 3 and, on the other, Additional Protocol II have been met. This is so because Additional Protocol II is a legal instrument the overall sole purpose of which is to afford protection to victims in conflicts not of an international character. Hence, the Chamber deems it reasonable and necessary that, prior to deciding if there have been serious violations of the provisions of Article 4 of the Statute, where a specific reference has been made to Additional Protocol II in counts against an accused, it must be shown that the conflict is such as to satisfy the requirements of Additional Protocol II.

Common Article 3

619. The norms set by Common Article 3 apply to a conflict as soon as it is an 'armed conflict not of an international character'. An inherent question follows such a description, namely, what

constitutes an armed conflict? The Appeals Chamber in the Tadić decision on Jurisdiction[163] held "that an armed conflict exists whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until [...] in the case of internal conflicts, a peaceful settlement is reached". Similarly, the Chamber notes that the ICRC commentary on Common Article 3[164] suggests useful criteria resulting from the various amendments discussed during the Diplomatic Conference of Geneva, 1949, *inter alia*:

- That the Party in revolt against the *de jure* Government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring the respect for the Convention.

- That the legal Government is obliged to have recourse to the regular military forces against insurgents organized as military in possession of a part of the national territory.

- (a) That the *de jure* Government has recognized the insurgents as belligerents; or

  (b) that it has claimed for itself the rights of a belligerent; or

  (c) that it has accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or

  (d) that the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of peace,

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[163] See ICTY Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, para. 70

[164] See International Committee of the Red Cross, Commentary I Geneva Convention, Article 3, Paragraph 1 - Applicable Provisions

or an act of aggression.

620. The above 'reference' criteria were enunciated as a means of distinguishing genuine armed conflicts from mere acts of banditry or unorganized and short-lived insurrections[165]. The term, 'armed conflict' in itself suggests the existence of hostilities between armed forces organized to a greater or lesser extent[166]. This consequently rules out situations of internal disturbances and tensions. For a finding to be made on the existence of an internal armed conflict in the territory of Rwanda at the time of the events alleged, it will therefore be necessary to evaluate both the intensity and organization of the parties to the conflict.

621. Evidence presented in relation to paragraphs 5-11 of the Indictment[167], namely the testimony of Major-General Dallaire, has shown there to have been a civil war between two groups, being on the one side, the governmental forces, the FAR, and on the other side, the RPF. Both groups were well-organized and considered to be armies in their own right. Further, as pertains to the intensity of conflict, all observers to the events, including UNAMIR and UN Special rapporteurs, were unanimous in characterizing the confrontation between the two forces as a war, an internal armed conflict. Based on the foregoing, the Chamber finds there existed at the time of the events alleged in the Indictment an armed conflict not of an international character as covered by Common Article 3 of the 1949 Geneva Conventions.

Additional Protocol II

622. As stated above, Additional Protocol II applies to conflicts which "take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of

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[165] *Ibid*

[166] See Commentary on Additional Protocol II, paras 4338-4341

[167] See 'Factual Findings - General Allegations (paragraphs 5-11 of the Indictment)'

its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

623. Thus, the conditions to be met to fulfil the material requirements of applicability of Additional Protocol II at the time of the events alleged in the Indictment would entail showing that:

(i) an armed conflict took place in the territory of a High Contracting Party, namely Rwanda, between its armed forces and dissident armed forces or other organized armed groups;

(ii) the dissident armed forces or other organized armed groups were under responsible command;

(iii) the dissident armed forces or other organized armed groups were able to exercise such control over a part of their territory as to enable them to carry out sustained and concerted military operations; and

(iv) the dissident armed forces or other organized armed groups were able to implement Additional Protocol II.

624. As per Common Article 3, these criteria have to be applied objectively, irrespective of the subjective conclusions of the parties involved in the conflict. A number of precisions need to be made about the said criteria prior to the Chamber making a finding thereon.[168]

625. The concept of armed conflict has already been discussed in the previous section pertaining to Common Article 3. It suffices to recall that an armed conflict is distinguished from internal disturbances by the level of intensity of the conflict and the degree of organization of the

[168] See generally Commentary on Additional Protocol II, Article 1 (Material field of application)

parties to the conflict. Under Additional Protocol II, the parties to the conflict will usually either be the government confronting dissident armed forces, or the government fighting insurgent organized armed groups. The term, 'armed forces' of the High Contracting Party is to be defined broadly, so as to cover all armed forces as described within national legislations.

626. The armed forces opposing the government must be under responsible command, which entails a degree of organization within the armed group or dissident armed forces. This degree of organization should be such so as to enable the armed group or dissident forces to plan and carry out concerted military operations, and to impose discipline in the name of a *de facto* authority. Further, these armed forces must be able to dominate a sufficient part of the territory so as to maintain sustained and concerted military operations and to apply Additional Protocol II. In essence, the operations must be continuous and planned. The territory in their control is usually that which has eluded the control of the government forces.

627. In the present case, evidence has been presented to the Chamber which showed there was at the least a conflict not of a international character in Rwanda at the time of the events alleged in the Indictment[169]. The Chamber, also taking judicial notice of a number of UN official documents dealing with the conflict in Rwanda in 1994, finds, in addition to the requirements of Common Article 3 being met, that the material conditions listed above relevant to Additional Protocol II have been fulfilled. It has been shown that there was a conflict between, on the one hand, the RPF, under the command of General Kagame, and, on the other, the governmental forces, the FAR. The RPF increased its control over the Rwandan territory from that agreed in the Arusha Accords to over half of the country by mid-May 1994, and carried out continuous and sustained military operations until the cease fire on 18 July 1994 which brought the war to an end. The RPF troops were disciplined and possessed a structured leadership which was answerable to authority. The RPF had also stated to the International Committee of the Red Cross that it was

[169] See in particular documents referred to in 'Factual Findings - General Allegations (paragraphs 5-11 of the Indictment)'

bound by the rules of International Humanitarian law[170]. The Chamber finds the said conflict to have been an internal armed conflict within the meaning of Additional Protocol II. Further, the Chamber finds that conflict took place at the time of the events alleged in the Indictment.

Ratione personae

628. Two distinct issues arise with respect to personal jurisdiction over serious violations of Common Article 3 and Additional Protocol II - the class of victims and the class of perpetrators.

The class of victims

629. Paragraph 10 of the Indictment reads, "The victims referred to in this Indictment were, at all relevant times, persons not taking an active part in the hostilities". This is a material averment for charges involving Article 4 inasmuch as Common Article 3 is for the protection of "persons taking no active part in the hostilities" (Common Article 3(1)), and Article 4 of Additional Protocol II is for the protection of, "all persons who do not take a direct part or who have ceased to take part in hostilities". These phrases are so similar that, for the Chamber's purposes, they may be treated as synonymous. Whether the victims referred to in the Indictment are *indeed* persons not taking an active part in the hostilities is a factual question, which has been considered in the Factual Findings on the General Allegations (paragraphs 5-11 of the Indictment).

The class of perpetrators

630. The four Geneva Conventions - as well as the two Additional Protocols - as stated above, were adopted primarily to protect the victims as well as potential victims of armed conflicts. This implies thus that the legal instruments are primarily addressed to persons who by virtue of their

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[170] Report of the United Nations High Commissioner for Human Rights on his mission to Rwanda of 11-12 May 1994 (E/CN.4/S-3/3. 19 May 1994)

authority, are responsible for the outbreak of, or are otherwise engaged in the conduct of hostilities. The category of persons to be held accountable in this respect then, would in most cases be limited to commanders, combatants and other members of the armed forces.

631. Due to the overall protective and humanitarian purpose of these international legal instruments, however, the delimitation of this category of persons bound by the provisions in Common Article 3 and Additional Protocol II should not be too restricted. The duties and responsibilities of the Geneva Conventions and the Additional Protocols, hence, will normally apply only to individuals of all ranks belonging to the armed forces under the military command of either of the belligerent parties, or to individuals who were legitimately mandated and expected, as public officials or agents or persons otherwise holding public authority or *de facto* representing the Government, to support or fulfil the war efforts. The objective of this approach, thus, would be to apply the provisions of the Statute in a fashion which corresponds best with the underlying protective purpose of the Conventions and the Protocols.

632. However, the Indictment does not specifically aver that the accused falls in the class of persons who may be held responsible for serious violations of Common Article 3 and Additional Protocol II. It has not been alleged that the accused was officially a member of the Rwandan 'armed forces' (in its broadest sense). It could, hence, be objected that, as a civilian, Article 4 of the Statute, which concerns the law of armed conflict, does not apply to him.

633. It is, in fact, well-established, at least since the Tokyo trials, that civilians may be held responsible for violations of international humanitarian law. Hirota, the former Foreign Minister of Japan, was convicted at Tokyo for crimes committed during the rape of Nanking[171]. Other post-World War II trials unequivocally support the imposition of individual criminal liability for war crimes on civilians where they have a link or connection with a Party to the conflict[172].The

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[171] See 'General Legal Findings - Individual Criminal Responsibility (Article 6 of the Statute)'

[172] See *The Hadamar Trial*, Law Reports of Trials of War Criminals ("LRTWC"), Vol. I, pp. 53-54: "The accused were not members of the German armed forces, but personnel of a civilian institution. The decision of the

principle of holding civilians liable for breaches of the laws of war is, moreover, favored by a consideration of the humanitarian object and purpose of the Geneva Conventions and the Additional Protocols, which is to protect war victims from atrocities.

634. Thus it is clear from the above that the laws of war must apply equally to civilians as to combatants in the conventional sense. Further, the Chamber notes, in light of the above *dicta*, that the accused was not, at the time of the events in question, a mere civilian but a bourgmestre. The Chamber therefore concludes that, if so established factually, the accused could fall in the class of individuals who may be held responsible for serious violations of international humanitarian law, in particular serious violations of Common Article 3 and Additional Protocol II.

Ratione loci

635. There is no clear provision on applicability *ratione loci* either in Common Article 3 or Additional Protocol II. However, in this respect Additional Protocol II seems slightly clearer, in so far as it provides that the Protocol shall be applied "to all persons affected by an armed conflict as defined in Article 1". The commentary thereon[173] specifies that this applicability is irrespective of the exact location of the affected person in the territory of the State engaged in the conflict. The question of applicability *ratione loci* in non-international armed conflicts, when only Common Article 3 is of relevance should be approached the same way, i.e. the article must be applied in the whole territory of the State engaged in the conflict. This approach was followed by the Appeals

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Military Commission is, therefore, an application of the rule that the provisions of the laws or customs of war are addressed not only to combatants but also to civilians, and that civilians, by committing illegal acts against nationals of the opponent, may become guilty of war crimes"; *The Essen Lynching Case*, LRTWC, Vol. I, p.88, in which, *inter alia*, three civilians were found guilty of the killing of unarmed prisoners of war; and *the Zyklon B Case*, LRTWC, Vol. I, p. 103: "The decision of the Military Court in the present case is a clear example of the application of the rule that the provisions of the laws and customs of war are addressed not only to combatants and to members of state and other public authorities, but to anybody who is in a position to assist in their violation. [...] The Military Court acted on the principle that any civilian who is an accessory to a violation of the laws and customs of war is himself also liable as a war criminal".

[173] Commentary on Additional Protocol II, paragraph 4490

Chamber in its decision on jurisdiction in Tadić, wherein it was held that "the rules contained in [common] Article 3 also apply outside the narrow geographical context of the actual theatre of combat operations"[174].

636. Thus the mere fact that Rwanda was engaged in an armed conflict meeting the threshold requirements of Common Article 3 and Additional Protocol II means that these instruments would apply over the whole territory hence encompassing massacres which occurred away from the 'war front'. From this follows that it is not possible to apply rules in one part of the country (i.e. Common Article 3) and other rules in other parts of the country (i.e. Common Article 3 and Additional Protocol II). The aforesaid, however, is subject to the *caveat* that the crimes must not be committed by the perpetrator for purely personal motives.

Conclusion

637. The applicability of Common Article 3 and Additional Protocol II has been dealt with above and findings made thereon in the context of the temporal setting of events alleged in the Indictment. It remains for the Chamber to make its findings with regard the accused's culpability under Article 4 of the Statute. This will be dealt with in section 7 of the judgment.

[174] See ICTY Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, paragraph 69

7. LEGAL FINDINGS

7.1. Counts 6, 8, 10 and 12 - Violations of Common Article 3 (murder and cruel treatment) and Count 15 - Violations of Common Article 3 and Additional Protocol II (outrages upon personal dignity, in particular rape...)

638. Counts 6, 8, 10, and 12 of the Indictment charge Akayesu with Violations of Common Article 3 of the 1949 Geneva Conventions, and Count 15 charges Akayesu of Violations of Common Article 3 of the 1949 Geneva Conventions and the 1977 Additional Protocol II thereto. All these counts are covered by Article 4 of the Statute.

639. It has already been proved beyond reasonable doubt that there was an armed conflict not of an international character between the Government of Rwanda and the RPF in 1994 at the time of the events alleged in the Indictment[175]. The Chamber found the conflict to meet the requirements of Common Article 3 as well as Additional Protocol II.

640. For Akayesu to be held criminally responsible under Article 4 of the Statute, it is incumbent on the Prosecutor to prove beyond a reasonable doubt that Akayesu acted for either the Government or the RPF in the execution of their respective conflict objectives. As stipulated earlier in this judgment, this implies that Akayesu would incur individual criminal responsibility for his acts if it were proved that by virtue of his authority, he is either responsible for the outbreak of, or is otherwise directly engaged in the conduct of hostilities. Hence, the Prosecutor will have to demonstrate to the Chamber and prove that Akayesu was either a member of the armed forces under the military command of either of the belligerent parties, or that he was legitimately mandated and expected, as a public official or agent or person otherwise holding public authority or *de facto* representing the Government, to support or fulfil the war efforts. Indeed, the Chamber

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[175] *Supra* 'Legal Findings on Article 4 of the Statute' and 'Genocide in Rwanda in Rwanda in 1994'

recalls that Article 4 of the Statute also applies to civilians.

641. Evidence presented during trial established that, at the time of the events alleged in the Indictment, Akayesu wore a military jacket, carried a rifle, he assisted the military on their arrival in Taba by undertaking a number of tasks, including reconnaissance and mapping of the commune, and the setting up of radio communications, and he allowed the military to use his office premises. The Prosecutor relied in part on these facts to demonstrate that there was a nexus between the actions of Akayesu and the conflict. Further the Prosecutor argued that reference by Akayesu to individuals as RPF accomplices was indicative of Akayesu connecting his actions to the conflict between the Government and the RPF.

642. It has been established in this judgment that Akayesu embodied the communal authority and that he held an executive civilian position in the territorial administrative subdivision of Commune. However, the Prosecutor did not bring sufficient evidence to show how and in what capacity Akayesu was supporting the Government effort against the RPF. The evidence as pertains to the wearing of a military jacket and the carrying of a rifle, in the opinion of the Chamber, are not significant in demonstrating that Akayesu actively supported the war effort. Furthermore, the Chamber finds that the limited assistance given to the military by the accused in his role as the head of the commune does not suffice to establish that he actively supported the war effort. Moreover, the Chamber recalls it has been proved that references to RPF accomplices in the context of the events which occurred in Taba were to be understood as meaning Tutsi.[176]

643. Considering the above, and based on all the evidence presented in this case, the Chamber finds that it has not been proved beyond reasonable doubt that the acts perpetrated by Akayesu in the commune of Taba at the time of the events alleged in the Indictment were committed in conjunction with the armed conflict. The Chamber further finds that it has not been proved beyond reasonable doubt that Akayesu was a member of the armed forces, or that he was legitimately mandated and expected, as a public official or agent or person otherwise holding public authority

[176] *Supra* 'Factual findings on paragraphs 14 and 15 of the Indictment'

or *de facto* representing the Government, to support or fulfil the war efforts.

644. The Tribunal therefore finds that Jean-Paul Akayesu did not incur individual criminal responsibility under counts 6, 8, 10, 12 & 15 of the Indictment.

7.2. Count 5 - Crimes against humanity (murder)

645. Count 5 of the indictment charges the Accused with a crime against humanity (murder), pursuant to Article 3(a) of the Statute, for the acts alleged in paragraphs 15 and 18 of the indictment.

646. The definition of crimes against humanity, including the various elements that comprise the enumerated offences under Article 3 of the Statute have already been discussed.

647. The Chamber finds beyond a reasonable doubt that the Accused was present and addressed a gathering in Gishyeshye sector on the morning of 19 April 1994. The Chamber however finds that it has not been proven beyond a reasonable doubt that the Accused during this address, mentioned the names of Juvénal Rukundakuvuga or Emmanuel Sempabwa as Tutsi to be killed and as a result thereof they were subsequently killed.

648. The Chamber finds beyond a reasonable doubt that during his search for Ephrem Karangwa, the Accused participated in the killing of Simon Mutijima, Thaddée Uwanyiligra and Jean Chrysostome, by ordering their deaths and being present when they were killed.

649. The Chamber finds beyond a reasonable doubt that Simon Mutijima, Thaddée Uwanyiligra and Jean Chrysostome were civilians, taking no active part in the hostilities that prevailed in Rwanda in 1994 and the only reason they were killed is because they were Tutsi.

650. The Chamber finds beyond a reasonable doubt that in ordering the killing of Simon Mutijima, Thaddée Uwanyiligra and Jean Chrysostome, the Accused had the requisite intent to kill them as part of a widespread or systematic attack against the civilian population of Rwanda on ethnic grounds.

651. The Chamber finds beyond a reasonable doubt that in ordering the killing of Simon Mutijima, Thaddée Uwanyiligra and Jean Chrysostome, the Accused is individually criminally responsible for the death of these victims, pursuant to Article 6(1) of the Statute.

652. The Chamber finds beyond a reasonable doubt that there was a widespread and systematic attack against the civilian population in Rwanda on 19 April 1994 and the conduct of the Accused formed part of this attack.

653. The Chamber finds beyond a reasonable doubt that the killing of Simon Mutijima, Thaddée Uwanyiligra and Jean Chrysostome constitutes murder committed, as part of a widespread or systematic attack on the civilian population on ethnic grounds and as such constitutes a crime against humanity. Accordingly, the Chamber finds beyond a reasonable doubt that the Accused is guilty as charged in count 5 of the indictment.

7.3. Count 7 - Crimes against Humanity (murder)

654. Count 7 of the indictment charges the Accused with a crime against humanity (murder), pursuant to Article 3(a) of the Statute, for the acts alleged in paragraph 19 of the indictment.

655. The definition of crimes against humanity, including the various elements that comprise the enumerated offences under Article 3 of the Statute have already been discussed.

656. The Chamber finds beyond a reasonable doubt that on 19 April 1994, the Accused took eight detained refugees who were civilians and who did not take any active part in the hostilities that prevailed in Rwanda in 1994 and handed them over to the local militia, known as the Interahamwe with orders that they be killed.

657. The Chamber finds beyond a reasonable doubt that the Interahamwe, acting on the orders from the Accused killed these eight refugees, at the bureau communal in the presence of the Accused.

658. The Chamber finds beyond a reasonable doubt that in ordering the killing of the eight refugees, the Accused had the requisite intent to kill them as part of a widespread or systematic attack against the civilian population of Rwanda on ethnic grounds and as such he is criminally responsible for the killing of these eight refugees.

659. The Chamber finds beyond a reasonable doubt that in ordering the killing of the eight refugees, the Accused is individually criminally responsible for the death of these victims, pursuant to Article 6(1) of the Statute.

660. The Chamber finds beyond a reasonable doubt that there was a widespread and systematic attack against the civilian population in Rwanda on 19 April 1994 and the conduct of the Accused

formed part of this attack.

661. The Chamber finds beyond a reasonable doubt that the killing of these eight refugees constitutes murder committed, as part of a widespread or systematic attack on the civilian population on ethnic grounds and as such constitutes a crime against humanity. Accordingly, the Chamber finds beyond a reasonable doubt that the Accused is guilty as charged in count 7 of the indictment.

7.4. Count 9 - Crimes against Humanity (murder)

662. Count 9 of the indictment charges the Accused with a crime against humanity (murder), pursuant to Article 3(a) of the Statute, for the acts alleged in paragraph 20 of the indictment.

663. The definition of crimes against humanity, including the various elements that comprise the enumerated offences under Article 3 of the Statute have already been discussed.

664. The Chamber finds beyond a reasonable doubt that on 19 April 1994, the Accused ordered the local people and militia known as the Interahamwe to kill intellectual people.

665. The Chamber finds beyond a reasonable doubt that the Interahamwe and the local population, acting on the orders of the Accused killed five teachers namely; a professor known as Samuel; Tharcisse who was killed in the presence of the Accused; Theogene, Phoebe Uwineze and her fiancé.

666. The Chamber finds beyond a reasonable doubt that these five teachers were civilians and did not take any active part in the hostilities that prevailed in Rwanda in 1994.

667. The Chamber finds beyond a reasonable doubt that these five teachers were killed because they were Tutsi.

668. The Chamber finds beyond a reasonable doubt that in ordering the killing of these five teachers, the Accused had the requisite intent to kill them as part of a widespread or systematic attack against the civilian population of Rwanda on ethnic grounds.

669. The Chamber finds beyond a reasonable doubt that in ordering the killing of these five teachers, the Accused is individually criminally responsible for the death of these victims,

pursuant to Article 6(1) of the Statute.

670. The Chamber finds beyond a reasonable doubt that there was a widespread and systematic attack against the civilian population in Rwanda on 19 April 1994 and the conduct of the Accused formed part of this attack.

671. The Chamber finds, beyond a reasonable doubt that the killing of these five people constitute murder committed, as part of a widespread or systematic attack on the civilian population on ethnic grounds and as such constitutes a crime against humanity. Accordingly, the Chamber finds beyond a reasonable doubt that the Accused is guilty as charged in count 9 of the indictment.

7.5. Count 4 - Direct and Public Incitement to commit Genocide

672. Count 4 deals with the allegations described in paragraphs 14 and 15 of the Indictment, relating, essentially, to the speeches that Akayesu reportedly made at a meeting held in Gishyeshye on 19 April 1994. The Prosecutor alleges that, through his speeches, Akayesu committed the crime of direct and public incitement to commit genocide, a crime punishable under Article 2(3)(c) of the Statute.

673. The Trial Chamber made the following factual findings on the events described in paragraphs 14 and 15 of the Indictment. The Chamber is satisfied beyond a reasonable doubt that:

(i) Akayesu, in the early hours of 19 April 1994, joined a crowd of over 100 people which had gathered around the body of a young member of the Interahamwe in Gishyeshye.

(ii) He seized that opportunity to address the people and, owing, particularly, to his functions as bourgmestre and his authority over the population, he led the gathering and the proceedings.

(iii) It has been established that Akayesu then clearly urged the population to unite in order to eliminate what he termed the sole enemy: the accomplices of the Inkotanyi.

(iv) On the basis of consistent testimonies heard throughout the proceedings and the evidence of Dr. Ruzindana, appearing as expert witness on linguistic matters, the Chamber is satisfied beyond a reasonable doubt that the population understood Akayesu's call as one to kill the Tutsi. Akayesu himself was fully aware of the impact of his speech on the crowd and of the fact that his call to fight against the accomplices of the Inkotanyi would be construed as a call to kill the Tutsi in general.

(v) During the said meeting, Akayesu received from the Interahamwe documents which included lists of names, and read from the lists to the crowd by stating, in particular, that the names were those of RPF accomplices.

(vi) Akayesu testified that the lists contained, especially, the name of Ephrem Karangwa, whom he named specifically, while being fully aware of the consequences of doing so. Indeed, he admitted before the Chamber that, at the time of the events alleged

in the Indictment, to label anyone in public as an accomplice of the RPF would put such a person in danger.

(vii) The Chamber is of the opinion that there is a causal relationship between Akayesu's speeches at the gathering of 19 April 1994 and the ensuing widespread massacres of Tutsi in Taba.

674. From the foregoing, the Chamber is satisfied beyond a reasonable doubt that, by the above-mentioned speeches made in public and in a public place, Akayesu had the intent to directly create a particular state of mind in his audience necessary to lead to the destruction of the Tutsi group, as such. Accordingly, the Chamber finds that the said acts constitute the crime of direct and public incitement to commit genocide, as defined above.

675. In addition, the Chamber finds that the direct and public incitement to commit genocide as engaged in by Akayesu, was indeed successful and did lead to the destruction of a great number of Tutsi in the commune of Taba.

7.6. Count 11 - Crimes against Humanity (torture)

676. In the light of its factual findings with regard to the allegations set forth in paragraphs 16,17, 21, 22 and 23 of the Indictment, the Tribunal considers the criminal responsibility of the Accused on Count 11 for his acts in relation to the beatings of Victims U, V, W, X, Y and Z.

677. The Tribunal notes that evidence has been presented at trial regarding the beating of victims not specifically named in paragraphs 16,17,21,22 and 23 of the Indictment. Witness J, for example, testified that she was slapped and her brother was beaten by the Accused. As counts 11 and 12 are restricted to acts in relation to the beatings of Victims U, V, W, X, Y and Z, the Tribunal will restrict its legal findings to these acts.

678. The Tribunal notes that paragraph 16 of the Indictment alleges that the Accused threatened to kill the husband and child of Victim U. The factual finding of the Tribunal is that the Accused threatened to kill Victim U, not her husband and child. The Tribunal considers that the allegations set forth in the Indictment sufficiently informed the Accused, in accordance with the requirements of due process, of the charge against him. The material allegation is that he threatened Victim U. Whether the threat was against her life or the life of her immediate family is not legally significant in the Tribunal's view.

679. The Tribunal notes that Paragraph 21 of the Indictment refers to "communal police" without reference to the Interahamwe, although Paragraph 23 refers to "men under Jean Paul Akayesu's authority". In its factual findings, the Tribunal has determined that only Mugenzi was a communal police officer. The other person actively involved in the interrogation and beating of Victim Z and possibly the interrogation of Victim W was Francois, an Interahamwe. As Francois and Mugenzi were both acting in the presence of and under the immediate authority of the Accused, as bourgemester, the Tribunal finds that in relation to the Accused the acts of Francois may be treated as equivalent to the acts of Mugenzi.

680. The Tribunal notes that the Accused himself participated in the beating of Victim Y by hitting her on the back with a club, and the beating of Victim Z by stepping on his face and holding his foot there while others beat him. It is alleged that he interrogated them but it is not specifically alleged in Paragraphs 21 and 23 of the Indictment that the Accused committed acts of physical violence. The Tribunal finds, however, that the allegations in the Indictment were sufficient notice to the Accused of the incidents in question, and that the exact role of the Accused in these incidents was a matter which was adjudicated at trial in accordance with the requirements of due process. For these reasons, the Tribunal finds that the Accused may be judged criminally responsible for his direct participation in these beatings, despite the absence of a specific allegation of direct participation by the Accused in the relevant paragraphs of the Indictment.

681. The Tribunal interprets the word "torture", as set forth in Article 3(f) of its Statute, in accordance with the definition of torture set forth in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

682. The Tribunal finds that the following acts committed by the Accused or by others in the presence of the Accused, at his instigation or with his consent or acquiescence, constitute torture:

(i) the interrogation of Victim U, under threat to her life, by the Accused at the bureau communal, on 19 April 1994;

(ii) the beating of Victim Y outside of her house by the Accused and Mugenzi on 20 April 1994;

(iii) the interrogation of Victim Y, under threat to her life, by the Accused, and the

beating of Victim Y under interrogation by Mugenzi, in the presence of the Accused, at a mine at Buguli on 20 April 1994;

(iv) the interrogation of Victim W, under threat to her life, at a mine at Buguli by the Accused, on 20 April 1994;

(v) the beating of Victim Z under interrogation by the Accused, and by Mugenzi and Francois in the presence of the Accused, in Gishyeshye Sector, on 20 April 1994;

(vi) the forcing of Victim Z to beat Victim Y under interrogation, by Francois in the presence of the Accused, in Gishyeshye Sector, on 20 April 1994;

(vii) the beating of Victim Z and Victim V by Mugenzi and Francois and the interrogation of Victim V, under threat to his life, by the Accused outside the house of Victim V, on 20 April 1994;

683. Accordingly, the Tribunal finds the Accused criminally responsible on Count 11 under Article 6(1) of its Statute for commission of the following acts of torture as crimes against humanity under Article 3(a) of its Statute:

(i) his interrogation of Victim U, under threat to her life, at the bureau communal on 19 April 1994;

(ii) his beating of Victim Y, outside of her house, on 20 April 1994;

(iii) his interrogation of Victim Y, under threat to her life, at a mine at Buguli on 20 April 1994;

(iv) his interrogation of Victim W, under threat to her life, at a mine at Buguli on 20 April 1994;

(v) his beating of Victim Z in Gishyeshye Sector, on 20 April 1994;

(vi) his interrogation of Victim V, under threat to his life, outside of his house, on 20 April 1994.

684. The Tribunal finds the Accused criminally responsible on Count 11 under Article 6(1) of its Statute for implicitly ordering, as well as instigating, aiding and abetting, the following acts of torture, which were committed in his presence by men acting on his behalf, as crimes against

humanity under Article 3(a) of its Statute:

(i) the beating of Victim Y outside of her house by Mugenzi on 20 April 1994;

(ii) the beating of Victim Y, under interrogation, by Mugenzi, at a mine at Buguli on 20 April 1994;

(iii) the beating of Victim Z, under interrogation, by Mugenzi and Francois, in Gishyeshye Sector on 20 April 1994;

(iv) the forcing of Victim Z to beat Victim Y, under interrogation, by Francois, in Gishyeshye Sector on 20 April 1994.

7.7. Count 13 (rape) and Count 14 (other inhumane acts) - Crimes against Humanity

685. In the light of its factual findings with regard to the allegations of sexual violence set forth in paragraphs 12A and 12B of the Indictment, the Tribunal considers the criminal responsibility of the Accused on Count 13, crimes against humanity (rape), punishable by Article 3(g) of the Statute of the Tribunal and Count 14, crimes against humanity (other inhumane acts), punishable by Article 3(i) of the Statute.

686. In considering the extent to which acts of sexual violence constitute crimes against humanity under Article 3(g) of its Statute, the Tribunal must define rape, as there is no commonly accepted definition of the term in international law. The Tribunal notes that many of the witnesses have used the term "rape" in their testimony. At times, the Prosecution and the Defence have also tried to elicit an explicit description of what happened in physical terms, to document what the witnesses mean by the term "rape". The Tribunal notes that while rape has been historically defined in national jurisdictions as non-consensual sexual intercourse, 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. An act such as that described by Witness KK in her testimony - the Interahamwes thrusting a piece of wood into the sexual organs of a woman as she lay dying - constitutes rape in the Tribunal's view.

687. The Tribunal considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. The Tribunal also notes the cultural sensitivities involved in public discussion of intimate matters and recalls the painful reluctance and inability of witnesses to disclose graphic anatomical details of sexual violence they endured. The United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual framework of state-sanctioned violence. The Tribunal

finds this approach more useful in the context of international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

688. The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. The incident described by Witness KK in which the Accused ordered the Interahamwe to undress a student and force her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, constitutes sexual violence. The Tribunal notes in this context that coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal. Sexual violence falls within the scope of "other inhumane acts", set forth Article 3(i) of the Tribunal's Statute, "outrages upon personal dignity," set forth in Article 4(e) of the Statute, and "serious bodily or mental harm," set forth in Article 2(2)(b) of the Statute.

689. The Tribunal notes that as set forth by the Prosecution, Counts 13-15 are drawn on the basis of acts as described in paragraphs 12(A) and 12(B) of the Indictment. The allegations in these paragraphs of the Indictment are limited to events which took place "on or near the bureau communal premises." Many of the beatings, rapes and murders established by the evidence presented took place away from the bureau communal premises, and therefore the Tribunal does not make any legal findings with respect to these incidents pursuant to Counts 13, 14 and 15.

690. The Tribunal also notes that on the basis of acts described in paragraphs 12(A) and 12(B),

the Accused is charged only pursuant to Article 3(g) (rape) and 3(i) (other inhumane acts) of its Statute, but not Article 3(a)(murder) or Article 3(f)(torture). Similarly, on the basis of acts described in paragraphs 12(A) and 12(B), the Accused is charged only pursuant to Article 4(e)(outrages upon personal dignity) of its Statute, and not Article 4(a)(violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment). As these paragraphs are not referenced elsewhere in the Indictment in connection with these other relevant Articles of the Statute of the Tribunal, the Tribunal concludes that the Accused has not been charged with the beatings and killings which have been established as Crimes Against Humanity or Violations of Article 3 Common to the Geneva Conventions. The Tribunal notes, however, that paragraphs 12(A) and 12(B) are referenced in Counts 1-3, Genocide and it considers the beatings and killings, as well as sexual violence, in connection with those counts.

691. The Tribunal has found that the Accused had reason to know and in fact knew that acts of sexual violence were occurring on or near the premises of the bureau communal and that he took no measures to prevent these acts or punish the perpetrators of them. The Tribunal notes that it is only in consideration of Counts 13, 14 and 15 that the Accused is charged with individual criminal responsibility under Section 6(3) of its Statute. As set forth in the Indictment, under Article 6(3) "an individual is criminally responsible as a superior for the acts of a subordinate if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof." Although the evidence supports a finding that a superior/subordinate relationship existed between the Accused and the Interahamwe who were at the bureau communal, the Tribunal notes that there is no allegation in the Indictment that the Interahamwe, who are referred to as "armed local militia," were subordinates of the Accused. This relationship is a fundamental element of the criminal offence set forth in Article 6(3). The amendment of the Indictment with additional charges pursuant to Article 6(3) could arguably be interpreted as implying an allegation of the command responsibility required by Article 6(3). In fairness to the Accused, the Tribunal will not make this inference. Therefore, the Tribunal finds that it cannot consider the criminal responsibility of the Accused under Article 6(3).

692. The Tribunal finds, under Article 6(1) of its Statute, that the Accused, by his own words, specifically ordered, instigated, aided and abetted the following acts of sexual violence:

(i) the multiple acts of rape of ten girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
(ii) the rape of Witness OO by an Interahamwe named Antoine in a field near the bureau communal;
(iii) the forced undressing and public marching of Chantal naked at the bureau communal.

693. The Tribunal finds, under Article 6(1) of its Statute, that the Accused aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal, while he was present on the premises in respect of (i) and in his presence in respect of (ii) and (iii), and by facilitating the commission of these acts through his words of encouragement in other acts of sexual violence, which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place:

(i) the multiple acts of rape of fifteen girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;
(ii) the rape of a woman by Interahamwe in between two buildings of the bureau communal, witnessed by Witness NN;
(iii) the forced undressing of the wife of Tharcisse after making her sit in the mud outside the bureau communal, as witnessed by Witness KK;

694. The Tribunal finds, under Article 6(1) of its Statute, that the Accused, having had reason to know that sexual violence was occurring, aided and abetted the following acts of sexual violence, by allowing them to take place on or near the premises of the bureau communal and by facilitating the commission of such sexual violence through his words of encouragement in other

acts of sexual violence which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place:

(i) the rape of Witness JJ by an Interahamwe who took her from outside the bureau communal and raped her in a nearby forest;

(ii) the rape of the younger sister of Witness NN by an Interahamwe at the bureau communal;

(iii) the multiple rapes of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe by Interahamwe near the bureau communal;

(iv) the forced undressing of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe, and the forcing of the women to perform exercises naked in public near the bureau communal.

695. The Tribunal has established that a widespread and systematic attack against the civilian ethnic population of Tutsis took place in Taba, and more generally in Rwanda, between April 7 and the end of June, 1994. The Tribunal finds that the rape and other inhumane acts which took place on or near the bureau communal premises of Taba were committed as part of this attack.

COUNT 13

696. The Accused is judged criminally responsible under Article 3(g) of the Statute for the following incidents of rape:

(i) the rape of Witness JJ by an Interahamwe who took her from outside the bureau communal and raped her in a nearby forest;

(ii) the multiple acts of rape of fifteen girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;

(iii) the multiple acts of rape of ten girls and women, including Witness JJ, by numerous Interahamwe in the cultural center of the bureau communal;

(iv) the rape of Witness OO by an Interahamwe named Antoine in a field near the bureau communal;

(v) the rape of a woman by Interahamwe in between two buildings of the bureau communal, witnessed by Witness NN;

(vi) the rape of the younger sister of Witness NN by an Interahamwe at the bureau communal;

(vii) the multiple rapes of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe by Interahamwe near the bureau communal.

COUNT 14

697. The Accused is judged criminally responsible under Article 3(i) of the Statute for the following other inhumane acts:

(i) the forced undressing of the wife of Tharcisse outside the bureau communal, after making her sit in the mud, as witnessed by Witness KK;

(ii) the forced undressing and public marching of Chantal naked at the bureau communal;

(iii) the forced undressing of Alexia, wife of Ntereye, and her two nieces Louise and Nishimwe, and the forcing of the women to perform exercises naked in public near the bureau communal.

7.8. Count 1 - Genocide, Count 2 - Complicity in Genocide

698. Count 1 relates to all the events described in the Indictment. The Prosecutor submits that by his acts alleged in paragraphs 12 to 23 of the Indictment, Akayesu committed the crime of genocide, punishable under Article 2(3)(a) of the Statute.

699. Count 2 also relates to all the acts alleged in paragraphs 12 to 23 of the Indictment. The Prosecutor alleges that, by the said acts, the accused committed the crime of complicity in genocide, punishable under Article 2(3)(e) of the Statute.

700. In its findings on the applicable law, the Chamber indicated *supra* that, in its opinion, the crime of genocide and that of complicity in genocide were two distinct crimes, and that the same person could certainly not be both the principal perpetrator of, and accomplice to, the same offence. Given that genocide and complicity in genocide are mutually exclusive by definition, the accused cannot obviously be found guilty of both these crimes for the same act. However, since the Prosecutor has charged the accused with both genocide and complicity in genocide for each of the alleged acts, the Chamber deems it necessary, in the instant case, to rule on counts 1 and 2 simultaneously, so as to determine, as far as each proven fact is concerned, whether it constituted genocide or complicity in genocide.

701. Hence the question to be addressed is against which group the genocide was allegedly committed. Although the Prosecutor did not specifically state so in the Indictment, it is obvious, in the light of the context in which the alleged acts were committed, the testimonies presented and the Prosecutor's closing statement, that the genocide was committed against the Tutsi group. Article 2(2) of the Statute, like the Genocide Convention, provides that genocide may be committed against a national, ethnical, racial or religious group. In its findings on the law applicable to the crime of genocide *supra*, the Chamber considered whether the protected groups should be limited to only the four groups specifically mentioned or whether any group, similar to

the four groups in terms of its stability and permanence, should also be included. The Chamber found that it was necessary, above all, to respect the intent of the drafters of the Genocide Convention which, according to the *travaux préparatoires,* was clearly to protect any stable and permanent group.

702. In the light of the facts brought to its attention during the trial, the Chamber is of the opinion that, in Rwanda in 1994, the Tutsi constituted a group referred to as "ethnic" in official classifications. Thus, the identity cards at the time included a reference to "*ubwoko*" in Kinyarwanda or "*ethnie*" (ethnic group) in French which, depending on the case, referred to the designation Hutu or Tutsi, for example. The Chamber further noted that all the Rwandan witnesses who appeared before it invariably answered spontaneously and without hesitation the questions of the Prosecutor regarding their ethnic identity. Accordingly, the Chamber finds that, in any case, at the time of the alleged events, the Tutsi did indeed constitute a stable and permanent group and were identified as such by all.

703. In the light of the foregoing, with respect to each of the acts alleged in the Indictment, the Chamber is satisfied beyond reasonable doubt, based on the factual findings it has rendered regarding each of the events described in paragraphs 12 to 23 of the Indictment, of the following:

704. The Chamber finds that, as pertains to the acts alleged in **paragraph 12**, it has been established that, throughout the period covered in the Indictment, Akayesu, in his capacity as bourgmestre, was responsible for maintaining law and public order in the commune of Taba and that he had effective authority over the communal police. Moreover, as "leader" of Taba commune, of which he was one of the most prominent figures, the inhabitants respected him and followed his orders. Akayesu himself admitted before the Chamber that he had the power to assemble the population and that they obeyed his instructions. It has also been proven that a very large number of Tutsi were killed in Taba between 7 April and the end of June 1994, while Akayesu was bourgmestre of the Commune. Knowing of such killings, he opposed them and attempted to prevent them only until 18 April 1994, date after which he not only stopped trying to maintain law and order in his commune, but was also present during the acts of violence and

killings, and sometimes even gave orders himself for bodily or mental harm to be caused to certain Tutsi, and endorsed and even ordered the killing of several Tutsi.

705. In the opinion of the Chamber, the said acts indeed incur the individual criminal responsibility of Akayesu for having ordered, committed, or otherwise aided and abetted in the preparation or execution of the killing of and causing serious bodily or mental harm to members of the Tutsi group. Indeed, the Chamber holds that the fact that Akayesu, as a local authority, failed to oppose such killings and serious bodily or mental harm constituted a form of tacit encouragement, which was compounded by being present to such criminal acts.

706. With regard to the acts alleged in **paragraphs 12 (A) and 12 (B)** of the Indictment, the Prosecutor has shown beyond a reasonable doubt that between 7 April and the end of June 1994, numerous Tutsi who sought refuge at the Taba Bureau communal were frequently beaten by members of the Interahamwe on or near the premises of the Bureau communal. Some of them were killed. Numerous Tutsi women were forced to endure acts of sexual violence, mutilations and rape, often repeatedly, often publicly and often by more than one assailant. Tutsi women were systematically raped, as one female victim testified to by saying that "each time that you met assailants, they raped you". Numerous incidents of such rape and sexual violence against Tutsi women occurred inside or near the Bureau communal. It has been proven that some communal policemen armed with guns and the accused himself were present while some of these rapes and sexual violence were being committed. Furthermore, it is proven that on several occasions, by his presence, his attitude and his utterances, Akayesu encouraged such acts, one particular witness testifying that Akayesu, addressed the Interahamwe who were committing the rapes and said that "never ask me again what a Tutsi woman tastes like"[177]. In the opinion of the Chamber, this constitutes tacit encouragement to the rapes that were being committed.

707. In the opinion of the Chamber, the above-mentioned acts with which Akayesu is charged indeed render him individually criminally responsible for having abetted in the preparation or

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[177] "Ntihazagire umbaza uko umututsikazi yari ameze, ngo kandi mumenye ko ejo ngo nibabica nta kintu muzambaza."

execution of the killings of members of the Tutsi group and the infliction of serious bodily and mental harm on members of said group.

708. The Chamber found *supra*, with regard to the facts alleged in **paragraph 13** of the Indictment, that the Prosecutor failed to demonstrate beyond reasonable doubt that they are established.

709. As regards the facts alleged in **paragraphs 14 and 15** of the Indictment, it is established that in the early hours of 19 April 1994, Akayesu joined a gathering in Gishyeshye and took this opportunity to address the public; he led the meeting and conducted the proceedings. He then called on the population to unite in order to eliminate what he referred to as the sole enemy: the accomplices of the Inkotanyi; and the population understood that he was thus urging them to kill the Tutsi. Indeed, Akayesu himself knew of the impact of his statements on the crowd and of the fact that his call to fight against the accomplices of the Inkotanyi would be understood as exhortations to kill the Tutsi in general. Akayesu who had received from the Interahamwe documents containing lists of names did, in the course of the said gathering, summarize the contents of same to the crowd by pointing out in particular that the names were those of RPF accomplices. He specifically indicated to the participants that Ephrem Karangwa's name was on of the lists. Akayesu admitted before the Chamber that during the period in question, that to publicly label someone as an accomplice of the RPF would put such a person in danger. The statements thus made by Akayesu at that gathering immediately led to widespread killings of Tutsi in Taba.

710. Concerning the acts with which Akayesu is charged in paragraphs 14 and 15 of the Indictment, the Chamber recalls that it has found supra that they constitute direct and public incitement to commit genocide, a crime punishable under Article 2(3)(c) of the Statute as distinct from the crime of genocide[178].

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[178] See findings of the Chamber on Count 4.

711. With respect to the Prosecutor's allegations in **paragraph 16** of the Indictment, the Chamber is satisfied beyond a reasonable doubt that on 19 April 1994, Akayesu on two occasions threatened to kill victim U, a Tutsi woman, while she was being interrogated. He detained her for several hours at the Bureau communal, before allowing her to leave. In the evening of 20 April 1994, during a search conducted in the home of victim V, a Hutu man, Akayesu directly threatened to kill the latter. Victim V was thereafter beaten with a stick and the butt of a rifle by a communal policeman called Mugenzi and one Francois, a member of the Interahamwe militia, in the presence of the accused. One of victim V's ribs was broken as a result of the beating.

712. In the opinion of the Chamber, the acts attributed to the accused in connection with victims U and V constitute serious bodily and mental harm inflicted on the two victims. However, while Akayesu does incur individual criminal responsibility by virtue of the acts committed against victim U, a Tutsi , for having committed or otherwise aided and abetted in the infliction of serious bodily and mental harm on a member of the Tutsi group, such acts as committed against victim V were perpetrated against a Hutu and cannot, therefore, constitute a crime of genocide against the Tutsi group.

713. Regarding the acts alleged in **paragraph 17**, the Prosecutor has failed to satisfy the Chamber that they were proven beyond a reasonable doubt.

714. As for the allegations made in **paragraph 18** of the Indictment, it is established that on or about 19 April 1994, Akayesu and a group of men under his control were looking for Ephrem Karangwa and destroyed his house and that of his mother . They then went to search the house of Ephrem Karangwa's brother- in- law, in Musambira commune and found his three brothers there. When the three brothers, namely Simon Mutijima, Thaddee Uwanyiligira and Jean-Chrysostome, tried to escape, Akayesu ordered that they be captured, and ordered that they be killed, and participated in their killing.

715. The Chamber holds that these acts indeed render Akayesu individually criminally responsible for having ordered, committed, aided and abetted in the preparation or execution of

the killings of members of the Tutsi group and the infliction of serious bodily and mental harm on members of said group.

716. Regarding the allegations in **paragraph 19**, the Chamber is satisfied that it has been established that on or about 19 April 1994, Akayesu took from Taba communal prison eight refugees from Runda commune, handed them over to Interahamwe militiamen and ordered that they be killed. They were killed by the Interahamwe using various traditional weapons, including machetes and small axes, in front of the Bureau communal and in the presence of Akayesu who told the killers "do it quickly". The refugees were killed because they were Tutsi.

717. The Chamber holds that by virtue of such acts, Akayesu incurs individual criminal liability for having ordered, aided and abetted in the perpetration of the killings of members of the Tutsi group and in the infliction of serious bodily and mental harm on members of said group.

718. The Prosecutor has proved that, as alleged in **paragraph 20** of the Indictment, on that same day, Akayesu ordered the local people to kill intellectuals and to look for one Samuel, a professor who was then brought to the Bureau communal and killed with a machete blow to the neck. Teachers in Taba commune were killed later, on Akayesu's instructions. The victims included the following: Tharcisse Twizeyumuremye, Theogene, Phoebe Uwineze and her fiancé whose name is unknown. They were killed on the road in front of the Bureau communal by the local people and the Interahamwe with machetes and agricultural tools. Akayesu personally witnessed the killing of Tharcisse.

719. In the opinion of the Chamber, Akayesu is indeed individually criminally responsible by virtue of such acts for having ordered, aided and abetted in the preparation or execution of the killings of members of the Tutsi group and in the infliction of serious bodily and mental harm on members of said group.

720. The Chamber finds that the acts alleged in **paragraph 21** have been proven. It has been established that on the evening of 20 April 1994, Akayesu, and two Interahamwe militiamen and

a communal policeman, one Mugenzi, who was armed at the time of the events in question, went to the house of Victim Y, a 69 year old Hutu woman, to interrogate her on the whereabouts of Alexia , the wife of Professor Ntereye. During the questioning which took place in the presence of Akayesu, the victim was hit and beaten several times. In particular, she was hit with the barrel of a rifle on the head by the communal policeman. She was forcibly taken away and ordered by Akayesu to lie on the ground. Akayesu himself beat her on her back with a stick. Later on, he had her lie down in front of a vehicle and threatened to drive over her if she failed to give the information he sought.

721. Although the above acts constitute serious bodily and mental harm inflicted on the victim, the Chamber notes that they were committed against a Hutu woman. Consequently, they cannot constitute acts of genocide against the Tutsi group.

722. As regards the allegations in **paragraphs 22 and 23** of the Indictment, the Chamber is satisfied beyond reasonable doubt that on the evening of 20 April 1994, in the course of an interrogation, Akayesu forced victim W to lay down in front of a vehicle and threatened to drive over her . That same evening, Akayesu, accompanied by Mugenzi, a communal policeman, and one Francois, an Interahamwe militiaman, interrogated victims Z and Y. The accused put his foot on the face of victim Z, causing the said victim to bleed, while the police officer and the militiaman beat the victim with the butt of their rifles. The militiaman forced victim Z to beat victim Y with a stick. The two victims were tied together, causing victim Z to suffocate. Victim Z was also beaten on the back with the blade of a machete.

723. The Chamber holds that by virtue of the above-mentioned acts Akayesu is individually criminally responsible for having ordered, committed, aided and abetted in the preparation or infliction of serious bodily or mental harm on members of the Tutsi group.

724. From the foregoing, the Chamber is satisfied beyond a reasonable doubt, that Akayesu is individually criminally responsible, under Article 6(1) of the Statute, for having ordered, committed or otherwise aided and abetted in the commission of the acts described above in the

findings made by the Chamber on paragraphs 12, 12A, 12B, 16, 18, 19, 20, 22 and 23 of the Indictment, acts which constitute the killing of members of the Tutsi group and the infliction of serious bodily and mental harm on members of said group.

725. Since the Prosecutor charged both genocide and complicity in genocide with respect to each of the above-mentioned acts, and since, as indicated *supra*, the Chamber is of the opinion that these charges are mutually exclusive, it must rule whether each of such acts constitutes genocide or complicity in genocide.

726. In this connection, the Chamber recalls that, in its findings on the applicable law, it held that an accused is an accomplice to genocide if he or she knowingly and wilfully aided or abetted or instigated another to commit a crime of genocide, while being aware of his genocidal plan, even where the accused had no specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. It also found that Article 6(1) of the Statute provides for a form of participation through aiding and abetting which, though akin to the factual elements of complicity, nevertheless entails, in and of itself, the individual responsibility of the accused for the crime of genocide, in particular, where the accused had the specific intent to commit genocide, that is, the intent to destroy a particular group; this latter requirement is not needed where an accomplice to genocide is concerned.

727. Therefore, it is incumbent upon the Chamber to decide, in this instant case, whether or not Akayesu had a specific genocidal intent when he participated in the above-mentioned crimes, that is, the intent to destroy, in whole or in part, a group as such.

728. As stated in its findings on the law applicable to the crime of genocide, the Chamber holds the view that the intent underlying an act can be inferred from a number of facts[179]. The Chamber is of the opinion that it is possible to infer the genocidal intention that presided over the commission of a particular act, *inter alia*, from all acts or utterances of the accused, or from the

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1 See above the findings of the Trial Chamber on the law applicable to the crime of genocide.

general context in which other culpable acts were perpetrated systematically against the same group, regardless of whether such other acts were committed by the same perpetrator or even by other perpetrators.

729. First of all, regarding Akayesu's acts and utterances during the period relating to the acts alleged in the Indictment, the Chamber is satisfied beyond reasonable doubt, on the basis of all evidence brought to its attention during the trial, that on several occasions the accused made speeches calling, more or less explicitly, for the commission of genocide. The Chamber, in particular, held in its findings on Count 4, that the accused incurred individual criminal responsibility for the crime of direct and public incitement to commit genocide. Yet, according to the Chamber, the crime of direct and public incitement to commit genocide lies in the intent to directly lead or provoke another to commit genocide, which implies that he who incites to commit genocide also has the specific intent to commit genocide: that is, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

730. Furthermore, the Chamber has already established that genocide was committed against the Tutsi group in Rwanda in 1994, throughout the period covering the events alleged in the Indictment[180]. Owing to the very high number of atrocities committed against the Tutsi, their widespread nature not only in the commune of Taba, but also throughout Rwanda, and to the fact that the victims were systematically and deliberately selected because they belonged to the Tutsi group, with persons belonging to other groups being excluded, the Chamber is also able to infer, beyond reasonable doubt, the genocidal intent of the accused in the commission of the above-mentioned crimes.

731. With regard, particularly, to the acts described in paragraphs 12(A) and 12(B) of the Indictment, that is, rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as

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2 See above, the findings of the Trial Chamber on the occurrence of genocide against the Tutsi group in Rwanda in 1994.

such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims[181] and are even, according to the Chamber, one of the worst ways of inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.

732. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them. A Tutsi woman, married to a Hutu, testified before the Chamber that she was not raped because her ethnic background was unknown. As part of the propaganda campaign geared to mobilizing the Hutu against the Tutsi, the Tutsi women were presented as sexual objects. Indeed, the Chamber was told, for an example, that before being raped and killed, Alexia, who was the wife of the Professor, Ntereye, and her two nieces, were forced by the Interahamwe to undress and ordered to run and do exercises "in order to display the thighs of Tutsi women". The Interahamwe who raped Alexia said, as he threw her on the ground and got on top of her, "let us now see what the vagina of a Tutsi woman takes like". As stated above, Akayesu himself, speaking to the Interahamwe who were committing the rapes, said to them: "don't ever ask again what a Tutsi woman tastes like". This sexualized representation of ethnic identity graphically illustrates that tutsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the tutsi group - destruction of the spirit, of the will to live, and of life itself.

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[181] See above, the findings of the Trial Chamber on the Chapter relating to the law applicable to the crime of genocide, in particular, the definition of the constituent elements of genocide.

733. On the basis of the substantial testimonies brought before it, the Chamber finds that in most cases, the rapes of Tutsi women in Taba, were accompanied with the intent to kill those women. Many rapes were perpetrated near mass graves where the women were taken to be killed . A victim testified that Tutsi women caught could be taken away by peasants and men with the promise that they would be collected later to be executed. Following an act of gang rape, a witness heard Akayesu say "tomorrow they will be killed" and they were actually killed. In this respect, it appears clearly to the Chamber that the acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process.

734. In light of the foregoing, the Chamber finds firstly that the acts described *supra* are indeed acts as enumerated in Article 2 (2) of the Statute, which constitute the factual elements of the crime of genocide, namely the killings of Tutsi or the serious bodily and mental harm inflicted on the Tutsi. The Chamber is further satisfied beyond reasonable doubt that these various acts were committed by Akayesu with the specific intent to destroy the Tutsi group, as such. Consequently, the Chamber is of the opinion that the acts alleged in paragraphs 12, 12A, 12B, 16, 18, 19, 20, 22 and 23 of the Indictment and proven above, constitute the crime of genocide, but not the crime of complicity; hence, the Chamber finds Akayesu individually criminally responsible for genocide.

7.9. Count 3 - Crimes against Humanity (extermination)

735. Count 3 of the indictment charges the Accused with crimes against humanity (extermination), pursuant to Article 3(b) of the Statute, for the acts alleged in paragraphs 12 to 23 of the indictment.

736. The definition of crimes against humanity, including the various elements that comprise the enumerated offences under Article 3 of the Statute have already been discussed.

737. The Chamber finds beyond a reasonable doubt that during his search for Ephrem Karangwa on 19 April 1994, the Accused participated in the killing of Simon Mutijima, Thaddée Uwanyiligra and Jean Chrysostome, by ordering their deaths and being present when they were killed.

738. The Chamber finds beyond a reasonable doubt that on 19 April 1994, the Accused took eight detained refugees and handed them over to the local militia, known as the Interahamwe with orders that they be killed.

739. The Chamber finds beyond a reasonable doubt that the Interahamwe and the local population, acting on the orders of the Accused killed five teachers namely; a professor known as Samuel; Tharcisse who was killed in the presence of the Accused; Theogene, Phoebe Uwineze and her fiancé.

740. The Chamber finds beyond a reasonable doubt that the eight refugees as well as Simon Mutijima, Thaddée Uwanyiligra, Jean Chrysostome, Samuel, Tharcisse, Theogene, Phoebe Uwineze and her fiancé were all civilians, taking no active part in the hostilities that prevailed in Rwanda in 1994 and the only reason they were killed is because they were Tutsi.

741. The Chamber finds beyond a reasonable doubt that in ordering the killing of the eight refugees as well as Simon Mutijima, Thaddée Uwanyiligra, Jean Chrysostome, Samuel, Tharcisse, Theogene, Phoebe Uwineze and her fiancé, the Accused had the requisite intent to cause mass destruction, directed against certain groups of individuals, as part of a widespread or systematic attack against the civilian population of Rwanda on ethnic grounds.

742. The Chamber finds beyond a reasonable doubt that in ordering the killing of the eight refugees as well as Simon Mutijima, Thaddée Uwanyiligra, Jean Chrysostome, Samuel, Tharcisse, Theogene, Phoebe Uwineze and her fiancé, the Accused is individually criminally responsible for the death of these victims, pursuant to Article 6(1) of the Statute.

743. The Chamber finds beyond a reasonable doubt that there was a widespread and systematic attack against the civilian population in Rwanda on 19 April 1994 and the conduct of the Accused formed part of this attack.

744. Therefore the Chamber finds, beyond a reasonable doubt that the killing of the eight refugees as well as Simon Mutijima, Thaddée Uwanyiligra, Jean Chrysostome, Samuel, Tharcisse, Theogene, Phoebe Uwineze and her fiancé, constitute extermination committed, as part of a widespread or systematic attack on the civilian population on ethnic grounds and as such constitutes a crime against humanity. Accordingly, the Chamber finds beyond a reasonable doubt that the Accused is guilty as charged in count 3 of the indictment.

8. VERDICT

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments, THE CHAMBER unanimously finds as follows:

Count 1:	Guilty of Genocide
Count 2:	Not guilty of Complicity in Genocide
Count 3:	Guilty of Crime against Humanity (Extermination)
Count 4:	Guilty of Direct and Public Incitement to Commit Genocide
Count 5:	Guilty of Crime against Humanity (Murder)
Count 6:	Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)
Count 7:	Guilty of Crime against Humanity (Murder)
Count 8:	Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)
Count 9:	Guilty of Crime against Humanity (Murder)
Count 10:	Not guilty of Violation of Article 3 common to the Geneva Conventions (Murder)
Count 11:	Guilty of Crime against Humanity (Torture)

Count 12: Not guilty of Violation of Article 3 common to the Geneva Conventions (Cruel Treatment)

Count 13: Guilty of Crime against Humanity (Rape)

Count 14: Guilty of Crime against Humanity (Other Inhumane Acts)

Count 15: Not guilty of Violation of Article 3 common to the Geneva Conventions and of Article 4(2)(e) of Additional Protocol II (Outrage upon personal dignity, in particular Rape, Degrading and Humiliating Treatment and Indecent Assault)

Done in English and French,
Signed in Arusha, 2 September 1998,

Laïty Kama
Presiding Judge

Lennart Aspegren
Judge

Navanethem Pillay
Judge

(Seal of the Tribunal)