

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 12 July 2007

THE PROSECUTOR

v.

JOSEPH NZIRORERA

MOTION TO LIMIT SCOPE OF TESTIMONY OF EXPERT WITNESSES
ALISON DES FORGES AND ANDRE GUICHAOUA

The Office of the Prosecutor:

Mr. Don Webster
Ms. Allayne Frankson-Wallace
Mr. Iain Morley
Ms. Gerda Visser
Mr. Saidou N'Dow

Defence Counsel:

Mr. Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi
Mr. Tim Rogan, Legal Intern

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. Joseph Nzirorera respectfully moves that the Chamber limit the testimony of expert witnesses Alison Des Forges and Andre Guichaoua to preclude each from offering opinions which concern the acts, conduct, mental state or criminal responsibility of the accused.

2. Mr. Nzirorera submits that the Chamber should so limit Dr. Des Forges and Dr. Guichaoua's testimony on the basis that the acts, conduct, mental state and criminal responsibility of the accused as charged in the indictment are matters exclusively for the Trial Chamber's determination and are, as such, beyond the competence of expert witnesses.

3. Mr. Nzirorera submits, in the alternative, that the Chamber should exclude Dr. Des Forges' and Dr. Guichaoua's opinions concerning the acts, conduct, mental state and criminal responsibility of the accused as a matter of fairness to the accused.

Rules governing admissibility of expert evidence

4. There is no provision in the Rules specifically governing admissibility of expert evidence.¹

5. Relevant evidence deemed to have probative value is admissible at the discretion of the Trial Chamber.²

6. This discretion is, however, not unbounded. Rule 89(B) provides that, absent specific provision in the Rules, the Chamber shall apply the rules of evidence which will best favour a fair determination of the matter before it and which are

¹ Rule 94bis governs disclosure of evidence and sets out a procedure by which written expert evidence may be admitted without calling the witness to testify; it does not address admissibility; see, e.g., *Prosecutor v Boskoski and Tarculovski* No. IT-04-82-T *Decision on Motion to Exclude the Prosecution's Proposed Evidence of Expert Bezruchenko and His Report* (17 May 2007).

² Rule 89(C)

consonant with the spirit of the Statute and the general principles of law.³ The Appeals Chamber has held, in light of Rule 89(B), that:

A Trial Chamber's exercise of discretion under Rule 89(C) ought...to be in harmony with the Statute and the other Rules to the greatest extent possible.⁴

Provisional Rules Applicable under Rule 89(B)

Ultimate issues exclusively the province of the Trial Chamber

7. The criminal responsibility of the accused is the ultimate issue for determination at trial. Weighing the evidence to determine the criminal responsibility of the accused is the function of the Trial Chamber, exclusively. Where an expert witness offers opinions as to the criminal responsibility of the accused, the witness trespasses upon the function of the Trial Chamber. Expert witnesses may not, therefore, offer opinions as to the guilt or innocence of the accused.⁵

8. The rule that the ultimate issue of criminal responsibility for the acts and conduct charged in the indictment is for the Trial Chamber exclusively to determine has been consistently applied to limit the purview of expert testimony.

³ ICTR Rules, Rule 89(B)

⁴ *Prosecutor v Kordic & Cerkez*, No. IT-95-14/2-AR73.5, *Decision on Appeal Regarding Statement of a Deceased Witness*, (21 July 2000) at para 20

⁵ *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on Casimir Bizimungu's Urgent Motion for the Exclusion of the Report and Testimony of Deo Sebahire Mbonyinkebe (Rule 89(C))* (2 September 2005) at para 13; *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on the Admissibility of the Expert Testimony of Dr. Binaifer Nowrojee* (8 July 2005) at para 12; *Prosecutor v Dragomir Milosevic* No. IT-98-29/1-T *Decision on Admission of Expert Report of Robert Donia* (15 February 2007) at para 11; *Prosecutor v Enver Hadzihasanovic & Amir Kubura* No. IT-01-47-T *Decision on Report of Prosecution Expert Klaus Reinhardt* (11 February 2004) at p. 4; *Prosecutor v Dario Kordic and Mario Cerkez*, No. IT-95-14/2-T, T.13306-307 (28 January 2000), T20828 (9 June 2000); *Prosecutor v Blagojevic*, No. IT-02-60-T T. 12109-12111 (22 July 2004); *Prosecutor v Milan Martić*, No. IT-95-11-T, *Decision on Defence Submission for the Expert Report of Prof. Smilja Avramov Pursuant to Rule 94bis*, (9 November 2006), and *Decision on Defence's Submission of the Expert Report of Milisav Sedouard Karemeraulic Pursuant to Rule 94bis and on Prosecution Motion to Reconsider Order of 7 November 2006* (13 November 2006); *Prosecutor v Stanislav Galic* No. IT-98-29-T, *Decision Concerning the Expert Witnesses Ewa Tableau and Richard Phipps* (3 July 2002); *Prosecutor v Kordic & Cerkez*, No. IT-95-14 Transcript (28 January 2000) 13289; and Transcript (9 June 2000) at 20820; *Prosecutor v Brima et al* No. SCSL-2004-16-T, Oral Decision (24 October 2005) Transcript 24 October 2005 pp.110, 112.

9. In *Prosecutor v Hadzihasanovic*, for example, the Trial Chamber

considered:

‘...an expert witness may not be authorised to offer his opinion on the criminal liability of the accused, a matter which falls within the sole jurisdiction of the Chamber at the close of the trial...’⁶

10. In *Prosecutor v Slobodan Milosevic*, the Trial Chamber held that:

‘It is for the Trial Chamber to decide which evidence to accept and which to reject and what conclusions to draw from the evidence. Therefore, any evidence which trespasses on those functions is normally to be excluded.’⁷

11. In *Prosecutor v Dragomir Milosevic* the Trial Chamber stated:

‘Generally, an expert witness shall not offer his or her opinion on the criminal liability of the accused. This is a matter that falls within the competence of the Chamber.’⁸

12. Trial Chambers have often provided only summary reasons for the application of the rule, but the reasoning underlying its application is implicit in the operation of Rules 89(A) and 89(B) of the Rules of Procedure and Evidence.

13. Rule 89(A) mandates that

‘the rules of evidence set forth in [Section 3] shall govern the proceedings before the Chambers’.

14. Rule 89(B) provides, as noted, that where no specific provision is made in the Rules for a particular situation Chambers must

‘apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law’

⁶ *Prosecutor v Enver Hadzihasanovic & Amir Kubura* No. IT-01-47-T *Decision on Report of Prosecution Expert Klaus Reinhardt* (11 February 2004) at p. 4.

⁷ *Prosecutor v Slobodan Milosevic*, No. IT-02-54-T, *Oral Decision*, (30 May 2002) Transcript p.5941-5942. The Trial Chamber’s decision and reasoning was subsequently endorsed by the Appeals Chamber: see *Prosecutor v Slobodan Milosevic*, No. IT-02-54-AR73.2 *Decision on Admissibility of Prosecution Investigator’s Evidence* (20 September 2002) at para 17.

⁸ *Prosecutor v Dragomir Milosevic* No. IT-98-29/1-T *Decision on Admission of Expert Report of Robert Donia* (15 February 2007) at para 11.

15. Limiting expert evidence in accordance with the proposition that only the competent authority may pronounce upon the criminal responsibility of an individual accused is the approach which best favours a fair determination of the matter before the Trial Chamber, and is consonant with the spirit of the Statute and the Rules.

16. Drawing inferences and conclusions as to the criminal responsibility of the accused from the evidence before it is the function of the Trial Chamber.⁹

17. Were an expert witness to express an opinion as to the criminal responsibility of the accused, based on inferences and conclusions drawn from the expert's own investigations, this function of the Trial Chamber, pursuant to Articles 1 and 22 of the Statute of the Tribunal, would be usurped. The rule preventing this scenario, by precluding experts from offering opinions on the ultimate issues at trial, is therefore consonant with the spirit of the Statute and general principles of law.

Acts, conduct and mental state of the accused inseparable from ultimate issue of criminal responsibility

18. Mr. Nzirorera respectfully submits, further, that the acts, conduct and mental state of the accused as charged in the indictment are inseparable from the ultimate issue of criminal responsibility itself.

19. The acts and conduct of the accused as charged in the indictment bear directly upon the criminal responsibility of the accused – these are the factual issues upon which the Trial Chamber's determination of criminal responsibility turns – and as such only the Trial Chamber is competent to rule upon them. The acts or conduct of the

⁹ The Statute of the Tribunal provides that the Tribunal 'shall have the power to prosecute persons responsible for serious violations of international humanitarian law' falling within its temporal and territorial jurisdiction (article 1), and that the Trial Chambers 'shall pronounce judgements' upon persons convicted (article 22).

accused necessarily include relevant states of mind.¹⁰ The rule against entering in evidence expert opinions on ultimate issues therefore precludes expert opinions on acts, conduct, mental state and criminal responsibility of the accused alike.

20. The parameters of the Trial Chamber's province as the final arbiter of criminal responsibility were described by the Appeals Chamber in an interlocutory decision in *Prosecutor v Slobodan Milosevic*. The appeal concerned an oral decision of the Trial Chamber to exclude evidence consisting of an OTP investigator's report which contained conclusions drawn by the investigator from summaries he had made of written statements taken from prospective witnesses by a number of OTP investigators. The report was tendered *in lieu* of the oral testimony of the witnesses concerned.¹¹ The conclusions concerned the conduct of Serbian forces in the village of Racak from June 1998, in an incident which the Trial Chamber deemed 'significant' to the trial.¹²

21. The Prosecutor argued that since the conclusions drawn '[did] not discuss the guilt or individual criminal responsibility of the accused Milosevic, or any other legal issue',¹³ the admission of the report would not have trespassed upon the function of the Trial Chamber. The Trial Chamber, in the prosecution's submission, had therefore erred in excluding the report.

22. The Appeals Chamber, accepting that the investigator's conclusions '[did] not bear directly upon the involvement of the accused on those events', ruled that the issues upon which conclusions were drawn:

¹⁰ *Prosecutor v Galic*, No. IT-98-29-AR73.2 *Decision on Interlocutory Appeal Concerning Rule 92bis(C)* (7 June 2002) at para 11.

¹¹ *Prosecutor v Slobodan Milosevic*, No. IT-02-54-T, Transcript, 30 May 2002, pp.5940-5944.

¹² *Prosecutor v Slobodan Milosevic*, No. IT-02-54-T, Transcript, 30 May 2002, pp.5940-5943

¹³ See *Prosecutor v Slobodan Milosevic*, No. IT-02-54-AR73.2 *Decision on Admissibility of Prosecution Investigator's Evidence* (20 September 2002) at para 11.

‘[were] nevertheless facts which the Trial Chamber is obliged to consider and in relation to which it must make its own findings before coming to the issue of the accused’s guilt in relation to them.’¹⁴

The Appeals Chamber continued:

‘That task does not require expertise beyond that which is within the capacity of any tribunal of fact, that of analysing factual material put forward by the witnesses. Whatever expertise the OTP investigator may claim to have in relation to such a task, the Trial Chamber was entitled to decline his assistance in the very task which it had to perform for itself.’¹⁵

23. The AFRC Accused Trial Chamber of the Special Court for Sierra Leone

has held, in more definitive terms, that:

‘[The Trial Chamber] shall disregard any material which in the Trial Chamber’s judgment goes to the ultimate issue or provides opinions on matters which the Trial Chamber is going to have to rule, or draws any conclusions or inferences which the Trial Chamber will have to draw, or makes any judgments which the Trial Chamber will have to make.’¹⁶

24. Mr. Nzirorera accordingly submits that the rule precluding expert

witnesses from offering opinions as to the ultimate issues before the Trial Chamber

encompasses not only opinions adverting directly to the accused’s criminal

responsibility but also opinions concerning the acts, conduct and mental state of the

accused charged in the indictment, i.e. those facts upon which the Trial Chamber must

ultimately rule, in light of the evidence, in the process of determining the criminal

responsibility of the accused.

¹⁴ *Prosecutor v Slobodan Milosevic*, No. IT-02-54-AR73.2 *Decision on Admissibility of Prosecution Investigator’s Evidence* (20 September 2002) at para 17.

¹⁵ *Prosecutor v Slobodan Milosevic*, No. IT-02-54-AR73.2 *Decision on Admissibility of Prosecution Investigator’s Evidence* (20 September 2002) at para 17.

¹⁶ *Prosecutor v Brima et al* No. SCSL-2004-16-T, Oral Decision (24 October 2005) Transcript 24 October 2005 pp.110, 112.

In the alternative, expert opinions on acts, conduct, mental state or criminal responsibility of the accused inadmissible as a denial of the accused's fair trial rights

Cross-examination of witnesses as an element of a fair trial

25. Article 20(4)(e) of the Statute of the Tribunal provides that the accused has a right to examine the witnesses against him or her.

26. Where the Tribunal adopts measures to expedite proceedings, such as hearing testimony from expert witnesses, receiving evidence in the form of written statements, or taking judicial notice of relevant facts, the risk of unfairness to the accused warrants particular attention.¹⁷ Such measures may deprive the accused of the opportunity to confront witnesses against him. The risk of unfairness is particularly acute where the relevant evidence pertains directly to the accused and his involvement in the crimes alleged.¹⁸

27. The Tribunal's legitimate concern to expedite proceedings must therefore be balanced against the need to protect the accused's fair trial rights. This is largely a matter for the Trial Chamber to determine in a specific case. The concern to preserve for Trial Chambers the flexibility to ensure that trials are conducted fairly and in an expeditious manner militates against the codification of standing rules.¹⁹

28. And yet the parameters laid down by the Rules of Procedure and Evidence and in decisions of the Appeals Chamber manifest a concern to exclude evidence

¹⁷ *Prosecutor v Karemera et al* No. ICTR-98-44-AR73(C) *Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice* (16 June 2006) at para 51; *Prosecutor v Kordic and Cerkez* No. IT-95-14/2, *Decision on Appeal Regarding Statement of a Deceased Witness* (21 July 2000) at para 23;

¹⁸ Richard May and Marieke Wierda, *International Criminal Evidence* (2002) at [8.65]: 'It is submitted that the accused's right to examine a witness is most relevant in situations where the witness' evidence pertains directly to him and his involvement in the crimes. This is supported in the case law of the European Court of Human Rights...'

¹⁹ *Prosecutor v Aleksovski* No. IT-95-14/1-AR-73, *Decision on Prosecutor's Appeal on Admissibility of Evidence* (16 February 1999) at para 19; *Prosecutor v Kordic and Cerkez* No. IT-95-14/2, *Decision on the Prosecution Application to Admit the Tulica Report and Dossier Into Evidence* (29 July 1999) at para 11.

deemed unfair or unreliable because of the absence of an opportunity for the accused to examine the witness.

29. Rule 92*bis* sets the Rules against the admission of evidence as to the acts, conduct, mental state or criminal responsibility of the accused other than by direct oral testimony.²⁰ In making provision for the receipt of evidence by written statement, Rule 92*bis* specifically excludes evidence going to proof of the acts or conduct of the accused as charged in the indictment. The exclusion of such evidence is an important proviso designed to ensure that measures taken to expedite trial proceedings do not compromise the rights of the Accused.²¹

30. Similarly, the *Karemera* Appeals Chamber has directed that Trial Chambers not take judicial notice under Rule 94(B) of facts bearing upon the acts, conduct, mental state or criminal responsibility of the Accused.²²

31. The Appeals Chamber's ostensible concern in such situations is to ensure that the Accused is afforded an opportunity to confront those upon the basis of whose testimony he may be convicted.²³ The Accused must be allowed to cross-examine those upon whose evidence the prosecution relies to establish his criminal responsibility.

²⁰ Rule 92*bis*, Rule 94(B)

²¹ *Prosecutor v Karemera et al* No. ICTR-98-44-AR73(C) *Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice* (16 June 2006) at para 51; *Prosecutor v Kordic and Cerkez* No. IT-95-14/2, *Decision on Appeal Regarding Statement of a Deceased Witness* (21 July 2000) at para 23; *Prosecutor v Galic* No. IT-98-29-AR73.2, *Decision on Interlocutory Appeal Concerning Rule 92bis(C)* (7 June 2002) at para 30; see also The President of the International Tribunal, *Eighth Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, ¶ 51, delivered to the Security Council and the General Assembly, U.N. Doc. A/56/352-S/ 2001/865 (Sept. 17, 2001), available at <http://www.un.org/icty/rappannu-e/2001/AR01e.pdf>

²² *Prosecutor v Karemera et al*, No. ICTR-98-44-AR73(C), *Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice* (16 June 2006) at para 53.

²³ *Prosecutor v Karemera et al*, No. ICTR-98-44-AR73(C) *Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice* (16 June 2006) at para 52.

32. Where testimony of expert witnesses is based upon independent investigations, during which the expert consults persons unavailable for cross-examination at trial, the accused is afforded no opportunity to confront the witnesses upon whose statements the expert's opinion is based. To the extent that such opinions are tendered to establish the criminal responsibility of the accused – either by directly implicating the criminal responsibility of the accused or because they bear upon the acts, conduct or mental state of the accused as charged in the indictment – their admission deprives the accused of the opportunity to confront his accusers.

Availability of sources for cross-examination as an important indicium of reliability

33. Affording the accused an opportunity to confront his accusers is both an element of the right to a fair trial and a safeguard against the admission of unreliable evidence.

34. The operation of this safeguard is particularly important in relation to hearsay evidence. Expert opinions, which are derived from factual conclusions which the expert arrives at in his or her own research, using statements and other material from sources not before the Trial Chamber to prove the truth of their contents, constitute a form of hearsay evidence. Hearsay evidence, though admissible, must be carefully

examined to ensure its reliability.²⁴ The reliability of such evidence goes to admissibility, not merely to weight.²⁵

35. The *Aleksovski* Appeals Chamber stipulated that the availability of witnesses for cross-examination is an important indicia of reliability.²⁶ The Trial Chamber must have regard, among other indicia, to whether or not the accused has the opportunity to cross-examine those witnesses upon whose evidence expert opinions tendered as evidence are based.

36. In some cases the absence of an opportunity to cross-examine witnesses may be overcome by other indicia of reliability.²⁷ The Trial Chamber may form the view that the opportunity to cross-examine the expert witness himself or herself about his or her sources, in combination with other indicia among those to which the *Aleksovski* Appeals Chamber refers, is sufficient to overcome the absence of the opportunity to cross-examine the expert's sources themselves.

37. But in relation to the testimony of expert witnesses Dr. Des Forges and Dr. Guichaoua the absence of an opportunity to cross-examine the expert's sources is rather compounded by the absence of other indicia of reliability than cured by their presence.

²⁴ *Prosecutor v Tadic*, No. IT 94-1-T, *Decision on Defence Motion on Hearsay* (5 August 1996), para 15-19, *Prosecutor v Aleksovski*, No. IT-95-14/1-AR93 *Decision on Prosecutor's Appeal on Admissibility of Evidence* (16 February 1999) at para 15; *Prosecutor v Galic* No. IT-98-29-T, *Decision on the Prosecution Motion for Reconsideration of the Admission of Expert Report of Prof. Radinovic* (23 February 2003) at para 9; *Prosecutor v Martić*, No. IT-95-11-T *Decision on Defence's Submission of the Expert Report of Prof. Smilija Avramov Pursuant to Rule 94bis* (9 November 2006) at para 9.

²⁵ *Prosecutor v Kordic and Cerkez* No. IT—95-14/2 *Decision on Appeal Regarding Statement of a Deceased Witness* (21 July 2000) at para 24, citing *Prosecutor v Aleksovski*, No. IT-95-14/1-AR93 *Decision on Prosecutor's Appeal on Admissibility of Evidence* (16 February 1999) at para 15.

²⁶ *Prosecutor v Aleksovski*, No. IT-95-14/1-AR93 *Decision on Prosecutor's Appeal on Admissibility of Evidence* (16 February 1999) at para 15; *Prosecutor v Blaskic* No IT-95-14-T, *Decision on Standing Objection of the Defence to the Admission of Hearsay with No Inquiry as to its Reliability* (26 January 1998) at para 12.

²⁷ *Prosecutor v Slobodan Milosevic* No. IT-02-54-AR73.2, *Decision on Admissibility of Prosecution Investigator's Evidence* (30 September 2002) at para 22.

38. Whether or not hearsay evidence upon which the Trial Chamber is asked to rely is “first hand” or more removed from the tribunal of fact is one of the indicia to which the *Aleksovski* Appeals Chamber refers. Establishing whether the hearsay consisting in expert opinions is “first hand” or more removed is problematic, given Rwandans’ cultural habit of relating events or incidents about which they have learnt from others as within their direct experience.²⁸ The Trial Chamber can therefore have no assurance as to how far removed the tribunal of fact is from the testimony upon which it is asked to rely.

39. Issues of translation further muddy the waters. As the *Kordic and Cerkez* Appeals Chamber has cautioned:

[M]ultiple translations in an informal setting create a much greater potential for inaccuracy than is the case when both the declarant and the witness speak the same language or when the original statement is given in court with professional, double-checked translation.²⁹

The Trial Chamber has no assurance that any translations upon which Dr. Guichaoua and Dr. Des Forges have relied in forming their opinions are accurate.

40. Moreover, and notwithstanding her proficiency in Kinyarwanda, a previous judicial finding rejecting Dr. Des Forges’ opinions as an expert witness was reached partly on the basis that Dr. Des Forges had relied on a translation provided to her which was later found to be profoundly inaccurate.³⁰ In *Canada v Mugesera*,

²⁸ See, eg, *Prosecutor v Akayesu* No. ICTR-96-4, *Judgement* (2 September 1998) at para 155.

²⁹ *Prosecutor v Kordic and Cerkez* No.IT-95-14/2 *Decision on Appeal Regarding Statement of a Deceased Witness* (21 July 2000) at para 27.

³⁰ *Mugesera v Canada (Minister of Citizenship and Immigration)* 2003 FCA 325 (8 September 2003) at para 94-102. See especially para 99, reproducing Dr. Des Forges statement under cross examination that: ‘If you wish to argue that we chose our evidence to support our conclusions, you are entirely correct. We chose our evidence to support our conclusions.... We chose our evidence after we had weighed all of the facts and reached our conclusions.’

Canada's Federal Court of Appeals uncovered this and other serious deficiencies in Dr. Des Forges' methodology, and deemed her evidence unreliable.³¹

41. The voluntariness, truthfulness and trustworthiness of the testimony used in hearsay form by expert witnesses in advancing their opinions are further indicia about which the Trial Chamber must be satisfied in establishing that such opinions are reliable.³² The testimony upon which Dr. Des Forges and Dr. Guichaoua rely in forming their opinions is largely unsworn. The experts' sources are largely uncited, and where a source is specified that source is often left unnamed for confidentiality reasons. Thus the Trial Chamber can be assured of neither the truthfulness nor trustworthiness of the sources whose evidence is to be admitted as the basis of expert opinions.

42. The sole factual basis for determinations of the accused's criminal responsibility is the evidence before the Trial Chamber.³³ Hearing expert opinions as to criminal responsibility introduces inferences and conclusions based on facts not established before the Trial Chamber. To the extent that expert opinions are based on evidence not before the Trial Chamber, such opinions have no probative value and are inadmissible for that reason.³⁴

43. There is, as outlined above, no provision in the Rules of Procedure and Evidence governing the admissibility of expert evidence. Unlike in situations addressed

³¹ Though the outcome of the Court of Appeals hearing was overturned by the Supreme Court, the specific findings concerning the reliability of Dr. Des Forges' evidence were not discussed in the Supreme Court's opinion.

³² *Prosecutor v Aleksovski*, No. IT-95-14/1-AR93 *Decision on Prosecutor's Appeal on Admissibility of Evidence* (16 February 1999) at para 15, *Prosecutor v Tadic*, No. IT 94-1-T, *Decision on Defence Motion on Hearsay* (5 August 1996), para 15-19; *Prosecutor v Slobodan Milosevic* No. IT-02-54-AR73.2, *Decision on Admissibility of Prosecution Investigator's Evidence* (30 September 2002).

³³ Richard May and Marieke Wierde, *International Criminal Evidence* (2002) at [6.88].

³⁴ Richard May and Marieke Wierde, *International Criminal Evidence* (2002) at [6.88]; *Prosecutor v Kunarac et al*, No. IT-96-23, *Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony* (3 July 2000) at para 8.

by Rule 92bis, the Rules do not expressly protect the accused's fair trial rights, and ensure the reliability of evidence admitted, where either may be compromised by expert evidence. Instead, as in situations addressed by Rule 94, the Trial Chamber retains discretion to admit or exclude evidence that meets the threshold criterion in Rule 89(C). The Appeals Chamber has directed that such discretion must be exercised to be in harmony with the Statute and with other Rules to the greatest extent possible.³⁵

44. This direction can best be heeded in the present case by stipulating that expert opinions as to the acts, conduct, mental state or criminal responsibility of the accused are inadmissible. Such a ruling would both harmonise the principles governing admission of expert evidence with the rules governing evidence other than by direct testimony in general, and ensure that proceedings are conducted in a manner consistent with the fair trial rights of the accused.

Judicial Economy

45. Mr. Nzirorera further contends that excluding expert evidence on the criminal responsibility, acts, conduct, and mental state of the accused will foster judicial economy by eliminating the most controversial aspects of the testimony of the witnesses and thereby drastically reducing the length of their testimony, and the trial.

46. The Trial Chamber frequently cites the right to an expeditious trial when considering the length of cross-examination, proceeding in the absence of the accused, and in other aspects of the trial that disadvantage the accused. This motion presents an opportunity to promote an expeditious trial at the expense of the prosecution.

³⁵ *Prosecutor v Kordic & Cerkez*, No. IT-95-14/2-AR73.5, *Decision on Appeal Regarding Statement of a Deceased Witness*, (21 July 2000) at para 20

47. Of course, the same rules of exclusion will apply to any experts called by the defence, thereby further promoting judicial economy.

Proper scope of expert testimony

48. Mr. Nzirorera's submission is that the scope of expert testimony should be limited so as to preclude Dr. Des Forges and Dr. Guichaoua from offering opinions concerning the acts, conduct, mental state or criminal responsibility of the accused.

49. If this submission is adopted, Mr. Nzirorera submits further that, in keeping with the harmonisation principle mandated by the Appeals Chamber in *Kordic and Cerkez*,³⁶ the Trial Chamber should look to the criteria set out by the *Galic* Appeals Chamber in relation to Rule 92bis(A) to determine the precise issues upon which expert opinions will not be heard. The approach in *Galic* was endorsed by the *Karemera et al* Appeals Chamber in the context of Rule 94(B).³⁷ Adopting the same approach to expert testimony would further harmonise the evidentiary rules generally applicable where evidence is heard other than through direct oral testimony.

50. The testimony of Dr. Des Forges and Dr. Guichaoua would thereby be limited according to a rule excluding expert opinions along the same lines as the rule espoused by the *Galic* Appeals Chamber in relation to Rule 92bis(A). The relevant paragraph of the *Galic* Appeals Chamber decision is as follows:

Thus, Rule 92bis(A) excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish:

- (a) that the accused committed (that is, that he personally physically perpetrated) any of the crimes charged himself, or
- (b) that he planned, instigated or ordered the crimes charged, or

³⁶ *Prosecutor v Kordic & Cerkez*, No. IT-95-14/2-AR73.5, *Decision on Appeal Regarding Statement of a Deceased Witness*, (21 July 2000) at para 20; see also *Prosecutor v Slobodan Milosevic* No. IT-02-54-AR73.2, *Decision on Admissibility of Prosecution Investigator's Evidence* (30 September 2002) at para 18.

³⁷ *Prosecutor v Karemera et al*, No. ICTR-98-44-AR73(C), *Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice* (16 June 2006) at para 52-53.

- (c) that he otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes, or
- (d) that he was superior to those who actually did commit the crimes, or
- (e) that he knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or
- (f) that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.

Where the prosecution case is that the accused participated in a joint criminal enterprise, and is therefore liable for the acts of others in that joint criminal enterprise, Rule 92bis(A) excludes also any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish-

- (g) that he had participated in that joint criminal enterprise, or
- (h) that he shared with the person who actually did commit the crimes charged the requisite intent for those crimes.³⁸

...

The “conduct” of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct upon which the accused relies to establish that state of mind is not admissible under Rule 92bis.

51. Mr. Nzirorera further moves that the relevant sections from Dr. Des Forges and Dr. Guichaoua’s written reports, concerning the criminal responsibility, acts, conduct, and mental state of the accused should also be stricken if the reports are admitted as exhibits. Those sections are set out respectively in Annexes “A” and “B” to this motion.

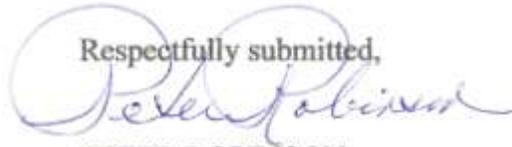
Conclusion

52. For the foregoing reasons, it is respectfully requested that the Trial Chamber exclude all oral and written evidence from Dr. Des Forges and Dr. Guichaoua which go to the criminal responsibility, acts, conduct, and mental state of the accused.³⁹

³⁸ *Prosecutor v Galic* No. IT-98-29-AR73.2 *Decision on Interlocutory Appeal Concerning Rule 92bis(C)* (7 June 2002) at para 10.

³⁹ Mr. Nzirorera expresses his gratitude to Legal Intern Tim Rogan who is the principal author of this motion.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

ANNEX “A”

Mr. Nzirorera submits that the following parts of Dr. Des Forges Written Report should be redacted. The relevant paragraphs of the indictment are listed, with the page number in Dr. Des Forges' written report, in footnotes.

'The organizers of the 1994 genocide in Rwanda worked through an effective state structure, making use of both its civilian administration and its armed forces. They also used other organizations linked to the state, but not identical with it, including political parties, the press, and parastatal agencies. In addition, they used personal relationships, ties of family and friendship, to reinforce the impact of directives given through more formal structures. Using these multiple and diverse mechanisms, the organizers of the genocide were able to mobilize large numbers of Rwandans to carry out a genocide of extraordinary speed and thoroughness.'⁴⁰

Outside of the official state institutions, the structure most important to planning and implementing the genocide was the political party known as the National Revolutionary Movement for Development (Mouvement Révolutionnaire National pour le Développement, MRND):⁴¹

Three of the four members of that committee, Edward Karemera, Mathieu Ndirumapfse, and Joseph Nzirorera shaped the MRND policies that led to genocide; during the slaughter of the Tutsi, they cooperated with other civilian and military leaders in trying to eliminate the people of this ethnic group from Rwanda.⁴²

In some cases, officials at the national level returned to their home provinces to incite attacks on Tutsi. All of these actions were duplicated by government officials beginning in 1990 and particularly during the genocide that began in April 1994.⁴³

Because *akazu* members and their large network of clients controlled so much of the state and parastatal apparatus, they had the resources to strengthen the Interahamwe organizations in many parts of the country.⁴⁴

The recruitment and training of militia, particularly the Interahamwe, increased during 1993 and early 1994 as MRND leaders increasingly saw their value in attacking Tutsi instead of just partisan rivals.⁴⁵

⁴⁰ ADF p.1, [para 11, 13, 14, 23, 28, 65]

⁴¹ ADF p.1, [para 10, 11, 13, 18, 23, 28, 79]

⁴² ADF p.1, [para 14, 28, 29, 35, 41, 65, 79]

⁴³ ADF p.4, [para 63, 64]

⁴⁴ ADF p.17, [para 18, 23, 28]

⁴⁵ ADF p.25, [para 14, 24]

The *akazu* contributed to this expansion of the Interahamwe by providing increased resources and by offering employment to militia recruits. In an economy where tens of thousands of young people were unemployed, the prospect of a steady job proved a powerful incentive to join the militia.⁴⁶

...The program was not limited to defense against actual RPF combatants in uniform but also against “disguised RPF” and their “acolytes,” language so broad as to be easily interpreted as meaning Tutsi civilians as well... Among those to urgently implement the program were the president of the republic, ministers of interior and defense, the general staffs of army and national police, the national, prefectural, and communal committees of the “republican” political parties, in short, those who controlled the governmental, military, and Hutu Power political hierarchies in the country.⁴⁷

Although the plan spoke in general terms of “republican” parties, it was clearly the MRND and its leaders who figured prominently in creating and implementing the “self-defence” program. At this time, Ngirumpatse, party president, Edouard Karemera, first vice-president, and Nzirorera, secretary general, had held the most important leadership positions in the party for more than six months, having been elected in July 1993.⁴⁸

The preparations for mass slaughter of Tutsi and of Hutu opposed to the MRND included

- Organizing the militia—done by political parties—and training and arming them—done by the army
- Organizing the civilian self-defense—a joint effort of administrative, military, and political actors from the president of the republic down to the level of the commune
- Distributing arms—handed out by military to militia, civilians identified by administrators and political leaders
- Preparing lists—done by administrators and delivered to army and militia⁴⁹

Even as Bagosora was directing the first attacks, he was in touch with political leaders like Ngirumpatse, Karemera, and Nzirorera who shared his goals. He first tried to take control of the state in his own right but when that effort failed, Bagosora worked with these and other political leaders to create a government that could seem legitimate. By their choice of MRND members for cabinet positions as well as by influencing the choices of other parties by this time pulled into the MRND sphere, these senior leaders of the MRND helped put in place a government whose members all reflected the single point of view of Hutu Power. The participation of the senior and most responsible leaders of the MRND (its president, first vice-president, and secretary general) in forming this government contributed enormously to its authority

⁴⁶ ADF p.18, [para 14, 24]

⁴⁷ ADF p.26, [para 13, 14, 23, 28, 35, 41, 65, 79]

⁴⁸ ADF p.26, [para 13]

⁴⁹ ADF p.29, [para 11, 13, 14, 36, 39]

both inside and outside Rwanda. The interim government presented by Bagosora to the military officers for their approval seemed in accord with the terms of the April 1992 agreement under which previous coalition governments had been formed, but it violated the spirit of the agreement because the persons chosen represented a single point of view, that of Hutu Power.⁵⁰

Administrative authorities also included persons of status and importance in the community, like clergy or businessmen, whose help was also expected in implementing the campaign to eliminate the Tutsi.⁵¹

Ngirumpatse played an important part in these attempts to mislead the international community.⁵²

As authorities responsible for directing the Interahamwe, the central committee members, and particularly Ngirumpatse and Nzirorera, assured that the militia would play fully and effectively the role assigned to them in genocidal activities. At the direction of party officials, the Interahamwe joined with the army in tracking and killing the “enemy,” including Tutsi civilians encompassed in that term.⁵³

In executing the genocide, military and civilian authorities throughout Rwanda put into effect elements of the “civilian self-defense” program.⁵⁴

By integrating the killers into a more tightly structured system, the authorities aimed to make sure that the genocide was carried out as intended and that dissension among Hutu was avoided.⁵⁵

Political authorities, like civilian and military officials, could hardly have escaped knowing of the widespread nature of this crime, given that rapists regularly took their victims from sites where there was supposedly police protection and left them, once dead, sprawled publicly in positions that indicated the crimes that had been committed against them before their slaughter.⁵⁶

The enormous importance of the three senior MRND leaders was shown immediately by the role they played in collaborating with Col. Bagosora and other military officers to designate the members of a new government. Yet none took a ministerial seat for himself. Certainly they were seeking to ensure participation from those likely otherwise to reject the new government—particularly those from the center and south. They may have also wished to keep a discreet distance from a government engaging in a genocide. But whatever their reasons for not claiming a ministerial post, it was not lack of power that kept them from doing so.⁵⁷

⁵⁰ ADF p.29-30, [para 23, 28, 29]

⁵¹ ADF p.3, [para 14, 18]

⁵² ADF p.30, [para 21]

⁵³ ADF p.32, [para 11, 14, 18, 28, 29, 35, 41, 65, 79]

⁵⁴ ADF p.33, [para 13, 36]

⁵⁵ ADF p.34 [para 14, 28, 29, 35]

⁵⁶ ADF p.35 [para 19]

⁵⁷ ADF p.35 [para 28]

Indeed all three acted as unofficial members of the government during the genocide.⁵⁸

They controlled the central posts of defense and interior, the two ministries responsible for implementing the genocide. They were able to stop an effort to replace Interahamwe at the barriers with soldiers, a measure that would have brought greater accountability to conduct at the barriers and would thus presumably have saved some lives.⁵⁹

In addition to discussing and helping to influence major decisions, the three undertook individual assignments for the government.

...

Karemera traveled with the minister of defense to the northwest to assess the situation of war and genocide in that region and later went to add his voice to demands by the prime minister and president for greater action against enemies in Kibuye.

...

Ngirumpatse traveled to Nairobi to try to excuse the genocide before the international press and later went to meeting of the Organization of African Unity at Tunis to ensure a favorable presentation of the situation of the interim government. He also went to persuade the head of an important parastatal corporation to undertake travel abroad in the interests of the government. Ngirumpatse dealt with President Mobutu of Zaire too on behalf of the interim government.

...

Nzirorera went to the Seychelles to negotiate arms purchases, securing weapons to kill Tutsi civilians as well as to fight RPF soldiers.⁶⁰

At the end of May, Karemera was installed as minister of the interior. In that capacity, he issued orders for organizing “civilian self-defense” and for assuring the funds needed to pay for “refreshments” for the militia. He helped arrange for the distribution of arms through the “civilian self-defense” program and he helped arrange for the needed reinforcements in the effort to eliminate the final Tutsi survivors who had been struggling to stay alive on the peaks of Biseseero. He removed from office those not supporting the government genocidal program and appointed or promoted those expected to assist in the killing, thus demonstrating the kind of “work” truly valued by his party and the government.⁶¹

The MRND had provided for the training and arming of these militia members, sure they would respond to effective direction from senior party leadership.⁶²

The slaughter of senior leaders from rival political parties and the importance of MRND leaders in forming the new government both demonstrated and reinforced its newly dominant position. As the MRND grew in strength, the assassination of

⁵⁸ ADF p.36 [para 14, 18, 20, 23, 28]

⁵⁹ ADF p.36, [para 14, 18, 20, 24, 37]

⁶⁰ ADF p.36, [para 21, 24, 64]

⁶¹ ADF p.36, [para 13, 36, 41, 64]

⁶² ADF p.37, [para 11,14, 24]

Habyarimana removed from the political arena the last eminent MRND figure who could potentially have overshadowed the three—Nzirumpatse, Nzirorera, and Karemera—who had taken control of the national machinery of the party. At the same time his killing provided a highly emotional and powerful symbol to drive Rwandans to rally around his old party, thus increasing the power of its current leaders. With this enormous political power delivered into their hands and with the Interahamwe militia at their command to enforce their dictates, the leadership trio of Nzirumpatse, Nzirorera, and Karemera turned these resources to the purpose of eliminating Tutsi from Rwanda.⁶³

⁶³ ADF p.37, [para 14, 18, 23, 28, 29, 35, 41, 65, 79]

ANNEX “B”

Mr. Nzirorera submits that the following sections of Dr. Guichaoua's report should be redacted. The relevant paragraphs of the indictment are listed, with the page number in Dr. Guichaoua's written report, in footnotes.

...the restricted group of principal decision makers (to which the three accused undoubtedly belonged) had programmed and ordered the annihilation of any individual or group identified as an impediment to their political designs, in the name of rational cost-benefit calculations, or to keep them aloof.⁶⁴

...That war had been termed by all and sundry as the ultimate war. The only limitation to the choice of means and the scope of action was the availability of resources and the motives imputed to the enemy they had sought to annihilate and neutralize.⁶⁵

...the criminal acts committed by the planners under trial, in the present case, belong exclusively to the camp of the vanquished.⁶⁶

...very concrete genocide policies. The studies proved the diversity of forms for mobilizing the actors and the strategies or stratagems that the authorities were forced to implement in order to achieve their ends...⁶⁷

(The transfer of Joseph Nzirorera to the Minister of Industry and Handicrafts under the two last Governments preceding the advent of multiparty politics marks a change of direction in his public career). This was due to diverse reasons, the first being the openly expressed exasperation by international donors over the brazen manner in which N took a cut from both projects implemented by the MINITRAPE and those executed in the Northern prefectures...⁶⁸

...discontent was echoed by the President who had been alarmed by the megalomania which had gripped his creature.⁶⁹

...That is how Joseph Nzirorera turned his talents to reorganising the system for financing the president's political base in anticipation of the inevitable separation of the hitherto amalgamated party and State resources...⁷⁰

...unofficial heir apparent to Juvenal Habyarimana...⁷¹

⁶⁴ p.8; para 10, 12, 13, 14, 18, 23, 28, 35, 41, 46, 65, 80]

⁶⁵ p. 8 [para 10, 11, 13, 14, 18, 23, 24, 28, 35, 65, 80]

⁶⁶ p.8

⁶⁷ p. 9 [para 10, 11, 13, 14, 23, 24, 25, 28, 29, 35, 65, 80]

⁶⁸ p.15

⁶⁹ p.18

⁷⁰ p. 18

That position made him the man who probably had the broadest and most precise vision of the ramifications of presidential power.⁷²

Some stealthy manoeuvres enabled him to win the election and take effective control over the party machinery.⁷³

After the death of President Habyarimana he had kept out of the transitional Government and prepared for the true succession...⁷⁴

As a realistic man who upheld the reputation he had acquired from the time he entered the Public Service, he is among those personalities who went on (sic) exile in particularly comfortable conditions as they had misappropriated state funds. ...he kept for himself part of the disbursed funds. Thus, part of the *Thomas Cook* Travellers Cheques issued to him in July 1994 for his mission to South Africa had financed his exile until the bank cancelled them in early 1998. Hounded by the justice department in Benin (where he resided at the time) for issuing dud cheques...⁷⁵

Just like the other MRND aspirants to a national destiny, he preferred to hold back and see how the political and military situation evolved.⁷⁶

In late May, when the probability of defeat could not be ruled out, he took over the Ministry of the Interior and Communal Development that had no substantive head since Faustin Munyazesa (...) refused to return to the country after the 6 April events. So he officially became Minister in charge of the genocide.⁷⁷

The main concern of the Akazu was then to secure a “new balance” of power in order to keep his ascendancy over the party and impose his candidate, Joseph Nzirorera, as national secretary.⁷⁸

Nzirorera thus became Habyarimana’s de facto heir.⁷⁹

Joseph Nzirorera was the instrument of the MRND and it was no longer a question of convening another Congress that would have enabled the liberals to recover their

⁷¹ p. 19 [para 10, 11, 13, 18, 28]

⁷² p. 19 [para 19, 20, 24, 28]

⁷³ p. 19 [para 10, 11, 13]

⁷⁴ p. 19 [para 24, 28]

⁷⁵ p. 20

⁷⁶ p. 32 [para 10, 23, 28, 65, 79]

⁷⁷ p. 32 [para 10, 11, 12, 13, 14, 19, 20, 21, 23, 28, 33, 34, 35, 37, 41, 57, 65, 76, 79, 80]

⁷⁸ p. 58 [para 10, 11, 13, 18]

⁷⁹ p. 59 [para 10, 11, 13, 18, 28]

voice. Likewise, no official organ could any longer meet. With Joseph Nzirorera at the helm, Juvenal Habyirama became a real party chief.⁸⁰

On 7 April 1994, in the morning, [Mathieu Ndirumpatse] refused to deputize for President Habyarimana and played a determinant role in setting up the interim government. He then carried out diverse diplomatic missions to explain the policy of that government.⁸¹

‘The reconciliation of Hutu youths of rival parties was also effected in order to coordinate the fight against the RPF and its allies.’⁸²

‘Although the violent reaction of the Presidential Guard was expected, RPA headquarters was surprised by the rapidity with which the political and military machinery recovered, and especially the powerful capacity the MRND party had for mobilising militants and militia.’⁸³

‘In fact, whereas the trump card held by the external rebellion was its military superiority, homogeneity and its strategic vision, the advantage to the President’s camp and domestic forces lay in the overwhelming numbers of the Rwandan Hutus who, in the eyes of their leaders, made it impossible for an expatriate Tutsi minority to assure sustainable administration of the country, especially if by eliminating the Tutsi population we deprived them of the presumed political clout to take over the administration. Those were the basic political calculations made by the persons called upon to re-configure the decapitated state.’⁸⁴

‘That the choice they made soon became incoherent and disastrous, illustrating once more the lack of ability by the extremists in the core of Akazu as strategists, in retrospect seems secondary’⁸⁵

‘that essentially involved putting the dignitaries of the regime under the protection of the Presidential Guards, meaning a few important personalities, to start with, such as Joseph Nzirorera as well as the MRND Ministers and their families.’⁸⁶

‘Installing Theoneste Bagosora at the head of the Military Committee initially appeared to the henceforth restricted nucleus of the Akazu (Protais Zigiranyirazo, Seraphin Rwamukumba and Joseph Nzirorera) as the most effective and sure solution, but Bagosora failed right away to fulfil the second condition.’⁸⁷

⁸⁰ p. 60 [Para 9, 10, 11, 13, 24]

⁸¹ p. 61 [para 5, 14, 21, 23, 28, 35, 65]

⁸² p. 69 [para 23, 24, 25, 41, 65, 76, 79, 80]

⁸³ p. 87 [para 11, 13, 14, 18, 23, 24, 37, 41, 79, 80]

⁸⁴ p. 88 [para 5, 14, 24.3, 27, 28, 29, 30, 31, 32, 35, 41, 65, 79, 80]

⁸⁵ p. 88

⁸⁶ p. 90

⁸⁷ p. 91 [para 28, 29]

For the presidential clan, the failure of Theoneste Bagosora to get his way was foreseeable from the middle of the night, and opened the door for an alternative, namely, a political solution: which presented the dual advantage of not shoving aside ‘Theoneste Bagosora and presenting its own candidate, JOSEPH NZIRORERA. But for that to happen, he had to abandon the argument about the Arusha Accords...⁸⁸

‘...to get the Chairman of the MRND to renounce his office and implement a constitutional scenario at odds with the Arusha Accords required his understanding and the consent of the MRND leaders under a solidarity scenario taking account of the momentary spirit of sacrifice displayed by Mathieu Ngirumpatse and forego their personal ambitions.⁸⁹

‘The two last potential candidates, the only ones of any consequence that night, Mathieu Ngirumpatse and Joseph Nzirorera...

‘The consultations that night between the Habyatrimana family and his close associates leave no doubt that the primary objective of the presidential clan was to make sure the interim arrangements did not fall in the hands of the MRND Chairman...

But it could not be ruled out that they might have thrown him as fodder into the vengeful arms of the Presidential Guard as a scapegoat for the people’s wrath, for the same reason as all the traitors in the opposition parties...⁹⁰

‘Therefore, on the whole, only one out of those five MRND candidates, Joseph Nzirorera, fulfilled the three aforementioned conditions. And in addition, he had the inevitable support of Theoneste Bagosora, the failed candidate.⁹¹

‘When solicited at dawn on 7 April, MRND leaders, who had conversed at length that night with their respective allies, showed they were up to that challenge and the two vying candidates spontaneously refused to come to terms about who would assume leadership. The party chairmen, manifestly inspired by fear, went ahead to allay the apprehensions that the new institutional set-up had conjured; then with the obstacle removed, they unanimously agreed to give Theoneste Bagosora a free hand to organise the interim; meaning they had validated the first step in the scenario formulated that night by the presidential clan and his close associates, in concordance with Theoneste Bagosora. This meant the resumption of the suspended murder programme....⁹²

⁸⁸ p. 95 [para 28]

⁸⁹ p. 95 [para 28]

⁹⁰ p. 96 [para 28]

⁹¹ p. 97 [para 28]

⁹² p. 97 [para 14, 28, 29, 35, 41, 65, 76, 79]

‘...the ensuing arrangements were outright, constitutional, military and political intrigue.’⁹³

The National Secretary did adopt a belligerent tone in his analysis: he envisaged a state of emergency, advocated ways to neutralise all the forces of evil and appease the nation and population prior to resuming any political process...⁹⁴

But, according to the Arusha accords, there is had been no ambiguity about it. The Presidency of the Republic had to go to the MRND and Mathieu Ngirumpatse who was elected Chairman by a Congress 9 months previously could assume his responsibilities without any major problem... The reservations therefore make no sense, except if it were a refusal to assume responsibility and confront JH’s *de facto* heir apparent, Joseph Nzirorera, who had become the natural candidate of the Akazu.⁹⁵

Bagosora could then get down to business – i.e. apply the priority list of personalities it was necessary to murder in order to promote the legal framework proposed by Edouard Karemera (promotion of the President of the CND as per the 1991 Constitution) and clear the political landscape for a homogenous government comprising members of the MRND and the power factions, by eliminating the pro-RPF Ministers and leaders of the parties associated with the government.⁹⁶

Joseph Nzirorera had an eye on the Presidency of the CND to supplant TS at the chosen moment...⁹⁷

After that meeting, Theoneste Bagosora’s path had been all charted and the two ways out clearly enunciated: either a state of siege and full powers assumed by Military Committee with the blessing of the MRND, or, still with the blessing of the MRND, with a return to the 1991 Constitution, starting with the dismissal of the current government and refusal to establish the GTBE. In both cases, the elimination of embarrassing political figures could be prosecuted.⁹⁸

The putschist Officers, in agreement with members of the president’s clan and MRND officials, were thus, bringing the fruition of their aborted coup of the night of 6 to 7 April, in another form. A plan once more disavowed by the meeting of the crisis committee together with OPS and Unit Commanders held in the morning of April 7, whereas underhand manoeuvres were afoot as certain Unit or Company commanders secretly organised the murders or pursued the massacres of civilians in order to foster an irreversible process. Among them figured prominently the

⁹³ p. 97 [para 28]

⁹⁴ p. 97-8

⁹⁵ p. 98 [para 28]

⁹⁶ p. 104 [para 23, 28]

⁹⁷ p. 104

⁹⁸ p. 106 [para 23, 28]

Presidential Guard, considered as ‘out of control’, and who made it possible for Theoneste Bagosora and the Hutu extremists to accomplish what they would not assume publicly...⁹⁹

Besides the almost insurmountable divisions between the soldiers, choosing a civilian Government offered numerous advantages for the hard core Akazu soldiers who maintained de facto law and order since the evening of 6 April. Not only did it suffice to choose civilians liable to implement their policy, but besides, such a Government protected the soldiers by assuming responsibility for the massacres and exactions. Lastly, better than a military regime, inevitably suspected of having fomented a coup d’etat, that government enabled them to immediately recover the prerogatives inherent in a legal regime; an absolute necessity before the foreign powers guaranteeing the application of the application of the Arusha Accords.¹⁰⁰

Colonel Bagosora realised the extent to which he was isolated and in the eyes of opponents his strategy had become a fuse that must be detonated, and accelerate his parallel overtures to form his own Government. The procedure was actively pursued from the morning of 8 April when, after an initial consultation with MRND leaders to establish the list of negotiators invited from the other parties, the new leaders belonging to the power factions of former decapitated opposition parties, were picked up by Theoneste Bagosora in person or by soldiers under the orders of Renzaho...¹⁰¹

For those pro-MRND leaders, the ground was clear even beyond their expectations. Politically, they became the exclusive masters of the game, with an MRND Chairman, a PM from Power and with all the MRND Ministers reappointed. They alone furnished half of the members of government. As RAF persons went, the situation was ideal: recourse to people from Butare, Kibuye and in a broader sense, from the southern prefectures made it possible to impute the responsibility for excesses to them, while the triumvirate withdrew temporarily to observe political developments and adjust their personal strategies accordingly.¹⁰²

...that Government reflected faithfully the preoccupations of those who designed it and it should mend the rifts within the “Hutu” camp for them to stand up to the “Tutsi” enemy and its “accomplices” who they must confront militarily and especially politically.¹⁰³

By doing so, that preoccupation played an invaluable role in the strategy adopted to keep some of the soldiers and the three MRND leaders in the background, for it was

⁹⁹ p. 107-8 [para 23, 28, 35, 41, 80]

¹⁰⁰ p. 109 [para 23]

¹⁰¹ p. 109 [para 14, 23, 28]

¹⁰² p. 114 [para 10, 11, 13, 18, 23, 28, 29, 35]

¹⁰³ p. 116 [para 23, 28, 29, 35, 46, 65]

important – in future – to get the Southern politicians to share responsibility for the massacres of political figures in Kigali.¹⁰⁴

But there is no doubt about the dominant line. That Government was the one advocated by the civilian and military components of the Akazu.¹⁰⁵

...the IG was well guided and counselled. Judging from the facts, one could say that it had sat non-stop in plenary session, depending on the urgency or through micro-groups brought in if the order of business so required should so require; also, experts could be invited to such sessions to give technical opinions or other persons or groups may attend such sessions by virtue of their observer status. Thus, the IG was constantly surrounded...Although all decisions did not emanate from the venue where the Government was installed...it had a sizeable cluster of individuals and formal as well as informal structures liable to make or endorse such decisions.¹⁰⁶

Access to information is one of the most crucial elements for exercising “power”. Between 9 and 11 April, the last day the government was present in Kigali, no structure or collegial procedure was put in place to provide a minimum of information to the Ministers, about events going on in the city and in the country...In that context, the members of the IG were forced to deploy their own resources and contacts to glean scanty information stingily confirmed by their military and political mentors...so it was that they believed, without a shadow of a doubt, any information provided by Bagosora, Ngirumpatse, Nzirorera and Karemera quartet pertaining to the plan conceived by the military high command to sabotage any contemplated political overtures....¹⁰⁷

Joseph Nzirorera got busy as the most combative stimulus in all domains pertaining to the political, military and militia domains.¹⁰⁸

At that date, considering the front surrounding Kigali and Mutara, the enemy targets were undeniably the Tutsi population.¹⁰⁹

[Edouard Karemera] was considered as the best placed and most determined to assure control over territorial administration through the civilian self-defence mechanism and resume the massacres.¹¹⁰

¹⁰⁴ p. 116 [para 23, 28]

¹⁰⁵ p. 119 [para 23, 28]

¹⁰⁶ p. 120 [para 12, 13, 18, 19, 28]

¹⁰⁷ p. 121, [para 11, 13, 14, 19, 28]

¹⁰⁸ p. 122 [para 11, 13, 14, 18]

¹⁰⁹ p. 123 [para 28, 29, 76, 79]

¹¹⁰ p. 124 [12, 13, 23, 28, 29]

The political and military reform that the assassination of Habyarimana presupposed in a climate marked by vengeance and the realism needed to confront the common adversary was therefore, as we have just seen, meticulously implemented, refined as the days went by and skilfully doled out in measured doses. Though urgency and constraints were dominant, one cannot but wonder whether it was chance or improvisation that had prevailed. The new decision-makers took the necessary time to promote solutions they deemed most judicious and created the adequate conditions to serve their ends, notably, by organising the murders of embarrassing personalities and the UNAMIR blue helmets. Likewise, the unleashing of massacres shows straight away that the ‘operatives’ were ready (vengeance and murderous furore of the Presidential Guard were in a way the natural expression of the unity forged after the assassination of their chief), and that the genocide plan was perfectly imbibed by the militia, notably, in Kigali and in the prefectures controlled politically by the MRND extremists (Gisenyi and Ruhengeri). The prompt coordination established shows clearly that at a time when tension was running high, deliberately exacerbated by the two protagonists, roles were distributed and the procedure known. There was no trouble at all for the new hierarchy installed on 7 April, to cling unto the available or solicited ‘resource-persons’ to assure nation-wide collaboration in the pursuit of defined goals.

But it was one thing to restore the institutional framework needed by the MRND to recover its de facto prerogatives as the State-Party and benefit from exceptional conditions for elimination, one and for all, the hated opponents that the Northern extremists had been seeking to rid themselves of for a long time. It was quite another thing to contend concurrently with the new threats posed by the RPA soldiers, by opening a domestic front for exterminating all its presumed accomplices within the country. It was no longer a matter of organising an unprecedented scale of massacres or pogroms against the Tutsi people. The idea is rather to give genocide of the Tutsi people the force of public policy of the Rwandan state.¹¹¹

As a matter of fact, what was later called genocide started on 8 April, with the distribution of arms to civilians by Semanza and Karera at the prefecture, and was the direct result of the failed Bagosora putsch. Two reasons were decisive:

- Domestically, the Bagosora camp risked being marginalised because of the elimination of the leaders of opposition parties. The genocide became imperative as the only means to implicate everybody in the massacres;
- Abroad, he wanted to exchange Tutsi lives against the cessation of RPF hostilities.¹¹²

Hence the urgent need to form a civilian government consisting of extremists who would prosecute his policy and stoke the ardent fire for vengeance in some Northern soldiers. The MRND leaders supported him through all those meanders because he

¹¹¹ p. 124 [para 14, 18, 19, 23, 28, 29, 30, 35]

¹¹² p. 125 [para 14, 18, 19, 23, 28, 29, 30, 35]

offered them power on a platter or else they would have been the big losers in a politically negotiated solution.¹¹³

The pact between the national military command controlled by extremist Officers and the core MRND aspirants¹¹⁴

It was especially necessary to drag the entire country into war, i.e. mobilise the territorial administration and once more take control of the Southern prefectures. After the Government tour to the prefectures of Gitarama, Gikongoro and Butare on 18 and 19 April, one might say that throughout the country, the MRND/CDR officials decided and formulated slogans in all fields of activity, subjugated erstwhile opponents and, if necessary, double-crossed or eliminated recalcitrant or simply irresolute staff. In the prefectures and communes, the main contribution of the administration and the MRND party was the mobilisation of means and civil servants, strict supervision of the people lending support to the Armed Forces and militia in order to win the war. That policy was openly flaunted and rigorously implemented.¹¹⁵

...it was possible to assert that the individual strategies of the war mongers had become a national destiny.¹¹⁶

On 11 and 12 April, the massacres of the Tutsi population turned into a state sponsored genocide strategy: for the RAF command, the pro-RPF Tutsi, the pro-Hutu extremists, soldiers and militiamen, waged a parallel war against the pro-RPF Tutsi and Hutu opposition. They thought, rightly so I believe, and as evidenced by the very appellation 'Abatabazi Government' that those who advocated war were not even convinced that the war against the RPF could be won. The common objective that united and motivated them was to prevent their former domestic adversaries from savouring any RPF victory. Defeat in the hands of the RPF was only tolerable if none of their treacherous Tutsi and Southern enemies derived any benefit whatsoever.¹¹⁷

...Their primary aim was to exterminate the potential political base of the RPF and its allies.¹¹⁸

...death-dealing strategy adopted by the IG...¹¹⁹

¹¹³ p. 125-6 [para 23, 24, 28, 29]

¹¹⁴ p. 126 [para 14, 23, 28]

¹¹⁵ p. 126

¹¹⁶ p. 127

¹¹⁷ p. 128 [para 14, 23, 28, 29, 35, 41]

¹¹⁸ p. 128 [para 14, 23, 28, 29, 35, 41]

¹¹⁹ p. 128 [para 14, 23, 28, 29, 35, 41]

Beyond that date [24 April] each party engaged in activities liable to consolidate its position within and without the country. The diplomatic action related principally to representation and contacts, dominated by matter-of-fact preoccupations pertaining to support and/or financing the war effort.¹²⁰

...despite the appointment of Clement-Jerome Bicamumpaka, a member of the MRD, as Minister of Foreign Affairs, the MRND/CDR had absolute control over foreign policy.¹²¹

...the President's camp was sufficiently entrenched, strong and diversified to survive its leader...¹²²

One can thus say that if recourse to genocide was openly contemplated as a decisive weapon in the hands of the Hutu extremists to deter the RPF from wrenching power by force of arms, the majority of leaders of the Hutu parties did not imagine that the military option could be successfully put into effect with the consent of the international community, more so as it seemed unthinkable that the RPF would manage to impose its hegemony over an overwhelming majority of Hutus. The genocide option was more a deterrent, the weapon being carefully maintained and kept operational by those who believed in the inevitability by those who believed in the inevitability of the resumption of war, rather than strategic planning.¹²³

On the other side, it behoved the Hutu power forces to unleash the genocide in order to promote their opportunistic strategies and then methodically organize the genocide out of cynical self-interests justified by the need for the aspirants to the succession to consolidate their rival ambitions, consequent upon the assassination of President Habyarimana. The achievement of the backers of the genocide was that they had managed, under extraordinary circumstances, to institute genocide as a State policy by creating an ad hoc government with the principal mandate to exterminate the ethnic enemy in the country.¹²⁴

...it behoved the genocide government to mobilise all the State resources for perpetrating the genocide in the name of National Unity....The genocide plan remained that of the faction acceding to power at the price of the blood of the legitimate leaders and who had, throughout the three months they wreaked havoc, subordinated the State apparatus to its designs. The significance and scope of the acts and objectives could therefore in no way be generalised. Each position on the political arena, and depending on the fruits expected from the civil war, elicits specific

¹²⁰ p. 128 [para 28]

¹²¹ p. 129 [para 28]

¹²² p. 129 [para 14, 18, 28]

¹²³ p. 130 [para 8, 14, 23, 28, 29, 35]

¹²⁴ p. 131 [para 14, 23, 28, 29, 35]

individual and collective behaviour. For some, it constituted a form of expression arising from the frenzy of jubilation. The support of the public authority unleashed the bottled up hatred and conferred the right to kill all the enemies without limitation, not necessarily the Tutsis. To others, it sufficed not to intervene or lend support publicly, if necessary, by opportunism, helplessness or cowardice.¹²⁵

Talking of “planned” genocide in that context extends to the fact that the outcome, according to the interlocutors, had been ideologically envisaged, accepted or sought and that the human and other resources for its implementation were available, or rather liable to be mobilized in the shortest time possible.¹²⁶

Although it seems difficult to show, beyond a *posteriori* evidence of its effective implementation, the reality of a genocide “plot” and a precise definition of the exact profiles by the participants in that plot, two reasons can be advanced. The first is that the plot was not hatched by the state or regime: the army was not all in favour of the genocide plan, especially the Staff Officers, political rifts were rife and most of the politicians were incapable of having a medium and long term strategic vision; and, lastly, nowhere had the militia represented a force decisive enough to disrupt law and order and impose their law. The second is at once simple and monstrous: that went without planning and did not required any elaborate planning to implement. What was termed genocide, after quite a number of weeks of killings, was a matter of scale: the massacres and pogroms of Tutsi civilians was part of the usual means of action adopted by certain core members of the President’s camp since the early part of 1991.¹²⁷

That is why the term ‘planned’ genocide seems to me best reserved for the actions promoted and coordinate by the military and political authorities who, in anticipation of the war, formed groups of militiamen and military units to identify and eliminate the enemy within the country, Tutsis as well as their Hutu accomplices, a sweeping connotation that covered almost the entirety of opponents.¹²⁸

It was not until President Habyarimana’s assassination, followed by two days of political manoeuvres that the extremist faction succeeded in imposing its genocide defensive strategy and raising it to an official State policy built around the Transitional Government. Therefore, the massacres and genocide are precisely the work of that pro-MRND politico-military faction made up of northerners who held power on 7 and 8 April, who sought to impose an alliance of all Hutus, from North and South. A faction to which most of the MRND national leaders rallied...
132¹²⁹

¹²⁵ p. 131 [14, 23, 28, 29, 35]

¹²⁶ p. 131 [14, 23, 28, 29, 35]

¹²⁷ p. 132 [para 14, 23, 28, 29, 35]

¹²⁸ p. 132 [Para 11, 13, 14, 23, 28, 36]

¹²⁹ p. 132 [para 14, 23, 28, 35]

Beyond the IG whose principal activity it was and which, by reason of the magnitude of the task, devoted most of its time to mobilising the necessary human, logistic and material resources, the genocide was committed by a host of activists, civilians and military, who must have had to permanently re-construe the relevance of its political dimension for the massacres not to degenerate completely into acts of pure banditry and extortion by local pieceworkers assigned to prosecute the killings. To a large extent, once unleashed, the genocide gathered its own momentum and the massacres needed no planning, as they just had to be organised on a day to day basis.¹³⁰

...the debate on the genocide plot now consists of specifying the extent of their personal involvement in planning the crimes as defined by me earlier....In other words, to analyse how they exploited the civil war and the genocide to further their ambitions and get the backing of the political and military forces liable to rid them of their rivals...¹³¹

...a line must be drawn between the murder and genocide committed between the night of 6 April and 9 April, when the IG effectively assumed office. During those three days, individual or collective crimes committed in Kigali and in numerous prefectures in the country were out of vengeance against scapegoats or were rather the result of strategies adopted by the extremists to re-fashion the political landscape taking advantage of the power vacuum to assert themselves. Beyond that date, whereas a Government had been put in place, the authorities of the country had taken decisions that explicitly covered up or amplified the scale of the massacres to dimensions that later qualified as genocide. Previous appraisals no longer suffice to characterise the crimes: it was no longer acts of factional or organised violence organized by extremist groups or authorities: it was a policy assumed, coordinated and weighed by the State. From 9 April to mid-July, that public policy required the difference actors each day to renew their support, irrespective of the place they were operation from and depending on their functions. And it is those acts that today enable us to appraise their own behaviour during the events.¹³²

As the days and weeks went by, the rationale to of taking the conflict to its logical end could go to extremes not because the protagonists had rejected any other solution, but because the induced cost in human life and material losses appeared to them acceptable in terms of the ultimate objectives sought and errors in assessing the balance of power.¹³³

It is in the light of the crimes committed during those weeks that behavioural antecedents take their significance, and it is within the same perspective that the liability of the individuals involved should be appraised.¹³⁴

¹³⁰ p. 132 [para 10, 11, 14, 18, 23, 28, 35, 41, 65, 79]

¹³¹ p. 133 [14, 23, 28, 29, 35, 41]

¹³² p. 133 [para 14, 18, 23, 28, 29, 35, 41, 65, 79]

¹³³ p. 134 [para 14, 23, 28, 29, 35]

¹³⁴ p. 134

...during the life of the Transitional Government (9 April to mid-July), that is where all the decision-making poles converged. Constituted on bases dictated by emergency, the IG did become a group “per se” in which the weight of some individuals was of course highly heterogeneous, but in which, for diverse reasons, each claimed unambiguous membership. Although it did not control all the seats of power (especially, soldiers and politicians stage-managing events), the IG claimed to incarnate constitutional legitimacy, and never sought to dissociate itself from the multiple “occult powers” (command of the Presidential Guard, Akazu). Quite inversely, it had always anticipated their desiderata or sheltered some officially condemned politicians under its legitimacy. By subjecting a structured, efficient civilian administration to the belligerent objectives of a nucleus of extremist military and paramilitary units, the politicians assumed absolute responsibility, since they were dead set on neutralising all forms of organised resistance to the genocide plan...and demolishing the social links that had transcended origin and sentiment of ethnic belonging.¹³⁵

Although the members of the Abatabazi government hardly had any political weight, multi-party government characteristics enabled it to formulate and implement policies defined outside by an unofficial, power structure associating the Akazu, Theoneste Bagosora and his military supporters, the MRND leadership quartet....¹³⁶

Faced with an efficient MRND war machine, only the MDR leaders had the capacity for political negotiations.¹³⁷

Deprived of the control or instruments for coercive power, the OTP and the conservative wing of the MRND adopted the same methods as the new opposition parties to adapt to the Government and the new political dispensation. They organised violent demonstrations...¹³⁸

Mathieu Ndirumpatse’s sustained investment in the officials of the movement was not without fore-thought; he had perfectly understood that control over the Interahamwe had become a major stake for politicians who were concerned about gaining the support of the militants, in order to control the MRND machinery and future election campaigns.¹³⁹

¹³⁵ p. 134[para 10, 11, 14, 18, 23, 28]

¹³⁶ p. 134 [para 14, 18, 23, 28, 29, 35, 65]

¹³⁷ p. 135 [para 14, 23, 28, 35]

¹³⁸ p. 138 [para 11, 13,14, 18, 24]

¹³⁹ p. 138 [para 11]

Mathieu Ngirumpatse on his part would not sit back and watch himself thrown out of a field, which he was among the first to cultivate.¹⁴⁰

Thus, as the youth of the MRND party, the movement remained under the authority of the President founder who did not want that the Interahamwe should depend on the National Secretary and consolidate his power.¹⁴¹

The names of the following three officials often cropped up: Mathieu Ngirumpatse, who headed the movement ab initio and organized its structuring nationally from 1992, then Joseph Nzirorera, the most influential Minister under Habyarimana's regime, as well as Jean-Pierre Habyarimana, the Head of State's son, who sponsored the Interahamwe youth of Kigali and provided them with transportation.¹⁴²

Thus, in a certain way, but belatedly, MRND honoured the promise made by the President at the end of 1991, to arm the populations at the borders "in order to silence the arrogance of the *Inkotanyi*."¹⁴³

It was therefore noticed that, winning the support of the people of Mukingo installed by the minister, the then National Sec of the MRND (Joseph Nzirorera) financed the militia of the prefecture until the final seizure of the entire Treasury by the militants....¹⁴⁴

The Interahamwe were never formally integrated into the party, and remained at the service of those who maintained them.¹⁴⁵

De facto, the Interahamwe National Committee was the responsibility of the Chairman of the party, just like the decentralised structures of the Interhamwe were under the representatives of the supervisory prefectural committees of the MRND and various other levels of imposition of the party (communes, sectors, cells).¹⁴⁶

In concrete terms, therefore...the prefecture of Ruhengeri [was headed] by Casimir Bizimungu, but animated de facto by their all powerful magnate Joseph Nzirorera.¹⁴⁷

In practice, the effective supervision of Mathieu Ngirumpatse over the Interhamwe militia was similar to that exercised throughout the party...¹⁴⁸

¹⁴⁰ p. 138 [para 11]

¹⁴¹ p. 139 [para 11, 14, 18]

¹⁴² p. 140 [para 11, 14, 18]

¹⁴³ p. 141 [para 11, 14, 18, 23, 98, 29, 35, 41, 65]

¹⁴⁴ p. 142 [para 11, 24]

¹⁴⁵ p. 143 [para 11, 18, 24]

¹⁴⁶ p. 143 [para 11, 14, 18, 24]

¹⁴⁷ p. 144 [para 11, 14, 18]

¹⁴⁸ p. 144 [para 11, 14, 18]

Whoever were the organisers of the rally, the major actors (and especially the official in charge of the financing mechanism, Joseph Nzirorera) the procedures were the same, with similar objectives.¹⁴⁹

In conclusion, it should be underscored that the de facto recognition of all the militia finally came on 25 May 1994, when the Minister of the Interior, Edouard Karemera, drew up the directives on the independent organization of the civil defence. The Interahamwe were those who supplied, in the field in all the communes and sectors, the principal resource – persons who were supposed to be core members of the civil defence politically and ideologically because they better fulfilled the criteria for selection of the youths to be trained and already brought together several reserve officers targeted by a ministerial note.¹⁵⁰

That practice was generalised during the second semester of 1993, and quickly became common knowledge, in spite of usual denials of the military authorities and the MRND party; such training took place in the Bugesera and Mutara military camps.¹⁵¹

Mathieu Ndirumpatse's statements fully acknowledging the existence of the said programme for military training, makes it possible to impute responsibility to hand.¹⁵²

Without going into detailed arguments, I shall again mention that numerous works and witnesses recount with precision a major event suitable for our analysis and which formally demolishes the claim that the party and the national youth committee being were not involved in the weapons distribution exercise. In fact, it was by the end of 1993, when Mathieu Ndirumpatse together with National Committee leaders organized a hide and seek game with UNAMIR in order to conceal weapons carried by their militants and counter the programme to confiscate illegal weapons, an operation during which UNAMIR was supposed to search the homes of those suspected of keeping weapons, meaning particularly the youth militia.¹⁵³

From the resumption of war on 6 April, the role of the Interahamwe militia was defined without any ambiguity whatsoever by MRND leadership organs, the National Committee and all prefectures, communes and secteurs, all over where politicians pledged to finance them, so that they could have some defence and political force. All big companies and para-statal controlled by the presidential camp had organized armed, paid groups...to maintain order, and if necessary, instil terror on behalf of the MRND/CDR....

¹⁴⁹ p. 146 [para 25]

¹⁵⁰ p. 146 [para 12]

¹⁵¹ p. 147 [para 14, 18, 23, 24, 25]

¹⁵² p. 147 [para 14, 18, 23, 24, 25]

¹⁵³ p. 148 [para 14, 24]

Three years later and in full knowledge of the facts with the MRND leaders, who stoke militia competition, that blunder had engendered a monster. The common responsibility of sorcerer's apprentices who had given birth to it, smouldered it and had honed its skills was therefore confirmed. After 6 April, the division of labour in the management of the war and massacres allowed for a re-assessment of responsibilities, if they had at least manifested their objections to the on-going actions, or used their office to counter such actions. That did not happen because everybody expected to earn dividends from the massacres, by openly posing as organizer and activist or by carefully dissembling their implication by self-interest.¹⁵⁴

In clear terms, we must still specify that during the war, the militia effectively entertained close relationships with the Armed Forces (and especially the gendarmerie) as part of the division of labour and logistics, but if the committee had rise amongst to the level of Administrative Staff, and if the militia were determined to the point of forcing more reserved units of the Armed Forces who were against the massacres of Tutsi civilians, they owed that latitude of action to the guarantees and support offered by the Interim Government, meaning, the State-Party reconstituted under the supervision of the most radical members of the parties. The fusion of the militia into the MRND leadership was completed.¹⁵⁵

Therefore, we can neither talk of the collapse of authority nor an inefficient state, as those were certainly deliberate, official decisions that assumed and amplified the fatal role of the youth militia.¹⁵⁶

‘Chapter 7: War, instrument for deciding on a candidate for succession’¹⁵⁷

11 April marked the end of ambiguities and the start of a resolute swing in the opinion of the GI in favour of war, within a context of rising tension and owing to awareness of the gravity of the military situation.¹⁵⁸

Actually, those who sought and conceived that weak Government with second-rate civilian personalities behind the scenes could congratulate themselves; the trap worked out well: the RPF did not want to negotiate; the demonized IG did not implode and approved without reservation the geographical isolation; solidarity among the party leaders stopped them from denouncing the massacres; instead they positioned themselves for future bargaining...¹⁵⁹

¹⁵⁴ p. 152 [para 11, 14, 24, 25, 28, 35, 37, 65]

¹⁵⁵ p. 152 [para 11, 14, 24, 28]

¹⁵⁶ p. 153 [para 11, 14, 18, 23, 28]

¹⁵⁷ p. 154 [para 23, 28]

¹⁵⁸ p. 155 [para 14, 23, 24, 28, 35]

¹⁵⁹ p. 155 [para 23, 28]

...with the support of the main MRND leaders, the militia had controlled entire neighbourhoods and propagated terror with the help of army units. The genocide could therefore gather its own momentum.¹⁶⁰

The term ‘pacification’ henceforth assumed an unequivocal content: to wipe out the enemy and fight him with no holds barred.¹⁶¹

Once more, as was the case with the tracts inciting the population to mobilize, it was the mentors of the MRND authorities and their intermediaries in the Army who unilaterally took the most critical decisions without as much as consulting the MRND party organs or any other institutional structure. The failure of the ‘pacification’ operation ...the demands of the Interahamwe National Committee members had been met: henceforth, they were free to interpret and perform their mandate and guarantee the supply of weapons by the real decision-makers: Bagosora and his consolidated units, the MRND via Joseph Nzirorera and Mathieu Ndirumpatse whose flight with the members of the GI is tantamount to a final discharge.¹⁶²

The genocide option was then validated, without restriction, and was not going to be challenged until after the defeat. The MRND press releases of 23 and 27 April, were in two different styles: to express gratitude to the militia for their action and urge them to be exemplary, but that in no way alter the basic orientation. At no time had the party management and those who had associated with it and openly adopted a hard-line against timorous or listless politicians had they the means of stopping the “atrocities” committed under the MRND banner and uniform.¹⁶³

That first meeting between the GI and Parties was exemplary, for it inaugurated the functioning pattern of the IG during its three months in office. The IG acted in symbiosis with the parties under the supervision of the MRND and its Chairman.¹⁶⁴

If we set aside the very awkward attempts by Jean Kambanda to justify its approach, the excerpt of his statement below seems of capital interest as it clearly confirms that the double assurances given about the massacres on 12 April by the MRND National Secretary through deeds and MRND Chairman by omission is part of a coherent, deliberate policy. To be still more precise, it is a homogenous policy pursued by the party management that transcends individual attitudes. Between Nzirorera and Karemera who performed their part of the work with method and conviction, who to not spend their time thinking about scruples and the Ng’s apparent indecisiveness that can be summed up in the subtle expression: ‘He will reflect there was no difference or

¹⁶⁰ p. 155 [para 14, 23, 24, 35, 41, 65]

¹⁶¹ p. 155 [para 14, 23, 24, 28, 35, 41]

¹⁶² p. 158 [para 11, 14, 18, 23, 24, 28, 35]

¹⁶³ p. 158 [para 14, 23, 28, 29, 35]

¹⁶⁴ p. 159 [para 10, 14, 18, 19, 20]

divergence of views. (They were united over the strategy, only the calculations and personal political ambitions were different'¹⁶⁵

Thus, a few days later, the IG placed itself in the heart of the power machine, receiving into ranks or into ad hoc groups connected to party officials and the officers responsible for conduct of the war.¹⁶⁶

The division of labour recommended by Colonel Leonard Nkundiye at 7am when he supported the idea of leaving civilians at the forefront was not only smoothly and quickly established, but was streamlined. Among the civilians, there was on one side.....the party leaders who, at that stage of the conflict, preferred staying on the fringes of the day-to-day functioning of the State machinery and mainly devoted their energies to preparation for future elections and, on the other hand, those managing the war and pacification.¹⁶⁷

'The Genocide Government'¹⁶⁸

'Even though harsh, this appellation seems appropriate because, after the Council of Ministers of 16 April, the IG dismissed timorous civil servants (military and civilian) and opponents of the genocide prepared to instil an administration that would be submissive administration in the southern prefectures. The entire government made inciting speeches before the Gitarama territorial administration on 18 and then in Gikongoro and Butare on 18 and 19 in order to 'ignite' those prefectures too.¹⁶⁹

The generalised massacres were in keeping with the intensification of the military conflict...¹⁷⁰

By mid-April, the party-based Government reconstituted by the military...represented power internally and externally....major decisions were made in Murambi even if other venues maintained some relative autonomy...¹⁷¹

The parties and their squabbles characterized the everyday life of the Government, but beyond the rivalry for recourse and power sharing, there was unity as to objects and resources. The relationship between them however seemed to be totally asymmetrical owing to the determining weight of the MRND that had exclusive intermediaries in the military...¹⁷²

¹⁶⁵ p. 159 [para 14, 23, 28, 35, 41, 65]

¹⁶⁶ p. 163 [para 13, 14, 18, 23, 24]

¹⁶⁷ p. 163 [para 14, 23, 28]

¹⁶⁸ p. 163 [para 10, 11, 12, 13, 14, 19, 20, 21, 23, 28, 33, 34, 35, 37, 41, 57, 65, 76, 79, 80]

¹⁶⁹ p. 163 [para 23, 24, 28, 30, 35, 41]

¹⁷⁰ p. 163 [para 13, 14, 18, 23, 24, 28]

¹⁷¹ p. 164 [para 23, 24, 28]

¹⁷² p. 164 [para 10, 14, 20, 23, 24, 28]

...creation of the National Defence Fund for lending assistance to the IG (procurement of weapons, vehicles, and uniforms for the Army and Militia). The promoters included.. Mathieu Ngirumpatse, Edouard Karemera...On 20 May Felicien Kabuga formally informed the IG of the creation of that Fund and described how the funds will be used.¹⁷³

The youth militia posed a delicate problem by representing the most devoted and active forces for accomplishing the GI's central mission, which was the massacres of the Tutsi and their accomplices.¹⁷⁴

It behoved the new Minister of the Interior, Edouard Karemera, to channel their murderous energy towards civil defence, under the supervision of the prefets.¹⁷⁵

...the civil defence implemented under the directives of the PM and the Minister of the Interior issued on 25 May 1994 appeared as an attempt to resuscitate dampening zeal for implementing the massacres and committing the final spurt of national effort to the business at hand, before any military defeat occurred. The civil defence sought to incarnate a binding covenant by the people, their self-proclaimed Government, the Armed Forces, parties and militia.¹⁷⁶

The genocide had been well and truly the business of territorial administration, the soldiers cum politicians...and all echelons of the MRND and its Interahamwe youths.¹⁷⁷

It should finally be noted that Kibuye, under the Senior Vice-Chairman of the MRND and/or Minister of the Interior, Edouard Karemera, played a decisive role in murdering the Tutsis.¹⁷⁸

Mathieu Ngirumpatse, Joseph Nzirorera, Edouard Karemera for the MRND, Murego and Karamira for the MDR showed their restored unity by merging the Inkuba youths into the I/H militia, then into the civil defence mechanism.¹⁷⁹

First and foremost, the high-ranking party leaders were bent on satisfying their own needs and filling their party coffers...

¹⁷³ p. 165 [para 13, 23, 24]

¹⁷⁴ p. 165 [para 14, 23, 24, 28, 29, 35, 41, 65, 79]

¹⁷⁵ p. 165 [para 12, 13, 14]

¹⁷⁶ p. 166 [para 12, 13, 14, 18, 23, 24, 28]

¹⁷⁷ p. 166 [para 11, 13, 14, 23, 24, 28, 29, 35, 41, 65, 79]

¹⁷⁸ p. 166 [para 55, 60, 64]

¹⁷⁹ p. 168 [para 13]

Then enter Joseph Nzirorera himself (the IG in exile estimated the outstanding amounts, meaning funds not expended and not returned to the State Treasury after missions abroad....¹⁸⁰

Due to [Sindikubwabo's] age and declining health, popular opinion believed he was not the right man for the situation and were scheming to force him to precipitated resignation in order to make way for the natural candidate. Joseph Nzirorera, who could hardly show his impatience, but such reserve did not impress everybody.¹⁸¹

The speech could not have been clearer: the Government team was generally considered inefficient all echelons of government and the MRND was losing patience with the inability of the IG to take once more take the military and diplomatic initiative against the RPF. A Cabinet reshuffle was imperative...and to speedily mobilise the Civil defence units that had been currently misled into undertaking a pacification mission where vandals and criminal thrived...¹⁸²

Diplomatic manoeuvres ended up in an insurmountable contradiction. In order to stop the genocide and the massacres, it was imperative to continue negotiations with the Interim Government which was hitherto unreachable. Besides the horror of genocide, their scorched earth policy option and the resolve to make the adversary pay dearly for the victory hindered any rescue or political reprieve, even from the most understanding foreign supporters...¹⁸³

The most remarkable decision was that of finally resuming the initiative at the political and military levels, which was more within the reach of the Abatabazi, re-launching the massacres of the Tutsis.¹⁸⁴

Edouard Karemera's activates (sic) [in the interim] corresponded to the title. From the outbreak of the war, he still appointed mass mobilisation, to arouse public awareness and gather information...¹⁸⁵

The terror and distrust instilled by the excesses of the Interahamwe, notably in the Southern prefectures, offended Edouard Karemera and he soon became the defender of integration under the orders of military hierarchy of that structured civilian, armed component. Edouard Karemera was first and foremost a methodical man, concerned with efficiency. But the upsurge of credibility thus concerned by the Senior Vice-Chairman of the MRND to an underrated Government and moribund in the eyes of

¹⁸⁰ p. 169

¹⁸¹ p. 171

¹⁸² p. 173 [para 14, 23, 28, 35]

¹⁸³ p. 173 [para 28, 29, 41, 65]

¹⁸⁴ p. 180 [para 14, 23, 24, 28, 29, 35, 65, 79]

¹⁸⁵ p. 180 [para 12, 14, 23, 24, 28, 57]

some of its members marked the beginning of large-scale ruthless final manoeuvres.¹⁸⁶

A resolute and strong-willed man, Edouard Karemera did not occupy that position by chance after having stayed out of the Government for one and a half months.¹⁸⁷

But Karemera had not come out a loser. In fact, while Mathieu Ngirumpatse was engulfed in his impulsive intellectual calculations and had been able to measure the international discredit of the government of which he was spokesperson, Edouard Karemera was of the opinion that it was necessary to show unfaltering determination and enhance his popularity by spearheading the civil resistance against the emerging RPF domination¹⁸⁸

As soon as he entered the government, Edouard Karemera showed he was as efficient as an experienced minister. He mobilised the executives of MININTER and territorial administration, in the hope of capitalising on that long and incomprehensible interim, during which he had performed the crucial task of managing the civil defence mechanism. He therefore embarked immediately on the succession process in favour of Joseph Nzirorera.¹⁸⁹

But the situation offered him the opportunity to face the realities of his own prefecture in Kibuye as war leader. That prefecture that had already witnessed large-scale massacres because of the large number of Tutsis living there and the aggressive policy pursued by the prefet Clement Kayishema, in late May saw a large concentration of Bisesero Tutsis on the hills, hunted down and with all escape routes blocked in the north towards Gisenyi, in the West by a lake and in the south towards Cyangugu. The extermination of Tutsis in that area where survivors had resolved to defence itself to the last, with the means of defence at their disposal or fabricated in situ(...) became a national mission giving rise to hysterical reactions towards heroic gestures of resistance that the local policy and militia mobilised all over the prefecture, and in the neighbouring prefectures, could not overcome.¹⁹⁰

As all the documents available on scheme to annihilate the civilian population reveal, it was actually the Minister of the Interior who personally directed the mopping up operation, with the support of the prefet and the Commander of the Gendarmerie detachment. On 20 June, following a decision by the Council of Ministers on 17 June, he was still the one who...had ordered on behalf of the government Lieutenant Colonel Anatole...to kindly support the Kibuye gendarmerie detachment that had been incapable of exterminating the survivors and had given three days to complete the mopping up operation...It is obvious here, maintaining law and order in his native

¹⁸⁶ p. 180 [para 12, 14, 23, 24, 28, 57]

¹⁸⁷ p. 180 [para 23, 28]

¹⁸⁸ p. 181 [para 12, 13, 57]

¹⁸⁹ p. 181-2 [para 12, 13, 57]

¹⁹⁰ p. 183 [para 57, 64]

prefecture that however had a team of particularly efficient activists with Elezior Niyitigeka, fell within his jurisdiction...¹⁹¹

...An approach which, though not original, probably appeared to be the only one susceptible to counter for at least some time the military superiority of the RPF and neutralize or terrorise its potential domestic supporters.¹⁹²

...That formula ended the de facto debate on the formal status of the militia: the Karemera model finally unified them by making them into formal back-up troops under the orders of the reconstituted state-party. Besides, the Karemera model finally cleared any misunderstanding arising MRND-held prefectures, by formally adopting the arming of civilians and the militia, a move so far opposed by many personalities.¹⁹³

The offensive to wipe out Bisesero perfectly illustrates the coherence of the mobilization. The Ministers of the Interior and Defence had solicited the intervention of the OPS Commander to put in motion, under his orders, the gendarmerie, the communal policy and the drafted militia.

But Minister Karemera's speech clearly indicated that was just a policy tool in the service of politicians. The two tasks assigned were:

- the "rational" re-launching of the massacres and the war on one side, vital for regaining the latitude for negotiation...
- and
- to play for time to bring constitutional transition prepared by Edouard Nziroera (sic) in the night of 6 to 7 April to a successful conclusion.¹⁹⁴

The most important decision proposed by Edouard Karemera who was in charge of the process that was validated by the parties and adopted by the Government. The suggestion was to organise the election provided for under the Arusha Accords. The jurist thus demonstrates his capacity to choose constitutional texts most propitious for furthering the best interests of the moment. The legal summary he had to come up with to satisfy the international community by referring to the legitimacy of the TNA installed in conformity with the Arusha Accords and to place Nziroera as President of the TNA thereby conferring on him the constitutional prerogatives accruing to him under the TND.¹⁹⁵

...Such was notably his strategy for promoting the party youths, whom he did not hesitate to use to exact ruthless violence in defence of the vested interests of the one-party state; then he required them to turn their energies to the dirty jobs that are usually the corollary of war. That was how he always exploited their offensive

¹⁹¹ p. 184 [para 14, 23, 24, 28, 57, 64]

¹⁹² p. 184 [para 28, 35, 41, 65]

¹⁹³ p. 184 [para 14, 18, 19, 20, 28, 57]

¹⁹⁴ p. 185 [para 64]

¹⁹⁵ p. 187 [para 23, 28]

capacity so as to derive some strategic advantage over his opponents (stewardship for turning militants into armed militiamen and dispensing military training to them; recruitment and securing loyalty; indulging in illegal or mafia-style practices; neutralizing the State repressive and judicial machinery in order to guarantee the impunity enjoyed by his thugs).¹⁹⁶

...henceforth, subjected to face to face competition with Joseph Nzirorera who had the backing of the Akazu and the president's approval, he devoted all his strength to safeguarding his presidential ambitions and, for that matter, gained at least control of the armed youth wing (IH) that he had founded.¹⁹⁷

The acid test imposed on him in the morning of 7 April confirmed all the prejudice about his capacity to make the right choices in times of major crisis. He deserved his reputation of being weak and timorous: he did not dare reveal his claims to succession; cynical and realistic, he approved, just like his stooges, the elimination of the nuisances who were entrusted with the task of perpetuating continuity in power. Like his rival anticipated, the timorous intellectual did not assume his own responsibility; neither did he envisage erecting his personal ambition into a national destiny. Within the exceptional contest of 6 April, he could actually represent a political outlet. Liberal in conformity with what he claimed to represent, he had posed as a bulwark of peace and democracy in defence of the Arusha Accords and had opposed the spiral of war. He did not lack allies, but simply courage, thinking that war and/or foreign powers will finally give him a second chance. In the name of ethnic outbidding, he scrupulously sacrificed the progressive and liberal wings of the MRND.¹⁹⁸

Brazenly protected his respectability under the cover of diplomatic missions abroad, where he always defended the official positions of the IG...¹⁹⁹

Although those missions abroad had given him a convenient alibi during some weeks of absence, he was very present at every decisive stage. At the beginning it had been to spark off the apocalypse in last of May when the massacres had been relaunched. To the best of my knowledge, during the entire genocide period, there had been neither a text nor a declaration in which he disassociated himself from the official policy, or even condemned the activity of the militia he had confirmed at the baptismal fonts and who he had accompanied right to the end of their criminal enterprise, especially as he had finally become their boss. Without any political substance, liberal when circumstances so dictated, extremist to conserve the necessary political base, the awkward dissimulator.²⁰⁰

¹⁹⁶ p. 192-3 [para 11, 14]

¹⁹⁷ p. 194 [para 11, 14, 18]

¹⁹⁸ p. 194 [para 23, 24, 28]

¹⁹⁹ p. 194 [para 21, 28, 65]

²⁰⁰ p. 194 [para 20, 65]

The retirement strategy jointly implemented by the three leaders of the MRND on the night of 6-7 April served [Edouard Karemera] better than it had Mathieu Ndirumpatse. As much by temperament, than by interest, caring less to appear as a tarnished personality, he embraced the cause of the massacres as a justified political expedient, a functional obligation...He thought it was unnecessary to leave the Northern leadership the task of mounting the resistance against he invader from the north.²⁰¹

The operations he completed included: notably, the organization of the institutional transition within 90 days for the benefit of Joseph Nzirorera.²⁰²

Up to the end, just like in exile, he did not doubt the rightness of the cause he defended more than he contested the legitimacy of the expedients...²⁰³

By entrusting the country to a fictitious President surrounded by a team of novices to which the MRND members retained were completely devoted, [Joseph Nzirorera] took no risk and even granted himself two main attributes for the future, imputing responsibility to the Interim Government for the elimination of the legitimate aspirants to power and personally choosing the date of his swearing in ceremony.²⁰⁴

The hope of sharing having been dashed, he resorted to a scorched earth policy.²⁰⁵

The most remarkable thing at the end of that tragic story is the utter indifference of the protagonists whose paths I have retraced during the massacres and the genocide that they had treated as a political expedient, including others at their beck and call, to serve their political designs and personal ambitions...²⁰⁶

²⁰¹ p. 195 [para 14, 23, 24, 28, 29, 35, 41, 65, 79]

²⁰² p. 195 [para 23, 28]

²⁰³ p. 195 [14, 18, 23, 24, 28, 35, 57]

²⁰⁴ p. 196

²⁰⁵ p. 196 [para 14, 23, 24, 28, 29, 35, 41, 65, 79]

²⁰⁶ p. 196 [para 14, 23, 24, 28, 29, 41, 65, 79]