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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

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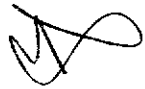
THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S FINAL PRE-DEFENCE BRIEF
VOLUME 1: RUHENGERI EVENTS

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I.

INTRODUCTION

1. Joseph Nzirorera filed his *Pre-Defence Brief* on 8 December 2008 and his *Almost Final Pre-Defence Brief: Volume 1: Ruhengeri Events* on 16 October 2009. Now that the Trial Chamber has adjudicated on all pending motions concerning Ruhengeri witnesses, Mr. Nzirorera is in a position to file his final pre-defence brief on the Ruhengeri events. Mr. Nzirorera will file further volumes to his final pre-defence brief before presenting his defence evidence on the National, Gisenyi, and Kibuye events.

2. The prosecution's case against Mr. Nzirorera for the Ruhengeri events is already in a shambles. Its principal witness—BTH—has recanted his testimony. Its second witness—GBU—has admitted to taking a bribe in exchange for changing his testimony. Its other witnesses offered no direct evidence of Mr. Nzirorera's involvement in killings, but also lied in their evidence: ANU, who has been implicated as a participant in the Ruhengeri prison evidence fabrication cabal; and GAV, who has been shown to harbor a grudge against the former Mukingo bourgmestre, Juvenal Kajelijeli, who had him arrested.

3. The defence case on the Ruhengeri events will demonstrate that the prosecution witnesses have told a pack of lies, and that Mr. Nzirorera is not responsible for the deaths of Tutsis in Ruhengeri.

II.

RUHENGERI EVENTS

A. Post 6 April 1994 Events Charged in the Indictment

1. Meeting of Authorities at Joseph Nzirorera's
Mother's House on the Morning of 7 April

a. Indictment:

62.8 **Joseph NZIRORERA** participated in decisions taken at a meeting at his mother's Busogo *secteur* residence on the evening of 6 April 1994 or the morning of 7 April 1994 or both. Other participants at one or the other of those meetings were Casimir BIZIMUNGU, Augustin BIZIMUNGU, and Juvenal KAJELIJELI. During the meeting that took place on or about the early morning of 7 April 1994 **Joseph NZIRORERA** agreed with the other participants and ordered that *Interahamwe* militias and locally recruited armed civilians should attack and kill the Tutsi population in Mukingo and Nkuli *communes*.

b. Prosecution Evidence:

4. The prosecution offered no evidence of a meeting at the residence of Mr. Nzirorera's mother on the evening of 6 April 1994.

5. The prosecution's evidence of the existence of a meeting at Mr. Nzirorera's mother's residence on the morning of 7 April 1994 in which Casimir Bizimungu, Augustin Bizimungu, and Juvenal Kajelijeli attended is based solely on the testimony of Witness GBU. His testimony concerning the identity of persons meeting at Mr. Nzirorera's mother's house is contradicted by the testimony of two other prosecution witnesses, Witnesses BTH and ANU.

6. The prosecution offered no evidence that Mr. Nzirorera was present for any such meeting.

i. Witness GBU

7. Witness GBU testified that on the morning of 7 April, he left his house and went to the Isimbi house in the Byangabo center.¹ When he arrived at around 6 a.m., he

¹ Transcript of 4 December 2006 @ 22

observed Major Bizabarimana, Colonel Setako, Karorero, Baheza, Bambonye, Bazimenyera, Kajelijeli, and Muhunde heading for Nzirorera's mother's house.²

8. Witness GBU testified that he observed the following:

- (1) Colonel Setako, driving a vehicle with Karorero, Bizabarimana, and Casimir Bizimungu as passengers.³
- (2) Esdras Baheza, driving in his own vehicle with no passengers.⁴
- (3) General Augustin Bizimungu driving his own vehicle.⁵
- (4) Brigadier Bazimenyera, Kajelijeli, and Muhunde together in the same vehicle.⁶

9. Witness GBU did not see Nzirorera on the morning of 7 April.⁷

10. A short time later, Dusabimana came to Isimbi house and told the Interahamwe that it had been decided that they should kill the Tutsis.⁸

11. There were several internal inconsistencies in the testimony of Witness GBU on this event.

12. When interviewed on 22 May 1997, he falsely told the Rwandan authorities that he had stayed indoors for a week after President Habyarimana's death.⁹

13. He testified that in the morning of 7 April, he went to Byangabo center because he expected they would be asked to hunt the Tutsis after the death of President Habyarimana.¹⁰ However, when confronted with a previous statement to OTP, he changed his testimony and said that he went to the market to look for work and was only asked to kill Tutsi after he had arrived at Isimbi house.¹¹

14. In his statement to OTP in November 2002, Witness GBU said that he observed Colonel Setako arrive at Nzirorera's mother's house in a yellow Land Cruiser with Baheza and Karorero as passengers.¹² In General Bizimungu's trial, he testified that Setako had arrived with Major Bizabarimana.¹³ When he was interviewed in April 2003

² Transcript of 4 December 2006 @ 23

³ Transcript of 5 December 2006 @ 14-17

⁴ Transcript of 5 December 2006 @ 14-15

⁵ Transcript of 5 December 2006 @ 16

⁶ Transcript of 5 December 2006 @ 14

⁷ Transcript of 5 December 2006 @ 31

⁸ Transcript of 4 December 2006 @ 23-24

⁹ Transcript of 4 December 2006 @ 41-42; Exhibit DNZ-244

¹⁰ Transcript of 4 December 2006 @ 22

¹¹ Transcript of 4 December 2006 @ 56

¹² Transcript of 5 December 2006 @ 13-14; Exhibit DNZ-260

¹³ Transcript of 5 December 2006 @ 15; Exhibit DNZ-274

by OTP, he claimed that Setako had arrived with General Bizimungu.¹⁴ At General Bizimungu's trial, Witness GBU testified that it was Casimir Bizimungu who had driven Setako.¹⁵

15. At General Bizimungu's trial, Witness GBU testified that General Bizimungu had not come to Nzirorera's mother's house on the morning of 7 April.¹⁶

16. At General Bizimungu's trial, Witness GBU testified that Karorero arrived in a pickup truck with Kajelijeli and Muhunde.¹⁷

17. Witness GBU had testified at the first trial in this case and at General Bizimungu's trial that he had not seen Brigadier Bazimenyera on the morning of the 7th at Nzirorera's mother's house.¹⁸

18. Although Witness GBU testified that he saw them alight their vehicles when arriving at Nzirorera's mother's house, he had testified at the first trial in this case that he had not seen anyone arrive.¹⁹ He then claimed he only saw them leaving Nzirorera's mother's house. However, at General Bizimungu's trial, he testified that he had seen them arrive and had seen them leave.²⁰

19. In addition to the inconsistency with his own prior testimony and statements, and with the testimony of Witness BTH, described below, Witness GBU's testimony on this event was also contradicted by Prosecution Witness ANU, who testified that did not go to Nzirorera's mother's house on the morning of 7 April as Witness GBU has testified.²¹

ii. Witness BTH

20. During his first appearance in this trial, Witness BTH testified that he heard about the death of the President between 1 and 3 a.m. on 7 April. He went to Byangabo market early that morning. While outside the place where he took tea, he saw

¹⁴ Transcript of 5 December 2006 @ 16; Exhibit DNZ-265

¹⁵ Transcript of 5 December 2006 @ 16; Exhibit DNZ-275

¹⁶ Transcript of 5 December 2006 @ 16; Exhibit DNZ-275

¹⁷ Transcript of 5 December 2006 @ 14; Exhibit DNZ-274

¹⁸ Transcript of 5 December 2006 @ 18; Exhibit DNZ-277, 278

¹⁹ Transcript of 5 December 2006 @ 17

²⁰ Transcript of 5 December 2006 @ 17; Exhibit DNZ-276

²¹ Transcript of 14 June 2007 @ 34

Dusabimana and Michel Niyigaba. They were called to Nzirorera's mother's house by a child.²²

21. Witness BTH claimed that he went there and saw Kajelijeli, Baheza and Nyabusore in conversation, but nothing in particular was being said to the Interahamwe. He returned to Byangabo. Dusabimana returned with Niyigaba. Dusabimana said Habyarimana is dead, let's go kill some Tutsi. He ordered Niyigaba to get Rukara and Rukara was killed publicly. That was the signal for the massacres to begin.²³

22. Witness BTH testified that he did not see Nzirorera, General Bizimungu, or Casimir Bizimungu on 7 April 1994.²⁴ He did not see Setako or Brigadier Bazimenyera at Nzirorera's mother's house that morning.²⁵

23. In his first appearance at this trial, there were several internal inconsistencies in the testimony of Witness BTH on this event.

24. Witness BTH initially testified that (1) he arrived at Haguma's for tea; (2) Niyigaba and Dusabimana then arrived; and (3) the three of them went together to Nzirorera's mother's house.²⁶ However, at the trial of General Bizimungu, he had testified that he remained at the tea shop and went to Nzirorera's mother's after Dusabimana and Niyigaba.²⁷ On further cross examination, he claimed that Dusabimana went first from the tea shop to Nzirorera's mother's house, then returned for Niyigaba, then Witness BTH accompanied them.²⁸ Thus he gave three different versions of how he came to be at the house of Mr. Nzirorera's mother on the morning of 7 April.

25. Witness BTH also testified that he saw Nyabusore arrive at Nzirorera's mother's house.²⁹ But he had testified at the first trial in this case that he did not see Nyabusore arrive, that his car was already parked there.³⁰ On further cross examination, he admitted that he did not in fact see Nyabusore arrive.³¹

²² Transcript of 8 June 2006 @ 56

²³ Transcript of 8 June 2006 @ 56-57

²⁴ Transcript of 14 June 2006 @ 62-63

²⁵ Transcript of 14 June 2006 @ 63-64

²⁶ Transcript of 14 June 2006 @ 57

²⁷ Transcript of 14 June 2006 @ 58; Exhibit DNZ-151

²⁸ Transcript of 19 June 2006 @ 55-56

²⁹ Transcript of 14 June 2006 @ 58

³⁰ Transcript of 14 June 2006 @ 60; Exhibit DNZ-152

³¹ Transcript of 19 June 2006 @ 55

26. Witness BTH testified that he did not speak with anyone at Nzirorera's mother's house.³² Yet, in the first trial of Mr. Nzirorera's case before a different Trial Chamber, he claimed that the people at the house told him that Nzirorera had spoken to them on the telephone, and they told him that they needed to avenge the death of Habyarimana, come what may.³³

27. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that his earlier testimony concerning the meeting at Mr. Nzirorera's mother's house on the morning of 7 April³⁴, and the telephone calls from Mr. Nzirorera³⁵ on 7 April was false. Witness BTH further testified that he was not aware of any authorities having ordered the killings in Mukingo commune on 7 April 1994.³⁶

iii. Prosecution Exhibits

28. Exhibits introduced during the prosecution case also contradict the claim in the indictment that Mr. Nzirorera was in Mukingo commune on the morning of 7 April 1994.

29. In his testimony in the *Bagosora* trial, Mathieu Ngirumpatse testified that he received a call from Colonel Bagosora after midnight on 7 April asking to meet with the MRND leadership that morning.³⁷ Ngirumpatse contacted Nzirorera by telephone in the early hours of the morning.³⁸ He then met Nzirorera at the Ministry of Defence at around 7 a.m. on 7 April 1994.³⁹

30. Joseph Nzirorera also testified in the *Bagosora* trial that he met with Ngirumpatse, Karemera, Bagosora, and Ndindiliyimana at 7 a.m. on the morning of 7 April 1994 at the Ministry of Defence.⁴⁰

31. In a handwritten letter dated 8 August 1994, submitted by Luc de Timmerman, Colonel Theoneste Bagosora recounted how on the evening of 6 April 1994,

³² Transcript of 14 June 2006 @ 64

³³ Transcript of 14 June 2006 @ 64; Exhibit DNZ-153

³⁴ Transcript of 10 April 2008 @ 36

³⁵ Transcript of 10 April 2008 @ 40

³⁶ Transcript of 10 April 2008 @ 40

³⁷ Exhibit P61 @ 52

³⁸ Exhibit P61 @ 53

³⁹ Exhibit P61 @ 55

⁴⁰ Exhibit P69 @ 70

SRSB Booh Booh suggested that they ask the MRND to propose a candidate to replace President Habyarimana. After meeting with SRSB Booh Booh, he had called Mathieu Ndirumpatse and asked him to meet at the Ministry of Defence at 7 a.m. on the morning of 7 April 1994.⁴¹ On the morning of 7 April 1994, the MRND executive committee came to the Ministry of Defence.⁴²

c. Defence Evidence

32. **Edouard Karemera** testified that he met with Ndirumpatse, Nzirorera, Bagosora, and General Ndirindiyimana at the Ministry of Defence at around 7 a.m. on the morning of 7 April 1994.⁴³

33. **Witness DB11-2**, whose testimony from the *Ndirindiyimana* trial was admitted into evidence pursuant to Rule 92 bis, was a neighbor of Mr. Nzirorera's mother. He testified that he was at home during the night and morning of 6-7 April 1994 and that no vehicles passed by on the way to Nzirorera's mother's house. Only the people who usually stayed at Mr. Nzirorera's mother's house were present there during 6-7 April 1994.⁴⁴

34. **Joseph Nzirorera** will testify that was not in Mukingo commune during the 6th or 7th of April and did not attend any meeting at his mother's house. He will further testify that he is unaware of any such meeting having taken place.

35. **Casimir Bizimungu, General Augustin Bizimungu, Juvenal Kajelijeli, and Colonel Ephrem Setako** will all testify that they did not attend any meeting at the house of Mr. Nzirorera's mother on 6 or 7 April and are unaware of any such meeting taking place.

36. **Joseph Karorero** also testified that on 7 April 1994, he was never at the house of Joseph Nzirorera's mother in Mukingo. He does not even know that house.⁴⁵

⁴¹ P258 at p. 1

⁴² P258 at p. 2

⁴³ Transcript of 28 May 2009 @ 3

⁴⁴ Exhibit #DNZ-511, *Ndirindiyimana* transcript of 12 June 2007 @ 38

⁴⁵ Transcript of 16 November 2009 @ 34

37. **Witness DE9-7**, whose prior testimony was admitted pursuant to Rule 92 *bis*, testified that he was not at any meeting at the home of Joseph Nzirorera's mother on 6-7 April 1994.⁴⁶ At that time he was in Kigali.⁴⁷

38. **Theogene Bamporeye**, the storekeeper at ISAE, has indicated in a written statement that Nyabusore was not in Mukingo on the morning of 7 April. That statement will be admitted pursuant to Rule 92 *bis* after he is cross-examined.⁴⁸

39. **Witness 6** testified that on the morning of 7 April 1994, he was in Byangabo, some ten meters from Nzirorera's mother's house. There was no meeting of authorities held there.⁴⁹

40. **Assiel Ndisetse** testified that he was present in the Byangabo center in the early morning of 7 April and that no meeting of authorities was held at Nzirorera's mother's house on that morning.⁵⁰

41. **Witness 2** testified that no civilian or military authority came to Nzirorera's mother's home on the morning of 7 April. If they had been present, he would have been aware of it.⁵¹

42. **Epimaque Nshizirungu** testified that he was living at the house of Nzirorera's mother on 6 and 7 April 1994 and that no meetings were held there.⁵²

43. **Witnesses Claire Nyirabutsitsi** will testify that she was living at the house of Mr. Nzirorera's mother on 6 and 7 April 1994 and no meetings were held there.

44. **Juvenal Barayasesa**, a businessmen in Byangabo center, will testify, if allowed, that they arrived in Byangabo early in the morning of 7 April and that there were no authorities meeting at Nzirorera's mother's house.

45. **Witness 19** will testify that he and other inmates at Ruhengeri prison, including Witnesses GBU and BTH fabricated the story of the meeting at Nzirorera's mother's house in order to get released.

⁴⁶ Exhibit DNZ-688; *Ndindiliyimana* transcript of 5 June 2007 @ 74

⁴⁷ Exhibit DNZ-688; *Ndindiliyimana* transcript of 5 June 2007 @ 79

⁴⁸ *Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Witness Testimony* (15 July 2009) at paras. 38-39

⁴⁹ Transcript of 21 October 2009 @ 46; Transcript of 27 October 2009 @ 38

⁵⁰ Transcript of 23 November 2009 @ 23

⁵¹ Transcript of 20 October 2009 @ 3

⁵² Transcript of 3 November 2009 @ 7

46. Investigator **Dick Prudence Munyeshuli** will testify that his investigation has revealed that Major Bizabarimana and Dusabimana cannot be located and it is believed that they are deceased. Mr. Nzirorera will testify that his mother is also deceased.

d. Evidence the Defence Wished to Bring

47. **Jerome Nteziyaremye**, a businessman from Mukingo commune, would have testified that he arrived in Byangabo center on the morning of 7 April 1994 at around 6:30 a.m. He did not see any authorities in the area of Nzirorera's mother's house and knew of no meeting which had taken place there.⁵³

48. However, the Trial Chamber refused to admit the written statement of Mr. Nteziyaremye⁵⁴ and refused to issue a subpoena to compel his live testimony.⁵⁵

2. Nzirorera Communications with Interahamwe
On the Morning of 7 April 1994

a. Indictment

32.1 On or about the evening of 6 April and the morning of 7 April 1994 **Joseph NZIRORERA** engaged in communications with *Interahamwe* militiamen in Mukingo and Nkuli *communes* and exhorted them to start killing the Tutsi population in Ruhengeri. **Joseph NZIRORERA** went so far as to instruct that the killings should begin with one of his own children born of KIBERWA, a Tutsi woman, to instigate militiamen and armed Hutu residents in Mukingo to kill all Tutsi without exception, and instructed that this message be widely circulated.

b. Prosecution Evidence

49. The prosecution evidence that Joseph Nzirorera communicated with Interahamwe on the morning of 7 April 1994 is based solely upon the hearsay testimony of Witness BTH, which he later recanted.

i. Witness BTH

50. Witness BTH initially testified that on the morning of 7 April 1994, after participating in the killing of Tutsis and burning of Tutsi homes in the Rwankeli area, the

⁵³ *Joseph Nzirorera's Omnibus Motion to Admit Written Statements and Testimony* (8 December 2009) at Annex 9

⁵⁴ *Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Witness Testimony* (15 July 2009) at para. 11

⁵⁵ *Decision on Joseph Nzirorera's Motion to Subpoena Jerome Nteziyaremye and...* (5 November 2009) at para. 6

Interahamwe headed up the hill towards Busogo Parish. As they turned toward the house where a boy named Ingabire was staying, Witness BTH claimed that Michel Niyigaba told him that Nzirorera had ordered that Ingabire be killed.⁵⁶

51. There were several internal inconsistencies in the testimony of Witness BTH on this event.

52. Witness BTH testified, "I don't know if they had spoken about it on telephone or some other means." When confronted with his testimony on direct examination that Niyigaba said he had spoken to Nzirorera on the telephone, Witness BTH said: "He told me they had spoken on the phone, only I did not know **where** they had spoken by telephone."⁵⁷

53. Witness BTH was confronted with the fact that in his direct testimony, he had testified that Niyigaba had told him this around 1 p.m.,⁵⁸ but he now said they left Rwankeli to Ingabire's at 11 a.m. at the latest. He said he was just estimating the time and did not have a watch.⁵⁹

54. Witness BTH was confronted with the fact that in his direct examination, he said he received this information when they were on the road going down from Busogo,⁶⁰ and on cross examination he testified that he received the information while going up towards Busogo. He denied saying in direct examination that they were coming from Busogo when he received this information.⁶¹

55. Witness BTH was confronted with the fact that he had been with Niyigaba the entire morning from the time except for the few minutes Witness BTH had gone to get his gun and therefore there was no opportunity for Niyigaba to have a phone call with Nzirorera⁶² Witness BTH then changed his story and claimed that Niyigaba was not with him at all times while they were attacking the Tutsi in the area of Samvura's property, but had gone off to attack Tutsi across the road.⁶³ When asked how Niyigaba would have called Nzirorera, such as calling from a phone at one of the homes of the Tutsis, Witness

⁵⁶ Transcript of 16 June 2006 @ 10

⁵⁷ Transcript of 16 June 2006 @ 10

⁵⁸ Transcript of 8 June 2006 @ 61

⁵⁹ Transcript of 16 June 2006 @ 10

⁶⁰ Transcript of 8 June 2006 @ 61

⁶¹ Transcript of 16 June 2006 @ 10

⁶² Transcript of 16 June 2006 @ 3-7

⁶³ Transcript of 16 June 2006 @ 10-11

BTH said he could not speculate, but that he knew that Niyigaba had told him of the telephone conversation with Nzirorera.⁶⁴

56. Witness BTH believed that Ingabire's father was Nzirorera.⁶⁵ Ingabire, his mother Kiberwa, and his sister, Nyirabidabari, lived in Kigali, but Ingabire happened to be visiting his grandmother in Mukingo that week.⁶⁶

57. Witness BTH testified that he had seen Kiberwa in Mukingo about three times from 1991-94, but at Mr. Nzirorera's first trial, testified that he had not seen her at all in Mukingo during this period.⁶⁷

58. Witness BTH had told an entirely different version of the telephone call from Mr. Nzirorera at Mr. Nzirorera's first trial. At that trial, he testified that he was told at Mr. Nzirorera's mother's house that Nzirorera spoke to them on the telephone, and had told him that they needed to avenge the death of Habyarimana, come what may.⁶⁸ At this trial, he testified that he did not speak with anyone at Nzirorera's mother's house.⁶⁹

59. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that his earlier testimony concerning the telephone calls from Mr. Nzirorera on 7 April was false.⁷⁰ Witness BTH further testified that he was not aware of any authorities having ordered the killings in Mukingo commune on 7 April 1994.⁷¹

c. Defence Evidence

60. **Joseph Nzirorera** will testify that he had no communication whatsoever with anyone in Mukingo on 7 April 1994. He will further testify that Ingabire was not his son, and that he had no knowledge that Ingabire was visiting Mukingo commune on 7 April 1994.

61. **Witness 6** testified that he had no conversation with Nzirorera on the morning of 7 April, directly or indirectly.⁷²

⁶⁴ Transcript of 16 June 2006 @ 11

⁶⁵ Transcript of 16 June 2006 @ 7

⁶⁶ Transcript of 16 June 2006 @ 9

⁶⁷ Transcript of 16 June 2006 @ 9; Exhibit DNZ-156

⁶⁸ Transcript of 14 June 2006 @ 64; Exhibit DNZ-153

⁶⁹ Transcript of 14 June 2006 @ 64

⁷⁰ Transcript of 10 April 2008 @ 40

⁷¹ Transcript of 10 April 2008 @ 40

⁷² Transcript of 21 October 2009 @ 46; Transcript of 27 October 2009 @ 38

62. **Epimaque Nshizirungu aka Muhombo** testified that Nzirorera's mother sent him to Baheza's house to call Nzirorera because the telephone in her house was not working. He was unable to call from Baheza's house or a nearby police station as the telephone services were out of order.⁷³

63. **Witness 17** testified that on the night of 6 April 1994, he was at the house of Nzirorera's mother. They learned of the death of Habyarimana on the radio. The next morning, Muhombo went to try to call Nzirorera's wife in Kigali.⁷⁴

64. **Witness Claire Nyirabutsitsi** will testify that she was living at the house of Mr. Nzirorera's mother on 6 and 7 April 1994 and no one at the house had any contact by telephone with Joseph Nzirorera on 6 or 7 April.

65. **Witness 19** will testify that the story about telephone calls by Nzirorera to Mukingo on the 6-7 April 1994 was fabricated by himself and others in Ruhengeri prison.

3. Orders by Kajelijeli for the Killings
In Mukingo Commune

a. Indictment

62.9 Some time thereafter, Juvenal KAJELIJELI ordered and instigated *Interahamwe* and AMIHINDURE in Mukingo and Nkuli *communes* to attack and kill the Tutsi population. Hundreds of unarmed Tutsi men, women, children and elderly persons were killed and their homesteads burned. Among those killed were RUKARA and his brother Lucien, a woman named Joyce, a man named YAMWERI and six members of his family, SWALISI, KABOYI and ten members of his family, BAKIGA, Philip MUNGARURIRE, Abel MUHINDA, SEBIRAYI, SEBAGENI, and MUDIYAKONI.

62.10 During the course of 7 April 1994 Juvenal KAJELIJELI, among others, executed the decisions taken with **Joseph NZIRORERA**, Casimir BIZIMUNGU and Augustin BIZIMUNGU earlier that morning by ordering and commanding members of the *Interahamwe* and other militiamen and armed civilians to attack and kill persons sheltered in the Busogo parish church.

b. Prosecution Evidence

i. Witness BTH

⁷³ Transcript of 3 November 2009 @ 8-9

⁷⁴ Transcript of 4 November 2009 @ 14

66. Witness BTH initially testified that he heard Kajelijeli say in front of his bar that the father of the nation had been killed, and the Tutsis must be killed as well.⁷⁵

67. Witness BTH also initially testified that after Lucien's death, as they were going towards Samvura's property, Michel Niyigaba told him that he had received orders from Kajelijeli to kill the Tutsis.⁷⁶

68. When recalled at the request of Mr. Nzirorera, Witness BTH testified that he had testified falsely and that he had not spoken with Kajelijeli on 7 April nor had Niyigaba told him that Kajelijeli had ordered the killings of Tutsi.⁷⁷

ii. Witness GBU

69. Witness GBU testified that at Kajelijeli's bar, Kajelijeli asked them to kill the Tutsi and not spare even a fetus in a mother's womb.⁷⁸

70. It should be noted that in his statement to OTP of May, 1999, Witness GBU attributed those words to Bambonye.⁷⁹

iii. Witness GAV

71. Witness GAV testified that although was not present in Mukingo commune on 7 April, but he was told about the killings by a policeman named Boniface Nkuriye. He was told that Bourgmestre Harelimana refused to give Kajelijeli guns on the morning of the 7th, and Kajelijeli had gone to Mukamira camp and obtained guns which he distributed to the Interahamwe.⁸⁰

72. However, no witness testified to having seen Kajelijeli distributing weapons on 7 April 1994.

c. Defence Evidence

73. **Juvenal Kajelijeli** will testify that he never ordered the killings which took place in Mukingo commune on 7 April 1994 and did not distribute weapons used in those killings.

⁷⁵ Transcript of 8 June 2006 @ 59

⁷⁶ Transcript of 8 June 2006 @ 60

⁷⁷ Transcript of 10 April 2008 @ 44-45

⁷⁸ Transcript of 4 December 2006 @ 24

⁷⁹ Transcript of 4 December 2006 @ 57; Exhibit DNZ-252

⁸⁰ Transcript of 4 October 2007 @ 47-48

74. **Witness 6** testified that he did not see Juvenal Kajelijeli in Byangabo on the 7th of April and he had no role in the killings there.⁸¹

75. **Witness 19** will testify that he and other inmates at Ruhengeri prison, including Witnesses GBU and BTH fabricated evidence against Kajelijeli in order to be released from prison.

76. **Witness 17** was present in Byangabo market on the morning of 7 April 1994. He did not see Kajelijeli.⁸²

77. **Witness 16** testified that he was present in Byangabo market on 7 April 1994 and that Kajelijeli was not there.⁸³

78. **Epimaque Nshizirungu** testified that he went to Byangabo where he saw that Rukara had been killed. He did not see Juvenal Kajelijeli on the morning of 7 April.⁸⁴ He saw Conseiller Ndisetse telling Michel Niyigaba and his group that they were going to pay for what they had just done.⁸⁵

79. **Assiel Ndisetse** testified that he was present in Byangabo when the attack began and that Kajelijeli was not there.⁸⁶

80. **Witness 2** testified that he was summoned to Byangabo by the conseiller of his secteur, who requested that he go to the commune office and get assistance from the authorities as people had started killing Tutsis. He saw the corpse of Rukara.⁸⁷ He did not see Kajelijeli in Byangabo on the morning of 7 April.⁸⁸

81. **Witness 20**, a Tutsi, testified that on the morning of 7 April 1994, he went to the home of Juvenal Kajelijeli in Nkuli. It was about 7:15-7:30 am. Kajelijeli was home in his pajamas and had apparently just been wakened with the news. Kajelijeli told him to remain calm and that he would try to get some information from him. He stayed at Kajelijeli's home for about 30 minutes.⁸⁹ Later that afternoon, Kajelijeli sent his son with

⁸¹ Transcript of 21 October 2009 @ 46

⁸² Transcript of 4 November 2009 @ 15-17

⁸³ Transcript of 12 November 2009 @ 4

⁸⁴ Transcript of 3 November 2009 @ 9-10

⁸⁵ Transcript of 3 November 2009 @ 10

⁸⁶ Transcript of 23 November 2009 @ 23

⁸⁷ Transcript of 19 October 2009 @ 36

⁸⁸ Transcript of 20 October 2009 @ 21

⁸⁹ Transcript of 29 October 2009 @ 29-30

a message and he was able to be evacuated.⁹⁰ Therefore, Kajelijeli could not have been at Mukingo commune at that same time.

82. **Witness 20** also testified that one day, before the death of President Habyarimana, when he was on his way to Kigali, he was stopped in the Byangabo area by youths and beaten. Juvenal Kajelijeli was coming by and convinced the youth to stop by giving them some money to buy beer. Kajelijeli saved him.⁹¹

83. **Juvenal Barayasesa**, a businessmen who was present in Byangabo on the morning of 7 April will testify, if allowed, that Kajelijeli was not there.

84. **Haruna Manizabayo** was living in Byangabo and saw the killing of Rukara. He will testify, if allowed, that Kajelijeli was not there.

d. Evidence the Defence Wished to Bring

85. **Jerome Nteziyaremye**, a businessman from Mukingo commune, would have testified that he arrived in Byangabo center on the morning of 7 April 1994 at around 6:30 a.m. He did not see Juvenal Kajelijeli there.⁹²

86. However, the Trial Chamber refused to admit the written statement of Mr. Nteziyaremye⁹³ and refused to issue a subpoena to compel his live testimony.⁹⁴

4. Nzirorera telephone calls to Mukingo Commune Office and Busengo Sous-Prefecture

a. Indictment

62.11 Following those generalized attacks on the Tutsi in Ruhengeri of 7 April 1994 **Joseph NZIRORERA** made regular telephone calls to the Mukingo *bureau communal* for updates on the progress of the killings and to order further attacks against the Tutsi population. On or about 9 April 1994 **Joseph NZIRORERA** telephoned the *sous-préfecture* office in Busengo to find out if any Tutsi were hiding there. A few days later a group of *Interahamwe* armed with firearms attacked the *sous-préfecture* office and killed over 40 persons.

b. Prosecution Evidence

⁹⁰ Transcript of 29 October 2009 @ 33

⁹¹ Transcript of 29 October 2009 @ 32-33

⁹² *Joseph Nzirorera's Omnibus Motion to Admit Written Statements and Testimony* (8 December 2009) at Annex 9

⁹³ *Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Witness Testimony* (15 July 2009) at para. 11

⁹⁴ *Decision on Joseph Nzirorera's Motion to Subpoena Jerome Nteziyaremye and...* (5 November 2009) at para. 6

87. No evidence was introduced by the prosecution in support of this paragraph. In fact, Witness ANU, who worked in the Mukingo commune office, testified that he was not aware of any occasion when Nzirorera called the commune office after 6 April 1994.⁹⁵

c. Defence Evidence

88. **Joseph Nzirorera** will testify that he never called the Mukingo commune office after 6 April 1994, nor did he call the Busengo sous-prefecture.

89. **Witness 19** will testify that he fabricated the story about Nzirorera's telephone calls to the commune office in order to be released from prison.

90. **Marc Ntigura** will testify, if allowed, that he was working as a messenger/custodian at Mukingo commune office during this time and was unaware of any telephone calls from Nzirorera.

91. **Dismas Nzanana**, the sous-prefet working at Busengo, testified that he was never aware of any telephone calls from Nzirorera to the sous-prefecture office there.⁹⁶

5. Nzirorera Role in Attack on Ruhengeri Court of Appeals

a. Indictment

62.12 On or about 14 April 1994 gendarmes and *Interahamwe* attacked displaced Tutsi civilians that were sheltered in the Court of Appeals building in Kigombe *commune*, killing hundreds of Tutsi men, women and children. **Joseph NZIRORERA**, along with *commandant de secteur* Col. Augustin BIZIMUNGU and other regional authorities, were responsible for ordering the attack and knew or had reason to know of the attack and that the perpetrators were persons over whom they exercised effective control. Subsequent to the killings **Joseph NZIRORERA** participated in public gatherings with *Interahamwe* militiamen and local and regional civilian and military authorities in Ruhengeri, many of who were known to have authorized or participated in the attack. On those occasions **Joseph NZIRORERA** praised militiamen for the killings of Tutsi throughout the *préfecture*.

b. Prosecution Evidence

⁹⁵ Transcript of 14 June 2007 @ 36

⁹⁶ Transcript of 18 November 2009 @ 19

92. The prosecution introduced no evidence that Nzirorera ordered the attack on the Ruhengeri Court of Appeal or had effective control over the perpetrators.

i. Witness GBU

93. Witness GBU participated in the attack at the Court of Appeal in Ruhengeri. He told various stories about who ordered the attack.

94. He testified at trial that he was told by the Interahamwe leader from Ruhengeri that the attack was ordered by General Bizimungu.⁹⁷

95. However, in Mr. Nzirorera's first trial, Witness GBU testified that the Interahamwe from Ruhengeri had not named the person who had given the order to attack the Court of Appeals.⁹⁸

96. Witness GBU also testified at the first trial in Mr. Nzirorera's case that the order came from Colonel Bivugabagabo,⁹⁹ which is what he told Rwandan authorities in his interview of 17 May 2001.¹⁰⁰

97. Witness GBU testified that Kajelijeli, Karorero, and Baheza ordered the Interahamwe from Mukingo to participate in that attack.¹⁰¹

98. Witness GBU denied the statements attributed to him in the OTP interview of August 2003 wherein he was reported to have said that the Interahamwe initially refused Kajelijeli's order to go to the Court of Appeals because they had lost confidence in him after some Interahamwe were killed at Ngororero.¹⁰²

99. With respect to the involvement of Nzirorera, Witness GBU testified that after the attack on the Court of Appeal, he went to kill the aunt of Rukara. After that, he and two other Interahamwe—Muhombo and Ndebanyi--were arrested by the gendarmes. They were not given a reason for their arrest.¹⁰³ He doesn't know whether he was arrested for the killing at the Court of Appeal or the killing of Rukara's aunt.¹⁰⁴ After a

⁹⁷ Transcript of 4 December 2006 @ 29

⁹⁸ Transcript of 5 December 2006 @ 8; Exhibit DNZ-280

⁹⁹ Transcript of 5 December 2006 @ 7; Exhibit DNZ-280

¹⁰⁰ Transcript of 5 December 2006 @ 6; Exhibit DNZ-259

¹⁰¹ Transcript of 4 December 2006 @ 29

¹⁰² Transcript of 5 December 2006 @ 26; Exhibit DNZ-266

¹⁰³ Transcript of 4 December 2006 @ 31-32

¹⁰⁴ Transcript of 5 December 2006 @ 47

short while, Dusabimana came and they were released. Dusabimana told them the next day that he had phoned Nzirorera who had ordered their release.¹⁰⁵

100. Witness GBU had also told two different stories of this alleged phone call on prior occasions.

101. In his testimony at the *Kajelijeli* trial, Witness GBU testified that “a man I didn’t know called Mukingo and we were released.”¹⁰⁶

102. In an interview with OTP in August 2003, Witness GBU claimed that he was not one of those arrested, but was present when Dusabimana called Nzirorera from a public phone and that the three Interahamwe who had been arrested, Muhombo, Noheli, and Kinamba were thereafter released.¹⁰⁷

ii. Witness BTH

103. Witness BTH initially testified that on 13 or 14 April 1994, CDR members from Ruhengeri town arrived in Mukingo in two vehicles. When they arrived at Baheza’s petrol station, Kajelijeli ordered Witness BTH to gather some strong Interahamwe to accompany the CDR members to kill the Tutsi at the Court of Appeal. They went and killed the Tutsi and arrived home at about 7 p.m.¹⁰⁸ About 15 Interahamwe from Mukingo went to the Court of Appeals that day. About 300 Tutsi were killed there.¹⁰⁹

104. Witness BTH testified that there was no mention of Nzirorera in connection with this attack.¹¹⁰

105. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that his testimony about Kajelijeli’s involvement in this attack was false. He was not aware of any authorities having ordered the attack on the Court of Appeal. Some of the Interahamwe who went to participate in the attack were arrested. He does not know of the circumstances under which they were released. He had never heard that Nzirorera was called to release the detainees.¹¹¹

¹⁰⁵ Transcript of 4 December 2006 @ 36

¹⁰⁶ Transcript of 5 December 2006 @ 10; Exhibit DNZ-273

¹⁰⁷ Transcript of 5 December 2006 @ 26; Exhibit DNZ-266

¹⁰⁸ Transcript of 12 June 2006 @ 16

¹⁰⁹ Transcript of 12 June 2006 @ 17

¹¹⁰ Transcript of 12 June 2006 @ 17; Transcript of 16 June 2006 @ 16

¹¹¹ Transcript of 10 April 2008 @ 46-47

c. Defence Evidence

106. **Joseph Nziroera** will testify that he had no knowledge of the attack on the Ruhengeri Court of Appeal before it occurred and that he never ordered such an attack. He also never intervened in the arrest of Interahamwe from Mukingo after the attack.

107. **General Augustin Bizimungu** will testify that he did not order the attack on the Court of Appeal.

108. **Dismas Nzanana** was the sous-prefet of Ruhengeri, stationed at Busengo.¹¹² He testified that after the death of President Habyarimana, Tutsis sought refuge in the sous-prefecture office.¹¹³ He assisted the Tutsis in taking refuge there and provided them with food and security.¹¹⁴ He brought in gendarmes, and later soldiers, to protect them from attacks by members of the population. However, several Tutsis were killed and wounded there.¹¹⁵

109. **Nzanana** testified that he reported the matter to the authorities in Ruhengeri and on 13 April 1994, a security meeting was held at Ruhengeri prefecture presided over by sous-prefet Ntarwanda. It was decided to move the Tutsis to the Court of Appeal in Ruhengeri where they could be better protected.¹¹⁶ The Tutsi were transported by busses from Busengo to the Court of Appeal on 13 April 1994. He later learned on the evening of 14 April that the thugs and hoodlums of Ruhengeri had attacked the Tutsi at the Court of Appeal that day.¹¹⁷

110. **Juvenal Kajelijeli** will testify that they did not order the Interahamwe from Mukingo to participate in the attack at the Court of Appeal.

111. **Epimaque Nshizirungu** testified that he was among those from Mukingo who went to Ruhengeri to attack the Tutsi who were at the Court of Appeal. He and the driver Rumacya and Gato were arrested by the gendarmes. They were freed when members of the population arrived in large numbers, started throwing stones, and

¹¹² Transcript of 18 November 2009 @ 6

¹¹³ Transcript of 18 November 2009 @ 10

¹¹⁴ Transcript of 18 November 2009 @ 11

¹¹⁵ Transcript of 18 November 2009 @ 10-14

¹¹⁶ Transcript of 18 November 2009 @ 15

¹¹⁷ Transcript of 18 November 2009 @ 17-18

demanded the gendarmes release them.¹¹⁸ He did not see Kajelijeli in connection with this incident.¹¹⁹

d. Evidence that the Defence Wished to Present

112. **Witness 13** was a Rwandan Army officer stationed in Ruhengeri from 1992-94. He held the rank of Lieutenant Colonel. He would have directly refuted the testimony of Witness GBU that he was involved in the attack on the Ruhengeri Court of Appeal.¹²⁰ The Trial Chamber denied a motion for video link for Witness 13, ruling that his testimony was not sufficiently important to warrant a video link.¹²¹

6. Nzirorera Participation in 6 May 1994
Ruhengeri Pacification Meeting

a. Indictment

32.4 On or about 6 May 1994 **Joseph NZIRORERA** participated in a large pacification meeting in Ruhengeri préfecture with national and regional officials, including Prime Minister Jean KAMBANDA, Donat MUREGO, Stanislas MBONAMPEKA, Francois NDUNGUTSE, and the *préfet* of Ruhengeri. The Prosecutor is unable to specifically identify each and every official in attendance. By that time massive killings of Tutsi civilians in Ruhengeri had already substantially eliminated the Tutsi population in the region. **Joseph NZIRORERA**'s public association and endorsement of Interim Government ministers and policies were intended to, and had the consequence of, inciting further attacks upon the Tutsi.

b. Prosecution Evidence

113. The prosecution presented no testimony about this meeting. However, in exhibit P224, the diary of Pauline Nyiramasuhuko, she also notes a pacification meeting in Ruhengeri with the Prime Minister on 6 May 1994. Under that entry, she notes Nzirorera urged that representation in the Army should be proportional to members of each ethnic group. Among others present she listed Murego, Gahunde (CDR), Mbonampeka, and Ndungutse.¹²²

c. Defence Evidence

¹¹⁸ Transcript of 3 November 2009 @ 12

¹¹⁹ Transcript of 3 November 2009 @ 27

¹²⁰ Transcript of 5 December 2006 @ 5; 6 December 2006 @ 18

¹²¹ *Decision on Joseph Nzirorera's Motions for Testimony by Video-Link: [Witness 13] and Jacques Roger Booh Booh* (17 February 2009)

¹²² P224, p. 51

114. **Joseph Nzirorera** will testify that he never attended the meeting of 6 May 1994 in Ruhengeri.

115. **Pauline Nyiramasuhuko** will testify that Mr. Nzirorera did not attend the meeting of 6 May 1994 in Ruhengeri and will explain the entry in her diary.

7. Swearing-In Ceremony for Kajelijeli
and Passing-Out Ceremony

a. Indictment

32.2 On one particular occasion sometime after 6 April 1994 during a grandiose “passing out” ceremony for newly trained *Interahamwe* militias **Joseph NZIRORERA** publicly thanked military instructors and further praised the *Interahamwe*, urging the militiamen to continue in their mission and acknowledging their accomplishments since no single Tutsi in the *commune* had survived.

32.5 Also sometime in May or June 1994 **Joseph NZIRORERA**, along with Minister of Foreign Affairs Jérôme-Clément BICAMUMPAKA, participated in a ceremony at the Mukingo *bureau communal* for the re-investiture of Juvenal KAJELIJELI as *bourgmestre*. *Interahamwe* militiamen assembled and paraded for the delegation, whereupon **Joseph NZIRORERA** thanked them for the “excellent work” that they had done, referring to the killings of Tutsis. Such remarks incited militiamen and armed civilians to participate in further attacks against the Tutsi population.

53. On a date unknown between 1 May – 30 June 1994 **Joseph NZIRORERA**, along with Interim Minister of Foreign Affairs Jérôme-Clément BICAMUMPAKA, participated in a ceremony at the Mukingo *bureau communal* for the re-investiture of Juvenal KAJELIJELI as *bourgmestre*. *Interahamwe* militiamen assembled and paraded for the delegation, whereupon **Joseph NZIRORERA** thanked them for the “excellent work” that they had done, referring to the killings of Tutsis.

b. Prosecution Evidence

116. The prosecution introduced no evidence of an *Interahamwe* “passing-out” ceremony. It did introduce conflicting evidence concerning the swearing-in ceremony of Juvenal Kajelijeli. Only Witness GBU claimed that Nzirorera had praised the *Interahamwe*. Witnesses ANU and GAV testified that Nzirorera had made no reference

to the Interahamwe or the killing. All prosecution witnesses testified that there were no killings of Tutsi in Mukingo commune after the swearing-in ceremony.

i. Witness GBU

117. Witness GBU attended the swearing-in ceremony for Juvenal Kajelijeli in mid or late May 1994 at Gisesero. Nzirorera placed the scarf on Kajelijeli during the ceremony. The Interahamwe danced and paraded with wooden rifles.¹²³ Nzirorera congratulated the Interahamwe during the ceremony and said they had done a commendable job and deserved a reward. The Interahamwe were given a plot of land belonging to a Tutsi named Rachel at Nzirorera's request.¹²⁴

118. Witness GBU claimed that Michel Bakuzakundi attended Kajelijeli's swearing-in ceremony. However, he testified at the first trial of this case that he was sure he had not seen Bakuzakundi at that ceremony.¹²⁵

119. Witness GBU testified that no Tutsi were killed after Kajelijeli's swearing-in ceremony, as they had already been eliminated.¹²⁶

ii. Witness ANU

120. Witness ANU testified that after the election of Kajelijeli, a ceremony was held at the Gisesero football field. It was followed by a reception at ISAE.¹²⁷ The Prefet, Basile Nsabumugisha, was present. At the meeting, dances were performed by the population, speeches were made by some authorities, and the Interahamwe passed by.¹²⁸ Nzirorera made a speech and said it was necessary to support the new bourgmestre, Kajelijeli.¹²⁹

121. Witness ANU denied telling counsel for Nzirorera on 21 June 2003 that he did not recall Nzirorera making a speech.¹³⁰

122. Witness ANU estimated that Nzirorera must have supported the Interahamwe because he said nothing about the killings at the ceremony. The speakers

¹²³ Transcript of 4 December 2006 @ 37

¹²⁴ Transcript of 4 December 2006 @ 38-39

¹²⁵ Transcript of 5 December 2006 @ 24; Exhibit DNZ-281

¹²⁶ Transcript of 5 December 2006 @ 49

¹²⁷ Transcript of 13 June 2007 @42

¹²⁸ Transcript of 13 June 2007 @43

¹²⁹ Transcript of 13 June 2007 @45

¹³⁰ Transcript of 18 June 2007 @ 12; Exhibit DNZ-300

didn't encourage the killings at the ceremony, but there was nothing mentioned condemning the killings.¹³¹

123. Witness ANU testified that there were no other ceremonies at which the Interahamwe paraded after 6 April 1994.¹³²

iii. Witness GAV

124. Witness GAV testified that he attended the swearing-in ceremony for Kajelijeli. Nzirorera was there with a soldier called Bivugabagabo.¹³³ Nzirorera chaired the ceremony on behalf of the Interim Government.¹³⁴

125. Witness GAV testified that the prefet Basile was not present.¹³⁵ He also did not see sous-prefet Nzanana or Ntarwanda present, nor any heads of service for the prefecture, nor any bourgmestres from other communes. He also did not see Minister Jerome Bicamumpaka there.¹³⁶

126. Witness GAV testified that about 200 Amahindure were present, including women and young girls. Only 20 of the Amahindure had participated in the killings.¹³⁷ There was a procession of the Amahindure in the presence of Nzirorera. Nzirorera did not say anything about the procession of the Amahindure.¹³⁸

127. Witness GAV testified that in his speech, Nzirorera said that authorities had deemed Kajelijeli was the best person to be bourgmestre of the commune and that he had been authorized to preside over the installation ceremony.¹³⁹ At no time did Nzirorera thank the Interahamwe or Amahindure, or encourage anyone to eliminate the Tutsis. All of the Tutsis in Mukingo had been exterminated.¹⁴⁰ Nzirorera never made mention of any reward for the Interahamwe.¹⁴¹

¹³¹ Transcript of 18 June 2007 @ 53

¹³² Transcript of 18 June 2007 @ 14

¹³³ Transcript of 4 October 2007 @ 56

¹³⁴ Transcript of 4 October 2007 @ 59

¹³⁵ Transcript of 8 October 2007 @ 41

¹³⁶ Transcript of 8 October 2007 @ 42-43

¹³⁷ Transcript of 4 October 2007 @ 60-61

¹³⁸ Transcript of 4 October 2007 @ 62

¹³⁹ Transcript of 4 October 2007 @ 62-63

¹⁴⁰ Transcript of 8 October 2007 @ 45

¹⁴¹ Transcript of 8 October 2007 @ 46

128. In his statement to the ICTR, Witness GAV told them that he had left before Nzirorera spoke. He did this because he did not want to be a witness in Arusha.¹⁴²

129. Witness GAV testified that Kajelijeli spoke about the fact that the Amahindure were to fight against the Inkotanyi in Butaro commune at the front line in support of the Army. He said he would work with members of the public in the fight against the Inkotanyi—the soldiers who had attacked Rwanda. Kajelijeli was not talking about Tutsis, because they had all been exterminated.¹⁴³

130. Witness GAV testified that he was not aware of any ceremony taking place prior to Kajelijeli's swearing-in where the Amahindure paraded, after the death of the President.¹⁴⁴

iv. Witness BTH

131. Witness BTH was told by Michel Niyigaba that Nzirorera was present at Kajelijeli's swearing-in ceremony, but did not himself attend. The Amahindure had paraded at that ceremony.¹⁴⁵

c. Defence Evidence

132. **Joseph Nzirorera** will testify that he attended the swearing-in ceremony of Juvenal Kajelijeli around 22 June 1994, but that he did not make a speech.

133. **Juvenal Kajelijeli** will testify that he spoke at the swearing-in ceremony and that Nzirorera did not.

134. **Assiel Ndisetse** testified that he attended the swearing-in ceremony of Juvenal Kajelijeli. Joseph Nzirorera was present but he did not make a speech.¹⁴⁶

135. **Dominic Gatsimbanyi**, bourgmestre of Nkuli commune, and **Laurent Semanza** attended the swearing-in ceremony and will testify that Nzirorera did not give a speech.

136. **Joseph Karorero** testified that he attended the swearing-in ceremony of Juvenal Kajelijeli. The Amahindure conducted a march past during that ceremony. Joseph Nzirorera was present but did not make a speech. No speaker thanked the

¹⁴² Transcript of 4 October 2007 @ 66

¹⁴³ Transcript of 4 October 2007 @ 62-63

¹⁴⁴ Transcript of 8 October 2007 @ 32-33

¹⁴⁵ Transcript of 12 June 2006 @ 32

¹⁴⁶ Transcript of 23 November 2009 @ 25

Amahindure for killing Tutsis. The Amahindure had not killed any Tutsis.¹⁴⁷ The Amahindure had not conducted any operations as of the time that they all fled Rwanda in mid-July 1994.¹⁴⁸

137. **Epimaque Nshizirungu** testified that he attended the swearing-in ceremony of Kajelijeli in June 1994. Nzirorera was present but did not take the floor.¹⁴⁹

138. **Julius Simpakanye** testified that the Amahindure paraded at the swearing-in ceremony of Juvenal Kajelijeli. He was present. Nzirorera was there, but he doesn't remember if Nzirorera made a speech. No one thanked the Amahindure for killing Tutsis.¹⁵⁰

139. **Michel Bakuzakundi**, whose written statement was admitted pursuant to Rule 92 *bis* refuted the testimony of Witness GBU that that he attended the swearing-in ceremony of Juvenal Kajelijeli.¹⁵¹

d. Evidence which the Defence Wished to Present

140. The defence wished to call **Witness 13**, who would have also contradicted the testimony of Witness GBU that Joseph Nzirorera made a speech at the swearing in ceremony of Juvenal Kajelijeli congratulating the Interahamwe for killing the Tutsi in Mukingo commune.¹⁵² Witness 13 would have testified that he attended the swearing-in ceremony, but that Nzirorera did not say such things.

141. However, the Trial Chamber denied a motion for video link for Witness 13.¹⁵³

142. The defence wished to call **Amosse Murara**, who would have directly refuted the testimony of Witness ANU and GAV, who claimed that Joseph Nzirorera made a speech at the installation of Juvenal Kajelijeli as bourgmestre in June 1994. Mr. Murara attended that event and would have testified that Nzirorera did not make a speech.

143. However, the Trial Chamber refused to subpoena Mr. Murara.¹⁵⁴

¹⁴⁷ Transcript of 17 November 2009 @ 4

¹⁴⁸ Transcript of 17 November 2009 @ 5

¹⁴⁹ Transcript of 3 November 2009 @ 14

¹⁵⁰ Transcript of 5 November 2009 @ 7

¹⁵¹ Exhibit DNZ-674

¹⁵² Transcript of 4 December 2006 @ 38-39

¹⁵³ *Decision on Joseph Nzirorera's Motions for Testimony by Video-Link: [Witness 13] and Jacques Roger Booh Booh* (17 February 2009)

8. Rapes in Mukingo Commune

a. Indictment

66. In Ruhengeri *préfecture* during early-mid April 1994, Kigali-ville *préfecture* during April 1994, Butare *préfecture* during mid-late April 1994, Kibuye *préfecture* during May – June 1994, and Gitarama *préfecture* during April and May 1994, and throughout Rwanda, *Interahamwe* and militiamen raped and sexually assaulted Tutsi women and girls throughout Rwanda, causing them serious bodily or mental harm. Such serious bodily or mental harm inflicted upon Tutsi women and girls was intended to destroy the capacity of persons of Tutsi ethnic or racial identity to sustain themselves physically or psychologically as a group, or to reproduce themselves as a group. **Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA** were aware that rape was the natural and foreseeable consequence of the execution of the joint criminal enterprise and knowingly and willfully participated in that enterprise.
68. As part of these widespread or systematic attacks, *Interahamwe* and other militiamen raped Tutsi women and girls in Ruhengeri *préfecture* during early-mid April 1994, Kigali-ville *préfecture* during April 1994, Butare *préfecture* during mid-late April 1994, Kibuye *préfecture* during May – June 1994, and Gitarama *préfecture* during April and May 1994.
69. These rapes were the natural and foreseeable consequence of the object of the joint criminal enterprise to destroy the Tutsi as a group. **Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA** were aware that rape was the natural and foreseeable consequence of the execution of the joint criminal enterprise and knowingly and willfully participated in that enterprise.
70. Rape against Tutsi women between 6 April 1994 and 17 July 1994 was so widespread and so systematic that **Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA** knew or had reason to know that *Interahamwe* and other militiamen were about to commit these crimes or that they had committed them. The accused had the material capacity to halt or prevent the rapes, or to punish or sanction those that committed these crimes, but failed to take the necessary and reasonable measures to prevent the rapes or to punish the perpetrators.

b. Prosecution Evidence

i. Witness BTH

¹⁵⁴ Decision on Joseph Nzirorera's Motion for Subpoena to [Witness 5] (14 July 2009)

144. Witness BTH initially testified that he witnessed the rape of two women during the attacks of 7 April by Interahamwe.¹⁵⁵ The Interahamwe boasted about these attacks, but never in the presence of Nzirorera.¹⁵⁶

145. When he was recalled at the request of Mr. Nzirorera, Witness BTH testified that he had not in fact witnesses the rapes, but they did occur.¹⁵⁷

146. Witness BTH testified that between the end of May and June, 1994, some women were raped by Interahamwe after their bus stopped at Byangabo en route from Kigali to Gisenyi. This was at a time refugees were fleeing Kigali. He could not say if they were Tutsi or Hutu, but such fate did not often befall Hutu women.¹⁵⁸ The soldiers arrived and intervened and killed Noheli Ndayisaba, the nephew of Nzirorera.¹⁵⁹ Nzirorera never had the officer who killed his nephew punished, nor did he attend the burial of his nephew.¹⁶⁰

147. Witness BTH never heard Nzirorera specify that women should be raped before they were killed.¹⁶¹

ii. Witness GBU

148. Witness GBU testified that during the attack on 7 April, a lady named Joyce was raped by Nteziyaremye and Gapfobo.¹⁶²

iii. Witness ANU

149. Witness ANU testified that on 8 April, he went to Busogo Parish and observed some 300 bodies at that location.¹⁶³ He saw the bodies of two women who appeared to have been raped.¹⁶⁴

150. The Interahamwe had stopped a bus at a roadblock in Byangabo which had been transporting refugees from Kigali, and which had passed by Mukamira. They boarded the bus and took off young girls and women who they raped. *Witness ANU*

¹⁵⁵ Transcript of 8 June 2006 @ 64-65; Transcript of 12 June 2006 @ 9-10

¹⁵⁶ Transcript of 8 June 2006 @ 65-66

¹⁵⁷ Transcript of 10 April 2008 @ 43

¹⁵⁸ Transcript of 12 June 2006 @ 11

¹⁵⁹ Transcript of 12 June 2006 @ 12-13

¹⁶⁰ Transcript of 16 June 2006 @ 20

¹⁶¹ Transcript of 16 June 2006 @ 19

¹⁶² Transcript of 4 December 2006 @ 39

¹⁶³ Transcript of 13 June 2007 @ 34

¹⁶⁴ Transcript of 13 June 2007 @ 35

*notified the Prefet.*¹⁶⁵ The Prefet notified the soldiers , who intervened. Fighting ensued and Noel was killed.¹⁶⁶ The roadblock was not a permanent one.¹⁶⁷

151. The bus came to Byangabo because it could not pass the Mukamira roadblock.¹⁶⁸ The women who were in that bus were Tutsi. The event took place while Semahane was bourgmestre.¹⁶⁹ He believes it was in early May.¹⁷⁰ Among the Interahamwe who participated in this event was Abdul Karim Nzabonimpaye aka Gato.¹⁷¹

152. The issue of rapes was not discussed by many people. It was not a widespread practice. Witness ANU did not discuss it with anyone. People talked about the rapes around the death of Noel after it had occurred.¹⁷²

iv. Witness GAV

153. Witness GAV testified that he observed a bus with the wives and children of soldiers arrive in Byangabo center. The persons got off the bus to get something to eat. The Interahamwe separated the Tutsi and Hutu women and aggressed the Tutsi women. He cannot say if any of them were raped. A driver named Muhunde called the alarm. Soldiers arrived and killed Noel, the nephew of Nzirorera. The other Interahamwes ran away. He saw this and was a witness to this incident. Among the Interahamwe were Niyigaba, Gato, and Gakuru.¹⁷³ Rukundo was also there.¹⁷⁴

v. Witnesses GAY and FAL

154. Witness GAY's statement was admitted into evidence. In her statement, she claimed to have been raped by Interahamwe in Mukingo commune in early April 1994.¹⁷⁵ Witness FAL's statement was also admitted into evidence. She claimed to have been raped, that Kajelijeli was responsible for the death of her husband, and that the doctors and nurses at Ruhengeri hospital refused to treat the Tutsi survivors.

¹⁶⁵ Transcript of 13 June 2007 @54

¹⁶⁶ Transcript of 13 June 2007 @27

¹⁶⁷ Transcript of 15 June 2007 @ 14-15

¹⁶⁸ Transcript of 13 June 2007 @28

¹⁶⁹ Transcript of 13 June 2007 @28

¹⁷⁰ Transcript of 14 June 2007 @ 40

¹⁷¹ Transcript of 14 June 2007 @ 52

¹⁷² Transcript of 13 June 2007 @32

¹⁷³ Transcript of 4 October 2007 @ 50-51; Transcript of 8 October 2007 @ 33-35

¹⁷⁴ Transcript of 8 October 2007 @ 35

¹⁷⁵ Exhibit #P111

vi. Adjudicated Facts

155. Nteziyaremye and Iyamuremye, members of the Interahamwe, mutilated a Tutsi girl named Nyiraburanga by cutting off her breast and then licking it, on the morning of 7 April 1994 in Rwankeri cellule.¹⁷⁶

156. Members of the Interahamwe, including Interahamwe from Mukingo commune and neighbouring areas committed rapes and sexual assaults in the Ruhengeri Prefecture between 7 and 10 April 1994.¹⁷⁷

157. The Interahamwe pierced Joyce's side and sexual organs with a spear, and then covered her dead body with her skirt.¹⁷⁸

158. A Tutsi woman was raped by members of the Interahamwe in Busogo Parish and in Kabyaza cellule on 7 April 1994, after having been stopped at a roadblock.¹⁷⁹

b. Defence Evidence

159. **Joseph Nzirorera** will testify that he was out of the country when his nephew was killed. When he returned to Mukingo, he learned of Noel's death. He was never informed of anyone being raped in Mukingo commune.

160. **Juvenal Kajelijeli** will testify that he never discussed the issue of rapes with Joseph Nzirorera.

161. **Edison Munyatarama**, who killed the husband of Witness FAL, will testify, if allowed, that neither Kajelijeli nor any other authorities had anything to do with his death.

162. **Andre Gihanza** will testify, if allowed, that he worked at Ruhengeri hospital and that, contrary to the statement of Witness FAL, the staff did not refuse to treat Tutsi survivors.

163. **Witness 6** testified that with respect to the incident with a busload of people who were stopped in Byangabo in May 1994, those were Hutu women and men who were fleeing Kigali. There were no rapes committed. Noel was shot in the open, not

¹⁷⁶ Adjudicated fact #16

¹⁷⁷ Adjudicated fact #17

¹⁷⁸ Adjudicated fact #20

¹⁷⁹ Adjudicated fact #21

inside a house. Two passengers on the bus, Felicite Nyiruhungu and Delphine Wineza can confirm this.¹⁸⁰

164. **Witness 17** testified that he learned about an incident in May 1994 where Noel was killed by Lt. Mburuburengero in Byangabo. Noel had extorted money from a lady on a bus that had been stopped there. No rape was involved in this incident.¹⁸¹

B. Pre 6 April 1994 Events Charged in the Indictment

1. Formation of the Interahamwe in Mukingo Commune

a. Indictment

14. Édouard KAREMERA, Mathieu NGIRUMPATSE, and Joseph NZIRORERA, acting alone and in concert with other members of the joint criminal enterprise, participated in the joint criminal enterprise in the following ways: they created, founded, and organized the *Interahamwe*...

b. Prosecution evidence

i. Witness BTH

165. Witness BTH initially testified that the youth wing of the MRND was founded in Mukingo commune in late 1991. They became known as the Interahamwe in 1992.¹⁸² Bourgmestre Kajelijeli convened a meeting of youth at the Mukingo commune office and announced that Nzirorera had instructed that a youth wing of the MRND be set up.¹⁸³ About 40-50 youths attended.¹⁸⁴ It was the bourgmestre not the President of the MRND in the commune who convened the meeting to set up the MRND youth wing.¹⁸⁵ Witness BTH does not recall if the MRND President was present at this meeting.¹⁸⁶

166. Witness BTH testified that among the people elected to the Interahamwe committee was one Hakizimana, who lived in the house of Alphonse Ntilivamunda in Kigali. Witness BTH did not know exactly what role he played in the committee.¹⁸⁷

¹⁸⁰ Transcript of 28 October 2009 @ 19

¹⁸¹ Transcript of 9 November 2009 @ 6

¹⁸² Transcript of 8 June 2006 @ 28

¹⁸³ Transcript of 8 June 2006 @ 28

¹⁸⁴ Transcript of 8 June 2006 @ 30

¹⁸⁵ Transcript of 14 June 2006 @ 16

¹⁸⁶ Transcript of 14 June 2006 @ 16

¹⁸⁷ Transcript of 14 June 2006 @ 17

Hakizimana would use the telephone at ISAE to contact Nzirorera and receive instructions.¹⁸⁸ Nzirorera would give him instructions on occasion.¹⁸⁹

167. Witness BTH initially testified that immediately after the youth wing was set up, leaders were introduced to Nzirorera, who said he was ready to work with them and that all communication should go through Kajelijeli.¹⁹⁰ Nzirorera said that he was duty bound to see that the MRND was strong in his native commune.¹⁹¹ The members of the committee who met with Nzirorera were Witness BTH, Niyigaba, Noel Ndayisaba, and Rwihandagaza.¹⁹² Also present were Augustin Bizimungu, Niyoyita, Baheza, and Nyabusore. This took place at the residence of Nzirorera's mother.¹⁹³ Ndisetse was also present.¹⁹⁴ The meeting lasted for about 40 minutes.¹⁹⁵ It took place at the end of 1991.¹⁹⁶

168. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that he and other persons in Ruhengeri had fabricated the accounts the authorities having established the Interahamwe.¹⁹⁷ There was no meeting at the communal office called by Kajelijeli.¹⁹⁸ He also testified that Nzirorera never met with the Interahamwe leaders as he had claimed, and that Nzirorera had nothing to do with the formation of the Interahamwe.¹⁹⁹ The "militia" was formed on the initiative of the youths themselves.²⁰⁰

ii. Witness GBU

169. Witness GBU testified that the Interahamwe was formed by the high committee of the MRND for Ruhengeri which included Nzirorera, Charles

¹⁸⁸ Transcript of 8 June 2006 @ 36

¹⁸⁹ Transcript of 14 June 2006 @ 17

¹⁹⁰ Transcript of 8 June 2006 @ 29

¹⁹¹ Transcript of 8 June 2006 @ 29

¹⁹² Transcript of 8 June 2006 @ 29

¹⁹³ Transcript of 8 June 2006 @ 31

¹⁹⁴ Transcript of 8 June 2006 @ 58

¹⁹⁵ Transcript of 8 June 2006 @ 31

¹⁹⁶ Transcript of 8 June 2006 @ 32

¹⁹⁷ Transcript of 10 April 2008 @ 25-26

¹⁹⁸ Transcript of 10 April 2008 @ 25-26

¹⁹⁹ Transcript of 10 April 2008 @ 26

²⁰⁰ Transcript of 10 April 2008 @ 24-25