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A

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: 8 December 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S PRE-DEFENCE BRIEF

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I.

INTRODUCTION

1. The prosecution's case against Joseph Nzirorera is a pack of lies. If given the opportunity, Mr. Nzirorera will demonstrate during his defence case that the prosecution's witnesses have falsely accused him and his MRND colleagues. Through the testimony and written statements of approximately 200 witnesses, and the introduction of more than 500 exhibits, Mr. Nzirorera will systematically discredit, dismantle, and destroy the prosecution's case against him.

2. This Pre-Defence brief is intended as a guide to the testimony to be presented during the defence case of Joseph Nzirorera. It is divided into four geographical sections corresponding to the order in which Mr. Nzirorera intends to present his defence evidence. Each section establishes the target—the prosecution's evidence—and then sets forth the ammunition to be used to demolish the target—the defence evidence.

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:

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

4. 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.

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

i. Witness GBU

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

7. 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

¹ Transcript of 4 December 2006 @ 22

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

(4) Brigadier Bazimenyera, Kajelijeli, and Muhunde together in the same vehicle.⁶

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

9. 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

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

11. 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

12. 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

13. 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 by OTP, he claimed that Setako had arrived with General Bizimungu.¹⁴ At General

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

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

Bizimungu's trial, Witness GBU testified that it was Casimir Bizimungu who had driven Setako.¹⁵

14. 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

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

16. 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

17. 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

18. 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

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

ii. Witness BTH

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

20. 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

21. 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

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

23. 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

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

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.

24. 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

25. 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

26. 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

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

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

iii. Prosecution Exhibits

27. 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.

28. 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

29. 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

30. 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, 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 Ngirumpatse 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

³⁷ Exhibit P61 @ 52
³⁸ Exhibit P61 @ 53
³⁹ Exhibit P61 @ 55
⁴⁰ Exhibit P69 @ 70
⁴¹ P258 at p. 1
⁴² P258 at p. 2

c. Defence Evidence

i. Karemera case

31. **Edouard Karemera** will testify on this issue.

ii. Nzirorera case

32. **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.

33. **Casimir Bizimungu, General Augustin Bizimungu, Juvenal Kajelijeli, Lt. Colonel Ephrem Setako and Witnesses 4 and 8** 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.

34. **Theogene Bamporeye**, the storekeeper at ISAE, will testify that Nyabusore was not in Mukingo on the morning of 7 April.

35. **Witness 6** will testify that there he was not aware of any meeting at Nzirorera's mother's house on the morning of 7 April.

36. **Witnesses 1 and 2** will testify that they were present in the Byangabo center in the early morning of 7 April and that they were not aware of any authorities having gathered at Mr. Nzirorera's mother's house.

37. **Witness DB11-2**, a close neighbor of Mr. Nzirorera's mother, will testify that he was at home on the evening of 6 April and morning of 7 April and that no meeting of authorities was held at Mr. Nzirorera's mother's house.

38. **Witnesses 11 and 14** will testify that they were living at the house of Mr. Nzirorera's mother on 6 and 7 April 1994 and no meetings were held there.

39. **Jerome Nteziyaremye** and **Juvenal Barayasesa**, businessmen in Byangabo center, will testify 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.

40. **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.

41. 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.

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

43. 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

44. 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

Interahamwe headed up the hill towards Busogo Parish. As they turned toward the house where a boy named Iingabire was staying, Witness BTH claimed that Michel Niyigaba told him that Nzirorera had ordered that Iingabire be killed.⁴³

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

46. 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."⁴⁴

47. 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.,⁴⁵ but he now said they left Rwankeli to Iingabire's at 11 a.m. at the latest. He said he was just estimating the time and did not have a watch.⁴⁶

48. 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,⁴⁷ 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.⁴⁸

⁴³ Transcript of 16 June 2006 @ 10

⁴⁴ Transcript of 16 June 2006 @ 10

⁴⁵ Transcript of 8 June 2006 @ 61

⁴⁶ Transcript of 16 June 2006 @ 10

⁴⁷ Transcript of 8 June 2006 @ 61

⁴⁸ Transcript of 16 June 2006 @ 10

49. 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 Nzirorera⁴⁹ 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.⁵⁰ When asked how Niyigaba would have called Nzirorera, such as calling from a phone at one of the homes of the Tutsis, Witness BTH said he could not speculate, but that he knew that Niyigaba had told him of the telephone conversation with Nzirorera.⁵¹

50. Witness BTH believed that Iingabire's father was Nzirorera.⁵² Iingabire, his mother Kiberwa, and his sister, Nyidibidabari, lived in Kigali, but Iingabire happened to be visiting his grandmother in Mukingo that week.⁵³

51. Witness BTH testified that he had seen Kaberwa 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.⁵⁴

52. 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

⁴⁹ Transcript of 16 June 2006 @ 3-7

⁵⁰ Transcript of 16 June 2006 @ 10-11

⁵¹ Transcript of 16 June 2006 @ 11

⁵² Transcript of 16 June 2006 @ 7

⁵³ Transcript of 16 June 2006 @ 9

⁵⁴ Transcript of 16 June 2006 @ 9; Exhibit DNZ-156

told him that they needed to avenge the death of Habyarimana, come what may.⁵⁵ At this trial, he testified that he did not speak with anyone at Nzirorera's mother's house.⁵⁶

53. 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.⁵⁷ Witness BTH further testified that he was not aware of any authorities having ordered the killings in Mukingo commune on 7 April 1994.⁵⁸

c. Defence Evidence

54. **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.

55. **Witness 6** will testify that he had no conversations, directly or indirectly, with Joseph Nzirorera on 7 April 1994. He will further testify that he never told Witness BTH that he had spoken to Nzirorera.

56. **Witnesses 11 and 14** will testify that they were 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.

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

⁵⁵ Transcript of 14 June 2006 @ 64; Exhibit DNZ-153

⁵⁶ Transcript of 14 June 2006 @ 64

⁵⁷ Transcript of 10 April 2008 @ 40

⁵⁸ Transcript of 10 April 2008 @ 40

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

57. 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.⁵⁹

58. 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.⁶⁰

59. 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.⁶¹

ii. Witness GBU

60. 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.⁶²

⁵⁹ Transcript of 8 June 2006 @ 59

⁶⁰ Transcript of 8 June 2006 @ 60

⁶¹ Transcript of 10 April 2008 @ 44-45

⁶² Transcript of 4 December 2006 @ 24

61. It should be noted that in his statement to OTP of May, 1999, Witness GBU attributed those words to Bambonye.⁶³

iii. Witness GAV

62. 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.⁶⁴

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

c. Defence Evidence

64. **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.

65. **Witness 6** will testify that Kajelijeli was not involved in ordering the killings in Mukingo commune on 7 April and that he never told Witness BTH that Kajelijeli had given orders to kill the Tutsi.

66. **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.

⁶³ Transcript of 4 December 2006 @ 57; Exhibit DNZ-252

⁶⁴ Transcript of 4 October 2007 @ 47-48

67. Persons who were present in Byangabo on the morning of 7 April 1994 and participated in the attacks, such as **Witnesses 14, 16, and 17**, will testify that Kajelijeli was not in Byangabo that morning and did not order the attack or supply weapons.

68. **Witness 1** who was present in Byangabo when the attack began will testify that Kajelijeli was not there.

69. **Witness 2** arrived at Byangabo in the morning and will testify that Kajelijeli was not there.

70. **Witness DB11-2**, who observed the events in Byangabo, will testify that Kajelijeli was not there during the morning of 7 April.

71. **Witness 20**, a Tutsi, will testify that he spent about ½ hour with Kajelijeli in Nkuli commune around 7 a.m. on 7 April 1994 and that therefore Kajelijeli was not in Mukingo commune when the attacks were launched.

72. **Jerome Nteziyaremye** and **Juvenal Barayasesa** are businessmen who were present in Byangabo on the morning of 7 April and know Kajelijeli was not there.

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

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

74. 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 1994.⁶⁵

c. Defence Evidence

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

76. **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.

77. **Marc Ntigura** was working as a messenger/custodian at Mukingo commune office during this time and was unaware of any telephone calls from Nzirorera.

78. **Witness 18**, will testify that he was never aware of any telephone calls from Nzirorera to the sous-prefecture office.

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 NZIROREIRA**, 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 NZIROREIRA** 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 NZIROREIRA** praised militiamen for the killings of Tutsi throughout the *préfecture*.

⁶⁵ Transcript of 14 June 2007 @ 36

b. Prosecution Evidence

79. 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

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

81. He testified at trial that he was told by the Interahamwe leader from Ruhengeri that the attack was ordered by General Bizimungu.⁶⁶

82. 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.⁶⁷

83. Witness GBU also testified at the first trial in Mr. Nzirorera's case that the order came from Colonel Bivugabagabo,⁶⁸ which is what he told Rwandan authorities in his interview of 17 May 2001.⁶⁹

84. Witness GBU testified that Kajelijeli, Karorero, and Baheza ordered the Interahamwe from Mukingo to participate in that attack.⁷⁰

85. 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.⁷¹

⁶⁶ Transcript of 4 December 2006 @ 29
⁶⁷ Transcript of 5 December 2006 @ 8; Exhibit DNZ-280
⁶⁸ Transcript of 5 December 2006 @ 7; Exhibit DNZ-280
⁶⁹ Transcript of 5 December 2006 @ 6; Exhibit DNZ-259
⁷⁰ Transcript of 4 December 2006 @ 29
⁷¹ Transcript of 5 December 2006 @ 26; Exhibit DNZ-266

86. 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.⁷² He doesn't know whether he was arrested for the killing at the Court of Appeal or the killing of Rukara's aunt.⁷³ After a short while, Dusabimana came and they were released. Dusabimana told them the next day that he had phoned Nzirorera who had ordered their release.⁷⁴

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

88. In his testimony at the *Kajelijeli* trial, Witness GBU testified that "a man I didn't know called Mukingo and we were released."⁷⁵

89. 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.⁷⁶

ii. Witness BTH

90. 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.

⁷² Transcript of 4 December 2006 @ 31-32

⁷³ Transcript of 5 December 2006 @ 47

⁷⁴ Transcript of 4 December 2006 @ 36

⁷⁵ Transcript of 5 December 2006 @ 10; Exhibit DNZ-273

⁷⁶ Transcript of 5 December 2006 @ 26; Exhibit DNZ-266

They went and killed the Tutsi and arrived home at about 7 p.m.⁷⁷ About 15 Interahamwe from Mukingo went to the Court of Appeals that day. About 300 Tutsi were killed there.⁷⁸

91. Witness BTH testified that there was no mention of Nzirorera in connection with this attack.⁷⁹

92. 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.⁸⁰

c. Defence Evidence

93. **Joseph Nzirorera** 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.

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

95. **Witness 18** will testify how the Tutsis happened to be at the Ruhengeri Court of Appeals, the efforts of the authorities to protect them, the lack of involvement of authorities in the killings, and how it would not have been possible for Nzirorera to call the gendarmes and get someone released.

⁷⁷ Transcript of 12 June 2006 @ 16

⁷⁸ Transcript of 12 June 2006 @ 17

⁷⁹ Transcript of 12 June 2006 @ 17; Transcript of 16 June 2006 @ 16

⁸⁰ Transcript of 10 April 2008 @ 46-47

96. **Juvenal Kajelijeli and Witness 8** will testify that they did not order the Interahamwe from Mukingo to participate in the attack at the Court of Appeal.

97. **Witness 14** will testify that he was one of those arrested on the day of the attack on the Court of Appeal and that Nzirorera had nothing to do with their release.

98. **Witness 13** will testify that he never ordered the killing at the Court of Appeal and that when the authorities learned about it, they were upset and tried to have the perpetrators arrested.

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

99. 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.⁸¹

c. Defence Evidence

⁸¹ P224, p. 51

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

101. **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.

102. **Jean Kambanda** will testify that Nzirorera did not attend this meeting.

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

103. 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

104. 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.⁸² 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.⁸³

105. 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.⁸⁴

106. Witness GBU testified that no Tutsi were killed after Kajelijeli's swearing-in ceremony, as they had already been eliminated.⁸⁵

ii. Witness ANU

107. 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.⁸⁶ The Prefet, Basile Nsabumugisha, was present. At the meeting, dances were performed by the

⁸² Transcript of 4 December 2006 @ 37

⁸³ Transcript of 4 December 2006 @ 38-39

⁸⁴ Transcript of 5 December 2006 @ 24; Exhibit DNZ-281

⁸⁵ Transcript of 5 December 2006 @ 49

⁸⁶ Transcript of 13 June 2007 @42

population, speeches were made by some authorities, and the Interahamwe passed by.⁸⁷ Nzirorera made a speech and said it was necessary to support the new bourgmestre, Kajelijeli.⁸⁸

108. Witness ANU denied telling counsel for Nzirorera on 21 June 2003 that he did not recall Nzirorera making a speech.⁸⁹

109. Witness ANU estimated that Nzirorera must have supported the Interahamwe because he said nothing about the killings at the ceremony. The speakers didn't encourage the killings at the ceremony, but there was nothing mentioned condemning the killings.⁹⁰

110. Witness ANU testified that there were no other ceremonies at which the Interahamwe paraded after 6 April 1994.⁹¹

iii. Witness GAV

111. Witness GAV testified that he attended the swearing-in ceremony for Kajelijeli. Nzirorera was there with a soldier called Bivugabagabo.⁹² Nzirorera chaired the ceremony on behalf of the Interim Government.⁹³

112. Witness GAV testified that the prefet Basile was not present.⁹⁴ 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.⁹⁵

⁸⁷ Transcript of 13 June 2007 @43

⁸⁸ Transcript of 13 June 2007 @45

⁸⁹ Transcript of 18 June 2007 @ 12; Exhibit DNZ-300

⁹⁰ Transcript of 18 June 2007 @ 53

⁹¹ Transcript of 18 June 2007 @ 14

⁹² Transcript of 4 October 2007 @ 56

⁹³ Transcript of 4 October 2007 @ 59

⁹⁴ Transcript of 8 October 2007 @ 41

⁹⁵ Transcript of 8 October 2007 @ 42-43

113. Witness GAV testified that about 200 Amahindure were present, including women and young girls. Only 20 of the Amahindure had participated in the killings.⁹⁶ There was a procession of the Amahindure in the presence of Nzirorera. Nzirorera did not say anything about the procession of the Amahindure.⁹⁷

114. 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.⁹⁸ 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.⁹⁹ Nzirorera never made mention of any reward for the Interahamwe.¹⁰⁰

115. 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.¹⁰¹

116. 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.¹⁰²

⁹⁶ Transcript of 4 October 2007 @ 60-61
⁹⁷ Transcript of 4 October 2007 @ 62
⁹⁸ Transcript of 4 October 2007 @ 62-63
⁹⁹ Transcript of 8 October 2007 @ 45
¹⁰⁰ Transcript of 8 October 2007 @ 46
¹⁰¹ Transcript of 4 October 2007 @ 66
¹⁰² Transcript of 4 October 2007 @ 62-63

117. 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.¹⁰³

iv. Witness BTH

118. 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.¹⁰⁴

c. Defence Evidence

119. **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.

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

121. **Witnesses 1 and 13, Dominic Gatsimbanyi**, bourgmestre of Nkuli commune, and **Laurent Semanza** attended the swearing-in ceremony and will testify that Nzirorera did not give a speech.

122. **Witness 8** will testify that the Amahindure paraded during the ceremony for the swearing-in of Juvenal Kajelijeli, but that no speaker praised the Interahamwe or Amahindure. He recalls Nzirorera being present, but does not recall whether he made a speech.

123. **Michel Bakuzakundi** will testify that contrary to the testimony of Witness GBU, he did not attend the swearing-in ceremony.

¹⁰³ Transcript of 8 October 2007 @ 32-33

¹⁰⁴ Transcript of 12 June 2006 @ 32

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

124. Witness BTH initially testified that he witnessed the rape of two women during the attacks of 7 April by Interahamwe.¹⁰⁵ The Interahamwe boasted about these attacks, but never in the presence of Nzirorera.¹⁰⁶

125. When he was recalled at the request of Mr. Nzirorera, Witness BTH testified that he had not in fact witnessed the rapes, but they did occur.¹⁰⁷

126. 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.¹⁰⁸ The soldiers arrived and intervened and killed Noheli Ndayisaba, the nephew of Nzirorera.¹⁰⁹ Nzirorera never had the officer who killed his nephew punished, nor did he attend the burial of his nephew.¹¹⁰

127. Witness BTH never heard Nzirorera specify that women should be raped before they were killed.¹¹¹

ii. Witness GBU

128. Witness GBU testified that during the attack on 7 April, a lady named Joyce was raped by Nteziyaremye and Gapfobo.¹¹²

iii. Witness ANU

¹⁰⁵ Transcript of 8 June 2006 @ 64-65; Transcript of 12 June 2006 @ 9-10

¹⁰⁶ Transcript of 8 June 2006 @ 65-66

¹⁰⁷ Transcript of 10 April 2008 @ 43

¹⁰⁸ Transcript of 12 June 2006 @ 11

¹⁰⁹ Transcript of 12 June 2006 @ 12-13

¹¹⁰ Transcript of 16 June 2006 @ 20

¹¹¹ Transcript of 16 June 2006 @ 19

¹¹² Transcript of 4 December 2006 @ 39

129. Witness ANU testified that on 8 April, he went to Busogo Parish and observed some 300 bodies at that location.¹¹³ He saw the bodies of two women who appeared to have been raped.¹¹⁴

130. 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 notified the Prefet.*¹¹⁵ The Prefet notified the soldiers, who intervened. Fighting ensued and Noel was killed.¹¹⁶ The roadblock was not a permanent one.¹¹⁷

131. The bus came to Byangabo because it could not pass the Mukamira roadblock.¹¹⁸ The women who were in that bus were Tutsi. The event took place while Semahane was bourgmestre.¹¹⁹ He believes it was in early May.¹²⁰ Among the Interahamwe who participated in this event was Abdul Karim Nzabonimpaye aka Gato.¹²¹

132. 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.¹²²

iv. Witness GAV

133. 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.

¹¹³ Transcript of 13 June 2007 @34
¹¹⁴ Transcript of 13 June 2007 @35
¹¹⁵ Transcript of 13 June 2007 @54
¹¹⁶ Transcript of 13 June 2007 @27
¹¹⁷ Transcript of 15 June 2007 @ 14-15
¹¹⁸ Transcript of 13 June 2007 @28
¹¹⁹ Transcript of 13 June 2007 @28
¹²⁰ Transcript of 14 June 2007 @ 40
¹²¹ Transcript of 14 June 2007 @ 52
¹²² Transcript of 13 June 2007 @32