

**SUPERIOR COURT**  
CRIMINAL DIVISION

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. 500-73-002500-052

DATE: May 22, 2009

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**PRESENT: THE HONOURABLE ANDRÉ DENIS J.S.C.**

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**HER MAJESTY THE QUEEN,**  
Prosecutor

v.  
**DÉSIRÉ MUNYANEZA,**  
Accused

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**JUDGMENT**

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**I – PREAMBLE**

*"Even I said nothing, the air, the earth*

*And the wind would howl the truth*

*Of what happened in Rwanda*

*Witness C-18*

[1] A muggy night had already fallen on the hills of Kigali when the presidential plane arriving from Dar es Salaam flew over the airport.

[2] A ground-to-air missile hit the plane as it began its descent.

[3] In the early morning, Rwandans learned of the death of their president.

[4] This judgment recounts events that occurred in Rwanda between April 6 and July 4, 1994.

## II – TRIAL

[5] I presided over the trial of Désiré Munyaneza, born in Rwanda on December [...], 1966 and now living in Canada.

[6] Mr. Munyaneza is charged with seven counts of genocide, crimes against humanity and war crimes. The indictment is reproduced in the chapter entitled “The Law” and is appended to the judgment.

[7] Arrested in Toronto, Ontario, on October 19, 2005, he appeared before me the next day. In April 2006, he filed a motion for interim release, which I dismissed on April 27, 2006 on the ground that his release could undermine the public's trust in the administration of justice.

[8] Mr. Munyaneza was charged under the *Crimes Against Humanity and War Crimes Act* (the “Act”), adopted by the Canadian Parliament in 2000 (S.C. 2000, c. 24). He is the first to be prosecuted under that legislation in Canada.

[9] The trial should have taken place before a judge of the Superior Court and a jury, but Canadian law allows the accused, if the prosecution consents, to opt to be heard before only a judge. That was the choice the parties made.

[10] Trials for crimes against humanity and war crimes are extremely rare outside of international criminal tribunals. To my knowledge, this is a first in North and South America.

[11] Also to my knowledge, this is the first time that a single judge has heard such a case, even in international criminal tribunals, where collegiality is the rule.

[12] The trial began on March 27, 2007 at the Montréal courthouse in the province of Québec. It took place in French, one of the two official languages in Canada, along with English.

[13] Mr. Munyaneza, who pursued his university studies in French, chose the language of the trial, as was his right. Nonetheless, the majority of witnesses were heard in Kinyarwanda, one of Rwanda's official languages, and interpreters

continuously translated the testimony at the hearing. Mr. Munyaneza speaks Kinyarwanda. He also understands English.

[14] Certain witnesses were also heard in French and others, fewer in number, in English. Québec judges are bilingual (French, English) and no translation was required for that testimony. The accused specifically waived translation of the testimony.

[15] In January and February 2007, before the trial began, I presided over a rogatory commission in Kigali, Rwanda, during which I heard the first 14 prosecution witnesses, who could not travel to Canada. The accused specifically waived translation of the testimony.

[16] Those hearings could have been conducted by video-conferencing, but I preferred to go there myself in order to see, hear and assess the credibility of each witness in person.

[17] I ordered that each testimony be filmed and recorded, and that all the recordings be given to Mr. Munyaneza, along with the stenographic notes, so that he could be apprised of the evidence and discuss it with his attorneys.

[18] Beginning on March 27, 2007, I heard 16 other prosecution witnesses at the Montréal courthouse. Thus, the prosecution called 30 witnesses to testify and declared its case closed.

[19] The accused filed three motions for rogatory commissions in order to examine, outside Canada, witnesses who could not travel here. I allowed the three motions, and the rogatory commissions were held in the same manner as that requested by the prosecution.

[20] In January 2008, I heard three defence witnesses in Paris, France.

[21] In April 2008, I heard seven defence witnesses in Kigali, Rwanda.

[22] In May 2008, I heard 14 defence witnesses in Dar es Salaam, Tanzania.

[23] The organization of four rogatory commissions, in the circumstances of this trial, was a colossal undertaking for all participants.

[24] Returning to Canada, I heard 12 additional defence witnesses. The accused called 36 witnesses and declared his case closed.

[25] Thus, I heard 66 witnesses in all, whose testimony covers over 16 000 pages of stenographic notes.

[26] The parties filed close to 200 exhibits in the record.

[27] The attorneys requested to plead in writing and they submitted factums of more than 600 pages each, along with tens of thousands of pages of jurisprudence and various authorities.

[28] They were allowed to summarize their comments in brief oral arguments in December 2008.

[29] I took the case under advisement on December 19, 2008, 19 months after the formal start of the hearings.

[30] I want to underscore the remarkable work of the attorneys in the case: Mtre. Richard Roy, Mtre. Pascale Ledoux and Mtre. Alexis Gauthier for the prosecution; and Mtre. Richard Perras, Mtre. Mylène Dimitri and Mtre. Paul Skolnik for the defence.

[31] This case was demanding. Through their ethical sense, the intelligence of their words and the respect they showed, they contributed to ensuring that it retained a human face.

[32] In doing so, they assisted the court, served justice and provided an example of what is most noble about the profession of attorney. I am grateful to them.

### **III – JUDGMENT**

[33] The added difficulty of a trial in which the majority of the witnesses testified in Kinyarwanda, a language unrelated in any way to French or English, was rightly pointed out.

[34] The same competent interpreters acted throughout the trial in Montréal and Africa. They helped one another during the hearings and the two parties were assisted by people speaking Kinyarwanda. The accused himself provided clarifications regarding the quality of the translation.

[35] At the end of the trial, the attorneys and the accused said they were satisfied with the translations and corrections made to the evidence as a whole.

[36] When the material elements of one witness's version are contradicted by the version of witnesses for both the prosecution and the defence, regardless of the language of the testimony, the credibility of the witness is affected.

[37] The judgment was written in French (the only official version) and is published simultaneously in an English translation.

## IV – THE LAW

### 1. GENERALITIES

[38] The territory of Canada, which was first occupied by the Native peoples, was successively colonized by France and England.

[39] That colonization is at the root of the Canadian legal system.

[40] In Québec, codified civil law was inspired by French civil law. In the other provinces, civil law is based on the common law, which is of British inspiration.

[41] Criminal law is codified in a criminal code inspired by English criminal law.

[42] Canada is a federal system, in which criminal law is under federal jurisdiction. The *British North America Act*, signed in 1867, laid the foundations for the Canadian State and reserved for the central Parliament exclusive jurisdiction over criminal law and procedure.

[43] However, the establishment of courts of civil and criminal jurisdiction, as well as the administration of justice, devolved to the provinces.

[44] In 1982, the Canadian Parliament adopted the *Canadian Charter of Rights and Freedoms*, which is an integral part of the Constitution. The Charter, in fact, encompasses the first 34 sections of the *Constitution Act, 1982*.

[45] The Charter provides for a number of “legal guarantees” devolving to Canadians, particularly:

- the guarantee against abusive search, entry and seizure;
- the guarantee against arbitrary detention and imprisonment;
- the right to be informed of the reasons for one's arrest and the right to the assistance of an attorney;
- the right to be judged within a reasonable amount of time;
- the right not to be forced to testify against oneself;
- the presumption of innocence;
- the right to a fair trial before an independent and impartial tribunal;
- the right to reasonable bail;

- the right to trial by jury for offences punishable by more than five years of imprisonment;
- the right not be judged or punished twice for the same offence;
- the right to protection from all cruel or unusual treatment (in Canadian law, the death penalty is a prohibited cruel treatment);
- the right not to use an accused's prior testimony against him or her;
- the right to an interpreter.

[46] The Canadian *Criminal Code*, which applies throughout the territory of Canada, is the most important source of criminal law. It is not the only source. Many federal laws create offences (such as for narcotics); others are created by regulation.

[47] Parliament also enacted the *Canada Evidence Act*, which applies in criminal matters. It is simple, minimalist legislation, supplemented by the common law, a series of principles laid down by the courts in the course of disputes. Those principles evolve to keep pace with social change.

## **2. A FEW PRINCIPLES**

### **2.1 Trial by jury**

[48] Pursuant to Canadian criminal law, this trial should take place before a judge of the Superior Court and 12 jurors.

[49] However, if the Attorney General consents, the accused can opt to be judged solely by a judge of the Superior Court. The two parties agreed to avail themselves of that provision (s. 473(1) Cr. C.) and the trial was heard by me without a jury.

### **2.2 Reasonable doubt**

[50] In Canada, the accused has the constitutional right to the presumption of innocence. Therefore, it is up to the Crown to demonstrate the accused's guilt beyond a reasonable doubt.

[51] The Supreme Court has defined the guidelines applicable to the notion of reasonable doubt:

- the standard of proof beyond a reasonable doubt is inextricably intertwined with the presumption of innocence;

- the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;
- a reasonable doubt cannot be based on sympathy or prejudice;
- rather, it is based on reason and common sense;
- it is logically connected to the evidence or absence of evidence;
- the standard does not require proof corresponding to absolute certainty; it is not a question of proof beyond any doubt whatsoever or of an imaginary or frivolous doubt;
- more is required than proof that the accused is probably guilty; a trial judge who concludes only that the accused is probably guilty must acquit (see *R. v. Lifchus*, [1997] 3 S.C.R. 320 at para. 36).

[52] Reasonable doubt is closer to absolute certainty than to proof of guilt on a balance of probabilities. In short, something less than absolute certainty, but more than probable guilt, is required in order to convict the accused (see *R. v. Starr*, [2000] 2 S.C.R. 144 at para. 242).

[53] The judge must weigh all the facts and items of evidence submitted and ascertain whether the evidence as a whole demonstrates the accused's guilt beyond a reasonable doubt in regard to each essential element of the alleged offences (see *R. v. Morin*, [1988] 2 S.C.R. 345 at paras. 35 to 45).

### **2.3 Credibility of witnesses**

[54] It is the duty of the trial judge to determine the credibility of the witnesses, a demanding duty that must meet unchanging criteria.

[55] The Supreme Court teaches that, when the credibility of witnesses is fundamental or important to determining the guilt of the accused on an essential element of the offence, trial judges must properly charge the jury.

[56] Even if the trial is held before only a judge, I must make it a rule to follow these teachings, which professors Pierre Béliveau and Martin Vauclair<sup>1</sup> describe as follows:

- First, if, after considering all the evidence and not only the testimony of the accused's witnesses, you believe the evidence of the accused's witnesses, obviously you must acquit.
- Second, if, after considering all the evidence and not only the testimony of the accused's witnesses, you do not believe the testimony of the accused's witnesses, but you have a reasonable doubt, you must acquit.

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1 Now, respectively, judge of the Superior Court of Québec and judge of the Court of Québec.

- Third, even if you have no doubt after hearing the evidence of the accused's witnesses, that does not mean that you must find the accused guilty. Just because the accused's witnesses do not tell the truth does not mean that the accused is guilty. You must ask yourself whether, on the basis of the evidence that you accept, you are convinced by the evidence of the accused's guilt beyond a reasonable doubt. (*Traité général de preuve et de procédure pénales*, 15th ed. (Cowansville, Qc.: Yvon Blais, 2008, at 807) (See *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at para. 28).

[57] The exercise of evaluating the credibility of witnesses whose testimony was given through an interpreter, as in the case of most of the witnesses in this trial, makes the task more difficult and requires greater attention on the part of the trial judge.

### **3. THE CRIMES AGAINST HUMANITY AND WAR CRIMES ACT (the "Act")**

#### **3.1 History**

[58] On June 29, 2000, the Act was assented to and placed in Chapter 24 of the Statutes of Canada for the year 2000. Its complete title is the *Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts*.

[59] The Act came into force on October 23, 2000.

[60] It is aimed at implementing the Rome Statute of the International Criminal Court, adopted on July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (the "Rome Statute").

[61] The Website of the International Committee of the Red Cross ([www.icrc.org](http://www.icrc.org)) contains this comment on the Rome Statute:

The United Nations has been considering the establishment of a permanent international criminal court since its creation. After years of negotiations, a Diplomatic Conference was held from 15 June to 17 July 1998 in Rome which finalised and adopted the Statute for the International Criminal Court (ICC). The Statute was finally adopted by a vote where 120 were in favour, 7 against and 21 abstained.

The establishment of an ICC represents a major progress for better implementation of international humanitarian law and a clear step forward in the battle against impunity. Hence, for the Court to be truly effective, a very large number of States must ratify the Statute.



The ICC will be established in the Hague and will have jurisdiction over suspected perpetrators of genocide, crimes against humanity, war crimes or aggression, including superiors or military commanders. The Court may exercise its jurisdiction, if the State on the territory of which the act or omission occurred or the State of nationality of the suspect is Party to the Statute or has accepted the jurisdiction of the Court. The Prosecutor can refer cases *proprio motu* (on his/her own initiative). The Court has not a retroactive effect.

The ICC is not intended to take over jurisdiction exercised by national courts: the ICC is intended to exercise its jurisdiction only when the state is unwilling or genuinely unable to prosecute. States continue to have the primary duty to prosecute suspected war criminals before their own courts.

[62] Canada signed the Rome Statute on December 18, 1998 and acceded to it by ratifying it on July 7, 2000.

[63] The Red Cross Website lists 108 countries that have ratified the Rome Statute and 31 countries that have signed but refused to accede to it by ratifying it, particularly, the United States, the Islamic Republic of Iran, Israel and the Russian Federation.

[64] China and India, in particular, have not signed the Rome Statute.

[65] In contrast to all Canadian laws that punish offences committed on Canadian territory, the Act provides that a person who has committed abroad a crime of genocide, a crime against humanity or a war crime can be prosecuted in Canada if he or she resides here.

[66] One of the avowed purposes of the Act is to fight against the impunity of war criminals, like that which existed after the Second World War.

[67] The following chapter reviews the accused's alleged offences and their essential elements by analysing them in light of the Act.

### **3.2 Genocide**

#### **(A) Indictment**

[68] The first two counts allege that the accused committed an act of genocide in two ways:

- by the intentional killing of;
- by causing serious bodily or mental harm to;

members of an identifiable group of people, the Tutsi.

[69] The counts read as follows:

First count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, committed the intentional killing of members of an identifiable group of people, to wit: the Tutsi, with intent to destroy the Tutsi, in whole or in part, committing an act of genocide, as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of genocide, as provided for in subparagraph 6(1)(a) of the said Act.

Second count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, caused serious bodily or mental harm to members of an identifiable group of people, to wit: the Tutsi, with intent to destroy the Tutsi, in whole or in part, committing an act of genocide, as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of genocide, as provided for in subparagraph 6(1)(a) of the said Act.

[70] Section 6(3) of the Act defines genocide as an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide within the meaning of customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations.

[71] The Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (the "1948 Convention") is the foundation of conventional international law as it pertains to genocide. Article 2 of the 1948 Convention defines genocide:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

[72] This convention was ratified by Canada on September 3, 1952 and by Rwanda on April 26, 1975. It applied to Rwanda in 1994.

[73] That information is found on the Website of the International Committee of the Red Cross, at [www.icrc.org](http://www.icrc.org).

[74] The Convention's definition of genocide was reiterated and incorporated into the Statute of the International Criminal Tribunal for the former Yugoslavia (the "ICTY Statute"), the Statute of the International Criminal Tribunal for Rwanda (the "ICTR Statute") and the Rome Statute.

[75] Even without that conventional definition, the crime of genocide in 1994 was in contravention of all the peremptory rules of customary international law.<sup>2</sup>

[76] Article 53 of the Vienna Convention on the Law of Treaties, 1969 provides for the following:

*Treaties conflicting with a peremptory norm of  
general international law ("jus cogens")*

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

[77] The crime of genocide, like all indictable offences in Canada, involves an act (*actus reus*) and an intent (*mens rea*).

[78] We have seen the list of acts prohibited by the 1948 Convention. A moral element, that is, intentional commission, must be grafted onto the prohibited acts.

[79] The perpetrator of the crime of genocide must have a specific intent to destroy a group in whole or in part because of its national, ethnic, racial or religious nature.<sup>3</sup>

[80] The genocide that occurred in Rwanda between April 6 and mid-July 1994 is public knowledge<sup>4</sup> and admitted by the accused. His admission is appended to this judgment.

(B) Intentional killing

[81] The notion of "intentional killing" does not exist in the Canadian *Criminal Code*. Murder is defined in section 229 as follows:

Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

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<sup>2</sup> *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100 at para. 82.

<sup>3</sup> *Mugesera* at para. 88.

<sup>4</sup> *Prosecutor v. Karemera*, Appeals Chamber, ICTR, Case No. 1CTR-98-44-AR73(c), June 16, 2006 at paras. 33 to 38 and *Mugesera* at para. 8.

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not.

[82] By using in the Act a term that differs from the one used in the *Criminal Code*, the Canadian legislator wished to refer to the definition of “intentional killing” found in international law and its jurisprudence.

[83] But the difference is rather slim. In international law, it must be demonstrated that:

- (a) the person is dead;
- (b) the accused caused the death by means of an act or omission, or contributed substantially to the death;
- (c) the accused intended to cause the death of the victim or inflict grievous bodily harm that he knew was likely to result in death.<sup>5</sup>

(C) Serious bodily or mental harm

[84] The ICTR and the ICTY agree to include the following acts, in particular, as causing a person serious bodily or mental harm:

- physical or mental torture;
- inhumane or degrading treatment;
- rape;
- sexual violence;
- persecution.<sup>6</sup>

[85] The notion of causing serious bodily or mental harm is found in Article 2(b) of the 1948 Convention, Article 4(2)(b) of the ICTY Statute, Article 2(2)(b) of the ICTR Statute and Article 6(b) of the Rome Statute.

[86] The Assembly of State Parties to the Rome Statute adopted regulations clarifying the elements of crimes that assist the Tribunal in interpreting and determining genocide, crimes against humanity and war crimes.

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<sup>5</sup> See, in particular, *Mugesera*, at para. 130, and *Prosecutor v. Brdanin*, Trial Chamber, ICTY, Case No. IT-99-36-T, September 1, 2004.

<sup>6</sup> See, in particular, *Prosecutor v. Akayesu*, Trial Chamber, ICTR, Case No. ICTR-96-4-T, September 2, 1998 at para. 504.

[87] It is recognized by the international tribunals that each case is *sui generis*, but a certain number of principles emerge from the jurisprudence:<sup>7</sup>

- (a) the harm may be physical or mental;
- (b) the physical harm need not be permanent or irreversible, but must be likely to prevent the victim from living a normal life over a relatively long period;
- (c) the mental harm must go beyond slight or temporary deterioration of mental faculties;
- (d) the harm must be so serious that it threatens to destroy the targeted group in whole or in part.

[88] Rape, sexual violence, mutilation and interrogation accompanied by blows or threats are recognized as acts causing serious physical harm.

[89] Subjecting a person to intense fear, terror, intimidation or threats is recognized as an act causing serious mental harm.

[90] The prosecution must demonstrate the accused's intent to destroy the targeted group in whole or in part and his or her intent to cause serious bodily or mental harm to one or more members of the targeted group.<sup>8</sup>

(D) Inhumane or degrading treatment

[91] The expression "inhumane or degrading treatment" is also found in the Rome Statute, the 1949 Geneva Conventions, the ICTY Statute and the ICTR Statute.

[92] Such treatment is considered cruel and requires proof of the following elements:

- (a) an intentional act or omission causing serious mental or physical suffering or constituting outrages on personal dignity;
- (b) committed against a protected person or a person who did not take a direct part in the hostilities;
- (c) a lesser degree of suffering is required than for torture, but the same degree as for serious bodily or mental harm to the person.<sup>9</sup>

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7 *Prosecutor v. Kajelijeli*, Trial Chamber, ICTR, Case No. ICTR-98-44A-T, December 1, 2003 at paras. 814-815.

8 *Bosnia and Herzegovina v. Serbia and Montenegro*, International Court of Justice, February 26, 2007, General List No. 91 at para. 319.

9 *Prosecutor v. Naletilic and Martinovic*, Trial Chamber, ICTY, Case No. IT-98-34-T, March 31, 2003 at para. 246.

[93] Each case is also *sui generis*, but the jurisprudence has accepted the following in particular:<sup>10</sup>

- (a) piling prisoners into buses and beating them as they pass between two rows of soldiers when they get out of the buses;
- (b) beating prisoners held in a shed;
- (c) detaining men of a targeted group and beating them in public.

(E) Act of sexual violence

[94] Rape and sexual violence constitute serious bodily or mental harm to a person and, therefore, be acts constituting genocide if they are committed with the intent to destroy the group to which the victim belongs:

In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.

... Sexual violence was a step in the process of destruction of the tutsi group - destruction of the spirit, of the will to live, and of life itself.<sup>11</sup>

[95] International jurisprudence, which does not differ from Canadian jurisprudence in this regard, defines sexual violence as “any act of a sexual nature which is committed on a person under circumstances which are coercive”.<sup>12</sup>

[96] The following acts, among others, are considered sexual violence:

- (a) forcing a person to undress in public;
- (b) sexual penetration;
- (c) rape;
- (d) sexual molestation.

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<sup>10</sup> *Prosecutor v. Mrksic*, Trial Chamber, Case No. IT-95-13/1-T, September 27, 2007 at paras. 526-527.

<sup>11</sup> *Prosecutor v. Akayesu*, Trial Chamber, ICTR, Case No. ICTR-96-4-T, September 2, 1998 at paras. 731-732.

<sup>12</sup> *Prosecutor v. Akayesu* at para. 688.

(F) Intent to destroy

[97] In international law, genocide requires the prosecution to demonstrate that the accused had the specific intent to destroy the victim's ethnic group in whole or in part.<sup>13</sup>

[98] The perpetrator of the crime of genocide must have had the intent to physically destroy the targeted group, not only its national, linguistic, religious or cultural identity.<sup>14</sup> Premeditation is not one of elements essential to the crime.<sup>15</sup>

[99] The existence of a plan or policy for the destruction of the group is also not one of the elements essential to the offence.<sup>16</sup>

[100] Intent to destroy must be inferred from the facts and circumstances as a whole. For a given act, the intent to commit genocide can be deduced from the systematic perpetration of other reprehensible acts against the group in the region or country, while other groups are spared.<sup>17</sup>

[101] The intent to commit genocide can be gauged in light of the accused's words and deeds.<sup>18</sup>

(G) In whole or in part

[102] The prosecution need not prove the accused's intent to destroy the entire group targeted. It must demonstrate intent to destroy a substantial part of the group.

[103] The expression "substantial part" means a high proportion of the group, or the most prominent members of the community, the effect of which on the whole group is significant.<sup>19</sup>

(H) An identifiable group of people

[104] The 1948 Convention, the Statutes creating the ICTR and the ICTY, and the Rome Statute define an identifiable group of people as a national, ethnic or religious group.

[105] Each case is *sui generis*, but the international jurisprudence defines an ethnic group from an objective standpoint according to political, cultural, social or historical

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13 *Bosnia and Herzegovina v. Serbia and Montenegro* at para. 187.

14 *Prosecutor v. Semanza*, Trial Chamber, ICTR, Case No. ICTR-97-20-T, May 15, 2003 at para. 315.

15 *Prosecutor v. Semanza* at para. 319.

16 *Prosecutor v. Brdanin*, Trial Chamber, ICTY at para. 704.

17 *Mugesera* at para. 89, and *Prosecutor v. Akayesu* at para. 523.

18 *Prosecutor v. Bagishema*, Trial Chamber, ICTR, Case No. ICTR-95-1A-T, June 7, 2001 at para. 63.

19 Art. 2 of the 1948 Convention, and *Prosecutor v. Krstic* at paras. 8 and 12.

characteristics, and from a subjective standpoint according to perceptions of these characteristics by the perpetrators of the offences.<sup>20</sup>

[106] The ICTR affirmed, and it is admitted in this case, that, in 1994, the Tutsi of Rwanda formed an identifiable ethnic group.<sup>21</sup>

(I) The intent to destroy must target an ethnic group as such

[107] For genocide to be demonstrated, the intent to destroy that drove the perpetrators of the crime must be specifically motivated by the very nature of the group to which the victims belong, be it a national, ethnic, racial or religious group. That specific intent need not be exclusive. The accused may have other motives in committing the offence.<sup>22</sup>

### **3.3 *Crime against humanity***

(A) Indictment

[108] Counts 3 and 4 allege that the accused committed crimes against humanity:

- by intentional killing;
- by the act of sexual violence.

[109] The counts read as follows:

Third count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, committed the intentional killing of members of a civilian population or an identifiable group of people, to wit: the Tutsi, knowing that the said intentional killing was part of a widespread or systematic attack on the Tutsi, committing a crime against humanity, as defined in subsections 6(3), 6(4) and 6(5) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of a crime against humanity, as provided for in subparagraph 6(1)(b) of the said Act.

Fourth count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, committed the act of sexual violence in regard to members of a civilian population or of an identifiable group of people, to wit: the Tutsi, knowing that the said act of sexual violence was part of a widespread or systematic attack on the Tutsi, committing a crime against humanity, as defined in subsections 6(3), 6(4)

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<sup>20</sup> *Bosnia and Herzegovina v. Serbia and Montenegro* at para. 191.

<sup>21</sup> *Prosecutor v. Semanza* at para. 422.

<sup>22</sup> *Prosecutor v. Nivitegeka*, Appeals Chamber, ICTR, Case No. ICTR-96-14-A, July 9, 2004 at para. 53.



and 6(5) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of a crime against humanity, as provided for in subparagraph 6(1)(b) of the said Act.

(B) Crime against humanity

[110] Subsection 6(3) of the Act defines a crime against humanity as follows:

“crime against humanity” means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

[111] Subsection 6(5) of the Act stipulates the following:

For greater certainty, the offence of crime against humanity was part of customary international law or was criminal according to the general principles of law recognized by the community of nations before the coming into force of either of the following:

(a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on August 8, 1945; and

(b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19, 1946.

[112] The Act confirms a consensus of the League of Nations, prior to 1945, that crimes against humanity were part of customary international law. Killing, sexual violence and the other crimes listed in subsection 6(3) of the Act constituted crimes before 1945 and, therefore, in Rwanda in 1994.

[113] These acts are universally acknowledged to be criminal in nature. The Supreme Court, in *Mugesera*,<sup>23</sup> stipulated the conditions for demonstrating a crime against humanity:

1. An enumerated proscribed act was committed (this involves showing that the accused committed the criminal act and had the requisite guilty state of mind for the underlying act);
2. The act was committed as part of a widespread or systematic attack;
3. The attack was directed against any civilian population or any identifiable group of persons; and

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<sup>23</sup> *Mugesera* at para. 119.

4. The person committing the proscribed act knew of the attack and knew or took the risk that his or her act comprised a part of that attack.

[114] Although the distinction may appear theoretical in the Rwanda genocide, international jurisprudence establishes that the attack need not be the result of an official policy of the State or government:

Contrary to the Appellants' submissions, neither the attack nor the acts of the accused needs to be supported by any form of "policy" or "plan". There was nothing in the Statute or in customary international law at the time of the alleged acts which required proof of the existence of a plan or policy to commit these crimes. As indicated above, proof that the attack was directed against a civilian population and that it was widespread or systematic, are legal elements of the crime. But to prove these elements, it is not necessary to show that they were the result of the existence of a policy or plan. It may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic (especially the latter) to show that there was in fact a policy or plan, but it may be possible to prove these things by reference to other matters. Thus, the existence of a policy or plan may be evidentially relevant, but it is not a legal element of the crime.<sup>24</sup>

[115] It is worth recalling that, in *Karemera*, the Appeals Chamber of the ICTR noted facts of public knowledge:

The following state of affairs existed in Rwanda between 6 April 1994 and 17 July 1994: Throughout Rwanda there were widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to persons perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.<sup>25</sup>

[116] The Supreme Court of Canada noted the same facts in *Mugesera*, in paragraph 8.

[117] The accused himself acknowledged that in his admissions, appended to the judgment.

(C) Intentional killing

[118] The elements essential to proving intentional killing, which are described in the chapter on genocide, are the same in the context of a crime against humanity or a war crime.

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<sup>24</sup> *Prosecutor v. Kunarac, Kovac and Vukovic*, Appeals Chamber, Case Nos. IT-96-23-A and IT-96-23-1A, ICTY, June 12, 2002 at para. 98.

<sup>25</sup> *Prosecutor v. Karemera*, Appeals Chamber, ICTR, Case No. ICTR-98-44-AR73(c), June 16, 2006 at paras. 26 and 32.

(D) Act of sexual violence

[119] As we have seen, subsection 6(3) of the Act includes sexual violence and inhumane acts as prohibited acts that can constitute a crime against humanity.

[120] They are found in Article 5 of the ICTY Statute and Article 3 of the ICTR Statute.

[121] The elements essential to proving an act of sexual violence are the same as those described in the chapter on genocide.

(E) Prohibited act committed in a widespread or systematic attack

[122] The prosecution must demonstrate a widespread or systematic attack but not necessarily both. "The widespread or systematic nature of the attack will ultimately be determined by examining the means, methods, resources and results of the attack upon a civilian population".<sup>26</sup>

[123] *Mugesera* also teaches us:

- (a) that it is the attack that must be widespread or systematic, not the prohibited acts of the accused (at para. 156);
- (b) an attack is widespread if it is massive, frequent and carried out collectively. It must be of considerable seriousness and directed against a multiplicity of victims. It may consist of a series of prohibited acts or one act of great magnitude. It need not be part of a political strategy or particular plan (at para. 154);
- (c) the attack is systematic if it follows a policy or plan; it is carefully organized and involves substantial public or private resources (at para. 155);
- (d) the prosecution must demonstrate that the accused's prohibited act was committed as part of the attack; the act must be able to be objectively perceived and, because of its nature or consequences, as able to further the attack even if the accused may have also acted for personal reasons (at paras. 164-165).

(F) Against a civilian population or an identifiable group of people

[124] *Mugesera* stipulates that, in addition to being systematic, the attack must be directed against a civilian population that is the primary, not merely a collateral, object of the attack (at para. 161).

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<sup>26</sup> *Mugesera* at para. 156.

[125] The prototypical example of a civilian population would be a national, ethnic or religious group. The Tutsi ethnic group and moderate Hutu were the civilian population in this case (at paras. 162 and 163).

(G) The accused's intent

[126] The prosecution must demonstrate, in addition to the criminal intent to commit the prohibited act, that the accused knew (or was wilfully blind to the fact) that the acts were part of a widespread and systematic attack against a civilian population or an identifiable group of people. The prosecution need not demonstrate that the accused knew that his acts were inhumane:

The mental element required to be proven to constitute a crime against humanity is that the accused was aware of or wilfully blind to facts or circumstances which would bring his or her acts within the definition of a crime against humanity. However it would not be necessary to establish that the accused knew that his or her actions were inhumane. For example, if the jury was satisfied that Finta was aware of the conditions within the boxcars, that would be sufficient to convict him of crimes against humanity even though he did not know that his actions in loading the people into those boxcars were inhumane.<sup>27</sup>

[127] The accused's reasons are of little importance:

It is important to stress that the person committing the act need only be cognizant of the link between his or her act and the attack. The person need not intend that the act be directed against the targeted population, and motive is irrelevant once knowledge of the attack has been established together with knowledge that the act forms a part of the attack or with recklessness in this regard: *Kunarac*, Appeals Chamber, at para. 103. Even if the person's motive is purely personal, the act may be a crime against humanity if the relevant knowledge is made out.<sup>28</sup>

[128] The prosecution need not demonstrate that the accused was driven by discriminatory intent in regard to the victim's group, nor that he knew all the details of the attack. Knowledge can be inferred from the circumstances, public knowledge of the attacks, the scope of the violence, and the historical and political context.<sup>29</sup>

### **3.4 War crime**

(A) Indictment

[129] Counts 5, 6 and 7 allege that the accused committed a war crime by means of:

(a) intentional killing;

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<sup>27</sup> *R. v. Finta* [1994] 1 S.C.R. 701 at para. 204.

<sup>28</sup> *Mugesera* at para. 174.

<sup>29</sup> *Mugesera* at paras. 142, 144 and 175.

- (b) an act of sexual violence;
- (c) pillage.

[130] The counts read as follows:

Fifth count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, during an armed conflict, to wit: hostilities between the Rwandan Armed Forces (RAF) and the Rwandan Patriotic Front (RPF), committed the intentional killing of people who were not taking a direct part in the said conflict, committing a war crime, as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of a war crime, as provided for in subparagraph 6(1)(c) of the said Act.

Sixth count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, during an armed conflict, to wit: hostilities between the Rwandan Armed Forces (RAF) and the Rwandan Patriotic Front (RPF), committed the act of sexual violence against people, committing a war crime, as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of a war crime, as provided for in subparagraph 6(1)(c) of the said Act.

Seventh count:

Between April 1, 1994 and July 31, 1994, in the Prefecture of Butare, in Rwanda, during an armed conflict, to wit: hostilities between the Rwandan Armed Forces (RAF) and the Rwandan Patriotic Front (RPF), pillaged, committing a war crime, as defined in subparagraphs 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of a war crime, as provided for in subparagraph 6(1)(c) of the said Act.

(B) War crime

[131] Subsection 6(3) of the Act defines a war crime as follows:

“war crime” means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

[132] The four Geneva Conventions of August 12, 1949 and their two Additional Protocols of June 8, 1977 constitute the foundations of international conventional law related to national or international armed conflicts.<sup>30</sup>

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30 Website of the International Committee of the Red Cross: [www.icrc.org](http://www.icrc.org).

[133] Canada has been a party to these conventions since May 14, 1965 and to the Protocols since November 20, 1990, and Rwanda, respectively, since May 5, 1964 and November 19, 1984.

[134] International conventional law related to armed conflicts was in force in Rwanda in 1994.<sup>31</sup> The 1994 armed conflict was a national conflict, as the ICTR recognizes.<sup>32</sup>

[135] As for customary international law, Article 4 of the ICTR Statute, regarding non-international armed conflicts, provides that it applied on Rwandan territory in 1994 and that the list of war crimes included killing, outrages upon personal dignity, rape and pillage.<sup>33</sup>

[136] It is useful to cite a few excerpts from the documents mentioned above:

(a) Article 3, which is common to the four Geneva Conventions of August 12, 1949 (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War; and Convention (IV) relative to the Protection of Civilian Persons in Time of War), reads as follows:

Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

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31 *Prosecutor v. Semanza* at para. 353.

32 *Prosecutor v. Karemera*, Appeals Chamber, Case No. ICTR-98-44-AR73(c), June 16, 2006 at paras. 26 and 32.

33 *Prosecutor v. Akayesu* at para. 616.

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

(b) The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, states:

Art 4. – Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

1: (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective punishments;

(c) taking of hostages;

(d) acts of terrorism;

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

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any of the foregoing acts.

(c) Article 4 of the Statute of the International Tribunal for Rwanda, 1994 (ICTR Statute) states:

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

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

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

[137] *Tadic*, of the ICTR Appeals Chamber, affords an historical perspective on the development of international conventional and customary law.<sup>34</sup>

[138] The prosecution must demonstrate that:

- (a) the armed conflict in Rwanda was non-international;
- (b) the victims were not taking part in the hostilities at the time of the alleged violation;
- (c) there was a nexus between the accused's alleged crimes and the conflict.<sup>35</sup>

[139] In that regard, it is not without interest to refer again to the accused's admissions, appended to the judgment.

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<sup>34</sup> *Prosecutor v. Tadic*, Appeals Chamber, Case No. IT-94-1, October 2, 1995 at paras. 98, 102 and 134, in particular.

<sup>35</sup> *Prosecutor v. Semanza* at para. 512.



(C) Intentional killing

[140] The elements essential to intentional killing are the same in a context of genocide, crimes against humanity and war crimes.

(D) Act of sexual violence

[141] It is accepted that an act of sexual violence is part of “inhumane acts”, “outrages upon personal dignity” and “serious bodily or mental harm” as regards the victim.<sup>36</sup>

[142] The elements essential to this offence are the same as those described under genocide and crimes against humanity.

(E) Pillage

[143] Article 8(2)(e)(v) of the Rome Statute, appended to the Act, prohibits pillage.

[144] We have seen that, prior to 1994, Rwanda adhered to international conventional law, particularly the 1949 Geneva Conventions and their Protocols. Pillage is prohibited under Article 4(2)(g) of Additional Protocol II of 1977.

[145] We have also seen that international customary law applied on Rwandan territory and that pillage was prohibited under it (Art. 4(f) of the ICTR Statute).<sup>37</sup>

[146] International jurisprudence stipulates the elements that constitute the act of pillage:

- (a) the accused appropriated one or more items of property;
- (b) the accused intended to plunder property owners for private or personal gain;
- (c) without the owners' approval;
- (d) the act is closely linked to hostilities;
- (e) the plundered property must have sufficient value for the victim.<sup>38</sup>

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<sup>36</sup> *Prosecutor v. Akayesu* at para. 688.

<sup>37</sup> *Prosecutor v. Akayesu* at para. 616.

<sup>38</sup> *Prosecutor v. Hadzihasanovic*, Trial Chamber, ICTY, Case No. IT-01-47-T, March 15, 2006 at paras. 49, 50, 54, 55 and 56.

(F) Non-international armed conflict

[147] For a war crime to be proven, there must be an armed conflict and the prohibited act must be related to it.<sup>39</sup>

[148] It has been demonstrated, and it is not contested, that a non-international armed conflict occurred in Rwanda between April 1 and July 31, 1994.<sup>40</sup>

- (a) a prolonged armed conflict;
- (b) between the government authorities (RAF) and an organized armed group (RPF);
- (c) no foreign State became directly involved in the conflict by sending troops, exercised comprehensive control over the actions of one of the parties or took part in the planning of the conflict;
- (d) throughout Rwandan territory.

[149] A war crime can be committed far from the main hostilities.<sup>41</sup> The perpetrator need not be a belligerent party but can be simply a civilian.<sup>42</sup> The prohibited act must be related to the armed conflict:

... That requirement would be satisfied if the crime were committed either during or in the aftermath of the fighting, provided that it is committed in furtherance of, or at least under the guise of, the situation created by the fighting.<sup>43</sup>

[150] An excerpt from *Semanza* illustrates those words:

518. In the Chamber's opinion, the ongoing armed conflict between the Rwandan government forces and the RPF, which was identified with the Tutsi ethnic minority in Rwanda, both created the situation and provided a pretext for the extensive killings and other abuses of Tutsi civilians. The Chamber recalls that in this case the killings began in Gikoro and Bicumbi communes, shortly after the death of President Habyarimana, when the active hostilities resumed between the RPF and government forces. Civilians displaced by the armed conflict, as well as those fearing the increasing violence in their localities, who were mostly Tutsi, sought refuge at sites such as Mabare mosque, Musha church, and Mwulire Hill, or went into hiding, such as Victims A and B.

519. In the Chamber's opinion, certain civilian and military authorities, as well as other important personalities, exploited the armed conflict to kill and mistreat Tutsis in Bicumbi and Gikoro. Rwandan government soldiers and gendarmes played an active role in the attacks against the concentrated refugee populations

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39 *Prosecutor v. Semanza* at para. 369.

40 *Prosecutor v. Akayesu* at para. 639.

41 *Prosecutor v. Akayesu* at paras. 635-636.

42 *Prosecutor v. Akayesu* at paras. 444-445.

43 *Prosecutor v. Vasiljevic*, Trial Chamber, ICTY, Case No. IT-98-32-T, November 29, 2002 at para. 25.

at Musha church, Mabare mosque, and Mwulire Hill. The participation of armed soldiers and gendarmes in the massacres substantially influenced the manner in which the killings were executed. The evidence reflects that these attacks generally involved a number of armed soldiers, gendarmes, *Interahamwe* militiamen, and commune authorities. The involvement of military officials and personnel in the killings of local Tutsi civilians tied these killings to the broader conflict.

520. The Accused participated in these operations by gathering or bringing *Interahamwe* militiamen and soldiers to the attacks. He also worked in tandem with the soldiers and *Interahamwe* to identify and kill Tutsi civilian refugees. The Chamber also recalls that with soldiers and high ranking military and commune officials at his side, the Accused asked a crowd how their work of killing the Tutsis was progressing and encouraged them to rape Tutsi women before killing them.

...

522. The Accused's participation in the military operations conducted against civilian refugees and, in particular, his attempt to elicit information concerning the advance of the enemy army reveal that his conduct was closely related to the hostilities. The Chamber therefore has no doubt that a nexus existed between the Accused's alleged offences and the armed conflict in Rwanda.<sup>44</sup>

[151] The prosecution must demonstrate that the accused had knowledge of the armed conflict, that the illegal act he or she committed was related to it and that the victim was not a party to the conflict. The prosecution need not demonstrate that the accused knew he or she was committing a war crime.<sup>45</sup>

[152] A war crime need not be premeditated and the prosecution need not demonstrate that it was committed in accordance with a given policy.<sup>46</sup>

(G) A person who does not take part in the conflict

[153] For a war crime to occur in a non-international armed conflict, the victim must be a protected person taking no direct part in the hostilities, a civilian, or a person who has laid down his or her arms or has been placed hors de combat.<sup>47</sup>

[154] That person is protected under Article 3, which is common to the Geneva Conventions of 1949 and the Protocols of 1978.

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<sup>44</sup> *Prosecutor v. Semanza* at paras. 518, 519, 520 and 522.

<sup>45</sup> *R. v. Finta* at para. 205.

<sup>46</sup> *Prosecutor v. Kunarac*, Appeals Chamber, ICTY, Case Nos. IT-96-23 and 23/1-A, June 12, 2002 at para. 58.

<sup>47</sup> *Prosecutor v. Rutaganda*, Trial Chamber, ICTR, Case No. ICTR-96-3-T, December 6, 1999 at paras. 99 to 101.

## V – RWANDA

### 5.1 *A bit of history*<sup>48</sup>

[155] The ancestors of those who, in 1994, would be known as Hutu, Tutsi and Twa had colonized Rwanda over a period of two thousand years.

[156] Originally gathered in tribes loyal to an outstanding leader, they gradually built a complex State and created a common language, Kinyarwanda. They developed a set of common religious and philosophical principles, and founded a culture that lent great importance to song, dance, poetry and rhetoric. They celebrated the same heroes.

[157] Most of the country's inhabitants were cultivators and did some livestock breeding. A minority devoted themselves to breeding large herds. The two groups lived together in a fertile land.

[158] Rwanda was an important state in the 18th century. The power of its leaders stemmed from the number of their subjects and the size of their herds of livestock.

[159] Rwanda reached the height of its power at the end of the 19th century under the reign of the sovereign Rwabugiri. He controlled the central regions of the country through multiple competing hierarchical groups of people charged with administering men, livestock, pastureland and farmland.

[160] The term *Tutsi*, which means "he who is rich in cattle", initially referred to the status of an individual, but eventually came to refer to the elite group as a whole.

[161] The term *Hutu*, which means "subordinate or follower of a more powerful person", came to refer to the mass of ordinary people.

[162] Most people, whether pastoralists or cultivators, married within their own group until the mid-20th century. Over the generations, therefore, pastoralists, who were generally tall, thin and narrow-featured, came to look like other pastoralists, while cultivators, who were shorter, stronger and with broader features, came to look like other cultivators.

[163] Prior to the genocide, the Twa, who were obviously different from the Tutsi and the Hutu, made up 1% of the population (Twa are Pygmies).

[164] The Germans were the first to colonize Rwanda in the period from 1895 to 1916. They established a colonial administration.

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48 I have relied most heavily on the book *Leave None to Tell the Story*, by Alison Des Forges, who testified at the trial (New York: Human Right Watch, 1999). Each witness shed personal light on the history of the country.

[165] After the First World War, the Belgians replaced the Germans and organized Rwanda, along European lines, beginning in 1920. The Belgians decided that only the Tutsi could hold prestigious offices, and they removed the Hutu from positions of power and excluded them from higher education.

[166] These measures imposed a Tutsi monopoly on public life in Rwanda and sowed the seeds of future conflicts.

[167] In the 1930s, to ensure their colonial system was well extended, the Belgians decreed that social groups had to be registered at birth, and they created mandatory identity cards for all adult Rwandans.

[168] Roughly 15% of the population was registered as Tutsi, 84% as Hutu and 1% as Twa.

[169] Around 1950, the colonial regimes disappeared one by one and the Belgians, under United Nations' pressure, began to increase the possibilities for Hutu to participate in public life and to attend secondary schools.

[170] The changes alarmed the Tutsi, while failing to satisfy the Hutu. Violence erupted in 1959 and hundreds of people were killed.

[171] Elections in 1960 and 1961 were easily won by the Hutu party. The Tutsi monarchy was abolished and the Rwandan Republic was proclaimed in January 1961. The Belgians ended their colonization.

[172] Many Tutsi were displaced, while 10,000 others left for exile. Some of those in exile tried to make incursions into Rwandan territory from 1961 to 1967. The Tutsi within Rwanda sustained reprisals and were accused of helping the invaders. Thousands of Tutsi were killed and tens of thousands were forced to flee into exile.

[173] The identity cards continued in the new republic and quickly became a means to discriminate against the Tutsi in employment and education. The Tutsi population plunged from 17.5% to 8.4% between 1952 to 1991.

[174] In July 1973, General Juvénal Habyarimana took power following a coup and became President of the Republic. He made Rwanda a one-party state led by the "*Mouvement révolutionnaire national pour le développement*" the "MRND": the National Revolutionary Movement for Development). All Rwandans were members of the party from birth.

[175] The president of the country is the head of the single party. Government officials simultaneously hold positions in the party.

[176] Rwandans have always had a strong sense of organization and communication within the country.

[177] The Rwanda of 1975 was divided into 10 "prefectures" (an 11th, Kigali, was added in 1991 and a 12th in 1996). The prefectures were divided into sub-prefectures, communes, sectors and cells. Within 24 hours, an order given by the president can be transmitted to each citizen throughout the country through prefects, sub-prefects, burgomasters, section heads and cell heads.

[178] The supreme authority at the local level rests with the burgomaster, the president's man in the hills. Habyarimana named all of them.

[179] Rwanda became one of the promising models for Africa in the eyes of the international community.

[180] But it remained a poor country, in which 90% of Rwandans earned their living through agriculture.

[181] At the end of the 1980s, power had weakened the party and its president. Corruption, patronage and economic decline pushed intellectuals and politicians to demand reforms and more democracy.

[182] During that period, 600,000 Rwandans found refuge in neighbouring countries. Paul Kagame led the armed wing of the RPF from Uganda.<sup>49</sup>

[183] On October 1, 1990, the RPF armed forces crossed the border and headed for Kigali. They were soon overpowered by the Rwandan army, and many Rwandan Tutsi were killed or imprisoned for complicity with the enemy.

[184] The opposition to the Habyarimana regime forced the adoption of a constitutional amendment legalizing multiple political parties in June 1991. Fifteen parties were created. A coalition government was formed, and the MRND obtained 9 of the 19 cabinet posts (August 1992). The aim was to end the MRND's monopoly.

[185] Each political party created a youth wing that vaunted the party's merits. Violent clashes occurred between political rivals. Politics and the judiciary were overwhelmed.

[186] Better organized, the MRND transformed the *Interahamwe*, its youth wing, into a true militia that received military training.

[187] Fearful citizens took up arms to defend themselves. The MRND attributed the violence to RPF accomplices.

[188] In the summer of 1992, the RPF and the Rwandan government signed a ceasefire agreement in Arusha. Many members of the Rwandan Army denounced the accords. In November 1992, Habyarimana disavowed them.

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49 See the summary of Alison Des Forges's testimony for an understanding of the birth of the RPF.

[189] During that period, Radio-Rwanda transmitted government propaganda. The RPF created its own radio station, Muhabura Radio. In April 1993, radical Hutu set up *Radio-télévision libre des mille collines* (RTLM), which broadcast as of August 1993. Its founder was the son-in-law of President Habyarimana.

[190] A populist forum, RTLM mixed news, gossip and hate-mongering. During the genocide, its sole message was that the Tutsi enemy should be eliminated.

[191] On November 22, 1992, Léon Mugesera, Vice-President of the MRND and a government official, gave an incendiary speech calling for the murder of all opponents of the MRND, particularly the *Inyenzi* (literally, "cockroaches"), i.e. the members of the RPF and their accomplices in Rwanda.

[192] The speech was heard by an immense audience. Excerpts were broadcast on the national radio and copies of the cassette recording circulated in Rwanda. The speech contained the following: "Know that anyone whose neck you do not cut is the one who will cut your neck".

[193] Between 1990 and 1994, many Tutsi were massacred throughout Rwanda on all manner of pretexts and, generally, with complete impunity.

[194] On February 8, 1993, the RPF violated the ceasefire and attacked the north of the country, officially to end the slaughter of the Tutsi, but especially to make Habyarimana return to the negotiating table.

[195] The RPF's attack worried the political parties, which feared that the RPF wanted to take control of the country. The opposition parties drew closer to the MRND.

[196] In the government and among political leaders, some wanted a political agreement with the RPF, while others wanted to get rid of the Tutsi accomplices in the country.

[197] On July 18, 1993, Agathe Uwilingiyimana, a moderate Hutu, was appointed Prime Minister.

[198] Since 1990, Rwanda had enjoyed France's military support, and presidents Habyarimana and Mitterrand had had a cordial relationship. In February 1993, France sent troops to help the Habyarimana regime halt the RPF's advance.

[199] Countries supporting Rwanda financially, including France, pressed Habyarimana to reach an agreement with the RPF.

[200] On August 4, 1993, the Arusha Accords were signed under the aegis of the Organization of African Unity (OAU) and in the presence of United Nations observers.

[201] The accords provided for the establishment of a state of law, a transitional government, the holding of elections, the repatriation of refugees and the merging of the two opposing armed forces.

[202] The interim government consisted of five MRND members, five RPF members and nine members from the various political parties.

[203] Numerous Rwandans, including many of the military, were furious that Habyarimana had given in to international pressure. Many, including Colonel Bagosora, feared their careers were over.

[204] In the months that followed, many extremists kept up the violence. Weapons and tons of machetes were imported into Rwanda. The militias resumed training.

[205] The RPF feared that its adversaries would not abide by the accords and it stepped up its military recruitment and training.

[206] The United Nations Security Council, recovering from the failure of the peace mission to Somalia, agreed to send a small intervention contingent because peace seemed within reach. Organization of a peacekeeping force was slow and the resources allocated were minimal.<sup>50</sup>

[207] At the same time, on October 21, 1993, Burundi Tutsi officers assassinated Burundi President Melchior Ndadaye, a democratically-elected Hutu, along with several of his ministers.

[208] Although the rebel officers were forced by world opinion to return to their barracks, the coup attempt triggered violence in Burundi and the situation deteriorated rapidly in Rwanda.

[209] The moderates who had cited Burundi as a model of Hutu-Tutsi power-sharing lost all credibility.

[210] RTLM radio used the events as a basis for an anti-Tutsi campaign.

## **5.2 Prefecture of Butare**

[211] As we have seen, Rwanda in 1994 was divided into 10 prefectures, to which an 11th, consisting of the City of Kigali, was added.

[212] I will use three maps taken from the work by Professor André Guichaoua, *RWANDA 1994, Les politiques du génocide à Butare* (Paris: Éditions Karthala, 2005). The maps were used by the two parties throughout the trial. They are at pages 18, 22 and 23 of the work and are appended to the judgment.

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<sup>50</sup> See the summary of General Roméo Dallaire's testimony.



[213] On Map 1, we see in the insert the 11 prefectures and the countries surrounding Rwanda: the Democratic Republic of Congo to the west, Uganda to the north, Tanzania to the east and Burundi to the south.

[214] Kigali, the Rwandan capital, is at the centre of the country, and the prefecture of Butare is to the south, next to Burundi. Butare contains about 20 communes, including Ngoma, which is on Map 2.

[215] Butare Ville is the main city in the commune of Ngoma and the second largest city in Rwanda after Kigali. A university and intellectual centre, it was formerly the capital of Rwanda.

[216] The commune of Ngoma is shown on Map 2 and includes various sectors that witnesses will mention: Butare Ville, Ngoma, Matyazo, Tumba, Cyarwa-Sumo and so on.

[217] It is worth pointing out that the Prefecture of Ngoma is about four kilometres wide and twelve or so kilometres long, while Butare Ville is two kilometers wide by four kilometres long. The city can be crossed on foot in a half an hour.

[218] Rwanda itself is a small country of 26,000 square kilometres. A two-hour drive by car from Kigali in any direction, brings one to the border of a neighbouring country.

[219] Map 3 shows the sector of Butare Ville and the places that witnesses will mention: the prefecture, the Faucon hotel, the Ibis hotel, the school complex, the university hospital, the INRS (the National Scientific Research Institute), the university laboratory, the university, the home of Pauline Nyiramasuhuko, the École des sous-officiers (the ESO, the School for Non-Commissioned Officers), the Ngoma military camp and so on.

### **5.3 Butare Ville on April 5, 1994**

[220] Butare Ville is a sector of Ngoma and a small community. Everyone knows everyone else and everyone knows the elites. There were not even a hundred cars in the prefecture, and there would be even fewer during the genocide.

[221] Among the well-known families were those of Prefect Jean-Baptiste Habyalimana and of Maurice Ntahobari, the university rector, whose wife, Pauline Nyiramasuhuko, was Minister for the Family and Women's Development, and whose son, Shalom Ntahobari, everyone knew.

[222] There was also the family of Isaac Munyagasheke, the most important businessman in Butare. He ran a beer and soft drink business. A former Member of Parliament, he was described as the local head of the MDR (Democratic Republican Movement) party.

[223] Munyagasheke's business was located on the main street and his family lived upstairs. The inner courtyard of the building, which was surrounded by a compound wall, had a number of bedrooms (see exhibits P-14 and P-15).

[224] Munyagasheke has two sons, Clément Munyagasheke and Désiré Munyaneza, the accused. He also has five daughters.

[225] Désiré Munyaneza has a Master's degree in economics from the University of Butare. He ran a general store belonging to his father, a few steps from his family residence on the main street. The building was divided into the store, the living quarters and an annex in the courtyard, where there were several bedrooms.

[226] The building was the former residence of the Munyagasheke family.

[227] All these families, and others, such as that of DDM-15, were acquainted with one another, took part in the same social activities and formed Butare's bourgeoisie.

[228] The city had two hotels, located a few steps from each other: the Ibis and the Faucon. A third hotel, which had not yet opened, had just been established in the home of Maurice Ntahobari (often written as Ntahobali).

[229] The Ibis hotel was the favourite meeting place of the Butare elite.

[230] Also in the city were the Catholic cathedral, the school complex where the accused studied, the school of the Episcopalian Church of Rwanda (ECR) and two military camps: the ESO camp and the Ngoma military camp.

## **VI – THE FACTS**

[231] In the appendix of this judgment, I have summarized the testimony heard. That document is confidential because it makes it possible to identify witnesses to whom I granted anonymity in regard to their testimony and their identity. This appendix contains all the facts I noted in the hearings; it is not available to the public.

[232] In the following pages, I summarize the substance of that testimony, without identifying the witnesses.

**A) PROSECUTION****Alison DES FORGES, expert witness<sup>51</sup>**

[233] The accused admitted that the witness is an expert in history, particularly in the armed conflict that occurred in Rwanda in 1994. The witness's résumé was filed as Exhibit P-37.

[234] Dr. Alison Des Forges was an historian and international observer for the non-governmental organization (NGO) Human Rights Watch (HRW).

[235] With an undergraduate degree in European history from Harvard University, the witness earned a Master's in African studies from Yale University, then a doctorate from the same university. Her thesis dealt with the history of Rwanda from the late 19th century to the early 20th century.

[236] A university professor, Dr. Des Forges became an HRW volunteer in 1988, in charge of research missions to Rwanda as of 1991, given proof of increasingly numerous human rights violations in the country.

[237] Involved more and more in the Rwanda question at HRW, Professor Des Forges left teaching in 1994, the year of the genocide, and become a permanent employee of the non-government organization (NGO). She became an observer of the situation for HRW, the principal rapporteur and a militant for human rights.

[238] She testified on several occasions, both for the defence and the prosecution, at the ICTR and in various judicial and administrative proceedings throughout the world.

[239] Professor Des Forges remained a lecturer in various universities (Yale, State University of New York, Beijing Academy of Social Sciences and Berkeley).

[240] The witness was in charge of at least 25 missions in the Great Lakes region of Africa, especially in Rwanda. HRW, in collaboration with the Fédération internationale des ligues des droits de l'homme, headquartered in Paris, launched a research project on the 1994 Rwanda genocide. She led the project.

[241] Dr. Des Forges began to gather information in August 1994 in Rwanda, as well as in Europe and the United States. She continued to gather information for five years. Research began in the south of Rwanda, not because the genocide began there, but because the events that took place there were the most dramatic example of government action to destroy the Tutsi ethnic group.

[242] The methodology used was that recognized for historical research: interviews of hundreds of people among the victims and the assailants, meetings with government

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<sup>51</sup> Dr. Alison Des Forges died in airplane crash in February 2009 in Buffalo, U.S.A.

authorities, diplomats, international players, journalists, physicians and so on; visits to locations, and study of maps, statistics and documents available in government archives and documents abandoned after the war on office floors. UN archives and the archives of various countries—France, Belgium and the United States—were also studied.

[243] The witness spent several months in Rwanda in 1994 and early 1995.

[244] The study led to the publication of a book of over 800 pages, written by the witness and entitled *Leave None to Tell the Story*, also published in French, under the title *Aucun témoin ne doit survivre*. The book was published in German as well.

[245] The 1994 conflict was between the RAF and the RPF.

[246] The 1959 revolution led to Rwandan independence in 1962.

[247] Serious violence toward Tutsi prompted them to seek refuge in the neighbouring countries of Uganda, Burundi, Congo and Tanzania.

[248] As many as 600,000 Tutsi (in 1990) had taken refuge abroad, mainly in Uganda. But a Rwandan diaspora was found throughout the world.

[249] The Rwandan refugees in Uganda formed a community that created various mutual assistance movements, including the Rwandan Refugee Welfare Foundation, then the Rwandan Alliance for National Unity. The organizations served as a basis for the foundation of the RPF in 1987-1988.

[250] The RPF was composed in part of Rwandan soldiers who had served in the Ugandan army and in part of members of the diaspora who had studied in Europe and whose ideology was close to the revolutionary Marxist ideas of the 1970s. Later, the Marxist ideology was replaced by the theory of economic liberalism.

[251] In the early 1960s, the Rwandan refugees attempted a few incursions into Rwanda from Uganda and Burundi. The incursions were failures and the Tutsi remaining in Rwanda became the scapegoats for them.

[252] The life of the Rwandan refugees abroad was generally hard. They were used from time to time when needed, afterward becoming pariahs again, depending on the mood at the time and the governments involved. For example, thousands of Rwandans helped Museveni seize power in Uganda and many played a major role in his army. But once Museveni was in power, and because of internal conflicts, anti-Rwandan sentiment again took hold among the Ugandan population in the late 1980s.

[253] Over the years, the Rwandan refugees continued to nurture the dream of returning to their country, of which they had an idyllic image.

[254] The United Nations High Commission for Refugees insisted, in the early 1990s, that negotiations foster the return of Rwandans to their country.

[255] It must be pointed out that, at the time, the opponents of the Habyarimana regime in Rwanda were not only Tutsi. President Habyarimana had been in power for more than 15 years, and many Hutu opposed his autocratic, corrupt and repressive regime.

[256] Tripartite negotiations began between Rwanda, Uganda and the High Commission on the fate of the Rwandan refugees in Uganda.

[257] The major problem in the negotiations was that they did not include representatives of the Rwandan refugees.

[258] In the early 1990s, the RPF was run from a political office in Uganda, but its military wing, which was well structured, rapidly came to hold increasing power. In December 1990, Paul Kagame led the RPF.

[259] Bear in mind that, for centuries, the Rwandans had had a natural talent for political and social organization that was the envy not only of Africa, but of the world. The RPF, like all of Rwandan society, implemented an elaborate organizational structure based on a group of cells.

[260] In Rwanda, the cell was already the basic administrative unit in each village, thus the origin of the later rumour that RPF cells were infiltrating Rwandan cells. In fact, many multiethnic (Hutu/Tutsi) groups in Rwanda supported the RPF.

[261] The Rwandan diaspora was educated, and prosperous businessmen from Rwanda financially supported the RPF.

[262] On October 1, 1990, before Paul Kagame became the head of the RPF, he attempted a military action, led by Fred Rwigyema, against the Habyarimana regime. The RPF was defeated and Rwigyema was killed.

[263] The RPF regrouped in Uganda and chose guerilla tactics instead of direct confrontation. Those tactics were used until the Arusha Accords, in August 1993, with the exception of an incursion in June 1992 in which the RPF took control of a portion of northeastern Rwanda consisting of two communes.

[264] The fact was that the RPF was not as warmly welcomed by the Rwandan population as it would have liked. Firstly, a portion of the population was faithful to Habyarimana, and secondly, the rumour ran that the RPF wanted to reinstate the monarchy and oppression by Tutsi.

[265] In August 1993, the Arusha Accords, which had a political and a military component, were signed.

[266] Politically, Habyarimana and his party, the MRND, lost most of the absolute power they had held. A multi-party system was established and an interim government would be created with 19 ministers: five from the MRND and five from the RPF, with the nine others from the various existing political parties.

[267] From a military standpoint, the accords provided for the merger of the guerilla forces of the RPF and the Rwandan national army, and the equal sharing of army and police command positions between the RPF and government forces.

[268] The accords produced immense discontent among government political and military leaders who had to give up their power. Habyarimana was accused of being weak.

[269] The accords were never implemented.

[270] Habyarimana's policies swayed in the wind in 1993. He denounced, then accepted, then denounced again, the Arusha Accords, depending on the threats of a coup by the people around him. Every time he was to concede power under the pressure of international authorities, he was redeemed in the eyes of his supporters by allowing attacks on Tutsi and moderate or dissident Hutu.

[271] A series of Tutsi massacres took place in October 1990, in the early months of 1991, in August 1992 and in January 1993.

[272] In February 1993, the RPF carried out a very successful military action within Rwanda and reached the outskirts of Kigali, which it could have taken, but for French assistance to the Habyarimana regime.

[273] However, the RPF's military success meant a political defeat, since many Hutu dissidents in favour of the RPF joined the Habyarimana camp after the incursion. The Hutu/Tutsi polarization dominated again.

[274] France itself realized that it had become too involved in the conflict, and it encouraged Habyarimana to negotiate.

[275] Finally, the RPF returned to its stronghold in the northeast of the country at the insistence of the international community.

[276] The witness pointed out that the involvement of France, the United States and Belgium in Rwanda could bring them nothing monetarily, since Rwanda had nothing to offer. Only a political and strategic advantage could be envisioned, a base for influence in the neighbouring countries of Congo, Uganda and Sudan.

[277] By August 1993, when the Arusha Accords were signed, until the conflict in April 1994, it was clear that the two forces were preparing to fight despite the ceasefire and

the peace accords. Too many people on both sides were dissatisfied with the agreements.

[278] In February 1994, after a politician was assassinated, dozens of Tutsi were killed.

[279] It will be recalled that the violence originated in the killing of the president of neighbouring Burundi in October 1993. Burundi had strong ties with Rwanda and the election of a Hutu president in June 1993 was considered a major gain for democracy.

[280] The assassination of the President of Burundi by a group of Tutsi soldiers aggravated tensions in Rwanda. Rwandan propaganda originating with people close to President Habyarimana spread false rumours about the events (particularly that the President of Burundi had been castrated) and contrived to affirm that the Rwandan Tutsi were preparing to do the same in Rwanda.

[281] In short, the massacres of Tutsi resumed with renewed vigour on the death of the President of Burundi, and the whole situation engendered fear and distrust between the two communities.

[282] On April 6, 1994, President Habyarimana's plane was shot down over the Kigali airport.

[283] Very quickly, certain elements of the Rwandan army and the militias began to hunt down and kill Tutsi and members of the opposition.

[284] All Hutu who were members of the government and had shown any opposition whatsoever were killed, as were all members of the opposition. The Prime Minister herself was assassinated.

[285] The new government included no Tutsi, Hutu moderate, member of the opposition or representative of the RPF, and was essentially made up of the most extremist Hutu elements. Those acts were the prelude to a carnage that would last more than three months.

[286] The massacres began in Kigali and everywhere that the MRND, the party of the assassinated president, had its strongest bases. Those perpetrating the massacres were emboldened by the absence of international reaction.

[287] Ten days after the president's death, government leaders went to Butare, and replaced and killed the Tutsi prefect, his family, his supporters and all the local Tutsi leaders. They incited the population to complete the ethnic cleansing or face the same fate.

[288] Beginning on April 7, 1994, RPF soldiers occupying barracks in Kigali went into action against the Rwandan army and the police.

[289] International players, including the UN, tried to bring the two parties back to the negotiation table and a ceasefire. The RPF refused to engage in discussions as long as the massacres of Tutsi civilians continued. The government rejected the ceasefire because it would allow the RPF to fan out.

[290] The heart of the armed conflict remained around Kigali from April 7 to July 4, 1994, when the RPF took the capital. The RPF was also advancing on all fronts throughout the country.

[291] The United Nations wanted, at all costs, to avoid another Somalia, where troops had to rescue the peacekeeping mission in peril. As of January 1994, the United States insisted that the men of the peacekeeping mission be withdrawn as soon as possible.

[292] Belgium withdrew its contingent after ten of its nationals were killed in early April 1994 while trying to protect the Prime Minister.

[293] In actuality, General Dallaire was abandoned to his own fate with a handful of men. He nevertheless did extraordinary work, for which he never received all the credit he deserved.

[294] The RPF was remarkably organized and one of the fears of the United Nations authorities was more that a confrontation would occur between the peacekeeping mission and the RPF, rather than with government forces.

[295] In 1990, the RPF was composed particularly of Rwandans who had served in the Ugandan army. When hostilities began in April 1994, its composition had changed considerably through the recruitment of Rwandans living in Rwanda and refugees from neighbouring countries such as Burundi, Congo and Tanzania.

[296] After each military success, the RPF appropriated weapons abandoned by the routed armed forces and received financing from the Rwandan diaspora and even foreign States.

[297] France militarily supported the Rwandan government until the spring of 1993 and began to withdraw as of the Arusha Accords, although a group of French officers continued to maintain relations with Rwandan army leaders.

[298] President Mitterrand remained very close to President Habyarimana. France assisted Rwandan troops militarily during the spring of 1994, although its help did not have a significant impact on the outcome of the fighting.

[299] France sought to retain the support of a French-speaking country in the region for reasons of prestige and geopolitical strategy.

[300] The witness gave the following explanation for a genocide of such magnitude to have occurred in such a short period of time.



[301] Bear in mind, first of all, that 16 massacres of Tutsi occurred between October 1990 and April 1994, killing approximately 2000 people. Without going so far as to speak of rehearsals for a greater massacre to come, these events convey a certain modus operandi that paved the way for the tragedy.

[302] The propaganda repeated the same refrains of infiltration by the enemy, self-defence and the obligation to protect oneself against imminent aggression.

[303] Furthermore, it is clear that the sophisticated, age-old system of social organization in Rwanda, from the President on down to the local cell, played a role in the way the genocide unfolded.

[304] The channels of communication in Rwanda enabled government authorities to rapidly reach and mobilize the population. But that does not explain everything. Just because the authorities tried to mobilize the population does not mean that the population would respond like robots.

[305] It was a long process of threats, fears, mobilization, punishments and incitement to violence that culminated in the acts of April 1994.

[306] The initial massacre of Tutsi in the regions dominated by the MRND, the elimination of opponents, the replacement of prefects and leaders, and their assassination by government authorities set the tone for a certain modus operandi.

[307] That modus operandi was conveyed from the highest authorities to the lowliest local leaders, with the implicit message that those who did not cooperate would be punished.

[308] But despite everything, many Rwandans refused to take part in the massacres.

[309] And among those who did take part, some were acting on a visceral hatred for Tutsi that needed little in the way of encouragement in order to explode.

[310] In short, the Rwandan genocide was an historical event of great complexity that is not easy to explain simply.

[311] The witness could not say who shot down President Habyarimana's plane. She knew that a French investigation concluded that the RPF had. But at the time, rumours linked extremist elements of the Rwandan armed forces to the attack, and those people had already threatened to topple the president in a coup.

[312] However, the weapons used to shoot down the plane were more accessible to the RPF than to the Rwandan army.

[313] In fact, many people or groups had reasons to kill the president.

[314] In cross-examination, Dr. Des Forges explained that the UN never declared in 1994 that a genocide was under way in Rwanda.

[315] The witness acknowledged that, in 1985, fighting occurred between the Rwandan and the Ugandan armed forces.

[316] It is true that some authors affirm that the Rwandan conflict began on October 1, 1990 and ended in July 1994. However, legally speaking, the conflict ended with the signing by the two parties of the Arusha Accords and the ceasefire that was part of them (August 1993).

[317] There is no documentary proof that the RPF was determined to abort the Arusha Accords. What is clear, however, is that, despite the accords, the two parties continued to prepare for an eventual confrontation.

[318] The witness explained that, after the Arusha Accords, which were to lead to democratic elections, it was difficult to predict who would win them.

[319] The accused's attorney asked whether the attack that killed the President of Rwanda and his passenger, the President of Burundi, had a social impact in Burundi.

[320] The witness pointed out that the President of Burundi who died in the plane was a Hutu, who had replaced the former president, a Hutu, who had been killed six months earlier in a coup. Tens of thousands of Burundians were killed from October 1993 to January 1994.

[321] The country was getting over that shock when the president was killed, and the circumstances differed from those prevailing in Rwanda. Moreover, a highly respected UN diplomat rushed to make a radio broadcast asking Burundians to remain calm and succeeded in convincing the local elites not to react violently.

[322] The weapon used to down the presidential plane was a rocket-launcher, a weapon not generally found in the Rwandan army. Rocket-launchers were found after the attack but no official investigation seems to have been conducted.

[323] According to the report of French magistrate Bruguière, the serial numbers of the rockets indicated that they were from a lot sold by Russia to Uganda. Uganda was a source of weapons for the RPF.

[324] Comments: A meticulous witness who did remarkable scientific work. Completely credible.

**Roméo DALLAIRE**

[325] The witness was a General in the Canadian Army at the time of the events in 1994 and the military officer in charge of the United Nations Assistance Mission for Rwanda (UNAMIR).

[326] In 1993, General Dallaire commanded the Fifth Brigade of the Canadian Army, based in Valcartier, Québec. In August 1993, he was seconded to the UN for a peacekeeping mission in Uganda.

[327] Then the Arusha Accords, aimed at putting an end to the latent civil war in Rwanda between the RAF and the RPF, were signed.

[328] The main purpose of the accords was to establish a transitional government of national unity before democratic elections were held, to demobilize the two armies and integrate soldiers into civilian life, and to organize humanitarian aid funded by the international community.

[329] In order to help implement the accords, the UN decided to organize a peacekeeping mission (Chapter 6 of the UN Charter), the objective of which would be to observe, report the facts and help establish a transitional government for September 10, 1993. It quickly became apparent that the timeframe was unrealistic.

[330] It must be understood that the UN has no permanent army and that every intervention mission consists of "loans" of military or civilian contingents from various member countries of the UN.

[331] In the summer of 1993, General Dallaire went to Rwanda and elsewhere in Africa to lay the groundwork for the intervention mission in Rwanda. In that planning, it was assumed that the southern border of Rwanda with Burundi would be stable since a democratically elected government was in power in Burundi.

[332] The UN Security Council approved the creation of UNAMIR on October 5, 1993. On October 21, 1993, the government of Burundi was toppled in a coup. Widespread massacres ensued and 300,000 people sought refuge in Rwanda, on the other side of the border.

[333] The government of Burundi was headed by a Hutu and was overthrown by a military leader who was Tutsi.

[334] General Dallaire arrived in Rwanda on October 22, 1993. The special representative of the United Nations Secretary-General, thus the mission chief, was a former Cameroon diplomat, Jacques-Roger Booh-Booh. Mr. Dallaire was the second in command of the mission as the commander of the armed force. A third person in charge of administration and logistics was responsible directly to UN headquarters in New York, which was an aberration, according to the witness.

[335] The mission consisted of 300 observers and 2100 soldiers or police officers from different countries: Belgians, Bengalis and Ghanaians were most numerous, along with small groups from a variety of countries. The force was complete in late January 1994.

[336] The UN rule was that soldiers thus lent by various countries arrived for the mission self-sufficient in terms of matériel, fuel and food for a period of two months. Some contingents arrived in Rwanda with nothing to eat and no ammunition.

[337] Mr. Booh-Booh arrived in Rwanda on November 21, 1993.

[338] A classic UN peacekeeping mission generally requires six to nine months of preparation. UNAMIR was set up in 90 days. General Dallaire had to serve as a French/English interpreter. Logistics were non-existent.

[339] The deadline of September 10, 1993 for the formation of a transitional government was unrealistic. The Arusha Accords provided for a 20-member cabinet with six members from the MNRD (the government party in power, headed by President Habyarimana), six members from the RPF (headed by General Kagame) and the others from the various Rwandan political parties.

[340] Not only was the deadline unrealistic, but the train of events showed that the transitional government would never see the light of day. The two main belligerents watched one another, were distrustful of one another, met and negotiated, but it all led nowhere.

[341] The witness attended many meetings aimed at establishing a transitional government that would ensure security in Kigali, the capital, and throughout Rwanda. Colonel Bagosora was the main negotiator for the government and General Kagame was the main negotiator for the RPF.

[342] The political deadlock persisted and only President Habyarimana was sworn in on January 5, 1994. After that date, the situation deteriorated in Kigali. Demonstrations and riots increased, as did crime.

[343] In the crowd of rioters, the witness recognized members of the army and the Presidential guard who were acting as agitators. The government structure was crumbling, people were demonstrating in the streets and Kigali was becoming increasingly unsafe.

[344] The political parties had a youth section, certain members of which wore distinct uniforms. These youths formed militias, many of which probably received military training. They were called the *Interahamwe*.

[345] The *Interahamwe* organized demonstrations, engaged in violence and beat people up. They particularly targeted those who hoped for national reconciliation and the organization of a provisional government.

[346] It was in that atmosphere that, in January 1994, UNAMIR tried to ensure people's safety, disarm Kigali and set up safe corridors for travel throughout the country, without ever becoming a party to the conflict ... and preferably, as the Security Council hoped, without ever firing a shot.

[347] In February 1994, tensions increased and the riots multiplied. The militias were more pervasive, were better armed and used more force. UNAMIR had to protect members of parliament, judges and all those who asked for its help.

[348] In the north, the RPF encroached on the demilitarized zone. Killings occurred on both sides. Government forces and the RPF accused one another of all the evils in the world. Foreign diplomats and politicians visited the country to help find a solution but no progress was made.

[349] Mr. Booh-Booh was exasperated and threatened to stop all negotiations. No one listened.

[350] In March 1994, the situation improved and the politicians in power seemed to want to help UNAMIR reduce tensions. Riots and crime declined. The parties, which the witness considered anti-Tutsi extremists, were allowed to be part of the negotiations.

[351] In late March and early April 1994, social tensions reappeared. Weapons caches were discovered. A vehicle and a plane linked to the MRND were intercepted and found to be filled with weapons.

[352] A mission report was submitted to the UN and the mission was reevaluated in New York as is customary every three or six months. On April 5, 1994, the Security Council gave the mission six weeks. If it did not produce conclusive results, it would be cancelled.

[353] In the evening of April 6, 1994, General Dallaire learned that the president's plane, arriving from Dar es Salaam, had been shot down over the Kigali airport. President Habyarimana and his escort (including the chief of staff), and the President of Burundi had been killed.

[354] General Dallaire met with the crisis committee, which had just gathered. It was chaired by Colonel Théoneste Bagosora. Mr. Dallaire insisted that power be transferred to the sitting Prime Minister, Agathe Uwilingiyimana (the witness called her Madame Agathe), the sole person with authority. The committee did not recognize the authority of the Prime Minister.

[355] Mr. Booh-Booh's intervention with Colonel Bagosora was no more successful.

[356] General Dallaire gave instructions to his soldiers to secure the site of the accident at the airport. He asked the Prime Minister to address the public on RTLM and

she agreed to do so. The general took steps with the authorities of the radio station, who first agreed, then refused to let the Prime Minister speak.

[357] More and more roadblocks appeared spontaneously on the roads. The meeting of ambassadors called by Mr. Booh-Booh did not take place. Many political and other figures sought UNAMIR's protection as they believed their lives were in danger.

[358] The witness went to another meeting chaired by Colonel Bagosora in order to convince all the parties to return to the Arusha Accords. The general learned that ten of his soldiers from the Belgian force who were responsible for protecting the Prime Minister had been abducted.

[359] He rushed to the home of the Prime Minister, who had just been killed, along with her husband. The couple's children were found hiding in house and were moved to a safe location.

[360] The RPF communicated with the witness to tell him that many Tutsi were targeted and threatened with death by the militias and the soldiers. The witness tried to bring the two belligerents together, but to no avail. His instructions from the UN were to always abide by the strictest neutrality.

[361] In the evening of April 7, 1994, he learned that his Belgian soldiers had been killed. He rushed to the morgue, where he discovered, with great sorrow, the massacred bodies of his men. That scene will never leave his mind.

[362] On April 8, 1994, General Dallaire found the Arusha Accords had fallen apart and war had resumed. The UN forces tried to provide protection to all those seeking it, but 20,000 people quickly placed themselves under the protection of a handful of UN soldiers.

[363] Total chaos reigned. All the MRND ministers disappeared. The number of roadblocks multiplied and were manned by people who were armed and violent. Alcohol and drugs were widespread at the roadblocks and among the militias.

[364] Tutsi were being raped and killed everywhere.

[365] The Hôtel des Mille Collines became the refuge for 600 or 700 Tutsi. The building was encircled by soldiers, and the *Interahamwe* wanted to attack the premises and grab the "traitors".

[366] The Hôtel Méridien became a Hutu refuge.

[367] Each ambassador from a foreign country sought to repatriate the country's own nationals and called on UNAMIR to help. French forces landed in Kigali. For five days, shuttles took to the airport convoys of civilians wanting to leave the country.

[368] Bagosora accused the Belgians of having shot down the President's plane. Rwandans increasingly looked with suspicion at the Belgians, who decided to leave the country, thereby depriving General Dallaire of his best officers. The evacuation of the Belgians began on April 10 and the last one left Rwanda on April 19, 1994.

[369] As of April 8, 1994, the country became a vast refugee camp. Everyone was fleeing. Tutsi bodies were strewn on the ground everywhere, particularly at the roadblocks. Most had been killed with machetes.

[370] All those who supported reconciliation, Tutsi and moderate Hutu, were killed in the first four days following the crash of the President's plane.

[371] After April 10, the slaughter spread to all regions of the country. Every Tutsi was hunted down and killed.

[372] In three months, from April to June 1994, five million people found themselves on the roads. The population of Kigali dropped from 300,000 to 30,000.

[373] The killing of Tutsi was common at every roadblock. Civilians and soldiers could kill 200 or 300 people at a time. The bodies were taken away by power shovel.

[374] The witness tried without success to explain to Bagosora that the situation was completely out of hand and that ethnic cleansing was under way.

[375] With only a few hundred men, UNAMIR quickly found itself with 30,000 refugees to protect, without food or medication. People were dying of hunger under the protection of UN forces and sometimes under mortar fire.

[376] General Dallaire and his men watched helplessly as the human catastrophe unfolded. The soldiers could no longer eat their meager rations in front of all the people dying of hunger. The men of UNAMIR were physically and psychologically broken.

[377] Fifty or so Rwandan members of the Red Cross and other NGOs were killed.

[378] On April 26, 1994, General Dallaire found himself at the head of a contingent of 450 people, 100 of whom were unarmed observers.

[379] On April 9, 1994, the government withdrew to Gitarama and Major General Augustin Bizimungu, who was vehemently anti-Tutsi, became chief of staff, replacing Marcel Gatsinzi. Gitarama is 40 kilometres from Kigali.

[380] General Dallaire had to negotiate the transfer of refugees out of Kigali with the *Interahamwe* guarding the roadblocks. The *Interahamwe* were the youths, recruited by government authorities, who served as instruments of mass destruction of Tutsi. They were supported by the army and encouraged by RTLM, the unambiguous message of

which was constantly broadcast: "Go ahead, mutilate and kill!". The negotiations were nerve-wracking.

[381] The *Interahamwe* militias were self-managed locally. In late April, RTLM encouraged people to take refuge in churches and monasteries. The *Interahamwe* encircled the holy places and killed all the refugees.

[382] The rape, killing and mutilation of Tutsi of all ages were occurring everywhere. Rivers and lakes were littered with corpses.

[383] It was apocalyptic.

[384] From late April to late June 1994, Rwanda became the site of an armed conflict. The RPF attacked everywhere and the government defended itself.

[385] As they withdrew, the government forces urged people to flee with them, saying that the Tutsi would kill them. Kigali became a city under siege. In late April 1994, 500 000 refugees were on the roads.

[386] General Dallaire then prepared a plan for the UN to strengthen UNAMIR. His understanding was that the major nations thought it was better to let people kill each other for a certain amount of time, after which, they would surely stop.

[387] The general asked for 5500 soldiers. The United States refused. By late April 1994, there were already 300,000 to 400,000 dead. The general is convinced that, had he been given reinforcements, he could have stopped the violence.

[388] He contacted the belligerents. The RPF responded that it would negotiate if the massacres stopped. The RAF contended that it was defending itself. They were going around in circles.

[389] International opinion ultimately admitted that a genocide was under way in Rwanda. On May 17, 1994, the UN accepted the principle of sending additional troops to Rwanda. They would arrive in late July 1994. No developed country participated in the new contingents.

[390] In June 1994, the fighting raged in Kigali, which was without water, electricity or means of communication. It fell to the RPF on July 4, 1994.

[391] In mid-June 1994, Bernard Kouchner, an emissary of the French government, met with General Dallaire to inform him that France wanted to intervene in Rwanda to stop the genocide and provide humanitarian aid.

[392] The general fiercely opposed that intervention, first, because it was not under the aegis of the UN and, second, because the French were perceived as allies of the RAF



and enemies by the RPF. The witness especially did not want to see a third military force join the conflict.

[393] On June 22, 1994, the French landed in Goma. Their strike force was impressive and powerful, but had no logistic support. The French troops were ready to fight but not well equipped to provide humanitarian aid.

[394] It was the start of Operation Turquoise.

[395] Paul Kagame was furious that the French had intervened. The French forces allowed the RAF to withdraw, and Kagame accused them of protecting the "génocidaires".

[396] UNAMIR's Francophones were singled out by the RPF and beaten up. General Dallaire evacuated all his Francophone officers.

[397] The French forces left Rwanda on August 22, 1994, after the new government gave them to understand that they were not welcome.

[398] As we have seen, Kigali fell on July 4, 1994. The RPF formed the government on July 18 and was recognized by the international community.

[399] General Dallaire remained on site to help with the humanitarian work of rebuilding the country. He left Rwanda on August 19, 1994.

[400] Out of eight million Rwandans, nearly a million were killed, two million were wounded and five million were displaced.

[401] The general concluded his examination-in-chief by saying that, after the first shocks of April 6, 1994, a veil descended over the country and human beings ceased to exist.

[402] In cross-examination, the general acknowledged that he had testified before the ICTR and had given many interviews after his mission in Rwanda.

[403] He suffered major post-traumatic shock after he returned to Canada. Circuits in his brain were permanently destroyed. He wrote a book entitled *Shake Hands with the Devil* (Random House of Canada), his account of the Rwandan genocide. He actually wrote 4000 pages of recollections, but his publisher retained only 450.

[404] The general emphasized that his testimony was based on what he saw and heard, supported by the methodical collection of military information. He deliberately did not mention rumours.

[405] The general did not know Africa in 1994. His previous peace missions had taken him to Europe, Cyprus, Cambodia and Yugoslavia. He pointed out that, in Rwanda, he had no political power, which was assumed by Mr. Booh-Booh.

[406] The only reason UNAMIR was set up was that the two parties said they wanted to advance the Arusha Peace Agreement and asked the UN to help them do so.

[407] After a century of colonization, 30 years of dictatorship and two years of war, it was no doubt utopian to think that democratic elections could be organized in two years.

[408] The witness was asked whether Madame Agathe continued to be Prime Minister after January 1, 1994. The witness explained that, as long as a transition cabinet had not been appointed, she remained Prime Minister. In fact, the cabinet was never appointed, the Arusha Accords died on April 6, 1994 and the Prime Minister was assassinated.

[409] The general stated that, in terms of organization and response to demands in the field, UNAMIR verged on irresponsibility. It lacked leadership and the diplomat leading it was not really involved in the mission. The general spent the bulk of his time handling administration and logistics, to the detriment of his work as a soldier.

[410] The witness explained that armed conflicts also occurred in Rwanda in 1990 and 1992. There were latent ethnic tensions. The balance between moderates and extremists was fragile.

[411] The Hutu believed they should be in power, which they had exercised for 25 years in the form of a single dictatorial party.

[412] For a good portion of the population, the distinction between Hutu and Tutsi was of no importance and there had long been many interethnic marriages.

[413] The general explained that, under his mandate, he was authorized to prevent the perpetration of crimes against humanity, but he did not have the resources to do so. Rwanda was not a major concern for the UN. Belgium was the only developed country that agreed to provide a military force. Since it was a former colonial power in Rwanda, its presence was unfortunately not ideal.

[414] The witness explained that the presidential guard was a very independent unit. After April 6, 1994, its members knew exactly where to go, as part of a broader plan directed by someone whose identity he never discovered.

[415] He found the RPF to be better organized and better from a military standpoint than the RAF.

[416] The witness contended that Operation Turquoise was conducted entirely without consulting him.

[417] The general was unable to say who shot down the president's plane on April 6, 1994. UNAMIR was forbidden access to the premises and no investigation could be conducted. Five or six scenarios are possible.

[418] In April 1994, government propaganda warned the populace of infiltration by the enemy RPF, which was demonized: "They eat children, rape, etc.". After April 6, 1994, the people at the roadblocks were armed and their sole purpose was to kill Tutsi.

[419] General Dallaire concluded his testimony by saying that he promised, when he left Rwanda, that he would never let the genocide be forgotten.

[420] Comments: The witness was completely sincere and credible. He testified without notes, with an astonishing memory of the facts. He came out of that experience completely broken.

**Rony ZACHARIAH, expert witness**

[421] Holding degrees in general medicine, pediatrics, tropical medicine and public health from universities in Nigeria, London, Ireland and Amsterdam, the witness was part of Médecins sans frontières (MSF, Doctors Without Borders) in Rwanda in early 1994.

[422] The defence admitted the witness's expertise in that area, and the Court declared him an expert medical witness.

[423] The witness is currently a clinical and operational expert for MSF at its Brussels/Luxembourg office. MSF collectively received the Nobel Peace Prize in 1999.

[424] The witness worked as a physician with various NGOs in Lebanon, Malawi, Chad, Guinea, Sri Lanka, Liberia, Tadjikistan, Kenya, Somalia, Ireland and the United Kingdom.

[425] He arrived in Rwanda on February 20, 1994 with MSF, which intervenes throughout the world in conflict and natural disaster areas. MSF provides its own assistance matériel and can set up a hospital in a week. The organization wishes to remain neutral and does not intervene politically in the countries to which it goes.

[426] In Rwanda, MSF saw to 100,000 refugees from Burundi. Most of the refugees were Hutu and lived in camps near the Rwanda-Burundi border.

[427] MSF assisted the refugees from its station in Butare, offering, in tandem with the UN and other NGOs, food, shelter, medications and hospital care.

[428] MSF set up operations on the premises of the Butare hospital and helped to care for the military and civilian population there, along with the hospital authorities and the

nursing staff. In late February 1994, the witness was in charge of the MSF medical team in Butare. At that time, everything was going well in Rwanda.

[429] On April 6, 1994, the Rwandan president died and the country fell into upheaval.

[430] The witness obtained from the sub-prefect of Butare a safe-conduct for himself and his team in order to circulate freely in the area.

[431] On April 11, 1994, the MSF team set up an emergency intervention plan. Six or seven bodies of civilians who had been bound and killed were brought to the hospital in a truck.

[432] On April 13, the witness and an MSF team left for Gitarama, where wounded had been reported. Hundreds of exhausted civilians were walking along the roads leading to Butare. Near Gitarama, roadblocks guarded by armed soldiers sealed off the roads.

[433] A soldier came toward the MSF convoy and wanted to attack the Rwandan driver because he was Tutsi. The witness had to intervene to calm the soldier down. That was the first time he witnessed a racist act in Rwanda.

[434] In Gitarama, the witness saw 40 or so wounded people with lacerations on their heads and backs. The wounded were given care and the team returned to Butare.

[435] On April 14, the witness noted that seven of the eight MSF drivers were Tutsi. Given the danger, he ordered them to stay home.

[436] On April 15, the witness went to the refugee camps near the Burundi border. He had to cross five roadblocks and found 10,000 refugees at the border.

[437] On April 16, the witness went to Gikongoro, where many wounded were reported. Three vehicles were chartered. They had to pass through eight roadblocks guarded by civilians demanding identity papers. A church near Kiberu was full of refugees.

[438] On the road, a pick-up truck blocked the convoy. Soldiers got out of it, kept their guns trained on the MSF team and ordered it to turn back. A civilian with a yellow scarf seemed to be the leader of the group. The sound of machine-gun fire was heard from the direction of the Kiberu church. The team returned to Butare.

[439] On April 17, a Mitsubishi vehicle came to the hospital driven by a man whose identity was checked and who was then beaten to death. The assailants wore yellow scarves and banana tree leaves around their necks. They were referred to as the *Interahamwe*. Numerous roadblocks were going up in Butare.

[440] On April 18, the witness obtained new safe-conducts for the MSF members. He was told that it would be better not to return to Gikongoro, where the situation was too dangerous, and to limit their travel to the prefecture of Butare.

[441] The witness went to the prefecture and met with Prefect Jean-Baptiste Habyarimana, who was very preoccupied and nervous. He told the witness that he had just been deposed and could do nothing for him. He was replaced by Sylvain Nsabimana.

[442] On April 19, the witness went to the Burundi border in order to evacuate the MSF team. The convoy had to cross more than 25 roadblocks guarded by civilians, some of whom had guns and grenades. Several wore military shirts.

[443] At each roadblock, two or three corpses lay on the ground. At some roadblocks, prisoners were being guarded. Blacks, but not Whites, were asked for their identity papers. The people at the roadblocks wanted to be sure MSF was not harbouring Tutsi. Everything had been burned down along the road. Here and there were mutilated and abandoned corpses.

[444] The witness filed as Exhibit P-29 photographs of corpses piled up and abandoned in fields. He himself had taken the photographs.

[445] Near the Burundi border, 60 to 80 civilians were being chased like cattle by civilians armed with machetes. Youths were hitting an old man hard with a machete. The witness stressed that the assailants seemed to know where to hit the civilians in order to seriously injure them. At the border, another armed group awaited those running away and everyone was killed.

[446] The bodies were thrown in the river that served as the border between Burundi and Rwanda. The witness filed as Exhibit P-29 photographs of bodies continuously carried away by the river current. The witness evacuated the MSF staff. The trip to the border took six hours instead of the usual hour.

[447] On April 20, the witness wanted to evacuate other members of the MSF staff near the border. The convoy truck was hit by *Interahamwe* and the occupants were threatened with death. They had to return to Butare.

[448] The witness went to the prefecture, protested and demanded the prefect's assistance under the Geneva Convention. The prefect laughed in his face. That evening, helicopters brought about 40 wounded soldiers to the hospital.

[449] On April 21, 14 children were ordered out of the hospital and taken to the prefecture. The witness protested to the sub-prefect. Many of the children were never seen again. That evening, the witness hid one of his Tutsi drivers, who was desperate, had not eaten in two days and had been hiding in the forest.

[450] On April 22, the witness went to the sub-prefect's home. Roughly 15 corpses lay outside the home, both children and adults. Farther on were many wounded children, whom the witness took to the hospital. Two soldiers rushed in and grabbed the children away from the MSF team. The witness convinced them to let him take the children.

[451] Upon his return, the witness saw about 30 civilians, both adults and children, beaten at the roadblocks by soldiers. They would all be killed.

[452] On April 23, the witness saw that all the patients in the hospital had been beaten and taken away. Three trucks filled with corpses of patients were on the grounds. The patients were all Dr. Zachariah's. There must have been about 150 civilians. He was told that those who were not killed were taken to the prefecture.

[453] MSF had set up tents on the hospital grounds in order to take in and care for refugees whose families had been killed. The witness presumed that all the refugees were Tutsi.

[454] The witness went to the prefecture, but he did not see any of his patients. He asked to meet with the authorities and angrily told them that the MSF cared for all people without discrimination: civilians, soldiers, Tutsi, Hutu. He called on the authorities' moral sense.

[455] A captain replied: "This hospital stinks of Tutsi: it has to be cleansed".

[456] The witness related that he worked with five nurses at the hospital. They were all taken away by soldiers because they were Tutsi. They took away Sabine, who was providing care to soldiers. The witness intervened physically to stop them from taking her away and explained to the soldiers that she was Hutu. The soldiers responded that her husband was Tutsi and that the child she was carrying (she was seven months pregnant) would be Tutsi. She therefore had to be eliminated. She was, in fact, killed the same day.

[457] For the first time, the witness realized what was really happening. The soldiers had a list of Tutsi who were detained and taken away to be killed.

[458] A patient receiving care in one of the MSF tents was taken out by force and beaten.

[459] The witness tried to get the military authorities and the NGOs together, but could not. He realized that he no longer had any control over the situation and that any neutrality of intervention was impossible.

[460] With a heavy heart, the witness decided to evacuate the MSF team from Rwanda.

[461] On April 24, the team left for Burundi, but had to cross numerous barricades. Everything had been burned down and bodies were floating in the rivers. That was the day he took the photographs in Exhibit P-29: corpses drifting down the river between Rwanda and Burundi.

[462] In cross-examination, the witness explained how MSF operated. The management of the organization moved to Butare when the person in charge of MSF in Kigali left the country on April 14, 1994. The witness explained that MSF was seeing to 100 000 Burundi refugees at eight sites in Rwanda.

[463] He had seen no particular tension between Hutu and Tutsi before April 6, 1994. The degeneration of events after April 6 was a total surprise to him.

[464] He himself could not differentiate between a Hutu and a Tutsi.

[465] MSF worked in Butare out of the university hospital. The hospital authorities and MSF worked together. Injuries such as lacerations and small cuts were treated in the tents and the more seriously wounded were treated at the hospital. MSF worked particularly on civilians, since the soldiers had their own medical personnel.

[466] On April 17, 1994, the witness learned of the existence of the *Interahamwe*: armed civilians found particularly at roadblocks. Some wore yellow scarves as a sign of authority.

[467] The witness could not recall whether there were refugees at the prefecture. All he knew was that many people were there.

[468] Four or five NGOs were working in Butare and their staff changed frequently. Between April 19 and 24, he heard a C-130 Hercules land at the Butare airport.

[469] The witness was asked whether it was possible for a two-to-four-year-old child with a rifle bullet in the throat to survive, or even speak. The physician explained that his prognosis would no doubt be poor, but everything would depend on the type of bullet, the distance from which it was fired and the organ affected.

[470] In response to another question, the witness explained that it would be difficult for him to visually distinguish between sperm and saliva.

[471] On April 19, the witness saw a civilian wearing a military shirt and carrying a gun and grenades. The witness had heard of Minister Pauline and located her home on the map (RCE-8).

[472] Comments: A wholly serious witness to the facts. His credibility is no way in doubt. Did remarkable work in a chaotic situation.

**RCW-1**

[473] The witness took refuge in the Butare hospital after the president's death. The presidential guard had already set up roadblocks. He remained hidden for three weeks in a washroom at the hospital.

[474] Numerous refugees flocked to the hospital. Many were wounded and cared for by MSF.

[475] The Tutsi were separated from the other refugees and were taken to their deaths by soldiers and the *Interahamwe*. Many people were killed in the witness's presence.

[476] Bodies were piled up in three common pits on the hospital grounds.

[477] The witness did not see the accused at the hospital while he was there.

[478] Comments: The witness looked very young, was calm and intelligent, and expressed himself well. He responded seriously to questions. He was very credible and did not contradict himself in cross-examination. He was 15 years old at the time of the events.

**RCW-2**

[479] A Tutsi from Ngoma, the witness had known the accused since elementary school. In March 1994, he saw the accused transporting *Interahamwe* to political gatherings in his vehicle.

[480] During the same period, he saw the accused, in the company of other people, distributing uniforms and weapons (machetes and small axes) to the *Interahamwe* near Vincent's store in Ngoma.

[481] After the president's death, life became sheer hell for the Tutsi. After the president's speech, the witness went into hiding.

[482] The Tutsi population took refuge in the Ngoma church and the witness went there on April 24, 1994. His parents had always told him that he was safe in a church.

[483] The witness made himself an isolated, makeshift shelter in the courtyard of the church and hid there at night.

[484] On April 30 at 1 p.m., the *Interahamwe*, armed with machetes, spears, clubs and small axes, arrived at the church, and made the refugees believe they had nothing to fear and would be moved to a safe location.



[485] The refugees came out in small groups of five to ten people and were killed just off to one side. The slaughter lasted until 6 p.m. Of the 500 people present, 15 or so survived.

[486] The witness could not see the massacre from his hiding place but he heard the orders to kill and saw the corpses the next day. People from the neighbourhood stole the clothing of the victims and four girls who survived were repeatedly raped.

[487] Comments: Testified calmly and seriously, despite an examination that lasted three days. Seemed exhausted at times and burst into tears twice when recalling painful events. He clearly explained all the nuances of the events he described, although there were obvious contradictions regarding aspects that were, when all is said and done, incidental to his account. Very credible.

### **RCW-3**

[488] Born in 1943, the witness lived in Ngoma and has five children, including four daughters. She enjoyed the esteem and respect of her community. She knew the accused's family well.

[489] In April 1994, Tutsi were killed throughout the country and the witness learned to hide in order to save her life.

[490] The accused, at the head of a group, went to the witness's house three times to loot it and to try to find her daughters. The group looted and ransacked the house. The witness managed to hide the first two times, but not the third.

[491] The group began to hit her and she cried out to the accused: "Desiré, why are you hitting me, you are my child?". The accused reproached her for being Tutsi.

[492] The accused grabbed her by the throat and hit her head on a grating. He stripped off part of her clothing and she lost consciousness. She still suffers from her head injuries.

[493] She did not know anyone else in the group except the accused and the son of Nyiramasuhuko. The accused carried a weapon and grenades. The three assaults took place in April, May and June 1994.

[494] Comments: The witness carried all the pain of the world on her frail shoulders. She was a very old woman for Rwanda and she seemed much older than her years. She was very credible and sincere, and testified firmly, despite her obvious suffering, and tolerated the long cross-examination well. Her explanations were satisfactory, considering all the circumstances, and the contradictions between her testimony and her prior statements. A number of prosecution and defence witnesses underscored her wisdom and the esteem she enjoyed in her commune.

**RCW-4**

[495] A Butare merchant, he received from the accused's father, Isaac Munyagasheke, and Georges Rutaganda an order for 48 boxes of machetes (2304 machetes) and 10 boxes of small axes (240 axes), paid for with Munyagasheke's personal cheque.

[496] Clément, the accused's brother, took delivery of the merchandise and brought it to the ECO. The transaction took place in mid-February 1994.

[497] Comments: A serious and disinterested witness; there was no reason to doubt his testimony.

**RCW-5**

[498] A Tutsi, the witness was a merchant in Butare. After the death of the president, the witness and his wife hid in the forest near the university, then returned to hide in his store, where employee RCW-6 brought them food.

[499] In late May 1994, a group of about 15 *Interahamwe*, led by Shalom and the accused, entered the witness's store firing their guns.

[500] From his hiding place, the witness saw the accused and his partners in crime loot and ransack his store. The accused carried a Kalashnikov. The witness heard him say that the group was heading next to the university, where they would rape and kill the girls. After that, they planned to go to Ngoma.

[501] When he was hiding in the forest near the university, the witness saw the accused and the *Interahamwe* force Tutsi students into the accused's pick-up in order to take them into town.

[502] In early July 1994, Shalom and his group, without the accused, returned to the premises and discovered the witness and his wife. They stole all their savings and took them to the ESO. On the way there, the witness saw the accused preparing to flee Butare with his family.

[503] On July 4, 1994, the RPF took the city and the witness was freed. His store had been destroyed and his entire family had been killed.

[504] Comments: The witness had a difficult time throughout the genocide and lost his entire family. His testimony was credible, despite some inaccurate dates. His testimony was corroborated by his employee, RCW-6.

**RCW-6**

[505] RCW-5's employee, he was living at his boss's home and worked there seven days a week. On the death of the president, his boss hid in the forest. When he had nothing left to eat, he came back with his wife and hid in his store.

[506] The witness saw three attacks on his boss's property. In the first, which the witness said occurred around April 22, 20 or so *Interahamwe* fired on the door. He recognized the accused and Camille, who were armed with guns and traditional weapons.

[507] The assailants were looking for his boss. When they did not find him, they looted the property.

[508] Another attack took place around May 18, when two soldiers confiscated his boss's vehicle.

[509] The third incident occurred on July 2, when an armed group lead by Kazungu discovered the boss and his wife. The witness fled. He saw from afar his boss, his boss's wife and a man called Laurent being taken away.

[510] From his hiding place, he also saw the accused and a man called Callixte loot property from his boss's home.

[511] Comments: The witness was honest and credible, but testified without emotion and reluctantly. Very weak intellectually. Could barely follow the debate in cross-examination.

**RCW-7**

[512] The witness, a Hutu, was living in Ngoma. His wife and children perished in 1994.

[513] On the president's death, the shock reverberated through the population and soldiers began to intimidate Tutsi.

[514] The widespread slaughter of Tutsi began openly after the president's speech around April 21 or 22.

[515] The president's message was clear: be vigilant and careful. The enemies of the homeland were trying to infiltrate. Roadblocks must be set up to prevent both infiltration and the departure of Tutsi who wanted to reach the RPF.

[516] The sector councillor was killed for failing to obey the instructions of the burgomaster and was replaced by Jacques Habimana, who forced the witness to join

him on pain of death. The witness joined the patrols of civilians and soldiers hunting down Tutsi.

[517] Everyone joined the patrols and all his Tutsi neighbours were killed.

[518] The witness was also assigned to manning one of the many roadblocks that appeared spontaneously throughout the prefecture of Butare. The roadblocks were built of pieces of wood or stones and served as checkpoints. Usually four or five Hutu guarded the roadblock and required people to show their identity cards. Hutu were allowed to continue on their way, while Tutsi were detained and handed over to the authorities. The guards were armed with machetes or clubs.

[519] Habimana appointed the people in charge of the roadblocks in Ngoma.

[520] The witness identified, among the people in charge of the city of Butare, Shalom Ntahobali, the son of Minister Pauline, who openly detested the Tutsi; the accused and his brother, Clément; businessmen and certain members of the *Interahamwe* leadership. These people carried firearms and sometimes wore camouflage fatigues.

[521] Before the genocide, the witness often saw the accused, Shalom and a group of *Interahamwe* at the Ibis hotel. During the genocide, the same group drove around town in motor vehicles. They went to the roadblocks, talked with the guards and took part in meetings of Hutu leaders at the Ibis hotel.

[522] During the genocide, five young women took refuge in Ngoma. The accused, Shalom and two *Interahamwe* came to pick up the refugees, forced them to get into Shalom's pick-up and took them away.

[523] Arrested in 1996, the witness was accused of genocide and pleaded guilty in 1998. He was sentenced to 15 years in prison.

[524] Comments: A serious and articulate intellectual. Had nothing to lose or win by testifying. Very credible. He no doubt embroidered on the facts to avoid having to accept any responsibility for the genocide, and merely repeated that he was forced to act or followed the orders issued by the authorities. He said his conscience is clear.

### **RCW-8**

[525] A Hutu, the witness was a merchant in Ngoma in 1994. When the president was killed, the local person in charge organized night patrols to protect himself.

[526] A crisis committee was set up and managed by the city's civilian and military VIPs. The committee decided that roadblocks would be set up, and a list was drawn up of important Tutsi who had to be killed first. All had to be killed, regardless of age or sex. If a Tutsi came to a roadblock, he or she was detained and handed over to the

authorities. Those who tried to flee were killed immediately. All Tutsi property was seized.

[527] Six to eight people guarded the roadblocks and the witness worked at them. The guards were armed with guns or traditional weapons.

[528] The accused and a man named Callixte Kalimanzira, a VIP, distributed the items required for the slaughter: grenades, gasoline, guns, machetes and military clothing. The accused personally gave him a grenade.

[529] The witness had access to the lists of Tutsi to be killed. A list might contain 30 or so names or places to visit or loot: doctors, teachers, merchants, etc. The witness knew all of them, as they were his neighbours. He was told they all had to be killed so that they would not join the enemy. The witness carried out the orders.

[530] The witness took part in many night patrols during which Tutsi were hunted down from house to house. As soon as a Tutsi was found, he or she was killed on the spot. The witness killed a Tutsi himself by hitting him with a shovel. He burned down Tutsi houses with the gasoline provided by the accused and Callixte.

[531] The Tutsi captured at the roadblocks were handed over to the people in charge, including the accused and Shalom. The accused drove them away to their deaths in a Daihatsu pick-up used in the family business.

[532] Arrested in 1995, the witness was sentenced to 10 years in prison. He took part in the search for the bodies of people buried during the genocide and helped dig them up from common pits so that they would have a decent burial. Since he helped locate the pits and admitted his responsibility in the genocide, he was released in 2003.

[533] Comments: He seemed sincere and his description of events was credible. He was much less clear and often confused in cross-examination.

### **RCW-9**

[534] The witness, a Hutu, was living the commune of X in the prefecture of Butare. Two weeks after the president's death, refugees arrived from Kigali and reported the massacres occurring there.

[535] Outsiders came to his commune to kill Tutsi. During the same period, local leaders organized public meetings at which the population was urged to kill Tutsi, as enemies of the homeland. The local police and soldiers joined the hunt for Tutsi.

[536] The Tutsi took refuge in the hills but, when they returned because they were short of food, they were killed. The witness took part in the killings.

[537] In April 1994, the witness took on important administrative responsibilities in the commune of X. He was given the responsibilities by the prefect during a large public gathering. The prefect invited the population (only Hutu participated; a Tutsi would have been killed immediately, the witness said) to fight the Tutsi accomplices, and a military leader encouraged Hutu youths to join the soldiers in their hunt for Tutsi.

[538] The radio incited the population to kill Tutsi. A message from Prime Minister Jean Kambanda was particularly eloquent in that regard.

[539] Everywhere, young Hutu underwent military training and arms drills. In June 1994, the witness attended two meetings chaired by Prefect Nsabimana, where an assessment was made of the Tutsi slaughter so far and of a campaign to complete the work. The importance of preventing Tutsi from reaching Burundi was also discussed.

[540] The prefect was replaced by Colonel Nteziryayo, who incited the population to complete the massacres and who ordered the killing of the women and children housed at the prefecture by the previous prefect.

[541] Meetings of prefecture leaders took place at the Ibis hotel, where Robert Kajuga, the national leader of the *Interahamwe*, lived. The witness did not see the accused there but did see him frequently going by in front of the hotel.

[542] There were many roadblocks in the prefecture. The accused and Shalom were in charge of the roadblocks near the university. The witness heard the accused ordering the guards at the roadblocks to detain everyone without an identity card, since Tutsi were destroying their cards in order to avoid being killed.

[543] In June 1994, the witness saw the accused and Shalom in the shopping area breaking down the door of a Tutsi store, looting it and loading the stolen goods into a white pick-up.

[544] On another occasion, he saw the two men removing the padlock from the door of another Tutsi store, enter the store and loot it, then load the contents of the store into a white Peugeot pick-up. The accused was wearing a military shirt. On that occasion, the witness was accompanied by the sub-prefect, who upbraided the accused for what he had done.

[545] In late June 1994, the witness left the country and returned to Rwanda only in July 1997. He admitted his responsibility in the genocide and has been in prison since then.

[546] He believed his testimony was important because genocide is a painful memory. It is important to tell the truth to ensure condemnation of the people responsible and denunciation of the devastating philosophy that took hold of the country at the time, and to prevent the recurrence of such a tragedy.

[547] Comments: Educated and intelligent, the witness responded slowly and calmly to questions. He was very articulate and wholly credible. He bore a demanding cross-examination well.

### **RCW-10**

[548] A Hutu from the commune of Ngoma, the witness worked at the bishopric of the ECR. After the death of the president, refugees from neighbouring communes began arriving at the school. There were about 5000 of them by April 20, 1994.

[549] On April 21, at a crisis committee meeting, it was decided to kill the refugees. The next day, April 22, a battalion of 250 soldiers armed with machine guns and grenade-launchers, accompanied by a group of civilians, including the witness, armed with traditional weapons, attacked and killed almost all the refugees.

[550] The operation lasted from 3:30 p.m. to 6 p.m. The victims were looted and the burgomaster ordered their burial two days later in common pits using a Caterpillar power shovel.

[551] The witness contended that he had to commit the crimes because his wife was Tutsi and he was told she would be killed if he did not cooperate.

[552] He recounted a series of events in which he participated in massacres of Tutsi in his community. He described the Butare roadblocks, at which he did not work as he was assigned to night patrols.

[553] The accused and Shalom were in charge of the roadblock near the home of Minister Pauline, Shalom's mother. When he went through the roadblock, Tutsi were being killed there. On April 21, his neighbour Léopold was killed there on Shalom's orders. Other Tutsi were detained.

[554] Later the same day at the roadblock, he saw the accused and Shalom loading 40 or so Tutsi onto three pick-ups and taking them near the university laboratory, where they were undressed and killed by the accused, Shalom, Pierre-Célestin and other *Interahamwe*. The three were armed. The witness was 15 metres from the scene.

[555] Most of the time, the refugees were killed with a traditional weapon, since the killers wanted to save bullets. On that occasion, the accused was wearing a military shirt and used a knife to kill the refugees. The victims were buried in a common pit on the site.

[556] On April 25, the witness saw the accused, Shalom, the prefect and many *Interahamwe* go to the prefecture and force Tutsi refugees there into two vehicles: the Daihatsu belonging to the accused's father, which the accused drove, and Shalom's Peugeot. The assailants were armed.

[557] Under intimidation, some of the refugees were taken to the pit near the INRS and some to the police station. On April 29, the same group took the refugees from the police station to the school complex.

[558] The witness fled Rwanda for Burundi when the RPF arrived. He remained there a week, then returned home, where he was arrested and imprisoned. He acknowledged his participation in the genocide and was to be released in 2003. Before being released, he was accused of the massacre of 40 people who were burned alive. He is certain that the investigation will show that the charge is not true, but for the time being, he is still incarcerated while awaiting trial.

[559] The witness has known, since childhood, the accused and the accused's father, a very important merchant in Butare.

[560] He explained at length the process of admitting responsibility in the genocide. Killing is a shattering act, which he refused to acknowledge until 1998. In the Butare prison where he is held, 2000 people have acknowledged their responsibility in the genocide out of 13,700 inmates.

[561] His conscience alone is his guide. For him and his co-inmates, the admission of responsibility is an on-going process that continues today. It is part of the rehabilitation process helped along by the *gacaca* (reconciliation) meetings held in prison.

[562] The witness admitted having participated in the deaths of 2000 people, but categorically refused to admit that he personally killed anyone. The death of those people was the work of a group: everyone is responsible collectively, but no one is responsible individually.

[563] Comments: He testified at length, with precision and rigueur. He remained credible despite contradictions between his testimony in court and some of his written statements. Other written statements were consistent with his testimony.

### **RCW-11**

[564] A Hutu, the witness was living in the commune of Ngoma. On the death of the president, he remained shut away in his home, fearing what would happen. A curfew was imposed.

[565] A few days later, Ngoma youth came together and gave instructions to kill Tutsi. Among the youth were Jean-Paul Nsabimana; Jacques Habimana, the sector councillor; Fils Murekezi; Blaise; Édouard Nyagashi; Jean-Pierre Bizimungu and Vincent.

[566] The group threatened to kill the witness if he did not join them. The witness joined them and the group, armed with traditional weapons, left to search for Tutsi.



[567] The group first went to the mosque and looted the building. The Tutsi hidden in the ceiling of the mosque school were killed with machetes and clubs.

[568] The group then went to the Ngoma Catholic church, where hundreds of Tutsi had taken refuge. The accused joined the leaders of the group and the church doors were opened. The accused left the site in his car.

[569] The Tutsi came out of the church in small groups, were taken to a pit close by and killed. The slaughter lasted five hours. The witness did not see where the Tutsi came out of the church but heard the leaders say that they would be killed. The attackers returned alone from the common pit.

[570] The group then went to the Adventist church. The Tutsi who had found refuge there were killed.

[571] The witness said that the accused and his group twice tried to attack RCW-3, a neighbour held in high esteem by those around her. Her neighbours prevented them from doing so.

[572] The group also went to the home of Felici, a rich Ngoma Tutsi. The home was looted and the accused killed a girl in the rear courtyard. He was wearing a military shirt at the time. After the accused left, the group killed the other people in Felici's home.

[573] The witness saw the accused, Shalom and other people loading Tutsi into vehicles at the prefecture. One of the vehicles was the Daihatsu driven by the accused. The accused also took part in transporting other Tutsi refugees to the stadium in his vehicle.

[574] The accused and his group recruited Ngoma youth to loot and kill Tutsi in Taba.

[575] The witness fled to Burundi when the RPF arrived. He returned to Rwanda on January 4, 1998, was arrested, admitted his responsibility, was tried and was sentenced to 15 years in prison.

[576] In cross-examination, the witness affirmed that it was clear the accused was one of the leaders of the hunt for Tutsi in Butare.

[577] Comments: The witness seemed sincere. He explained with passion and conviction. Perhaps he tried too hard to convince, which may have led him to give details he did not really remember. But, after cross-examination, part of the accused's testimony lost credibility. However, it must be noted that it is very difficult to invent all the details he reported.

**RCW-12**

[578] A foreigner by birth, the witness had a Hutu card. He lived in the commune of Ngoma. On April 20, the presidential guards arrived in the area and demanded that Tutsi homes be indicated. The witness had to cooperate or risked being killed.

[579] On April 21, the Tutsi slaughter began. Civilians joined the presidential guards in their attacks on homes, schools, dispensaries and churches in Matyazo.

[580] Tutsi took refuge in the school and locked themselves into classrooms. The presidential guards accompanied the Hutu population, fired on the refugees, set fire to the doors and threw grenades. Hundreds of people were killed. The witness accompanied the group.

[581] The same scenario was repeated at the Matyazo dispensary. Later, a tractor along with prisoners came by to load the corpses into trucks, from which the corpses were thrown into a pit in Ngoma.

[582] The witness saw the accused three times during the genocide. He was wearing a military shirt and was carrying a Kalashnikov. He drove a vehicle and asked the people guarding the roadblock where the witness worked: "Whether they had done good work", meaning, according to the witness, whether they had killed Tutsi.

[583] The accused was an important man who came by to check up on the situation, that is, to find out whether Tutsi were still alive on the premises.

[584] In late June 1994, the witness fled to Zaire (Congo). He was detained by force there and was beaten upon his return to Butare. He has been in prison since then.

[585] He admitted his responsibility in the attacks during the genocide and is awaiting trial.

[586] It was his job at the roadblocks to spot and detain Tutsi. Only the leaders had firearms; subordinates like him did not.

[587] Comments: The witness seemed particularly ill at ease testifying. He often looked down at the floor. He seemed sincere and repeated that he did not want to harm the accused but just to tell the truth. Was obviously mistaken when he said the facts occurred in May 1994. He added that he no longer knew whether they were in April or May. He cannot be relied on for the dates, that is, the months at least. It is very possible that he was afraid to testify, as his life was again turned upside down in 2000. He is more limited intellectually.

**RCW-13**

[588] Born abroad, the witness was living in Ngoma in 1994.

[589] On the death of the president, people were angry and the slaughter of Tutsi quickly began. He took part in the hunt for Tutsi because he was ordered to do so.

[590] The witness worked at the roadblock 60 metres from the Ngoma Catholic church. A group of soldiers, presidential guards and civilians, including councillor Jacques Habimana and the accused, came to the roadblock where the witness was working and ordered him to follow them.

[591] The group attacked the church where the Tutsi had taken refuge. There must have been 300 or 400 people in the church. The accused ordered the doors opened and killed a young man named Martin, who tried to flee.

[592] The group surrounded the building and the people inside came out in small groups. They were killed a little farther away, in a small wooded area or on the neighbouring soccer field.

[593] The witness searched the refugees and stole their money. Those who resisted were executed. The refugees were killed with guns or clubs. The witness admitted having killed many refugees with a club. He was forced to do it, by the accused in particular.

[594] The witness was arrested in Butare in November 1996 and has been in prison since then. He admitted his crimes, particularly the attack on the Ngoma church and mosque. He was tried, found guilty and sentenced to death. His case is being appealed.

[595] He did not implicate the accused because the accused took refuge abroad. In addition, the accused's brother-in-law was a Minister, and why go looking for trouble. He later felt the need to talk about what happened.

[596] Comments: The witness testified clearly and specifically. His estimate of the duration of the massacre and the disposal of the bodies was not realistic.

#### **RCW-14**

[597] The witness is Hutu and was living in the commune of Ngoma. He was working for an importer in the city.

[598] When the president was killed, the civilian and military leaders said Tutsi killed him, and wanted to eliminate Hutu and take control of the country. All the businesses closed, the soldiers left for the front and the population panicked.

[599] Soon roadblocks went up and everyone had to man them. They were instructed to detain Tutsi and hand them over to the authorities. The witness worked at a roadblock near his home. The roadblocks were run by those who were armed and had received training, i.e. the *Interahamwe* and the cell leader.

[600] Those manning the roadblocks were taught how to recognize Tutsi: they were tall, had large noses and were intelligent. The people at the roadblocks also had to check ankles (for boot marks) and shoulders (for marks of gun straps), which were signs of a Tutsi soldier who was trying to infiltrate. They also had to be vigilant because false identity cards were in circulation.

[601] At night, about 15 people worked at his roadblock. They had traditional weapons. Only the leaders had guns and grenades. One day, a police officer and five *Interahamwe* killed three Tutsi there. He himself took part in detaining eight Tutsi at the roadblock.

[602] The largest roadblocks were in Butare. The witness went through the roadblock near the university laboratory one day and was stopped because of his height. Many Tutsi had already been detained there, including one named Christiana.

[603] The accused and Shalom, who were armed, arrived at the roadblock in a Peugeot driven by Shalom and stolen from a Tutsi. Shalom criticized the people manning the roadblock for their lack of zeal, and he killed Christiana. Désiré had the witness released; he had worked for Désiré's father and Désiré knew him.

[604] Shalom, the accused and an *Interahamwe* took the detained Tutsi behind the university laboratory, where there was a common pit. The Tutsi were killed and their bodies were thrown in the pit. The accused was wearing a military shirt. The two men used either Shalom's Peugeot or the Daihatsu of the accused's family.

[605] In May 1994, the witness was taken to a civilian defence camp, where he received firearms training. He failed the training and went back home.

[606] The witness attended political meetings in his boss's store. Among those present at the meetings were his boss and his boss's brother, Nyagashi; Minister Pauline; Jabo; the accused and his brother, Clément and Shalom. They were all members of different parties but discussed ways to fight the Tutsi enemy.

[607] One day, at one of the meetings, his boss asked him to take delivery of merchandise—60 to 80 guns and ammunition—from a very large importer near Pauline's home.

[608] Comments: The witness explained the events calmly and simply. His explanation of the *gacaca* process, like his testimony as a whole, was very credible.

## **C-15**

[609] A Tutsi who was 17 years old in 1994, the witness was living with her parents in the commune of Ngoma. Just after the president's death, the *Interahamwe* started to hunt down Tutsi and kill them.

[610] She took refuge in the Matyazo school with her older sister, joining 3000 other Tutsi there. The *Interahamwe* killed the Tutsi at the school using traditional weapons and set fire to the building. Almost everyone was killed. She begged the attackers to spare her, but she was beaten and lost consciousness.

[611] She regained consciousness and realized that she had been thrown on a pile of corpses, where she remained for three days. She crawled over the bodies and went back home. She was taken to the councillor's home, where she was threatened with death unless she agreed to have sexual relations with the master of the house.

[612] She sought refuge at the Butare university hospital, where she was beaten and injured like all the Tutsi there. She had only rags for clothing.

[613] After a week, she went to the Butare prefecture, where many Tutsi had taken refuge. From there, a pick-up made many trips ferrying the Tutsi to be killed. Those transported were never seen again. The accused, Shalom, Peter and other *Interahamwe* drove the refugees to their deaths in Pauline's pick-up.

[614] Roadblocks went up, one near Venant's. Désiré was among those in charge of that roadblock. Those passing through were asked for their identity papers in order to spot Tutsi. The witness said she saw Désiré, Peter and some of their friends kill a young man by beating him with a stick near the roadblock. She was four metres from the scene.

[615] After taking refuge at the prefecture, the witness, and two other refugee girls, Alphonsine and Caritas, were taken to Mahenga's near Venant's, where they were repeatedly raped.

[616] The witness was raped by a tall Black man, Alphonsine by Désiré, and Caritas by a man from the prefecture. The three women were held at Mahenga's for three days and were assaulted in three separate rooms. Désiré came several times to Mahenga's during the three days.

[617] Ten or so men repeatedly raped her. They wanted to see whether Tutsi women were better than others.

[618] At that stage in her testimony, the witness lost consciousness and was hospitalized. She resumed her testimony a week later.

[619] The witness explained that, after her three days of "sexual captivity" at Mahenga's, an *Interahamwe* returned the three women to the prefecture in an appalling state.

[620] She was taken back another time to Mahenga's a little later, and was raped by all the *Interahamwe* who stopped by. The men told her she was their property. She

recognized Peter, Mahenga's son and Désiré, who had a gun. There were other refugees on the premises as well.

[621] While she was at the prefecture, the prefect sent all the refugees to the ECR school. Soldiers and *Interahamwe* attacked the refugees in the school. A soldier took her behind a nearby bush and raped her.

[622] Many young Tutsi men were killed there.

[623] The group was taken back to the prefecture, then to the ECR again and back to the prefecture. Many Tutsi were killed during these trips.

[624] When she was back at the prefecture, the witness saw Shalom, Mahenga's son and other *Interahamwe* forcing refugees onto a pick-up in order to take them to be killed. They were never seen again.

[625] One day, the prefect announced that the refugees would be taken to Nyaruhengeri, a safe place. Two buses took some of the refugees away and the witness heard that they were all killed. The next day, other refugees were forced into a third bus.

[626] Once the refugees arrived at the Nyaruhengeri roadblock, they saw that the guards and their machetes were covered with blood. The guards said they had killed refugees all day long and that they were tired. They refused to kill any more refugees and the bus returned to the prefecture.

[627] The refugees were then transferred to Rango, where they lived in dreadful conditions until the RPF arrived. The witness later returned to her village.

[628] The witness recognized the accused in court as the person she called Désiré. When she came into the courtroom for the first time, she recognized him immediately and was terrified.

[629] She acknowledged that certain memories of the genocide emerged in the course of her testimony, but that the suffering she endured is so deep that she cannot talk about many of the things that happened.

[630] Comments: The witness is illiterate, but she is far from destitute. She was very credible and thoughtful, and responded calmly and specifically to the questions. She did not lose her composure in cross-examination.

## **C-16**

[631] A Tutsi, the witness was 21 years old in 1994 and was living with her mother in the commune of Runyinya.

[632] The Hutu took out the death of the president on the Tutsi, stealing their property, setting fire to their homes and assaulting them. The Tutsi took refuge in the hills.

[633] The witness hid in the hills with a girlfriend her age and two children. The four fugitives were stopped, taken to the edge of a common pit and undressed. The two boys were killed and the two young women were raped by a Hutu who had promised to help them cross the border into Burundi.

[634] The two young women fled and were stopped at a roadblock. The witness's friend tried to run away, but she was killed and her body was thrown in the river. The witness was taken back to Butare, where she saw a truck from which the bodies of Tutsi killed at the university were being unloaded.

[635] She was taken to the Butare hospital, where Tutsi refugees were being beaten by Hutu soldiers returning from the front. There were many *Interahamwe* there.

[636] The witness sought refuge at the ECR, joining a flood of refugees. Soldiers, *Interahamwe* and civilians attacked the school and took away the men, who were never seen again. She heard Minister Pauline inviting the Hutu to get rid of the Tutsi vermin who had taken refuge in the woods around her home. All those found were killed with machetes.

[637] She then sought safety at the prefecture, where she found many other refugees. She stayed there for a month. She saw the accused, Shalom, Ntakujenjeka, Mahenga's son and *Interahamwe* force refugees onto a pick-up there. The refugees were beaten and in a terrible state. They were never seen again.

[638] The same group took the witness and six other Tutsi in the pick-up to a common pit. When an *Interahamwe* hit the person next to her, the witness fell down and pretended to be dead until the group left. During these incidents, Désiré was wearing a either a military shirt or military pants. He was armed.

[639] The witness again took refuge at the prefecture. One day, she saw the accused choose four Tutsi refugees in the prefecture and take them with friends to Venant's. The group suspended the four men by their feet and beat their heads on the ground until they died. Désiré had a gun and the whole group said all Tutsi had to die.

[640] One evening, Désiré and friends chose three girls from among the refugees and took them to the abandoned Mironko plastics building. Shalom took one girl, Désiré took Alphonsine and Mahenga's son took the witness and raped her. She did not see what happened to the two others, but Alphonsine appeared to be in despair upon her return. Désiré was armed and the girls were beaten if they refused to submit to rape.

[641] Désiré and his friends repeated their little scenario and forced female refugees to go to the Mahenga building, a restaurant/rooming house. Désiré chose the girls.

[642] The witness recounted the same episode of the buses going to Nyaruhengeri and Rango as witness C-15 did.

[643] The witness did not know the accused before the war. At the prefecture, he was called Gikovu, scar-face, because of the scar on his face. She clearly identified him in the dock.

[644] The witness stressed that, during the genocide, all the Tutsi in a position of authority were killed.

[645] The witness explained that she preferred to stay at the prefecture, where the chances of being killed by bullets were greater than those of being killed by machete if she fled.

[646] No one fed the refugees, except for some rations from the Red Cross, which the accused and his partners in crime often destroyed.

[647] Whenever the witness was in the accused's presence, he acted as if he were a leader.

[648] He was very frequently at the prefecture. He was there when refugees were moved by bus, but he did not come to Rango. Those who refused to get in the buses were beaten.

[649] In Rango, the refugees were assembled on the grounds of the Salesian Fathers' convent. Only a White Catholic priest helped the refugees in Rango but he was beaten by the *Interahamwe*.

[650] Almost all the women at the prefecture were raped in the nearby buildings or fields. An old woman was taken by the accused and she begged him to spare her, given her age. Her plea was ignored.

[651] Comments: The witness was calm, testified simply and seemed emotionally broken. Her testimony was akin to a long, constrained moan. She was intelligent and articulate, and her explanations were the same in the main examination as in cross-examination. She provided very specific details about the events she recounted. She was very credible and increasingly so as her testimony and the cross-examination progressed.

### **C-17**

[652] A Tutsi who was 20 years old in 1994, the witness was living in the commune of Ndora with her family.



[653] After April 21, Hutu looted Tutsi homes and killed the young men. The witness and her family hid at an uncle's home. An *Interahamwe* hit the witness in the back and threw her into a latrine. Her mother was beaten and killed in front of her.

[654] All the houses on the street were destroyed and all their occupants were killed. When she was about to be killed, an *Interahamwe* took her out of the group in order to give her in marriage to his son. That man's family rejected her because she was a member of an inferior race.

[655] The witness fled and reached her sister's house. Discovered, the two women were beaten and the witness was raped. She sought safety at the ECR school. The women were raped there, and the men were taken to the forest and never seen again.

[656] The witness said that, because of horror she experienced, she lost all conception of time.

[657] She left the school to find refuge at the prefecture. Living conditions there were terrible. In the evening, two pick-ups filled with *Interahamwe* came to get refugees and take them to their deaths. Désiré and Shalom were part of the group.

[658] Some evenings, Désiré, Shalom and their friends raped Tutsi women. Désiré raped the witness four times. The way he went about it was always the same: Désiré would come to get her at night at the prefecture, take her to old neighbouring buildings, force her to undress and rape her.

[659] Désiré told her he would do what he wanted with her and would kill her afterward. He had a knife and an axe. During the assaults, the accused was accompanied by his group of *Interahamwe*, who chose women at random. All were raped in turn.

[660] When she returned from being sexually assaulted, the witness wanted to die. She considered those who were killed lucky. She was raped by many *Interahamwe*. She saw the accused rape other female refugees.

[661] During the night transports by pick-up, she saw the accused kill two men with a machete.

[662] She recounted the transfer to Rango as the previous witnesses had.

[663] She did not know the accused before the genocide and she identified him in the courtroom.

[664] Comments: Testified clearly, plainly and with self-assurance. She was very articulate and very credible. Responded calmly and intelligently in cross-examination. Contradictions regarding incidental points were adduced.

**C-18**

[665] The witness, a Tutsi who was 22 years old in 1994, was living in the commune of Ngoma with his parents, brothers and sisters, two grandmothers and a cousin. They would all be killed in the genocide.

[666] On the death of the president, a curfew was ordered. Only soldiers and the *Interahamwe* could circulate in the city. On April 8, Bosco, a young Tutsi neighbour, was taken away and his body was found horribly mutilated.

[667] The Tutsi tried to flee to Burundi. The witness left to find a safe route for his family to flee and he returned on April 20. His whole family had been killed.

[668] President Sindikubwabo came to Butare during that period to preside over a meeting at the stadium. The witness saw the accused, his father, Théoneste and Eugène going to the meeting.

[669] The witness hid with his friend (Philippe) in the INRS forest. The *Interahamwe* were everywhere and the Tutsi were decimated. From his hiding place, he saw the accused and a friend at the hospital take a young Tutsi girl and force her into Désiré's vehicle. The young girl begged him to spare her but she was taken away. Désiré was wearing a military shirt.

[670] The witness fled toward Burundi with Philippe. The escape was nightmarish. Hutu were burning down Tutsi homes and killing Tutsi everywhere. Corpses littered the ground, particularly at the Burundi border, where many Tutsi had been slaughtered.

[671] Philippe was killed but the witness managed to cross the border.

[672] He returned to Rwanda in July 1994 after the RPF victory. He had known the accused for a long time and spontaneously recognized him in the dock.

[673] The witness also knew C-21 before the genocide. He saw her again when he returned to Rwanda and they both wondered how they had managed to stay alive.

[674] C-21 explained to him that she had hid in the home of the accused's father and that Désiré and his friends treated her barbarously and raped her.

[675] The witness stressed the importance of recounting the genocide, and even if he said nothing, the air, the earth and the wind would howl the truth of what happened in Rwanda.

[676] The witness said that the genocide in Rwanda was conceived according to a set plan for Hutu to kill Tutsi. The accused was an *Interahamwe* and he took part in the plan.

[677] Comments: Testified calmly, slowly and intelligently. Was overcome by emotion several times. His testimony brought back very painful memories for him. Identified the accused without hesitation, while looking directly in his eyes. Very credible and very intelligent.

### **C-19**

[678] The witness, a Tutsi who was 21 years old in 1994, was living in the commune of Ngoma with the family of her employer, a well-to-do man, whose children she took care of. Her employer's family was Tutsi.

[679] After the death of the president, many Tutsi sought refuge in the employer's home.

[680] One day, soldiers entered the house and discovered the people hidden in a bedroom. They opened fire and killed everyone except the witness, a friend and a two-year-old child, who was seriously wounded by a bullet in the neck. The soldiers looted the home.

[681] The three survivors went to the prefecture of Butare. The child was in terrible pain. It was the end of April or the beginning of May, as far as the witness could remember.

[682] When she arrived at the prefecture, the witness found Tutsi refugees everywhere; they were in an appalling state. Désiré and several *Interahamwe* were present.

[683] A few days after the witness arrived at the prefecture, the prefect and Minister Pauline came to see the refugees and Minister Pauline said: "Why not get rid of all this vermin", referring to the refugees.

[684] Désiré, Shalom and a certain Ntakugengeka and other *Interahamwe* were always at the prefecture. Désiré and his two friends appeared to be the leaders of the *Interahamwe*. Désiré was called "scarface" (Gikovu). Everyone was afraid of him.

[685] The witness saw Désiré and his two friends beat a young Tutsi man to death at the roadblock at Venant's.

[686] One day, Minister Pauline, her son and his two friends (one of whom was the accused) came to the prefecture with a pick-up spattered with mud and blood. They were accompanied by other *Interahamwe*.

[687] Minister Pauline gave instructions to kill the men and rape the women. The accused and his friends followed the instructions. The accused was particularly zealous and appeared to be the leader of the group. Désiré and his friends were armed with

guns. They made the men undress and took them away to be killed. The men were never seen again.

[688] When evening fell, Désiré and his associates came to the prefecture, woke the women, especially the girls, and raped them right there or off in the old houses next to the prefecture. Désiré was the leader of the group.

[689] The witness gave several examples of rapes by the accused that she witnessed. The accused and his men treated the women in the prefecture as if they were their property. They were there almost every evening.

[690] The witness was herself raped twice by an *Interahamwe*, although she was often spared because she had a two-year-old child in her arms. Generally speaking, the men preferred the youngest and prettiest girls. When she was taken away by an *Interahamwe* to be raped, she saw Désiré raping another woman.

[691] Tutsi men who took refuge at the prefecture were regularly taken away in vehicles by the *Interahamwe* carrying traditional weapons and by Désiré and his friends, who had guns. The men were never seen again.

[692] The witness saw Désiré kill two young men near the prefecture. Their only crime was being Tutsi.

[693] The refugees were ejected and sent to the ECR school, where life was just as awful. The Tutsi were beaten or killed there. Minister Pauline, who lived a few steps from the school, gave instructions to track down the Tutsi in the bushes near her home.

[694] The refugees were returned to the prefecture, where the rape and murder resumed.

[695] The prefect announced that buses would take the refugees to safety in Nyaruhengeri. A person who escaped from the first bus came to warn them that all the passengers had been killed. The witness refused to take the third bus, but was forced to. Rejected by the Nyaruhengeri guards, she found herself in Rango.

[696] The RPF freed them in early July.

[697] The witness explained that she was afraid when she entered the courtroom and saw the accused, whom she identified as Désiré Munyaneza.

[698] Comments: Testified with conviction and sincerity. She was very expressive and amply expressed her feelings. Her testimony was moving and convincing. She was very credible.

**C-20**

[699] A Tutsi who was 17 years old in 1994, the witness was living in the commune of Runyinya. After the president's death, she lived temporarily in Tumba at the home of Laurent, a family friend. A few days later, *Interahamwe* attacked the house and killed Laurent and his family.

[700] She managed to flee and went back home. Her family had been decimated. She found refuge in the dispensary, where Tutsi were living in appalling conditions. They had nothing to eat.

[701] She went to the Butare hospital, where refugees and wounded were everywhere. This was around April 20 or 25. Soldiers seized 50 or so Tutsi men, who were beaten and taken further away. Their cries could be heard but they were never see again. That scenario was repeated many times.

[702] Some Tutsi were killed in their hospital beds. Tutsi nurses were also killed. A cousin, Philippe, who was hospitalized in intensive care, was killed with a bayonet. His Tutsi nurse was taken away.

[703] MSF cared for the wounded Tutsi on the grounds of the hospital. Some were missing a leg or an arm. One day, the *Interahamwe* came and killed all the wounded being cared for by MSF.

[704] In the evening, solders and *Interahamwe* took female refugees and raped them. Some came back only two days later.

[705] One day, President Sindikubwabo came to the hospital and, when he saw the refugees, said: "You haven't yet cleaned away that filth; elsewhere that has all been done". The witness estimated that she stayed on the hospital grounds for three weeks.

[706] The Tutsi refugees were expelled from the hospital and taken to the prefecture. The Tutsi killers went at their work with renewed vigour. One day, Minister Pauline complained that refugees were on the grounds. She wanted to get rid of them as soon as possible. She threatened to get rid of them herself.

[707] It was at the prefecture that the witness saw Désiré, Shalom and Mahenga's son, who treated the refugees in many cruel ways. The land around prefecture was surrounded by roadblocks. There were *Interahamwe* everywhere.

[708] The witness saw Désiré, his two friends and *Interahamwe* surround and beat up a young man whom Désiré threatened with a gun. The young man was never seen again. Another day, the same group came to the roadblock at Venant's and beat the refugees with sticks.

[709] One evening, under Pauline's instructions, the three men came to the prefecture with a vehicle spattered with mud and blood, and chose young men, whom they beat and forced into the vehicle. They took the young men on the road to the university. They were never seen again. That scenario was repeated many times and, later, both men and women were chosen without distinction.

[710] Désiré was one of the leaders of the group. He told the refugees that they were a race that God had rejected.

[711] The same group took four or five-year-old children, put them in sacks and beat them with sticks. Désiré said that, if you want to kill a serpent, you have to hit it on the head. Many of the children died right there.

[712] The witness saw Désiré and his group attack a family that had just arrived at the prefecture "A Tutsi cannot live", he said as he and the *Interahamwe* beat the two men of the family to death. They then went after a women, who was beaten, dragged by the feet and thrown in their vehicle. Other refugees were also taken away and never seen again.

[713] The witness often saw Désiré with a gun at the Venant roadblock. Generally dressed in civilian clothing, he sometimes wore military garb.

[714] Désiré and his group regularly went to the prefecture at night after a slaughter, woke up the young women, took them and raped them. The group considered them rewards. The witness said she herself was raped, and she burst into tears. As the days passed, all the women were raped by Désiré and his group.

[715] One day, the refugees were chased toward the ECR school. They endured countless cruelties there. Minister Pauline, who lived close by, was delighted by the spectacle: "The Tutsi are dying like ants".

[716] The witness recounted the same episode as the previous witnesses about moving the refugees to Nyaruhengeri and Rango, which she witnessed when she was brought back to the prefecture with the other refugees.

[717] Knowing that they were being taken to their deaths, the refugees sang hymns in the bus, placing their fate in God's hands. In a very moving moment in her testimony, the witness began singing the hymn in Kinyarwanda.

[718] When the RPF arrived, the witness returned to her village. Alone.

[719] She did not know Désiré before the war, and identified him in the dock.

[720] Comments: The witness's testimony was very specific and calm, and she showed no spirit of vengeance. She testified with conviction and simplicity, and was very credible. She thought carefully before responding.

**C-21**

[721] The witness, a Tutsi, was 21 years old in 1994 and was living in the prefecture of Gikongoro with her parents, eight brothers and sisters, two cousins and a nephew.

[722] The day after the death of the president, a neighbour told the family that all Tutsi would be killed during the night. The family scattered into the neighbouring hills. Cries were heard in the night. The next day, she found her two little sisters and saw that her house had been half burned down. She later learned that all the rest of her family had been decimated.

[723] The Tutsi refugees gathered at the technical school, where the witness was hiding, with a friend's help, in a truck that took her to Butare. She took refuge in the school complex, where she joined many Tutsi refugees.

[724] On April 21, soldiers and militiamen attacked the refugees at the school complex and all those who could not pay a ransom. A member of the militia took the witness, who had no money, to the home of Isaac Munyagasheke, who gave 20,000 Rwandan francs (RWF) to save her life. The witness remained with the accused's family until the city was taken by the RPF.

[725] The property of Isaac, the accused's father, consisted of a large, two-storey house. The father's beverage business was on the ground floor, and the family lived on the upper floor. In the inner courtyard, which had a surrounding wall with two gates (one for pedestrians and one for cars), were annexes that contained a number of bedrooms.

[726] When she arrived at Isaac's house on April 21, the witness saw many people in the living room, including the Butare burgomaster and Colonel Muvunyi, in addition to Isaac. Isaac's spouse, children and grandchildren were also living in the house. The accused lived in another property belonging to Isaac, located a few steps from his father's house. The accused had supper almost every evening at his father's house. He was wearing a military shirt and was armed.

[727] While she stayed at Isaac's house, the accused raped the witness five times.

[728] One evening, after dinner, he took the witness to the bedroom he used when he lived at home. He asked her if she had been raped at the school complex. He touched her breasts, and immobilized, undressed and raped her. The witness resisted, argued, cried and, exhausted, gave in. The accused threatened to hand her over to the *Interahamwe*.

[729] Before being raped, the witness insisted the accused put on a condom, which he agreed to do. The witness begged the accused to kill her with the weapon he placed near the bed. She went back to her room crying and refused to speak to the person with whom she shared the bedroom. She was completely devastated.

[730] Two days later, during the day, the accused returned to the witness's room. She begged him not to rape her again. He assured her that he only wanted to rest. But he undressed and threw himself on her; she begged him to leave her alone. The accused responded that she had no choice, since she had nowhere to go.

[731] The witness submitted, telling the accused to do as he wanted: "It was as if I were dead; what you do, you are doing with my corpse".

[732] The witness said she wanted to die; she did not want to hide any more and be caught by the *Interahamwe*.

[733] Another time, the accused returned to the room during the day and asked to speak with her. He pulled the witness by her wrists and told her he knew she would not denounce him. The accused undressed, then undressed the witness and raped her. She cried out in pain. She said she wanted to close her eyes and never open them again.

[734] One evening, the accused knocked on the door of the witness's room and asked her to come and close the gate behind him because he was leaving. The witness followed the accused, who dragged her into his father's office adjacent to the gate. He threatened her: "If you run away through the gate, the *Interahamwe* will kill you". The accused was always armed and wearing a military shirt.

[735] He put down his weapons, held the witness by the neck and raped her after removing her pants. The witness ran back to her room crying and left her pants back in the office. She refused to answer the questions of the person who shared her room. The next morning, her pants were at the door of her room.

[736] A few days before the accused left for Congo, in early July 1994, he came into the witness's room crying. He had heard on the RPF radio station that he was accused of killing Tutsi and raping girls. He was certain that the RPF would kill him. He told the witness that he had kept her alive to show what a beautiful Tutsi was like, since she was the last: "There are only Hutu left".

[737] The accused apologized for ruining her life and revealed that he was infected with HIV. The witness was shattered: "It was as if my body no longer belonged to me; I had escaped the machetes and was going to die of AIDS".<sup>52</sup>

[738] The accused took his weapon and loaded it. The witness was sure that he was going to kill her and then kill himself. The accused undressed, then undressed the witness and raped her. She did not react, as she was terrified by the loaded weapon next to her.

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52 With consent, the parties filed Exhibit D-96, in which a physician, who examined the accused in 2008, indicated that he was not infected with HIV.



[739] The accused slept in the bedroom until morning. He was unrecognizable. He was crying. He said to the witness: "You see what state I'm in". He wanted to sexually assault her again, but she resisted. The accused got dressed and left. The witness did not see him again until she testified.

[740] The witness thought the first three assaults took place before the beginning of June 1994. She did not remember the dates of the fourth and fifth in early July. The accused used a condom only the first time.

[741] The witness cried heavily throughout her account of the assaults she described.

[742] She had no difficulty identifying the accused in the courtroom, since she has known him since childhood.

[743] The witness explained that Isaac left Butare with his wife and some of his children in early June 1994. Désiré and Clément left in early July.

[744] The witness recounted that, at the suppers she had with Isaac's family, the accused and his family talked about all those who had been killed. It was the accused who told her that her boyfriend had been killed, as had her best friend. He told her he had searched with dogs for Tutsi near the university. Tutsi deaths were normal for the whole family. Isaac encouraged his sons to go to the roadblocks as others were doing.

[745] At the beginning of July 1994, Désiré, Jeannette, Agnès and Valentine's family left Rwanda, given the imminent arrival of the RPF. Clément followed and took with him the person who was living in the witness's bedroom. No one took care of that person.

[746] Soon after that, the *Interahamwe* looted the house and found the witness hiding in her room. They decided to kill her but she begged them not to and they locked her in a bedroom at the Gracia motel, from which she was freed by the RPF.

[747] The witness explained that her vulnerable situation prevented her from denouncing Désiré's acts. She explained that she kept until 1998 the panties that Désiré had torn before raping her for the first time. That was the only souvenir she had of the pain and she did not share it with anyone. She had sworn that she would never talk about what happened because she was so ashamed.

[748] With time, she realized that the panties prevented her from forgetting that tragic period in her life. She threw them away in 1998, but will never manage to forget.

[749] In 2000, the witness met with the investigators of the Royal Canadian Mounted Police (RCMP) who were looking into the accused's role during the genocide. She refused to talk about the sexual assaults because she was too ashamed and felt guilty.

[750] In 2000, she took part in a project, funded by Belgium, in which many women testified about the rapes they suffered during the genocide. She learned not to feel guilty and found the courage to talk about what happened.

[751] In 2005, she learned that the Canadian police had returned to Rwanda and she asked to meet with them to talk about the sexual assaults.

[752] The witness explained that, in 2001, great pressure was applied on her by the accused's family to say that he had done nothing blameworthy during the genocide. Charles Butera, Désiré's cousin, was sent to see her several times. She agreed to sign a handwritten statement (D-4) in support of Désiré's application to immigrate to Canada.

[753] She agreed to that in order to have peace, and she wrote what Charles dictated to her.

[754] In the document, which was signed on April 1, 2001, she wrote that she could not talk about the "disgraceful events" that occurred in Rwanda in 1994, because she had been hidden by Désiré's family. She added that she could not accept the charges against Désiré because he is "very sensitive and social" and "could not kill anyone".

[755] In 2005, she sent the Canadian investigator an e-mail apologizing for not telling him about that. She said what she recounted in the courtroom was the truth.

[756] After the genocide, she saw C-18, a friend, and they both marvelled that they had survived. C-18 asked her if it were true that Désiré had killed and raped Tutsi. The witness responded that she had gone through hell in that family, but did not want to talk about it.

[757] Comments: An intelligent, educated woman, she testified in impeccable French. Her testimony was very painful when she recounted the sexual assaults. Wholly credible, her testimony was straight-forward and without bitterness. She responded calmly in the main examination and in cross-examination.

## **C-22**

[758] The witness, a Tutsi who was 23 years old in 1994, was living in the prefecture of Gikongoro with her parents, her four brothers and her two sisters.

[759] On the death of the president, the *Interahamwe* quickly began to kill Tutsi and burn down their houses.

[760] On April 11, the witness's family took refuge in the parish church, where Tutsi were crammed in. Many of them had machete wounds. One of her brothers was killed before he got to the church.

[761] A cousin came to take the family to a Butare convent. Subsequently, the witness took refuge with a friend's family that was decimated by the soldiers. She fled with a group of Tutsi.

[762] Through a loudspeaker mounted on a vehicle, the population was encouraged to hunt down Tutsi in the smallest bushes. The witness was taken on foot to the prefecture with a friend named Pierre. When crossing a major roadblock, Pierre recognized the accused, whom he had known in university, among the *Interahamwe* leaders of the roadblock.

[763] The group joined the very numerous refugees who were already on the prefecture grounds. Refugees were arriving all the time. Pierre was one of the first to be taken to his death. The *Interahamwe* beat all the men, including the witness's father, brother and friends. The men were separated from the women.

[764] During the night, three vehicles in turn took the men by force to their deaths. Those taken never came back. The accused and Shalom were among the *Interahamwe* taking the refugees to their deaths.

[765] Pauline, Shalom's mother, was also on the site and gave the order to kill those who screamed or cried.

[766] The witness saw a girl, Triphine, crying. She was decapitated and her body was thrown in one of the pick-ups with the other refugees. The refugees were piled into the pick-ups and the *Interahamwe* sat on them during the trip. Many *Interahamwe* mentioned the name Munyaneza.

[767] The accused was wearing a military shirt, and carrying a gun and a grenade belt.

[768] The *Interahamwe* were raping the women refugees at night, either on the spot or a little farther away. Some of the women were taken away and only returned a few days later. The witness said that an *Interahamwe* raped a girl on the prefecture grounds in front of everyone.

[769] One day, the witness saw an *Interahamwe* wearing her brother Alfred's jacket; her brother had been taken away the day before. She went to the vicinity of the prefecture and discovered many corpses that were about to be thrown into common pits. An enormous black dog had begun to devour her brother's corpse.

[770] The witness broke down in tears.

[771] The witness explained that Shalom and the accused were at the prefecture very often and gave instructions to the *Interahamwe*. One day, she heard the accused tell a police officer that the RPF was approaching and that, if it got as far as Butare, no refugee must be found in the prefecture.

[772] Another day, he criticized an *Interahamwe* for not carrying a weapon, and gave him one. Another day, the accused took a young refugee girl with him (she did not have breasts yet, the witness said) and brought her back three days later.

[773] The accused drove a Red Toyota pick-up with a special chassis in back.

[774] The witness estimated that she spent three weeks at the prefecture. One day, the authorities, accompanied by Minister Pauline came and decided to empty out the prefecture. The witness and refugees were loaded by force into a bus and taken to Rango, where the *Interahamwe* beat them and made their lives a living hell.

[775] In early July 1994, the RPF freed the refugees, who were returned to Butare. The witness lost her entire family with the exception of a sister and her father, who was seriously wounded.

[776] The witness did not know the accused prior to 1994. Everyone at the prefecture called him by name. He was not difficult to recognize since he was an important *Interahamwe* figure.

[777] She had no trouble recognizing him in the courtroom and said that the sight of him made her sick.

[778] The witness explained, that during the genocide, all Tutsi tried to save their lives in any way they could. That whole period was so painful that inaccuracies may have slipped into her prior statements. But the substance of what she said in the courtroom was true.

[779] For example, she may have been confused about where one of her brothers was killed. But the painful reality is that all her brothers and sisters were killed. Another unbearable memory that she cannot manage to forget is the torture of her father.

[780] She also explained the differences in language between peoples. For example, she stayed a long time at the house of her older sister, whom she very naturally called "Mother", as people do in Rwanda.

[781] Lastly, the witness explained that it was impossible for her to find the words to say how the refugees managed to survive in Rango despite their suffering, the absence of food and their total destitution. She said God simply decided they had to survive, even though it is inexplicable.

[782] Comments: The witness responded calmly and specifically to the questions, with no major contradictions. Very credible.

**C-23**

[783] The witness, a Tutsi who was 29 years old in 1994, was living in the commune of Mbazi in the Butare prefecture. Since her parents were deceased, she was living with family members (cousins, nephews).

[784] Soon after the death of the president, Hutu/Tutsi relations changed completely: neighbours no longer spoke to one another and behaviour become aggressive.

[785] The *Interahamwe* looted Tutsi property and burned their houses down. Only Tutsi property owners were targeted.

[786] The witness asked the person in charge of the cell for help but he could do nothing for her. She could not return to her home and took refuge at various locations where people agreed to take her in. All Tutsi were living in fear and finding refuge wherever they could. It was complete chaos.

[787] The witness found refuge in the youth camp, where a huge crowd of Tutsi had taken refuge as well. Some had even brought their livestock with them. One day, while the witness was hiding nearby, many *Interahamwe* encircled the refuge and two men in a car brought jerry cans of gasoline.

[788] The gasoline was poured inside and the *Interahamwe* also threw grenades. Those who were not killed instantly were slaughtered one by one when they tried to flee the premises.

[789] The witness hid in various places and ultimately returned to the Butare prefecture, where many Tutsi had taken refuge. New refugees were arriving every day. Numerous others, especially men, were being killed.

[790] Soldiers and *Interahamwe*, including Shalom, Désiré and Mahenga's son, were taking refugees by force to their deaths. Those taken were never seen again, except for the rare survivor who returned to tell of the deaths of all the others.

[791] Désiré, Shalom and Mahenga's son were the leaders of the group. Désiré wore a military shirt and was armed. All the *Interahamwe* received orders from those three people.

[792] They used two vehicles to transport refugees to their deaths. Désiré drove a red pick-up with a special chassis and the three other men used a white Peugeot pick-up. That vehicle was spattered with mud, which made it look like a military vehicle.

[793] The witness contended that the accused was frequently at the prefecture and that his activities seemed to constitute his main work. He might be there during the day and in the evening.

[794] One evening in particular, the accused was there with many *Interahamwe*, Shalom and Mahenga's son. The transport of three groups of refugees in the white vehicle was organized. The accused was armed with a gun and a saber. He was wearing a military shirt and was giving orders.

[795] The assailants encircled the prefecture grounds, and were shouting and frightening everyone. The three leaders—Désiré, Shalom and Mahenga's son—encouraged the *Interahamwe* to be zealous and spare no one. The refugees were grabbed wherever they stood and taken by force to the vehicle and their deaths.

[796] When the vehicle was full, the refugees were taken away, and the vehicle came back for another load. Terrified, the witness hid.

[797] The assailants called the three men "Chief".

[798] The witness heard Minister Pauline, whom she knew before the genocide, just as she did Shalom, say that Tutsi had to be killed: "Get rid of all these refugees for me".

[799] One day, the burgomasters from the surrounding areas got together and the prefect asked them to take the refugees back to their respective communes. Those taken back were killed by the *Interahamwe*.

[800] The witness stressed that the *Interahamwe* came to the prefecture and took away the women, especially very young girls. They might take them for an evening or a few days. They came back in a pitiful state, and wounded in many cases. They had been beaten if they had resisted. The accused took part in that violence.

[801] The accused affirmed that A.N., a very young girl (she did not even have breasts, the witness thought), was his property. He often took her with him in his vehicle. One day, she came back wearing the accused's cap. Three other girls were regularly taken away like that by Désiré and his friends.

[802] The *Interahamwe* regularly took the girls to old houses near the prefecture in order to rape them and to a house near Mahenga's.

[803] While she was staying at the prefecture, the refugees were sent to the ECR school under Pauline's orders. Life there was hard and Tutsi continued to be killed. The refugees quickly returned to the prefecture and were again expelled and had to go back to the ECR.

[804] A priest tried to help them by letting them stay in the school's classrooms and giving them food. The *Interahamwe* ordered him not to give them anything to eat because they were all to die.

[805] The refugees were again brought back to the prefecture, where Hutu refugees joined them. The Hutu were quickly separated from the Tutsi and sent to the stadium.

[806] A little later, the authorities decided to move the refugees to Nyaruhengeri to free up the prefecture grounds. Two buses took the refugees there. One refugee managed to escape and came back to tell the remaining refugees that everyone who left was killed.

[807] A third bus, in which the witness was riding and in which the refugees were crammed by force, left for Nyaruhengeri. Once it arrived near its destination, the bus was stopped by *Interahamwe* blocking its way. The *Interahamwe* were tired of killing Tutsi, especially since they were not being paid to do so. "Kill them yourself!", they told the people in charge who were accompanying the refugees.

[808] The bus returned to the prefecture and left later for the Rango forest. Living conditions there were just as difficult: nothing to eat, *Interahamwe* violence and appalling sanitary conditions. A White Father tried to feed the refugees but was prevented by the *Interahamwe*.

[809] The witness knew the accused by sight before the genocide. She knew that he was the son of Isaac, an important figure in Butare. She clearly identified the accused in the courtroom.

[810] She said the accused might come to the prefecture during the day and at night. His mission was clear: to kill and rape refugees. He was an integral part of the whole extermination process. He was in fear of no authority. He came many times to the prefecture with the red Toyota pick-up with the elevated chassis.

[811] Comments: The witness is not an intellectual but responded to the questions meticulously and in detail. She testified calmly, very credibly and with no aggressiveness. She appeared very weary in cross-examination. The fact that she did not tell the truth about her knowledge of C-22 in Arusha impaired her credibility, but her explanation was credible. The inaccuracies and contradictions raised by the defence seemed anecdotal, given her testimony as a whole.

## **C-24**

[812] The witness, a Tutsi who was 28 years of age in 1994, was living in the commune of Runyinya in the Butare prefecture with her husband and two children, who were two years and eight months old.

[813] She learned of the death of the president on Radio-Rwanda and, in the days that followed, Tutsi homes in the neighbouring commune of Gikongoro were burned down and refugees were fleeing to the witness's commune. Their property and animals were looted and some refugees were killed.

[814] The Hutu, assisted by the police, then attacked the witness's village. They attacked Tutsi homes and the schools where the refugees were hiding.

[815] The witness and her family sought safety at the communal offices. The Hutu had traditional weapons and wore necklaces of banana leaves. The police were armed with guns.

[816] A little later, the family took refuge in an elderly woman's house in the commune of Huye. In the distance, one could see the village houses in flames. All the Hutu were hunting down refugees.

[817] The family sought protection at the Butare hospital. Tutsi refugees who had been wounded by machetes were already there. The witness's sick child was refused care. Many wounded Hutu soldiers were on the premises.

[818] The witness saw a young Tutsi woman, Épiphanie, dragged by force to a vehicle by Hutu in military garb. The same happened to Philippe, a young Tutsi man who was a surgery patient; he was taken away by soldiers.

[819] The MSF physicians put up a tent on the hospital grounds for the wounded. Hutu seized the wounded Tutsi in the tent and took them away to their deaths. Their cries were heard a little farther away behind the maternity ward, where common pits had been dug.

[820] Young male refugees on the hospital grounds were taken to the same place to be killed.

[821] A soldier shouted at the refugees that he did not want to see them there any more because they were taking the place of wounded Hutu soldiers. The family left the hospital very early in the morning so as not to be seen on the road and they took refuge at the Butare prefecture. Many other refugees went with them.

[822] A multitude of Tutsi refugees were already on the site. The witness saw the prefect, the sub-prefect, many burgomasters, Minister Pauline, her son Shalom and the accused attending a meeting.

[823] It was announced that the refugees had to join their burgomaster and go back to their commune. Those from Huye left first. One refugee jumped out of the vehicle taking them there. He was caught and savagely beaten by the police. The witness and her family decided to remain on the site.

[824] One day, one of their neighbours was beaten by Hutu dressed in military uniforms. The witness's husband intervened. Shortly after that, the *Interahamwe* took her husband away after shoving him around. He was never seen again.

[825] One day, the prefect sent the refugees to the ECR school. Since the buildings were closed, the refugees slept outside in the rain. They were soon sent back to the prefecture. The couple's oldest child died there from an untreated fever.



[826] The *Interahamwe* insulted the refugees and called them vermin. They did military exercises. Among the *Interahamwe*, the witness identified, in particular, Shalom, Désiré and Shyaka, who were armed with guns, while the other *Interahamwe* had sticks.

[827] The *Interahamwe* regularly took girls with them and raped them. Some were taken for a few days and were brought back after being raped. The witness named young girls who suffered that abuse: Chantal, Séraphine, Marie-Nancy and Louise.

[828] Désiré was among those who raped the girls. He regularly took A.N., a very young girl of barely 16, with him. He was at the prefecture regularly, several times during the day and almost every evening. He wore a military shirt. He was armed sometimes, and sometimes not. The *Interahamwe* approached him when he arrived but the refugees were afraid of him and hid from his sight.

[829] One day, the witness heard the accused tell an *Interahamwe*: "Rape the Tutsi and kill them!".

[830] One evening, the witness went to the back of the prefecture to go to the washroom. She was intercepted by an *Interahamwe*, who threatened to kill her if she did not agreed to have sexual relations with him.

[831] The witness begged him to spare her, promising that God would repay him. The *Interahamwe* responded that God would never forgive him for what they had done, since no country had every engaged in so much horror. Looking at his machete, he asked the witness whether she had any idea of the number of people it had killed. He ordered her to submit.

[832] Two girls went by then to go to the washroom. The *Interahamwe* hit the witness with the blunt side of his machete and went toward the two girls.

[833] The refugees were returned to the ECR school a second time and again went back to the prefecture.

[834] *Interahamwe* took young men behind the prefecture, where they were killed. The witness saw the common pits there, where the bodies were thrown.

[835] One time around midnight, a vehicle splattered with mud came to the prefecture. The witness saw Pauline, Shalom and Désiré at the head of a group of *Interahamwe*. They were the leaders of the group.

[836] Refugees were woken up and taken away by force. They were crammed into the vehicle, taken in the direction of the university and never seen again. The accused carried a gun and wore a military shirt.

[837] Three trips of that kind were made during the night. The preference was to take strong young men.

[838] The prefect decided to send the refugees to Nyaruhengeri. The refugees were loaded into buses and a truck. Two buses left the prefecture. That was the day the witness's older child died. He was two years old.

[839] The next day, a third bus took the refugees. The witness asked the prefect where she could bury her child. He told her to throw the body in the bushes. The bus took the witness and the other refugees but it was stopped at a roadblock. The *Interahamwe* refused to let it pass because diseases were being transmitted by all the bodies already accumulated. The guards ordered that they kill only people from their own areas.

[840] The bus went back to the prefecture and left later for the Rango forest, where the refugees were taken to the grounds of a religious convent.

[841] The refugees were freed by the RPF after a stay of unimagined violence.

[842] The witness did not know Désiré before 1994. The other refugees called him Désiré and he was said to be the son of Munyagasheke. He was a proud, well-dressed young man, but he had something strange on the side of his face. Like a scar. She spontaneously identified him in the courtroom.

[843] Comments: The witness testified simply and without taking sides. Very meticulous, she regularly referred to events prior to the events about which she testified. Because of that, her testimony was more difficult to follow. However, her testimony as a whole was credible and the cross-examination strengthened her credibility, given her clear and convincing responses.

**Guy POUDRIER, police officer**

[844] A police officer of the Royal Canadian Mounted Police (RCMP) for 18 years, the witness was assigned to the war crimes squad from 1999 to 2006. He traveled to Rwanda 15 times, 6 for the present case.

[845] The Munyaneza case was opened in October 1997, following a complaint by a Rwandan citizen living in Canada.

[846] The witness prepared a photo line-up with photographs from the archives of the Montréal police department. One of the photos was of the accused, taken by the department on May 30, 2000. The line-up was prepared according to the usual rules for that type of exercise.

**B) DEFENCE****Delphine UWIMBABAZI, defence witness**

[847] The accused's younger sister, the witness was 20 years old in 1994. She was living in Butare with her parents. She has six brothers and sisters: Annunciata, Jeannette, Clément (born in 1962), Christine, Désiré (born in 1966) and Claire.

[848] She left Rwanda on May 29, 1994 for Zaire and settled in Belgium in 1996. She became a Belgian citizen in 2001 and has never returned to Rwanda.

[849] On April 1, 1994, she was living in the family home with her parents, her two brothers, her cousin Peter Furaha, her cousin Jacqueline, and two domestic servants, Joseph and Alphonsine.

[850] On April 6, she accompanied her father to Kigali for Easter vacation. She was to visit her sister Annunciata there for a week. The president was assassinated and her father returned to Butare.

[851] She went back to Butare on April 10 or 11 with her sister, her brother-in-law and their four children. Her sister Christine, her husband Alexandre and their two children also took refuge in the family home.

[852] Désiré left the house and took refuge in the second home, a few steps away.

[853] After April 15, many people took refuge in the house. Some came, others left, but at all times, 20 or so people were living there, either in the home or in the four rooms in the inner courtyard.

[854] Many women lived in Pierre Furaha's room during the war: Diane, Parfine, Claudette, C-21, Jeannette, Adelphine, Alphonsine and Goretti.

[855] Pierre moved to Clément's room in the annex. C-21 arrived a few days after April 11. On her arrival, she was fine physically, but not so well mentally. She shared the girls' room in the annex, where there was a double bed, a mattress on the floor and rudimentary furniture.

[856] They all got along cordially. The refugees left their rooms infrequently during the day and would come to eat at the main house in the evening.

[857] Désiré came home every day but less often in the evening. There was nothing in particular between him and C-21. Désiré lived with his spouse, Valentine, in the second home. He wore civilian clothing.

[858] There were many vehicles at home. The father had a blue Peugeot and a black and tan Renault 21. Clément had a red Nissan and Désiré had a tan Renault 21. A red Toyota, a Daihatsu pick-up and tractor-trailers were used for the business.

[859] The witness went outside the compound three times in April and May. The first time, she went with Désiré to the university in his Renault. The second time, she went to the funeral of friends who had been killed. The third time, she walked from her house to Désiré's second home. None of the three times did she see roadblocks, corpses or *Interahamwe*.

[860] Désiré was burned when he was a child and had a scar on the left side of his face. He was in a car accident in 1993 and had other scars on his face from that.

[861] No soldier, or Shalom or the new President came to the house during the war.

[862] The witness listened to the president's speech on the radio on April 19 and thought it contained no incitement to violence against Tutsi. To her knowledge, there was no roadblock in Butare. She knew Robert Kajuga, whom she saw at a wedding. She listened to Radio Mille Collines, but could not recall hearing messages for the population.

[863] No word was ever said at the table about massacres of the population. There were four bedrooms in the family residence: one for the parents, one for Christine's family, one for the witness and one that was unoccupied. Her father's office was on the ground floor, near the gate. The rooms of Clément, Joseph, Désiré and Pierre were in the annex before April 6.

[864] After April 11, Clément and Pierre occupied Clément's room; Joseph and Benjamin (the drivers) were in Joseph's room; Annunciata, her husband and the baby were in Désiré's room. Pierre's room was occupied in whole or in part by the girls.

[865] One evening in late May, Colonel Gasarabwe stopped by the house and said part of the family could be evacuated. C-21 preferred not to leave because she would have to pass through her village and it would be too dangerous for her. The next day, the witness, her parents, Annunciata and her family, their maid and a nephew left for Zaire, then Kenya.

[866] Désiré, Clément and Pierre joined them. C-21 was not with them. The witness was told a soldier came by to take her as his wife.

[867] She has followed Désiré's trial on the Internet. She discussed it with DDM-7 and with members of her family. She read the testimony of RCW-3 in *African Rights*. She knew that C-21 testified at the trial. She twice saw her brother in detention in Canada in 2005 and spoke to him on the phone once.

[868] Comments: Clear and precise in her examination-in-chief, she forgot many things in cross-examination. No credibility concerning the situation prevailing in Butare, C-21 or the family discussions. According to her, there was no war or genocide in Rwanda. She obviously wanted to help her brother.

### **DDM-19**

[869] A Hutu, the witness was 38 years old in 1994. He has lived in Canada since 2003. Canada is currently seeking to revoke his status as a permanent resident, given his involvement in the events of 1994.

[870] A university graduate and founding member of a Rwandan political party, he rose to very high administrative and political functions in Butare in early May 1994.

[871] On April 9, the interim government deposed the prefect of Butare and the two sub-prefects, and appointed new ones. On April 19, the president came to Butare and delivered a speech in which he encouraged the population to support the army and the interim government.

[872] The roadblocks appeared in Butare between April 10 and 15. They served to prevent enemy infiltration and stop looters. It was mandatory for all men 18 years of age or over to serve on the roadblocks. Night rounds to flush out the enemy that had infiltrated were also mandatory.

[873] The witness saw the accused at his store during the war, but nowhere else. He had known him since 1976.

[874] The authorities set up pacification committees to encourage the population to remain calm and vigilant. The witness saw scenes of looting, which was essentially the work of soldiers. He saw no acts of looting during the night. He witnessed looting of the Faucon hotel and of a rice warehouse.

[875] He knew Shalom, who, according to public rumour, was a criminal. He knew of no link between Shalom and Désiré.

[876] Refugees gathered on the grounds of the prefecture; their numbers did not exceed 200. He witnessed only two episodes of violence at the prefecture, one in which an warrant officer tried to seize a refugee teacher and the other in which militiamen tried to attack the refugees. In the latter case, the witness reprimanded the militiamen and they stopped.

[877] Later, an attempt was made to resettle the refugees from the prefecture to ensure their safety. The operation was cut short and the refugees returned to the prefecture. They were later moved to Rango.

[878] One day, the witness saw Shalom in a camouflaged Peugeot filled with militiamen. He did not see him again for the rest of the war.

[879] The family of the accused, which he had known since 1972, was a distinguished family in Butare. The same was true of Pauline's family.

[880] After the president's speech, Tutsi massacres multiplied and roadblocks went up manned by soldiers and civilians. Everyone had to serve on the roadblocks.

[881] The *Interahamwe* were merely militias made up of MRND youths. Attributing the name *Interahamwe* to all the youth militias is an invention of Alison Des Forges, whom the witness criticized, just as he did André Guichaoua.

[882] After April 21, soldiers were seen killing people in the woods.

[883] There were few cars in Butare—barely a hundred—and even fewer during the war. The vehicles of Désiré's family circulated in town: the red Toyota, the Nissan and the father's Peugeot.

[884] The witness saw no particular incident at the roadblocks. There were no prisoners and no corpses.

[885] Butare also never had any prefecture civil defence committee, or any civil defence financing committee, of which Isaac was allegedly a member.

[886] The witness acknowledged that he opened a civil defence bank account, of which he was the mandatary.

[887] No refugee disappeared from the prefecture and there was never a corpse on the grounds. Nothing unfortunate could happen to the refugees during the day because the authorities were present.

[888] The witness left Butare on July 3, 1994.

[889] Comments: The witness is an educated, intelligent and articulate man. Despite his elevated responsibilities in Butare, he saw nothing. No corpses, no violence, no genocide. He gave a contradictory version before the Canadian Immigration Commission and downplayed his participation in the events of 1994. Very little credibility.

#### **DDM-1**

[890] The witness was 30 years old in 1994 and took care of orphans and street children 2 to 25 years of age in a Kigali accommodation centre. He worked with the Belgian Red Cross.

[891] On April 7, the centre took in 700 to 800 refugees from the hills. On April 12, the accommodation centre was evacuated and the children and refugees found themselves at the Butare school complex.

[892] Between April 12 and 19, the children were forbidden to leave the school complex. The witness went into town and saw three roadblocks: one on the university's street, one near Pauline's house and one at Mukani, near the president's home.

[893] The roadblocks were guarded by soldiers and presidential guards. Corpses littered the ground near the last two roadblocks. The roadblock near Pauline's house was guarded by Shalom and Kajunga, who were dressed as *Interahamwe*, along with other *Interahamwe*. The witness did not see the accused there.

[894] Between April 12 and 19, the witness went once to the prefecture to pick up gasoline vouchers. He saw the accused and other people getting gasoline vouchers. He saw the accused again around April 22 at the family business.

[895] On April 19, the president gave his speech inciting violence against Tutsi.

[896] The school complex was attacked twice, on April 21 and 29. On April 21, a group of soldiers and *Interahamwe* isolated the Tutsi refugees. Some were taken and killed. Others who could pay a ransom survived.

[897] On April 29, a much bigger group of soldiers and *Interahamwe* encircled the perimeter of the compound of the school complex in order to prevent any escape. Shalom seemed to be the leader of the group. Refugees were beaten to death and taken away. The witness could not see all the assailants because he did not go outside the perimeter.

[898] On June 4 and 5, most of the children the witness took care of were evacuated to Burundi. Shalom and his *Interahamwe* tried to stop the evacuation but without success.

[899] The witness did not see the accused with Shalom.

[900] The witness left Rwanda on July 3 and returned in August 1994. Detained from 1995 to 2003, he was freed at the end of a trial in which he was acquitted of genocide and war crimes. He lives in France as a political refugee.

[901] Between his departure from Rwanda in 2005 and his arrival in France in 2006, he lived in Uganda, where he was imprisoned for assault and battery. He had to pay a fine.

[902] The witness said he taught Désiré at the school complex. When cross-examined, he had to admit that Désiré is, in fact, only two years younger than he is.

[903] Désiré was not a friend and the two men were not part of the same social group and did not see each other often. Désiré's family was well-to-do and the witness came from a rural area.

[904] The witness vaguely recalled that Désiré had a scar.

[905] Jeannette, one of Désiré's sisters, contacted him in August 2006 and begged him to meet with the accused's attorneys. He agreed.

[906] The witness acknowledged that he cooperated as a witness in the publication of a book by Dina Temple-Raston. Confronted with excerpts from the book, he had to admit that some of the facts reported in the courtroom were reported differently in the book.

[907] RTLM had been broadcasting vicious messages against Tutsi since 1990, predicting the worst for the country. It launched the rumour of a possible attempt on the president's life and reprisals against Tutsi.

[908] The witness had difficulty travelling to Butare after April 21 because the situation was too dangerous.

[909] During the genocide, the witness went to the prefecture to submit a Red Cross communiqué condemning the Butare massacres, particularly that of the orphans. He was received by the leader DDM-19 (defence witness), who was furious. He reproached the witness for having alerted the Red Cross to what was happening at the school complex and he called him a traitor. He reproached him for not being on the authorities' side.

[910] The witness saw a hundred or so refugees in a pitiful state at the prefecture. He tried to alert the authorities, but a colonel rebuffed him.

[911] The witness identified the accused in a photo line-up.

[912] Comments: A intelligent witness who expressed himself well and seemed sincere. He may have excessively emphasized his role as a saviour of the orphans. He recounted his story to a journalist who wrote a book about it. Many facts he gave in the courtroom did not jibe with what the author recounted. He was obviously mistaken in saying he was a teacher when Désiré was a student at the school complex. He knew little of life in Butare during the war and nothing about what went on at night. He was not at the same locations as the accused. His testimony was devastating to the version given by the preceding witness. His story about the evacuation of the children and their numbers was difficult to follow, owing to the differences between his examination-in-chief and his cross-examination.



**DDM-6**

[913] The witness, a Hutu from Kigali, was 28 years old in 1994. Married to an important figure in the presidential guard, she had a two-month-old child. She was living with two sisters-in-law and two domestic servants, in addition to her husband and child.

[914] On the death of the president, the city of Kigali became dangerous. On April 12, the family fled to Butare and rented rooms in Isaac's second home, which was occupied by Désiré. The main house was surrounded by a wall where there were rooms rented by students.

[915] The witness's family occupied three rooms. A woman and her brothers, and two young boys occupied other rooms. The witness did not know Désiré.

[916] Désiré and his fiancée, Valentine, and a friend, Blandine, occupied the main residence. When Valentine's parents joined them, Désiré occupied a room in the courtyard.

[917] Désiré handled the family business and the witness saw him every day in the store or with Valentine. In the evening, the engaged couple were in the courtyard. When Désiré was away, the witness was worried because she was convinced that he could protect them from the violence of the *Interahamwe*, in particular.

[918] The witness saw Shalom in town wearing camouflage fatigues.

[919] In late May, the witness left Butare for Bujumbura. To her knowledge, until she left, Désiré took all his evening meals with Valentine.

[920] The wife of the assassinated President Habyarimana is living in France, as the witness is, and she regularly comes to see the witness's mother, who is her neighbour.

[921] Jeannette, the accused's sister, called her recently and asked her to testify in her brother's defence.

[922] When she was in Butare, gasoline vouchers were not required. There was a curfew every day until 6 p.m. Her Hutu card enabled her to pass through the roadblock. She saw no corpses.

[923] She identified the accused in a photo line-up.

[924] Comments: The witness spoke calmly and intelligently. She made it seem as if the accused virtually never left the residential compound except to work in the store. She left Butare at the end of May.

**DDM-7**

[925] The witness, a Hutu, was 35 years old in 1994. She ran a general store in Butare but lived in Tumba with her husband and their five children, a nephew and three domestic servants.

[926] She is remotely related to Isaac and the two families have been friends for a long time.

[927] On the death of the president, a one-week curfew was imposed and the witness did not leave her home. On April 19, the president gave a speech and the massacres began that very night in Butare. The witness did not leave her home for another week.

[928] The witness explained that, during the war, you had to have a voucher from the prefecture in order to buy gasoline, which was paid for at the pump. That rationing policy applied to everyone, but priority was given to the military.

[929] Roadblocks went up everywhere in the city during the genocide; they were guarded by soldiers, civilians and other people wearing both military and civilian clothing. Shalom guarded the roadblock near his parents' house. He was not armed.

[930] Before April 6, 1994, the *Interahamwe* made up the MRND militia, but after that, many political parties joined the MRND, along with their militias. The term *Interahamwe* would soon mean literally "leaders and killers".

[931] Désiré was burned when very young and was involved in a serious accident in Kigali as a young adult. He has one scar on the right side of his face, from his ear to his chin, and another on his arm.

[932] During the genocide, the witness saw the accused many times in front of the two family businesses and once at the gasoline station. She did not see him in Tumba. He wore civilian clothing and drove an off-white Renault car. His brother, Clément, drove a red Nissan.

[933] The witness stated that no one in the family of Isaac Munyagasheke was involved in politics.

[934] She did not go to the prefecture during the war, but passing by in the car, she saw refugees living there in a horrible state: no water, no sanitation and no food.

[935] Before the war, it was customary to ask merchants for money to help the soldiers in battle. The civil defence authorities did not ask her for anything during the war.

[936] The witness saw corpses in Matyazo but not in Butare.

[937] The witness and her family left Butare on July 2, 1994 for Zaire, Tanzania, Kenya and Cameroon, and finally settled in France, where they have been since 1997. In France, she met the widow of President Habyarimana. She sheltered the accused in Yaoundé, Cameroon, in 1997.

[938] At the time, the accused's family was a rich family in Butare. Isaac and his family left Butare after the massacres, perhaps in April or May 1994, perhaps a month before her own departure. The witness's family and Désiré's family had long been friends. The accused's parents have come to the witness's house in France and she has been to see them in Kenya.

[939] The witness found out on the Internet about the accused's arrest and trial. She immediately called Jeannette, the accused's sister, in Belgium and said: "I know Désiré, he wasn't involved in those events; it's revenge!"

[940] The witness is certain that a story was cooked up that Désiré was an *Interahamwe*, when he was not. She learned from Jeannette that, in 2002, he had to change cities in Canada because a Rwandan was pursuing him.

[941] The witness stated that the accused's family was very well known in Butare and that no one was involved in the genocide.

[942] She immediately proposed to Jeannette that she go and testify in Désiré's defence.

[943] She stated even more forcefully that no one contacted her and that she was the one who contacted the accused's family in order to testify in his favour. The two families have always been close and that was what motivated her. They became even closer after Désiré's arrest. The witness contended that they become a single family in their shared suffering.

[944] Initially, after she learned of Désiré's arrest, the witness called Jeannette every week.

[945] The witness said she learned from a source in Rwanda that false testimony was being gathered. She said to herself that, if that was true, they also had to organize and she would testify. Jeannette did not immediately react to the witness's proposals.

[946] A little later, the witness was afraid to testify because a Rwandan who came to testify in Belgium in another genocide trial was killed. She mentioned her fears to Jeannette, who told her to think about it: "I won't force you".

[947] Questioned about her fear of testifying at the Munyaneza trial, the witness said it was based on the killing, in Belgium in the spring of 2007, of a witness who was going to testify in the trial of a Rwandan accused of the same crimes as Désiré Munyaneza.

[948] Confronted with the fact that the autopsy of that witness showed he had died of natural causes related to cirrhosis coupled with pneumonia and that the forensic pathologist had rejected any violent cause of death, the witness refuted that assertion.

[949] According to public rumour in Rwanda, he was poisoned and his attorney's office was ransacked in order to find compromising documents. His son-in-law's home was also allegedly searched. The witness reiterated that the man was killed because he came to testify in Belgium.

[950] A source in Rwanda told her that false testimony was being gathered against Désiré Munyaneza. They had to react.

[951] Convinced of a set-up, the witness decided to conduct her own investigation and, with the help of Rwandans, establish a list of witnesses who were heard by the prosecution.

[952] Initially, she asked Jeannette, the accused's sister, to give her a list of witnesses. Jeannette refused to respond, saying that she did not have the right to know the witnesses.

[953] The witness then approached Mtre. Dimitri in order to obtain the same information. The attorney refused, explaining that she could not have access to the list. Bear in mind that most of the witnesses for the prosecution requested and received permission from the Court to testify *in camera* and under an assumed name. Others testified behind a screen and under an assumed name.

[954] The same protection has, in fact, been demanded by the defence witnesses and they have obtained it to date with the consent of the prosecution.

[955] Faced with the two refusals, the witness turned to her Rwandan sources and learned that a prisoner, RCW-8, who had been heard in Kigali in the framework of the rogatory commission in Rwanda and who had obtained the Court's approval that his identity not be revealed, was assured that he would be released if he agreed to give false testimony against Munyaneza. The witness said that he was released from prison because of his testimony.

[956] She also learned that another potential witness received money and an offer of employment if she would say she had been raped by Désiré and that he gave her HIV. The Ibuka organization allegedly handled everything. Ultimately, the witness reportedly did not come to testify in Canada.

[957] The witness stated that she knew the names all those who testified against Munyaneza and that it was in her own interest to investigate.

[958] She contended that no one told her she did not have the right to try to establish the list of witnesses. She refused to answer a question that would have made it more

possible to identify her main source in Rwanda. The French vice-prosecutor responsible for the operation of the rogatory commission refused to compel her to respond, but noted in the minutes her reluctance to do so.

[959] Later, the witness changed her statement and contended that she knew the names of only two prosecution witnesses.

[960] The witness affirmed that she did not know the identify of the people who testified for the defence before she did.

[961] The witness maintained that, during the genocide, there was a list of real or assumed merchant sponsors of the RPF. Those merchants had every interest in closing up shop and leaving the country. Martin Uwariraye was one of them.

[962] Getting back to Shalom, whom she said was not a close friend of hers, she said she often saw him at the roadblock near her parent's house. He was always dressed in civilian clothing and never carried weapons, and his vehicle was not camouflaged. However, she knew that his pick-up belonged to a Butare Tutsi.

[963] Before the genocide, she had never seen Désiré and Shalom together. They did not live in the same neighbourhood and she see them as belonging to the same social class.

[964] She saw Mahenga's sons during the genocide, but Désiré never went around with them. However, Mr. Mahenga, the father, was often seated at a table at the Ibis hotel, drinking a beer and surrounded by *Interahamwe*.

[965] Returning to her whereabouts during the war, the witness confirmed that she closed her business from April 6 to 13 and from April 20 to 27, 1994 and stayed in Tumba.

[966] After that, she closed her business around 3 or 4 p.m. and returned to her home in Tumba. She tried to keep her business open despite the gloomy atmosphere, as rumour had it that merchants who closed their shops were Tutsi who were hiding.

[967] The witness never went out in the evening because a curfew was in effect as of 6 p.m. throughout the events.

[968] At the roadblocks she crossed, certain people were refused access and detained by the side of the road. She never saw a grenade in Butare.

[969] DDM-19 went to the witness's store during the genocide and demanded a contribution to help cover army expenses. He told the witness and her husband that they were rich and the contribution could not be below a certain amount. He intimidated them and said he would denounce them if they refused to pay. They paid.

[970] Since she has been living in France, the witness has had contact with DDM-1, with whom she did not discuss her testimony.

[971] Comments: The witness had no credibility. On the basis of her testimony, one would swear that nothing at all happened in Butare during the genocide. She mentioned only the events that supported her contentions.

[972] She set herself the mission of saving the accused, whom she claimed is innocent. She knew very well that she was not allowed to have the list of witnesses who demanded anonymity when testifying for the prosecution. Despite that, she named names and placed their lives in danger.

[973] She herself demanded anonymity, which she was granted because she feared for her life. She refused to cite her sources and invented conspiracy theories.

[974] She adjusted her testimony to fit the circumstances. She was very close to Isaac's family and her entire testimony showed a bias in favour of the accused and his family. She was contradicted by many witnesses on numerous indisputable points.

[975] For example, the non-involvement of Désiré's family in politics, the events during the genocide in Butare, that Shalom and Désiré did not live in the same neighbourhood and were not of the same social class, that Désiré did not go around with the Mahenda's sons, that Shalom was not armed, and so on and so forth.

[976] She contradicted DDM-19 concerning the contributions he demanded from merchants during the genocide.

### **DDM-12**

[977] The witness, a Hutu who was 32 years old in 1994, was born and had lived in Rwanda all his life. He sought asylum in Canada in 2007. He is married and the father of two children.

[978] In April 1994, his family was living in Kigali but he was studying at the university in Butare. In early April, he left Butare to rejoin his family in Kigali for the Easter vacation.

[979] On the death of the president, panic spread in Kigali. The witness was, however, able to go out every day. He could not see his parents and stayed with a brother-in-law in a sector that was not under RPF control. Roadblocks went up everywhere. They were guarded by armed civilians and Tutsi were killed or detained.

[980] Like all Rwandans, he kept abreast of the news by radio and word of mouth.

[981] RTLM indicated the places where the population had to flush out Tutsi. Roadblock guards recounted events on the airwaves.

[982] The witness did not man the roadblocks in Kigali but made rounds and took part in patrols to flush out Tutsi. He never found any Tutsi during his rounds. He made his rounds especially at night in small groups. They generally lasted two hours.

[983] The rounds began on April 9, 1994 and their purpose was ethnic cleansing. The Tutsi were killed by the soldiers. He could see that certain people were targeted. In the first ten days following the president's death, one could see corpses, but not after that.

[984] All able-bodied men had to take part in the patrols or they would be accused of complicity with the Tutsi.

[985] On May 20, 1994, a communiqué asked students to return to Butare. The witness wanted to leave Kigali since the south had not yet "flared up" and "large-scale" killing had not yet begun in Butare. He left the next day.

[986] The witness heard President Sindikubwabo's April 19, 1994 speech on the radio, asking people to eliminate those who did want to be involved. He encourage the public to massacre Tutsi.

[987] The situation changed in Butare after the speech. Large-scale massacres occurred in the city.

[988] Asked to explain the contradiction in his testimony, the witness contended that he did not believe the situation was as serious in Butare as in Kigali. In any case, he wanted to leave the country through the south.

[989] He arrived in his room in the student residences on May 21. They had sustained no damage. The students present informed him of his obligation to man the roadblocks. He went to the authorities the next day and Shalom assigned him to the roadblock near Pauline's house.

[990] When he arrived in Butare, he found relatives living in Désiré's house. From May 21 to the early days of July, he visited them frequently.

[991] The witness had known the accused for 22 years. He is three or four years older than the accused. They were friends: They had drinks together, went to soccer games and had drinks at the Ibis hotel. Désiré was a friend of his family.

[992] The witness said he never saw Shalom at the Ibis hotel.

[993] Just after the witness arrived in Butare, Désiré gave him 20,000 RWF to help him out. The witness opened a bar a week after he arrived.

[994] Désiré's father was a prosperous merchant in Butare. Désiré was a friend. Désiré lived in the annex behind his store. Others lived there, including Jeannette.

[995] The witness regularly ran into Désiré, who would greet him at the roadblock where the witness worked. Désiré drove a tan Renault 21. He was always dressed in ordinary civilian clothing.

[996] The witness had known Désiré since 1986. He had met him in the school complex. He also knew Shalom before 1994, having met him in university. From 1991 to 1994, he never saw Shalom and Désiré together.

[997] All able-bodied men were obliged to work on the roadblocks. The witness received his instructions from Shalom in his mother's home. The instructions were simple: Demand identity cards and do not let Tutsi through. Shalom was assisted by two or three lieutenants.

[998] The group at that roadblock was made up of about 14 people. Four-hour guard shifts were set up for the day time and night time. There were two to four guards in each shift. The guards were equipped with guns and traditional weapons. The witness did not know whether there were *Interahamwe* among them.

[999] Désiré was not a guard at that roadblock. He could get through without trouble because the guards knew him. There were never gun shots or corpses at the roadblock when the witness was on guard duty. The civil authorities sometimes stopped at the roadblock. For example, the two prefects, Sylvain et Alphonse, came by.

[1000] The witness affirmed that Robert Kajuga, the national president of the *Interahamwe*, arrived in Butare after he did and settled into the Ibis hotel with his group. Kajuga and his group were particularly dreaded in Butare.

[1001] Shalom used a vehicle that belonged to a Tutsi whom everyone assumed had been killed. The vehicle was a camouflaged Peugeot 404 pick-up.

[1002] During the war, the witness saw no pick-up transporting corpses or detained Tutsi. He saw another roadblock in Butare near the university laboratory. But there were no corpses or people detained there either.

[1003] He never saw a grenade, or a refugee at the ECR school. There was never a curfew in Butare but, for his own safety, the witness never went out after 7 p.m.

[1004] The witness recognized the accused in the courtroom.

[1005] The witness knew Charles Butera, Désiré's cousin and is still in contact with him but never spoke to him about the trial.

[1006] The witness explained that, on October 20, 2007, while he was in a vehicle in Kigali, he saw RCW-5, a former merchant in Butare, who told him: "You were contacted to testify at Désiré's trial. If that's true, there will be consequences".



[1007] The witness denied that he had to testify.

[1008] The witness left Rwanda on November 11, 2007 for a conference in New York. When he arrived, he phoned his wife, who told him that people from Butare had stopped by to see him during his absence. Fearing for his safety, the witness took refuge in Canada, where he applied for asylum.

[1009] At the end of 2007, the witness signed various documents at the Canada Border Services Agency explaining why he was seeking refuge in Canada.

[1010] In them, he explained that he sought refuge in Canada because he was afraid of RCW-5 in Rwanda. He denied any participation in the 1994 genocide.

[1011] He also stated that he left Kigali on April 21, 1994, not May 21, and that he remained in his room at the university until early July 1994.

[1012] He added that, when Désiré was arrested in 2005, the family began to gather proof of his innocence.

[1013] Comments: An educated, intelligent witness who expressed himself well. Testified in a detached manner as if he were above the events. Smiled or actually laughed during his testimony. Nothing happened during the rounds or at the roadblocks while he was present. He saw and did nothing.

[1014] He lost all credibility when he stated that, in late May 1994, the atrocities had not begun in Butare, that he remained in his room, that he did not discuss the trial with Désiré's family and that he did not know the identity of the witnesses at the trial, and when he affirmed that he saw no Tutsi during his patrols in Kigali or during his work on the roadblocks in Butare.

#### **DDM-24**

[1015] The witness, a Hutu born in Kigali, was 32 years of age in 1994. He was living in a commune just outside of Kigali, near the airport. Four times a year, he visited family in Butare.

[1016] The witness grew up in Kigali, but did his post-secondary studies in Butare from 1981 to 1986. He knew the accused by sight, but was friends with his brother, Clément.

[1017] The witness's family home was occupied by about 20 people on April 6, 1994. The day after the death of the president, there were 50 people in the house (family, workers, refugees).

[1018] They went out only rarely in the days that followed because fighting was raging between the RPF and the Rwanda army. The massacre of Tutsi was beginning. A sector

meeting was called and the witness participated in the burial of abandoned corpses, all of neighbours killed by the soldiers.

[1019] According to him, before the war, the *Interahamwe* were the youth representatives of the MRND. After April 1994, an *Interahamwe* was any hoodlum who wanted to loot, steal and kill. It was also composed of youth from all parties. Before the war, an *Interahamwe* wore a uniform in the colours of the MRND (coloured boubou [an African garment] and cap).

[1020] In mid-April, the witness and the people of his family left for Butare aboard two minibuses and a pick-up. There were about 60 people, all civilians. Rumour had it that, in Butare, life was less dangerous and there was no fighting. There were roadblocks throughout Kigali, but none in Butare.

[1021] The witness found refuge in the house of a friend who had left for Belgium. The house was in the Buye sector in a neighbourhood for university professors.

[1022] The city was calm and the only roadblocks were the ones that existed prior to that near the military camps.

[1023] President Sindikubwabo went to Butare and gave a speech unworthy of a head of state. He incited the people of Butare to begin the massacres.

[1024] The prefect was fired, roadblocks went up everywhere and the carnage became widespread.

[1025] The witness had known Robert Kajuga since 1980. He played soccer with him. Kajuga arrived in Butare in April 1994. Before the war, he was the national president of the *Interahamwe*. Kajuga and his *Interahamwe*, who were armed to the teeth, set up their headquarters at the Ibis hotel.

[1026] The Ibis hotel was the meeting place of the Butare elite. There, one could hear the latest news while having a beer at the bar or on the terrace. The witness went there almost every day.

[1027] The main roadblocks were at the Faucon hotel, on the road to the university, at Pauline's house and at the different military camps. They were the most dangerous ones. They were guarded by civilians, with the exception of those at the military camp.

[1028] The witness did not know Shalom before 1994. During the war, Shalom often drove through the city at the wheel of his pick-up filled with young, armed *Interahamwe*. He terrorized the population.

[1029] The witness saw Désiré during the war in town or at the wheel of his car. He did not see him at the roadblocks and he was wearing civilian clothing. He was not armed. He drove a tan Renault, while Clément drove a red Nissan.

[1030] He was told, and everyone knew, that there were corpses in Butare, particularly in the woods, but he only saw that of the son of Professor Karenzi in the garage of his home. The boy was about 15 years old.

[1031] The witness left his home at 8 a.m. in the morning and returned around 5 or 6 p.m. As a precaution, he never went out in the evening.

[1032] After the speech by Prime Minister Jean Kambanda (in mid-May 1994) to the university professors and physicians, a sector meeting was called and it was decided to set an example, as any good citizen would. Roadblocks went up and rounds were ordered to prevent infiltration by the Tutsi enemy.

[1033] The witness participated in those activities. If a Tutsi was discovered, he was killed. If a person had no identity card, he or she had to have a good explanation to avoid problems. If the person looked like a Tutsi, he or she was killed.

[1034] The roadblock where the witness worked in the neighbourhood for university professors was very simple: a few boards in the street, chairs and five guards who worked in shifts. The guards were armed with sticks, machetes and one gun per roadblock. Each house had to take part in the effort.

[1035] The witness participated in the detaining of only one Tutsi, who was hiding in a house. He was taken to the prefecture. The witness returned home because he did not want to see how the Tutsi was killed.

[1036] Captain Niyezimana and Shalom came to the roadblock from time to time to encourage the troops and urge them to be vigilant. Shalom appeared to be little hoodlum who gave himself authority.

[1037] The witness did not see Shalom and Désiré together.

[1038] He never went to Isaac's home and did not know where he lived. He went to the store run by Clément, who was his friend. During the war, he went two or three times to Tumba and did not see Désiré there. He recognized the accused in the courtroom.

[1039] The witness knew that Delphine, the accused's sister, came to testify at the trial.

[1040] The witness was a member of the MDR in Kigali. Isaac was an influential member of that party in Butare, where he was often with a group of friends, including Clément. They frequently went to the Ibis or the Faucon hotel.

[1041] The witness has lived in Belgium since 1996. He left Rwanda in early July 1994 and sought refuge in the Turquoise Zone, the security zone set up by France.

[1042] The witness knew the accused's family. He would see the accused's parents and sisters at family gatherings in Brussels at least four times a year.

[1043] He learned of Désiré's arrest in the newspapers. The Rwandan community in Belgium was talking about it. He was in contact with the accused's family before and after the arrest. Désiré's fate was discussed. Delphine asked him to see Désiré's attorneys. The witness agreed to do so and also agreed to testify, and he informed Delphine that he would.

[1044] He recognized the accused in the photos submitted by the attorneys. He knew Mahenga and his sons, but he did not know whether they were Désiré's friends.

[1045] Désiré often went to the Ibis hotel, the meeting place for the whole city.

[1046] The witness respected the curfew, except on the evenings when he went on rounds, and he almost never left his neighbourhood. He never went to the roadblock at night.

[1047] The *Interahamwe* carried grenades. There were also grenades at some roadblocks. The *Interahamwe* wore military boots and military half-uniforms.

[1048] RTLM spread a single message: eliminate Tutsi.

[1049] Lastly, he could not describe Désiré at the time because he was not a close friend. But he had a very visible scar on his cheek.

[1050] Comments: A serious, sincere and credible witness. He did not know the accused well and never went out at night. He remained in a sector far from the downtown area. He contradicted other defence witnesses when he said that Isaac was an important politician and that Désiré often went to the Ibis hotel, as did all young Hutu.

#### **DDM-29**

[1051] The witness, a Hutu who was 29 years of age in 1994, was a member of the national police and was based at the Butare ESO.

[1052] He knew the accused in elementary school. Désiré is four years younger than he is. Désiré is the son of a rich Butare merchant and they are not part of the same social circle.

[1053] The witness saw the accused twice during the war. The first time was a few days after April 6 when he was going into the annex of Isaac's business to buy beverages. Désiré and Valentine were present. The second time was around April 15 at the same location, when he went to say hello to DDM-6, a soldier's spouse, and ran into Désiré, his mother and Valentine. Both times, Désiré was dressed in civilian clothes.

[1054] Two weeks after the president died, the interim president gave an incendiary speech inviting the population to kill Tutsi.

[1055] After the speech, and even before, murders became widespread. There were corpses everywhere and the police were overwhelmed. Criminality seemed to have seized power. Many police officers were seconded to the army and sent to the front.

[1056] The witness left the ESO for only a few minutes a day to go to check at Venant, the baker, whether there was enough bread for the ESO. Otherwise, he never left the ESO.

[1057] The witness knew the families of Shalom and Désiré by reputation but had no dealings with the two men. He saw Shalom once during the war. Shalom was not with Désiré.

[1058] During the war, the witness went through the roadblocks but saw no corpses there. But there were corpses throughout the city: in the side streets near the Ibis hotel, piles of corpses in the wooded areas and many outside the Ngoma church.

[1059] In late June, RCW-5 was taken with his wife to the ESO by soldiers. Believing that they were in danger of being lynched by extremist soldiers, he transferred them to the police brigade near the prefecture.

[1060] The military authority requisitioned the Butare gasoline station and distributed gasoline vouchers at its discretion. Most of the roadblocks were guarded by "amoral" civilians, whom the witness did not know. Crime gripped the city. The witness could go through the roadblocks without being bothered.

[1061] Before the war, the *Interahamwe* were the MRND militia. They protected party members and conveyed the party's propaganda. The other parties had their own militias. After April 6, the militias of the other parties and hoodlums joined the *Interahamwe*.

[1062] The national president of the *Interahamwe*, Robert Kajuga, arrived at the Ibis hotel with his militia escort armed with guns and grenades and dressed in half-civilian, half-military uniforms. They intimidated the public.

[1063] The witness believed it would not be surprising that they had participated in the massacres. However, the witness saw no massacres during the war. The witness neither saw nor heard any plane landing in Butare on April 19 or 20.

[1064] After the massacres triggered following the president's speech, the situation did not calm down in Butare, but there were fewer corpses. There was no peace directive from the authorities.

[1065] The witness explained that a total curfew was ordered in the days following the death of the president, but it subsequently became more flexible. Throughout the conflict, however, no one went out after dusk. He himself remained in his ESO apartment every night of the conflict.

[1066] He could not explain how Kajuga and his group managed to acquire all the weapons they had, or the importance and weight they assumed after April 6.

[1067] After his arrival at the Ibis hotel on April 13, no one in Butare went there—neither soldiers nor civilians. Kajuga and his group took over the whole place and no one dared to approach. The witness believed that, as of Kajuga's arrival, the hotel was closed to the public and no normal person would have ventured in there. He never went there.

[1068] The witness could see the prefecture building from where he worked and noted a dozen or so refugees on the balcony, but no one on the grounds.

[1069] He did not know whether genocide took place during the war, but he knew that there was carnage on both sides.

[1070] Three radio stations broadcast in Butare: the national radio, Radio-Rwanda; the RPF radio, which people secretly listened to and which broadcast enemy propaganda; and RTLM, which broadcast propaganda to counter that of the RPF radio.

[1071] RTLM urged the population to be vigilant, but did not encourage people to kill Tutsi.

[1072] The witness did not know the names of the Butare sub-prefects.

[1073] He recognized Désiré in the courtroom with no hesitation.

[1074] The witness left Butare on July 3, the day before it fell. The staff officers were evacuated by the French and the men remained without leaders.

[1075] At the end of July, the witness learned that his father had been killed by the RPF. The Turquoise Zone was closed, and with regret, the witness left the country with his wife and son. The war was lost, survival was difficult and his career was over.

[1076] He crossed into Zambia, then went to the United States in 2000. He has been a US citizen since 2007. He will never speak again about the war with anyone. The memories are too painful.

[1077] Comments: A no doubt sincere witness. He presented a way of seeing things that was diametrically opposed to that of many other witnesses for the prosecution and even for the defence. The chaos, roadblocks and massacres were the work of small groups of bandits and amoral people. The army and police did nothing wrong.

[1078] He saw no genocide, but did see carnage on both sides during the war. If what he said was true, there was no genocide in 1994.

[1079] He saw no massacre in Butare and did not know who killed all those people whose corpses were discovered. He rarely left the ESO, did not know the sub-prefect

and saw nothing unusual in town: no murders, no violence, no refugees at the prefecture. RTLM broadcast only propaganda.

[1080] His father was killed by the RPF.

**DDM-26**

[1081] The witness, a Tutsi, was 40 years old in 1994. She grew up in Butare but had lived in Kigali since 1972. She lived with her husband and her six children.

[1082] She had known Désiré since he was very small but especially saw his sisters and his parents. The witness's parents and those of the accused were friends and went to the same Protestant church. Désiré was seriously burned when he was very young. She easily recognized him in the courtroom.

[1083] Before 1994, the *Interahamwe* were feared by the population.

[1084] On April 6, the witness was working as a nurse for the Kigali Red Cross and caring for about a hundred children from the orphanage. The children were 3 to 24 years of age. The head of the group was a Belgian and DDM-1 was in charge of the "supervisors".

[1085] The children were picked up everywhere and classified as Tutsi or Hutu by briefly looking them over. Most of them had no papers or history.

[1086] She heard on the radio about the death of the president, and shooting quickly began in Kigali. The whole family sought refuge at the orphanage, where Tutsi refugees flocked.

[1087] After two days of fear, it was decided to evacuate the orphans in two pick-ups and a car. Some followed on foot. After a stop on the way, the group took refuge in the Butare school complex. They had to cross many roadblocks in leaving Kigali. The roadblocks were guarded by *Interahamwe*. Three people in the convoy were killed by machete at the first roadblock, but the group as a whole managed to get through.

[1088] The *Interahamwe* were wearing special clothing, one of the elements of which was a shirt bearing the photograph of the president. They were armed with machetes and guns. They sang old jingles from before the war that already incited people to kill all Tutsi.

[1089] The Butare school complex is immense, with many buildings (dormitories, dining halls, etc.) and room for 3000 people. Besides the orphans, the families of the orphanage employees and the families of friends followed the evacuation to the school complex.

[1090] There were already hundreds of refugees in the school complex. At first, there were only civilians. Later, soldiers joined them.

[1091] On April 19, 1994, President Sindikubwabo gave a speech in Butare, which the witness heard on the radio. His comments were ambiguous, but he encouraged the killing of people. The refugees in the school complex were certain to die.

[1092] The Butare prefect tried to prevent the murders and protect the people, but without success.

[1093] Between April 19 and 29, 1994, the *Interahamwe* came regularly to the school complex to intimidate the refugees. They were contained by the soldiers. Among the *Interahamwe*, the witness recognized Shalom, Jean-Marie and teachers from the school complex. Kajuga was also in the group.

[1094] The *Interahamwe* beat the refugees and the witness with studded sticks. The witness has scars all over her body from the studded sticks and knives. She was told they were keeping her to be killed later on. For the time being, she was useful because she cared for the Hutu soldiers.

[1095] Among the *Interahamwe* were people of all ages, young and old.

[1096] On April 29, the *Interahamwe*, along with a great many soldiers, attacked the school complex. The site was emptied of refugees, who were crammed onto the soccer field. They started to kill the refugees with machetes, and the corpses were taken away in pick-ups.

[1097] The school complex was surrounded by attackers who prevented the people from fleeing.

[1098] The witness did not see the accused at the school complex while she was there. She did not see Shalom on April 29, 1994.

[1099] The witness stayed at the school complex for another week after April 29, then with the help of the Italian consul in Butare, the Red Cross and an NGO, an attempt was made to organize the evacuation of part of the refugees to Burundi using a bus, two pick-ups and a car.

[1100] The witness was evacuated two or three days later. Her convoy had to pass through many roadblocks, including the Tumba roadblock guarded by Shalom and his men. Shalom wanted the refugees to get out of the vehicles so that they could be killed. He wanted to attack the witness. Despite everything, the convoy went through. Désiré was not at that roadblock the day the witness went through, although it was impossible for her to see all the assailants.



[1101] The witness managed to get to Burundi. Her husband and mother were turned back to Butare. Her husband was killed, as was one of her children. The group of guards at the Tumba roadblock was armed with machetes, guns and grenades, and wore bullet belts.

[1102] Asked to explain why the events of 1994 occurred, the witness immediately responded: "Because we don't like each other!". Previously, Rwandans liked each other, then the Belgians came, measured noses and height, and classified people as Hutu or Tutsi. After that, people compared each other, were jealous and stopped liking each other.

[1103] Comments: A very serious and very credible witness. She left Butare the first week of May 1994 and had arrived there on April 9. She did not leave the school complex.

### **DDM-23**

[1104] The witness, a Hutu who was 27 years old in 1994, did not set foot in Butare during the genocide.

[1105] His many unexplained contradictions made him lose all credibility.

[1106] It was obvious that the witness was defending a cause (a Tutsi genocide and a Hutu genocide), which is not without merit, but he placed himself in an ambiguous role during the war, where it was impossible to distinguish what he did from what he claimed he did.

[1107] His testimony did not help the court render a judgment concerning the accused's responsibility.

### **DDM-34**

[1108] The witness, a Hutu who was 27 years old in 1994, was living in a small village of about 15 houses near Butare with his wife, his niece and four other people.

[1109] He arrived in Butare in 1988 to study medicine. For two years, he lived in the university residences. Désiré began university the same year in economics. According to the witness, Désiré was not a friend but, since there were only 500 students on campus, he was an acquaintance.

[1110] Shalom also came to the university later on. His mother was completing her last year in law. To his knowledge, Désiré and Shalom were not friends at that point. They had different personalities.

[1111] Désiré's father was a member of the MDR party, just as the witness was. Shalom was an active member of the MRND, as Jean Kambanda was.

[1112] Théodore Sindikubwabo was a general practitioner and an honorary member of the faculty of medicine. Robert Kajuga was known as the MRND youth leader. RCW-5 was a businessman in Butare (he had a restaurant and rooms for rent).

[1113] During the 1990 war, the school year was cancelled. Between 1990 et 1994, there were two not very restrictive roadblocks in Butare. One was at the entrance to the city and the other was at the ESO.

[1114] When the president's death was announced, everyone was in terror because the political situation was unstable and there was the possibility of violence. The first three days, all the people in his village stayed home.

[1115] Around April 9 or 10, life began little by little to return to normal. The national radio exhorted the population to stay home and ensure their homes were safe. The enemy was at the country's door.

[1116] The cell leader ordered that security rounds be organized in the village. The witness, like all able-bodied men, took part in the patrols with his Hutu and Tutsi neighbours. Any unknown people had to be detained. No one was.

[1117] A meeting was organized by the burgomaster at the Huye stadium between April 6 and 19, 1994. The news was good: the army was resisting and the rounds had to continue. The witness saw Désiré at the meeting. A curfew was introduced.

[1118] In the morning of April 19, 1994, President Sindikubwabo gave a speech in Butare in which he criticized the people of the city for acting as if the situation of the country did not concern them. The witness saw that as an insult to Butare's population.

[1119] "The tornado hit" that very day. Roadblocks were erected everywhere by the army, and people wanting to get through them had to show identity cards. The witness saw three young people seated and guarded at a roadblock.

[1120] Shots rang out in the afternoon and young people were killed in a wood. Soldiers started to kill people. The head of the village seemed to know what was going on.

[1121] The people of the village did not sleep that night; they were in terror.

[1122] The next day, the situation was even worse. Gun shots were continually heard here and there. The head of the village told the villagers to continue their rounds. The Tutsi in the village were afraid.

[1123] The massacres continued in the town for three or four days. After that, a team consisting of two soldiers, Kazungu (dressed in an MRND militia uniform and armed

with grenades) and two other people armed with metal bars came to the village and demanded that everyone show an identity card.

[1124] Two Tutsi on patrol with the witness were killed on the spot by being beaten with metal bars. Another Tutsi hiding at home was killed a few minutes later.

[1125] The witness did not know the man called Kazungu. Armed with a stick and wearing a grenade belt, Kazungu gave orders to kill. The two soldiers were armed with guns. The armed group left the site but promised to return. All the people in the village barricaded themselves in their homes.

[1126] Two days later, Kazungu and a group of militia returned to the village and loaded all the Tutsi into a pick-up. They were never seen again. The Hutu remaining in the village again barricaded themselves in their homes.

[1127] The witness affirmed that soldiers from Kigali set up headquarters in the hospital and took control of the city. Massive slaughter and looting began in Butare and the vicinity.

[1128] At the end of April, things quieted down a little because there was no one else to kill. The villagers began to come out of their homes. "The sky fell on us". The massacres continued, but they were isolated.

[1129] In mid-May, the witness went to the burgomaster by car and passed in front of Isaac's home, where a group of 10 to 15 militiamen wanted to attack Désiré's brother-in-law, who was accused of having killed someone.

[1130] The witness saw Désiré intervene and tell the assailants: "You say you are defending Hutu and he is a Hutu; he's my sister's husband!". The witness did not know what happened after that.

[1131] Those were the only two times (the other was the meeting at the Huye stadium) that the witness saw the accused during the war. He spontaneously recognized him in the courtroom.

[1132] In late May, early June, it was announced that Prime Minister Jean Kambanda was to visit the faculty of medicine. The witness went to the faculty, believing that the reopening of the faculty might be announced. On his way to the meeting, he went through a roadblock near Minister Pauline's home. The person in charge at the roadblock was a man called Jean-Pierre.

[1133] Shalom was there, near a white pick-up, and he carried a gun. His mother was also there, wearing a military shirt.

[1134] At the meeting, a physician questioned the Prime Minister on the implausibility of the situation. Kambanda said he ordered that the slaughter be halted. The witness did not see other massacres, but public rumour had it that they continued to occur.

[1135] In late June, the witness left the country and, after a journey around Africa, he went to Paris in 1998, then to Québec in 2001, and became a Canadian citizen in 2006.

[1136] Between April 19 and his departure from Rwanda, the witness left his village three times: at the end of April, in mid-May and in early June.

[1137] After April 19, the villagers themselves imposed a curfew and barricaded themselves in their homes. No one dared to light a fire or turn on a light during the night.

[1138] RTLM called for resistance and demonized the Tutsi and moderate Hutu. He heard the following in particular: "If the president is dead, we will go out and find you", which was a clear call for violence, according to the witness.

[1139] Comments: An articulate and credible witness. He left his village only three times during the war and never left his home at night.

**John MANZI, alias Jean-Claude MUHIRWA**

[1140] The witness, a Hutu, was 26 years old in 1994. His father was Hutu and his mother was Tutsi. He was born and lived in Butare. His father was a gynecologist and his brother was a physician, both at the Butare hospital. His brother-in-law was the director of the hospital.

[1141] In April 1994, the witness was a second-year management student at the national university of Rwanda in Butare. The accused was a second-year economics student at the same institution. On April 6, he was spending Easter vacation in Kigali.

[1142] On the death of the president, the massacres began in Kigali. The witness and his family took refuge in Butare on April 10. The Butare prefect was killed with his wife around April 19 and was replaced by Sylvain Nsabimana.

[1143] The witness had known the accused since elementary school. The two families were friends.

[1144] Désiré and the witness saw each other when they engaged in sports activities or at dances. He knew Désiré's three successive girlfriends: Diane (Tutsi), Francine (Tutsi) and Valentine.

[1145] From April 10 to 19, life was more or less normal in Butare. He regularly saw the accused in his general store. The accused was dressed in civilian clothing. He saw Désiré once or twice in the company of Valentine; they were living together without being married.

[1146] Désiré was not a member of a political party but his father was a member of the MDR. Désiré drove a Renault 21, and Clément a red Nissan. They were the only two young people of their generation who had a car. Their family was one of the city's richest.

[1147] On April 19 or 20, Théodore Sindikubwabo, a Butare physician and a friend of the witness's father, became acting president and came to give a speech at the Butare MRND centre. He invited people to kill Tutsi and their Hutu sympathizers. The speech was broadcast again and again on the radio.

[1148] In the days that followed, the massacres began in Butare. At the same time (on April 19 or 20), soldiers took away Rosalie Gicanda, the queen of Rwanda. The queen lived very near the witness, who saw the whole scene.

[1149] After April 6, many roadblocks guarded by soldiers appeared in the city. In May, civilians joined the soldiers. The witness did not see Désiré at the roadblocks.

[1150] Robert Kajuga and his *Interahamwe* set up headquarters at the Ibis hotel between April 10 and 19. They were not from Butare and they wore military or *Interahamwe* uniforms.

[1151] The witness went a few times to the prefecture during the events to get gasoline vouchers. He did not see Désiré there. He saw refugees there once.

[1152] The witness knew Shalom, the son of the university rector. From 1988 to 1991, Shalom was the boyfriend of the witness's sister Clarisse. In 1991, she left to study in Canada. Shalom was younger than he was and they did not frequent one another. The same was true of Désiré, who was older than Shalom.

[1153] Shalom was not involved in politics before the war, but he began to be after April 6. His parents were active in the MRND.

[1154] The witness saw Shalom a few times during the war, once at the wheel of a Peugeot belonging to a Tutsi who had been killed. The witness was dismayed by what he saw. Shalom was wearing a military shirt.

[1155] The literal meaning of the word *Interahamwe* is "people tending toward a common goal". The *Interahamwe* were people belonging to the youth wing of the MRND. All the other parties had such wings. After 1993, the *Interahamwe* began to kill people and sow fear around them.

[1156] The witness affirmed that the *Interahamwe* and the soldiers perpetrated the genocide.

[1157] There was no civil defence committee in Butare prior to May 1994, according to the witness. In May, a decree was issued that compelled each family to delegate someone to serve on the barricades.

[1158] The witness did not hear about a speech by Jean Kambanda in Butare during the war.

[1159] He recognized the accused in the courtroom. The accused had not changed. He had always had a scar on his face.

[1160] The witness's family left Rwanda in late June for Zaire, then Burundi. He returned briefly to Rwanda in August 1994. The killing was still in progress. The witness left the country, went to Burundi, then Kenya, then settled in the United States in 1995.

[1161] His older brother, Emmanuel Gashegu, was held from 1994 to 2006 in the Karubanda prison. He was allegedly detained without reason, only because people in Butare, including the witness's own mother-in-law, had nothing else to do but denounce innocent people for personal ends.

[1162] He was convinced that the same secret forces were at the root of the denunciation of Désiré. As soon as the witness learned that Désiré had been arrested, he sent an e-mail to the Prime Minister of Canada, the President of the United States, the *gacaca* tribunals and human rights leaders to urge them to be cautious in this case.

[1163] The witness said that, because he was in Rwanda and survived the genocide, he has become a genocide expert. The prosecution witnesses testified about events they did not see. He is convinced that they did so in order to destroy the accused, who did nothing blameworthy.

[1164] There are extremists in Butare whose sole purpose is to destroy reputations. The witness is convinced that they want to attack Isaac's family. In fact, many false charges have been brought before the *gacaca* tribunals. People who have accounts to settle with Rwandans use the genocide as an excuse to have them accused.

[1165] Asked to explain why he did not contact the accused's attorneys as soon as the accused was arrested, the witness explained that, in 2005 and 2006, he focused on the case of his brother in Rwanda and that, at any rate, there is something more important than his brother and the accused; there is a country—Rwanda—that must be revived.

[1166] The witness's father and the accused's father are close friends; they are both from Gikongoro.

[1167] The witness saw the accused two or three times in Montréal and Toronto in 1998-1999 and 2001. After the accused was arrested, the witness went to see his wife and children. He also spoke with Delphine and Jeannette, the accused's two sisters.

[1168] Testifying *in camera*, the witness contended that a friend living in Rwanda gave him the names of two prosecution witnesses, one of whom was known for his "showmanship". The witness implied that the names of the prosecution witnesses were circulating in Kigali.

[1169] Although the prosecution attorney repeatedly demanded the information, the witness refused to give the name of his informant and the names of the witnesses he knew about despite the confidentiality order issued by the court.

[1170] The witness also refused to respond to questions about his brother imprisoned in Rwanda. He agreed to say that he had been released and had left the country, but refused to say whether he left during his trial or whether an arrest warrant had been issued for him. He also refused to say whether he provided his brother with false papers in order to leave Rwanda.

[1171] Comments: The witness is intelligent and articulate. The first part of his examination was credible, but the further along he went in time, the less credible he became. He defended the theory of a conspiracy by a group of anti-Hutu extremists who would like to harm the family of the accused's father. He had no personal knowledge and merely testified about rumours.

[1172] He was the one who brought up the injustice suffered by his brother, then he abruptly decided to stop answering questions, thus putting an end to the cross-examination. His credibility was heavily affected by that.

### **DDM-25**

[1173] The witness, a Hutu who was 25 years old in 1994, was born in the Butare prefecture and lived in the sector of Ngoma five kilometres from Butare Ville. It takes an hour to go from Ngoma to Butare on foot and 15 minutes by car. Ngoma had 3000 to 5000 people. Butare is much more populated.

[1174] The witness went to university in Butare. He had known the accused since 1985. They were of the same generation.

[1175] Before April 6, life was normal. There were no roadblocks or curfews in the prefecture.

[1176] The witness heard on the radio on the morning of April 7 that the president had died. Everyone remained barricaded at home for three days. The curfew was ordered.

[1177] In the days that followed, the curfew was lifted somewhat and people could go out and buy food. There was no police station in Ngoma, but there was a military camp.

[1178] Between April 6 and 19, a public meeting was called and chaired by the prefect, Joseph Kanyabashi, who urged the people to keep the peace, be vigilant and show solidarity. Hutu and Tutsi participated in the meeting held in the sector office.

[1179] At that point, there were no roadblocks in Ngoma, but night rounds were organized (from 8 p.m. to 4 a.m.) and were overseen by the sector chief. Young people the witness's age and a few heads of families took part. In each five-person patrol, there were four Hutu and one Tutsi. The people on patrol were armed with sticks and looked for intruders. None were found.

[1180] A few days before April 19, Bosco, a Ngoma youth, was horribly slaughtered and his body was found in the forest.

[1181] On April 19, President Sindikubwabo gave a speech in Butare. Kanyabashi's speech urged peace, but the president's, although ambiguous, encouraged hate for the Tutsi.

[1182] Without anyone talking about it openly, interethnic social relations deteriorated.

[1183] Prefect Kanyabashi was replaced and killed. Jacques Habimana replaced him without any consultation of the public. Shortly after the speech, Tutsi massacres began in Ngoma. Some were large scale, like the one that occurred at the Catholic church, at which the witness was not present.

[1184] He personally witnessed only one crime. One night around 2 a.m., there was a knock on his door. Twenty or so people "drunk with rage and anger" reproached him for sleeping while they were working. They ordered him to follow them. They were armed to the teeth: guns, grenades, traditional weapons.

[1185] They went directly to the home of Rubatu, a well known soccer player, and accused him of hiding a child. A 10-year-old boy came out of the house and was killed immediately. The witness, who had stayed in back, ran home. The child was the son of Alex, a Tutsi from 4th Avenue who had already been killed.

[1186] Three fourths of the death squad was composed of people—both civilians and soldiers—whom the witness did not know. The witness recognized only five people, including Jacques Habimana, Gatera, Alphonse and Tony, one of his neighbours. Habimana was the leader of the group.

[1187] The witness has difficulty understanding how it could get to that point. The situation was unimaginable and incomprehensible. Many people joined out of fear. Others because of the lure of gain or to rape women.

[1188] The massacres and attacks by these groups always occurred at night.



[1189] Comments: An educated and articulate witness who responded seriously to questions. Spent the entire war in his commune five kilometres from Butare.

**DDM-35**

[1190] The witness, a Hutu, grew up in Ngoma, where he was schooled. In 1994, he was a student in his last year at the university of Butare. His father was a physician. He is now a Canadian citizen.

[1191] Upon the death of the president, confusion reigned in the city but no violence occurred. The witness was living in the university residences on the campus and remained there until he left the city on June 30, 1994.

[1192] On April 19, the president gave a speech in Butare that spread agitation throughout the city. Mistrust reigned in the city, the roadblocks went up, identity cards were required and gun shots were heard. The massacres began.

[1193] From April 6 to 19, the witness went out once a week and, from April 19 to mid-May, he remained shut away in the residences. It was too dangerous to venture into town.

[1194] The witness knew Désiré and his family in Butare. Désiré was older than the witness. The witness knew Claire, Désiré's sister, better. He said that Désiré had many Tutsi and Hutu friends.

[1195] The witness never saw Désiré during the war. Before the war, Désiré drove a red Toyota pick-up with a special body, a Renault 21 and Clément's grey Nissan.

[1196] The witness saw Shalom twice during the war in front of his parents' hotel. He was dressed in civilian clothing and was not doing anything in particular.

[1197] Kazungu was at the roadblocks, wearing a military shirt and asking the people trying to get through for their identity papers.

[1198] In mid-May, the witness noticed refugees at the prefecture and people who had access to administrative services.

[1199] The Butare roadblocks were guarded by soldiers and civilians. He saw no corpses and could name no one who worked on the roadblocks except Kazungu. He never saw Robert Kajuga.

[1200] The witness thought that, from the soccer field below one could not see the university residences. Nor could one see the residences from certain parts of the surrounding forest. The residences could not be seen from ISAR (the agronomy sciences institute).

[1201] The witness recognized the accused in the courtroom. The parents of the two families were friends. Isaac and the witness's father saw one another until the witness's father died in 1991.

[1202] The witness said he did not participate in the massacre of Tutsi. He went on security rounds on the campus as of mid-May at the request to the vice-rector.

[1203] There was no massacre on campus. However, at the beginning of the third week in April, soldiers came to the campus and took away 60 to 80 Tutsi students. They were never seen again.

[1204] Comments: Generally a serious and credible witness. He contradicted some defence witnesses, particularly in saying that students never worked at the roadblocks.

[1205] He testified from a standpoint diametrically opposed to that of the prosecution witnesses. Two solitudes confronted one another. To hear him, it is difficult to believe that genocide occurred. He saw nothing, could identify no one and remained hidden from April 19 to mid-May.

## **DDM-22**

[1206] The witness, a Hutu who was 23 years old in 1994, was born in the Kigali prefecture. His father held very high military and political positions.

[1207] In 1991, he began his studies at the Butare university and lived at the Faucon hotel until 1993. In October 1993, he moved to the student residences on campus.

[1208] The witness had known the accused since 1986. He met him at the house of a friend in Kigali. He had known Shalom since 1982 or 1983, when Shalom's father was appointed Minister and his family moved to Kigali. Shalom and the witness are the same age and are from the same neighbourhood in Kigali. Shalom and Désiré had no dealings with one another.

[1209] He considered the accused a friend. They were from the same socioeconomic class, which is important in Rwanda in forging bonds. He had a beer with Désiré from time to time and saw him at private parties.

[1210] The witness's mother died on February 16, 1994 and the family withdrew to their second home, 20 kilometres from Kigali, for the funeral and a period of mourning. The witness was then doing an internship in Kigali until the end of the Easter vacation.

[1211] So on April 6, 1994, the witness was at his family's second home with his father, his six brothers and sisters and three domestic servants. He heard an explosion coming from the hill, where the president was living, then gun shots.

[1212] Around 8:30 p.m., he heard on RTLM that the president had been killed. The next day, the radio announced the assassination of the prime minister. The witness's father understood that he was in danger.

[1213] On April 16, a domestic servant announced that militias were preparing to attack the house. The father decided to have his family cross the border into Burundi. The expedition failed and the family found itself in Butare at the Faucon hotel. On the way, the family had to cross roadblocks guarded by violent *Interahamwe*. The witness's father was armed.

[1214] After April 6, 1994, all the hoodlums in Rwanda joined the *Interahamwe*, which had represented MRND youth.

[1215] The family took refuge at the Faucon hotel, to which many families had already fled. The family was housed in two rooms in the main building.

[1216] Everything was calm in Butare and there were no roadblocks. But even though everything was calm, there was no question of going out in the evening since people were afraid. The witness stressed that everyone listened to RTLM in Rwanda, along with two other radio stations. Everyone could tune into RTLM, in Butare and Kigali at least. He himself listened regularly to RTLM on the university campus.

[1217] After he arrived in Butare on April 16, the witness spent the next day at Désiré's in his store on the main street. It was his first time there. After talking with Désiré, he went inside the residential compound, where friends from Kigali rented an apartment. Valentine, Désiré's girlfriend, lived in an apartment in the annex of the house.

[1218] To the witness's knowledge, Désiré sold imported beverages in his store.

[1219] On April 19 or 20, the witness went back to Désiré's to see his refugee friends. At that time, he saw a soldier and *Interahamwe* in a large white Daihatsu pick-up checking the identity of people at a roadblock and detaining some, who were then loaded into the vehicle.

[1220] The witness fled to the Faucon hotel and asked that the gate be closed. Dozens of *Interahamwe* tried to get onto the grounds by force. His father used his weapons to frighten them and the whole family moved to the ESO, where Colonel Muvunyi housed them. The whole family stayed there until leaving the country on May 21, 1994.

[1221] About 300 people were staying at the ESO, where food was distributed once a week by the soldiers. A military roadblock prevented access to the ESO.

[1222] The evening the witness's family arrived at the ESO, houses were burning in the area, people were screaming bloody murder and gun shots were heard. That period of turmoil lasted about three days.

[1223] There was a second period of turmoil, but the witness could not say when it occurred.

[1224] When those periods of turmoil subsided and the soldiers believed that the violence had declined, the witness ventured outside. He said he went to Désiré's once or twice a week when the situation was calm, in order to see his refugee friends. Each time, Désiré was there, dressed in civilian clothes.

[1225] The witness was an active member of the youth wing of the MDR party in the university. Désiré was not a member of a political party.

[1226] After April 18, students set up a roadblock and demanded to see the student cards of those who wanted to get through. The witness did not know the students, who were aggressive. He told Désiré to stay far away from those individuals.

[1227] The witness and his family left Rwanda on May 21, 1994 and that was the last time he saw Désiré. The family crossed the border into Burundi and the witness returned to Rwanda from November 11, 1994 to April 1995.

[1228] As of 1995, the witness crossed Africa and ultimately settled in France in 2001. He is a French citizen.

[1229] He testified in Arusha in defence of Colonel Muvenyi, who was found guilty and sentenced to a long term of imprisonment.

[1230] He had no contact with the family of the accused, whom he recognized in the courtroom. The witness noted that the accused had a scar on the side of his face.

[1231] The witness explained that one of the social repercussions of the Rwandan genocide was that no one trusts anyone else. Regardless of one's camp, distrust reigns on a national scale and passions are raw.

[1232] The witness wants to return to Rwanda, where part of his family lives. If it was known that he had testified, the possibility of his returning without problems would be in jeopardy.

[1233] The witness was convinced that both the prosecution and the defence witnesses risked reprisals, at least verbal ones, if their identity were known.

[1234] The witness refused to give the attorney for the prosecution permission to read his testimony before the ICTR in Arusha in defence of Colonel Muvunyi.

[1235] However, he revealed that he did not talk about Désiré in that testimony. He responded to specific questions with specific answers. He did not think it was proper to talk about the accused.

[1236] The elite of Butare knew Isaac, the most important merchant in the city. Isaac was a member of the MDR. The witness admitted that it was impossible for him to know all the members of the MDR and that Désiré left the university in 1992. Désiré drove a Renault 21 and a red Toyota pick-up.

[1237] He knew Désiré's family by sight when he arrived in Butare, but he had no contact with them. He never went to the accused's family home. He saw Delphine, the accused's younger sister, at a wedding and at a funeral in Europe before 2005.

[1238] The social status of Désiré and his family in Butare placed them in the upper class of wealthy, respected people.

[1239] Shalom's family was not liked in Butare, but it was an important family. The father had been a Minister, president of the National Assembly and rector. The mother was a Minister.

[1240] He did not see either Pauline or Robert Kajuga during the war. He did not know Mahenga. In fact, he knew only a dozen or so people in Butare during the war.

[1241] While he was in Butare, the witness never heard mention of the visit or the speech of President Sindikubwabo in Butare, even though he listened to the radio three hours a day.

[1242] The witness attributed the escalation of violence in Butare to the arrival of the *Interahamwe* from outside. They came to Butare to continue the massacres begun elsewhere.

[1243] After April 20, violence reigned in Butare for a week. No security instructions were given to the refugees at the ESO and no curfew was ordered in the city. In any case, it would not have entered anyone's mind to go out at night because the situation was so dangerous.

[1244] The witness began to go out after the week of violence. Until he left Butare, he saw no corpses, no *Interahamwe* and no one detained against his or her will at a roadblock. He knew nothing about the carnage at the university, an attack at the school complex or the massacre at the Ngoma church.

[1245] A second week of carnage took place in May 1994, but the witness could not say more specifically when it occurred. He heard, coming from the ESO, cries in the night and gun shots, and saw fires in the distance.

[1246] The witness never saw Shalom in Butare at any time during his stay there. He never saw Désiré driving a vehicle during the war. In any case, there were very few vehicles in Butare at the time. The witness might have seen two vehicles during his stays in the city.

[1247] Comments: The witness seemed sincere and generally credible. However, he contradicted defence witnesses regarding certain events, particularly that Valentine was living in one of the apartments in the annex. His description of Butare during his outings implies that there was no genocide. Like many defence witnesses, he described exemplary conduct by the accused when he saw him half a dozen times at his home between mid-April and May 21, 1994. It was surprising that he did not mention the visits he made to Désiré during his two days of testimony in Arusha, whereas the visits were basically the only time he went out.

[1248] His refusal to give access to his testimony in Arusha did not help his credibility.

[1249] His description of a Butare where there were no corpses, *Interahamwe* or Tutsi detained at a roadblock and where nothing was known about the visit of President Sindikubwabo, or the carnage at the university, the school complex or the Ngoma church is puzzling.

### **DDM-39**

[1250] The witness, a Hutu who was 24 years old in 1994, is the son of a well known merchant in Butare. His father ran a bar, restaurant and ten-room hotel. The witness lived on the premises of the business with his parents, his brother and sisters, cousins and domestic servants.

[1251] His older brother X, who is a dozen or so years older than he is, lived with him and the family. X was a member of the MDR and had behavioural problems.

[1252] Désiré is older than the witness. He knew him in elementary school. Désiré drove a Peugeot 504 and a Renault 21, both of which were white. Clément had a red Nissan. The witness did not have a car.

[1253] Désiré never came to his father's business, either before or during the genocide. The witness did not know Shalom before the war. During the war, he rode in a car twice, once to take X to the hospital and once to go to a funeral.

[1254] The family business was next to Venant's, the bakery. The prefecture could be seen a short distance away.

[1255] After April 6, life changed in Butare and a curfew was ordered for 15 to 20 days. No one went out during the day, except for soldiers, and even less at night. The father's business reduced its activities drastically.

[1256] Travel was impossible. There were soldiers everywhere, gunshots were heard, there were wounded and people were fleeing their villages. The witness did not hear the president's April 19 speech.

[1257] His brother X and two other people set up a roadblock at Venant's in early May. X carried a gun. Four or five people manned the roadblock day and night. No Tutsi was detained there. The witness did not see Désiré working there. No one was roughed up there.

[1258] The refugees arrived at the prefecture in early May. The witness did not go there.

[1259] During the war, the witness saw Désiré twice at Venant's. He was not armed.

[1260] The witness left Butare on July 3 or 4, and returned in August. He left the country again in mid-June 1995 with a false passport. He took refuge in Uganda. He was arrested and imprisoned there in July 1995. The same month, he was returned to Rwanda, imprisoned and accused of using a false passport and committing genocide.

[1261] He was held until January 31, 2008 and found innocent by a *gacaca* tribunal.

[1262] When he returned to Rwanda in 1995, he was questioned many times. Confronted with the minutes of those interrogations, the witness said they were generally accurate but that certain excerpts were erroneous. For example, he denied having said that he did not feel safe in Rwanda, that he had heard rumours in August 1995 that he would be kidnapped and killed, that people insulted him and that he lived in constant fear.

[1263] He said he was beaten up during the interrogations, as was customary at the time.

[1264] He denied saying that he could not work at the roadblock at night because he drank all day. He contended he said he compensated for his obligation to be at the roadblock by bringing a case of beer and food to the guards.

[1265] He denied having identified Rangira's murderers, whereas he himself was at the Venant roadblock where Rangira was killed.

[1266] He also denied having said the roadblock guards would loot houses, and detain and kill Tutsi who tried to pass through the roadblocks.

[1267] The witness did not know whether his brother X participated in the killings, but it was possible that he had. He had had civil defence training in an organization set up during the war. People testified against him at *gacaca* trials and he died in prison in 2000.

[1268] The witness was convinced that, in 2008, he was summoned from his cell by a *gacaca* tribunal that generally dealt with property cases because it was learned that he was testifying in the present case. Nothing came of the summons.

[1269] Isaac was the richest merchant in Butare. He had trucks and pick-ups for his business, including a Daihatsu and a red Toyota, both with a special body in back. The witness never listened to RTLM, which could not be picked up in Butare, except in cars.

[1270] The witness never saw corpses in Butare.

[1271] Comments: An intelligent, articulate witness who testified calmly. He told us little, as he almost never went out during the war, and never at night.

[1272] He lost much credibility in cross-examination. He saw nothing and took part in nothing, as if nothing had happened in Butare in 1994.

[1273] His explanations for not participating in guarding the roadblocks were not credible. His brother set up the Venant roadblock and was its leader, and he alleged he saw nothing? He was contradicted by many other witnesses.

### **DDM-33**

[1274] The witness, a Hutu who was 45 years old in 1994, settled in the Butare prefecture in the 1970s. Married to a Tutsi, he has eight children. He worked at the Ibis hotel from 7 a.m. to 3 p.m., seven days a week. He lived in Matyaso with his family.

[1275] On the morning of April 7, he learned of the president's death and of the National Defence order that the population stay home.

[1276] On April 12, the boss of the Ibis, Michel Campion, asked him to come in to work, which he did.

[1277] On April 19, his wife called to tell him that violence had begun in the village. The husband went to get his family and moved them to a room at the Ibis that was set aside for employees.

[1278] From April 12 to 20, things were slow at the hotel. On April 20, soldiers ordered that the premises be closed. They were under the orders of Colonel Nteziryayo, who moved to the hotel.

[1279] On April 12, Mr. Campion left the premises and never came back.

[1280] Relations between the witness and the colonel were not very good. The colonel suspected him of being a Tutsi.

[1281] On April 30, 1994, the colonel and Mathias, the cook, dismissed the witness, who nevertheless remained as a refugee at the hotel with his family.

[1282] At the time, it was impossible to go into town because gunfire was heard everywhere. The witness and his family hid in the room for employees.



[1283] The head of the *Interahamwe*, Robert Kajuga, soon moved into the hotel with a dozen armed militiamen. They forbid the army to enter the premises. Kajuga received no visitors, according to the witness, or he may have received some at night, without the witness knowing about it. The witness tried as much as possible to remain hidden.

[1284] No meeting was held at the hotel while the witness was there.

[1285] On May 31, the witness and his family were driven out of the hotel and went to the Gikongoro prefecture. The witness did not return to Butare during the war.

[1286] The witness knew Désiré by sight. He identified him in the photo line-up. Désiré never came to the Ibis hotel, either before or during the genocide. Neither did Shalom. Clément would deliver beverages there and have a drink. The witness knew DDM-3, who came to the Ibis with two friends.

[1287] On his return to Rwanda in 1995, the witness was imprisoned until May 2004. He believed he was imprisoned because of a contentious water flow problem he had with his neighbour, but the authorities accused him of working with Kajuga at the Ibis.

[1288] The witness admitted that he did not tell the whole truth to the Rwandan authorities when he was questioned.

[1289] He neglected to mention the abduction of two young hotel employees, Odile and Chantal, by soldiers between April 26 and 28, 1994. They were taken by force, thrown in a vehicle and never seen again.

[1290] Soldiers would come from the university and lay waste to everything in their path. The colonel and Célestin were present at the time of the abduction.

[1291] Confronted with a statement he made to the Canadian police officer on May 2, 2000 that he saw Désiré once in April at the Ibis with the colonel and Célestin, the witness said he was talking about Clément.

[1292] He said the same thing about a recent statement to the police officers that he had seen Désiré at the Faucon hotel roadblock during the genocide.

[1293] Comments: The witness is a simple man with little education who digressed endlessly. He seemed sincere and honest, but lost credibility as the cross-examination progressed. He knew nothing about the genocide or the war. He said he remained hidden with his family in a room, but in the same breath, he said he went many times to the Faucon hotel roadblock with his family.

[1294] In the examination-in-chief, he said he never went to Désiré's store but said the opposite in cross-examination. He was least credible when he said he knew nothing about the genocide, whereas he lived at the Ibis hotel. He said he saw DDM-39 at the Ibis during the genocide. DDM-39 said he did not leave his home.

[1295] He was contradicted by many witnesses who identified the Ibis hotel as one of the nerve centres for discussions about and the organization of, the genocide.

**Evanys MUKARWEGO**

[1296] Born in 1937, the witness is the accused's mother. She married Isaac Munyagasheke in 1957 and the couple had seven children: Annunciata, Jeannette, Clément, Christine, Désiré, Claire and Delphine. The family moved to Butare in 1974. The father is Hutu and the mother is Tutsi.

[1297] The family owned three buildings: the new, two-storey house (housing the beer business) and the former house, a little farther away on Butare's main road. A third building was on the road to the airport.

[1298] The second family business was a semi-wholesale general store that sold just about everything: soap, milk, sugar, liquor, mattresses and so on.

[1299] The business had three tractor-trailers and two pick-ups, one a Daihatsu and the other a Toyota. Five drivers worked for the business, including three Tutsi.

[1300] Isaac had two cars: a blue Peugeot and an off-white Renault. Désiré had a white Renault and Clément had a red Nissan.

[1301] On April 6, 1994, in addition to the parents, Clément, Désiré, Alphonsine, Pierre Furaha and two employees, Joseph and Alphonsine, were at the family home. Pierre Furaha is the son of the sister of the accused's mother; he was raised as one of the children of the family.

[1302] Désiré's room was in the inner courtyard, next to Pierre Furaha's.

[1303] After April 6, 1994, more people joined the family: Christine, her two children and an employee slept upstairs. Annunciata, her husband, Daniel, and their four children, plus an employee, Adelphine, arrived around April 10 or 11. There were also young people from Kigali: Diane, Parfine, Claudette, Alphonsine and Gorette.

[1304] At that point, Désiré left the house and moved to the former family home.

[1305] Later, the driver Benjamin, Alexandre, Christine's husband, C-21, Jeannette and her four children joined the group.

[1306] C-21 was a refugee from the school complex, as was Alexandre. The witness offered her a place to live at her house and paid a soldier 20,000 RWF to let her go.

[1307] C-21 joined the group but her safety was in danger. She remained in her room in the inner courtyard and ate with the family in the evening.

[1308] Désiré has a scar on his face and neck from being burned when he was a child. He has another scar on his abdomen, from a car accident, for which he received care in Europe and Kenya.

[1309] Very soon after April 6, Désiré went to live in the former family home, where Valentine and her parents were living. He came to eat at the house in the evening and sometimes slept over. He was dressed in civilian clothing. In cross-examination, the witness said Désiré came regularly to have his noon meal at home, but less often to have his evening meal.

[1310] The parents of Désiré, Delphine, Daniel and his family, the maid and a nephew left Butare at the end of May 1994 under a soldier's protection. They took a Renault vehicle, the Daihatsu and Daniel's vehicle.

[1311] C-21 did not join them for the trip because the soldier took her family away and because she was afraid of being detained when the convey went through her village.

[1312] The roadblocks were not often discussed at home but the events in Butare were. The witness never saw the roadblocks. During the war, she left her home only once, to go to Désiré's house.

[1313] The witness and her husband lived in Kenya from 1995 to 1999, the year she returned to Rwanda.

[1314] In Rwanda, she saw Annunciata, her husband Daniel and their children, and Christine, her husband Alexandre and their children. Jeannette, Claire and Delphine were in Belgium and Clément was in Kenya. Désiré had gone to Canada and never returned to Rwanda.

[1315] The witness went to Belgium several times and she knew that Delphine testified for the defence. She talked with Delphine before her testimony, in order to refresh both their memories.

[1316] She learned through the media that her son had been arrested and she knew he was accused of genocide. She knew nothing about what he was accused of, but she was certain that he was innocent.

[1317] She knew that C-21 and C-18 testified for the prosecution, but could not say who told her.

[1318] When she learned that the Canadian police were investigating in Rwanda in May 2000, she asked to meet with them along with Annunciata and Christine. She asked them to be very cautious in their investigation because many lies were circulating in Butare. "There is a group of people who do not like us and envy us", she said, adding "they stole things and destroyed all our property".

[1319] She knew Charles Butera, the eldest son of Pierre Furaha, and she never asked him to obtain a statement from C-21 for Immigration Canada.

[1320] The witness acknowledged that the family led a comfortable life before April 6, 1994. She knows Pauline's family; they were part of the circle of family relations. The two families and a few others invited one another to all sorts of social events.

[1321] Her husband was a Member of Parliament before 1973 for a first term of five years. At the start of the second term, there was a coup and he abandoned politics. During the war, he was a member of the Butare MDR, against his better judgment.

[1322] She learned about the looting of businesses. Her husband and other merchants hired watchmen. There were no weapons at home, except for a pistol registered in Isaac's name. He gave instructions to all the members of the family not to go out and not to loot. The witness added that, since she was always in her room, she could not tell whether his instructions were followed.

[1323] Comments: A strong, intelligent and articulate women. Certain of her son's innocence, she would do anything to help him. But she did not leave her home during the war and she was often ill and bedridden. Many of her responses seemed to have been prepared in order to counter the evidence against the accused. She knew nothing about the genocide in Butare in 1994 and knew little about the case at bar.

[1324] She contradicted the witnesses who said that there was no link between Shalom's family and that of Désiré.

#### **DDM-20**

[1325] The witness, a Hutu who was 38 years old in 1994, is married and the father of three children. He held very high functions in the Butare police force, which protected the population and property, and conducted criminal investigations.

[1326] The witness's office was in Tumba. There was a police brigade in Butare, near the prefecture, and a small unit in Nyanza. On April 6, the police came under army control.

[1327] He learned of the president's death in the evening in a call from the burgomaster. Anxiety spread through the population and a curfew was imposed. Many meetings took place, chaired by the prefect, Jean-Baptiste Habyalimana, and attended by the sub-prefect, the burgomasters, the head of the prison, the person in charge of intelligence services and himself or his assistant.

[1328] The witness remained in Butare only from April 6 to 19, 1994. On April 19, he was transferred to the Kigali station. Wounded, he returned to Butare in late May or early June 1994. He lived at the Tumba camp until his departure.

[1329] Roadblocks were erected in Butare and a roadblock guarded by the police was taken over by the presidential guard.

[1330] Prefect Jean-Baptiste Habyalimana, a Tutsi, was replaced by Sylvain Nsabimana, who was himself replaced by Lieutenant-Colonel Alphonse Nteziryayo.

[1331] The witness was no longer in Butare when President Sindikubwabo gave his speech. The witness heard it on the radio and understood that the president was asking his fellow citizens not to hate or detest one another.

[1332] Between April 6 and 19, he went to the brigade in downtown Butare, where he saw nothing out of the ordinary at the prefecture. Everything was normal.

[1333] When he returned to Butare in late June, the city was very calm, but the people were not happy. There were roadblocks everywhere. One was overseen by Shalom and officers from the ESO.

[1334] He knew Isaac, a merchant originally from Gikongoro, as he was. Isaac was a member of the MDR. He had a wholesale beer business and a general store.

[1335] He knew Isaac's sons, Clément and Désiré, and Isaac's sons-in-law. He could not recall whether he saw Désiré between April 6 and 19. He did not see him when he returned to Butare.

[1336] He thought he recognized him in the photo line-up. He did not remember having seen Clément during the war. When the witness returned, he saw Shalom driving around in a white pick-up.

[1337] The witness saw the presidential guards at the roadblock they controlled during the war, but nowhere else. Their military uniform was distinguished by a black beret. They were armed with pistols and machine guns.

[1338] After the fall of Butare, the witness sought refuge in Gikongoro, where he remained until September 1994. He never left Rwanda.

[1339] In September 1994, the RPF selected a number of people, including the witness, and sent them to solidarity camps, where he remained until November 1995.

[1340] On that date, the RPF gave him a succession of very important positions in the national administration.

[1341] On February 6, 2004, the witness was arrested, imprisoned and accused of genocide. He is still awaiting his trial before a civil tribunal. Those who held responsibilities cannot appear before a *gacaca* tribunal.

[1342] Comments: The witness knew nothing about what happened in Butare during the genocide.

**DDM-32**

[1343] The witness, a 28-year-old Hutu, lived in the commune of Ngoma but worked in the Mbazi commune, where he held administrative functions in the area of social affairs.

[1344] He has been held in the Karubanda prison since 1996 and was tried with 40 co-accused. He was sentenced to death in 2000 and is appealing from the judgment.

[1345] The councillor of his section was Saïd. The witness saw no roadblocks during the war. There were two mosques in Ngoma, one of which was closed. He met with Canadian police officers twice after 2000. He knew Shalom and saw him once in Ngoma during the war.

[1346] RCW-3 was living on 2nd Avenue. He saw his family the day they were attacked and everyone in the vicinity came to their assistance.

[1347] Jacques Habimana had Saïd, the sector councillor, massacred and took his place.

[1348] The witness has known Désiré since elementary school. He was just an acquaintance. From 1990 to 1994, they frequently ran into each other in Ngoma, at Jacques Habimana's bar on 4th Avenue and at soccer games.

[1349] He did not see Désiré at any of the three events for which he is reproached: at the Ngoma church; at the mosque or at Sadiki's neighbour's. He saw him only once, on the balcony of his home.

[1350] Between April 6 and 19, the Ngoma population was worried and did not know what to do. A curfew was ordered. The witness returned to his work in Mbazi on April 9.

[1351] Around 8 p.m. on April 22, he went on a round with his neighbour Nsabimana. Jacques Habimana, accompanied by Muligande and Mukwiye, ordered them to follow the group, which went to the home of Sadiki, a neighbour who lived 100 metres away. The lighting was dim.

[1352] When they arrived at Sadiki's, many attackers were already there in front of the house. The group was composed of 20 to 50 people. Besides the five in his group, the witness identified on the site Édouard Nyagashi, Kasim, Mukwiye and Bizimungu, as well as many others he could not identify because of the darkness.

[1353] He and Habimana entered Sadiki's home and ordered the children to go outside. They were massacred with clubs in the street.

[1354] Mukwiye and Bizimungu entered the house and looted it. The operation lasted 30 minutes and many children were killed: Sadiki's two children, the two children of the neighbour, Gatawa, and many other refugees in the house. There were other adults in the house besides Sadiki and his wife, but the witness did not see them. The adults were not killed.

[1355] When Habimana realized that Gatawa was not there, he ordered the troops to go to the mosque, where he probably was. That was an order, the witness said. The situation was unclear and Habimana had a weapon. Everyone followed.

[1356] They went to the mosque, a building 10 metres by 30 metres, which also contained classrooms. Habimana gave the order to enter and to make the people get down from the ceiling. The witness got on a table, saw the refugees and ordered them to come down.

[1357] They were all killed with traditional weapons. There were about 50 of them and the witness recognized Shema and Rwembe among them. Neighbours buried them.

[1358] Around 10:30 p.m., the witness returned home. On April 6, there 10 people at the witness's home. On April 22, there would be 23, many of them Tutsi.

[1359] The neighbourhood patrols were organized by the sector councillor. The enemy had to be hunted down, but as the witness explained, there were no enemies in Ngoma. So the orders were followed and patrols were organized every night with two teams of five people in shifts.

[1360] The head of the cell established the schedules. Each home had to delegate a person to patrol in rotation. All young adult males had to serve.

[1361] On April 23, the witness saw a group, composed in particular of Kassim, Mbarushimana, Mukwiye, Bizimungu, Vincent and Édouard, attack a neighbour's house. The neighbour's wife and child were massacred. The neighbour's name was Benjamin Rutayisire and he had taken refuge at the witness's house for the previous five days. Many other people were brought to the site and massacred at the same time.

[1362] That was the same Benjamin and his son Éric whom the witness accompanied to Isaac's house with Clément when he saw Désiré on the balcony.

[1363] On Saturday, April 30, around 10 a.m., while the witness was at Jacques Habimana's roadblock with a few other people, Habimana ordered the group to go to the Catholic church 70 metres away.

[1364] No one thought it over, the witness said. A force swept over them. They followed orders.

[1365] Besides Habimana, Marc and Bizimungu, the witness identified in the group people from Matyazo, including Ruben and Mukwiye.

[1366] When they arrived at the church, soldiers were already there and a crowd of people joined them. Whether simple spectators or participants, there were more people outside than refugees inside the church.

[1367] The soldiers had the church doors opened before Habimana's group arrived. The witness entered the church with Habimana, Bizimungu and Mukwiye. There must have been 150 refugees there. Three soldiers, including Pacifique and Gatwaza, were already in the church.

[1368] The refugees were brought out row by row and killed outside down below. The priest, Eulade, was there, aghast. His vehicle was inside the compound.

[1369] The witness left the premises around 11:30 a.m. The massacres were not yet over and there were still about 50 refugees in the church. The witness left, as he found the scene dreadful. He contended that he managed to hide three girls in a garage before leaving.

[1370] The refugees came out a side door that led toward the presbytery. The witness could not see who was killing those who came out.

[1371] The witness went home. The corpses lay there all day and all night. They were picked up the next day or the day after that and placed in a truck driven by Iritaranga.

[1372] A crisis committee was created in Ngoma in late April 1994. It was composed of seven people, particularly, Lorien Ntezimana, the head of the committee, Théophile Batware, Jacques Habimana, Sude and Ismaël Rwicaninyoni. They met at the sector office and the committee issued communiqués. One asked that no more women or children be killed and another was about the cutting down of bushes.

[1373] The purpose of the roadblocks was to check the identity of the people wanting to go through and to detect the RPF enemy, whose attack was thought to be imminent.

[1374] The roadblock where the witness worked was on 1st Avenue, near the community centre. The person in charge was Batware. Groups of no more than five people worked there, armed with traditional weapons, plus two guns carried by Habimana and Batware. The witness worked there particularly with Habimana, Muligande, Batware, Abdallah and Cyiza Issa. No one was detained there.

[1375] One day in May, the witness saw Shalom at the wheel of a pick-up loaded with a dozen armed people wearing full or partial military dress, heading toward Mama Amina's. The witness and a group of neighbours rushed to the site, shouting. The whole neighbourhood was gathered, and the group of attackers took fright and slipped away.



[1376] The pick-up driven by Shalom had been stolen from Rwamukwaya. The witness did not recognize the attackers, with the exception of a mechanic and Musangwa from Kigali. He did not see the vehicle again during the war.

[1377] Shalom lived at his parents' house, in front of which was a roadblock.

[1378] One evening, the witness accompanied some children to Taba. He saw no roadblock on the way. He also went to Matyazo, where he found near the roadblock a man who had been killed.

[1379] The witness gave shelter for a time to Benjamin and his son. Benjamin was Isaac's driver. When the situation became too dangerous, he asked Clément to take them. So he took Benjamin and his son with Clément to Isaac's house. Benjamin and his son were given shelter there.

[1380] On July 3, 1994, the witness left Butare on foot with his family. On July 19, he crossed into Congo. Later, the RPF destroyed the refugee camps and he returned to Rwanda. Incarcerated in 1996, he was interrogated and beaten from 1996 to 1999, both in prison and at the public prosecutor's. That stopped in 1999.

[1381] He had recourse to the confession procedure in 1998.

[1382] The witness pointed out the idiosyncrasies of the Rwandan language. One can call someone a neighbour even though he lives on the neighbouring hill 150 metres from one's home. He is still a neighbour.

[1383] The witness said he became a Pentacostalist in prison and was saved. During the war, he was Catholic.

[1384] At the witness's trial, those on trial with him wrongly accused him of murder. He said the witnesses were bribed. The tribunal found him guilty of carrying weapons, and committing rapes and murders. Influenced by Jacques Habimana, he believed he had to participate in the violence so as not have problems.

[1385] The witness admitted taking part in looting. He did not loot to feed his family, in contrast to many others.

[1386] The curfews were ordered by the burgomaster, but at any rate no one went out after 6 p.m. The witness never went out at night except to go on rounds. Jacques Habimana forced him to come along during the attacks.

[1387] The soldiers of Ngoma were at the forefront of all the carnage. They abducted Bosco and agreed with Habimana that they would hunt down Tutsi, who were responsible for the president's death.

[1388] The witness admitted that the home of Adrien, a neighbour, was looted at the time when Saïdi was alive. The witness looted the home with the others and admitted his crime.

[1389] When he met with the Canadian police officers, he may have told them that the soldiers were attacking targeted homes, but he did not say they had lists. He denounced the genocidal soldiers such as Pacifique, Gakwaya and many others who acted with impunity in full daylight.

[1390] Jacques Habimana, accompanied by police officer Marc and his bodyguard, Tony, went from house to house to recruit people to take part in his violent acts. He also recruited people in the street. Refusing the invitation meant serious problems. Jacques was supported by the soldiers.

[1391] Before the war, Jacques was a member of the MDR.

[1392] Jacques did not really have a specific plan. He acted as he pleased in his quest for power. His bar served as headquarters.

[1393] Returning to the attack on the mosque, which the witness thought had taken place on April 22 around 9:30 or 10 p.m., he named the people who took part: Édouard, Jacques, Jean-Paul Nsabimana, Rukundu, Blaise, Donat, the witness's brother and many others.

[1394] Since it was nighttime, it was impossible for him to identify everyone. The lighting was dim. He said he was not among those who went in to look for the refugees. Some were hiding in the ceiling, others in the classrooms.

[1395] They threatened to use gasoline if the refugees did not come out. In the end, everyone came out and everyone was killed. The witness said he went home after the refugees came out.

[1396] The refugees were killed. There were approximately 50 of them. The witness said he had a stick and that it was true he beat them up, but that does not mean he killed someone.

[1397] At this stage in the cross-examination, which was extremely difficult, it was obvious that the witness no longer wanted to respond to questions.

[1398] The witness maintained that he did not take part in the attack on the Adventist church, although witnesses at his trial said he did.

[1399] The witness stated that everything that happened in Rwanda in 1994 was driven by personal interest. Rwandans did not detest one another. He contended that his participation was accidental and that many organizers are free while he is in prison.

[1400] He contended that Sadiki was the one who arrested him and put him in prison. He invented things that never existed. When his home was attacked, his wife asked him to hide the children, which he was prepared to do. Unfortunately, they were killed immediately.

[1401] Returning to Shalom's attempt to attack Mama Amina, the witness said he saw Shalom and that he was accompanied, as usual, by a group of bodyguards of Robert Kajuga, who was living at the Ibis hotel. Besides the group in the back of the pick-up, a mechanic and Musangwa from Kigali were in the cab. Suleiman, Mama Amina's son, was the target of the attack.

[1402] A series of contradictions then followed in the witness's testimony, which, of course, did not help his credibility.

[1403] Comments: The witness was not easy to follow. He was visibly tormented by the role he played during the genocide, which he explained as being the result of threats and a fear of reprisals. His testimony, which was very often contradictory, showed that he played a very active role in the attacks and looting. His credibility was seriously undermined.

### **DDM-38**

[1404] The witness, a Hutu who was 27 years old in 1994, was living in Matyazo, in the Butare prefecture. He was a driver.

[1405] The first roadblocks went up in April in Matyazo. The first killings began on April 21. At the start of the genocide, the soldiers were drinking and wreaking havoc. Everyone hid in the banana fields.

[1406] The witness admitted working at the roadblocks, as everyone did. He was ordered to by councillor Saïdi. The purpose of the roadblocks was to spot the enemy, which was trying to infiltrate the country. The roadblocks were manned 24 hours a day. The neighbourhood rounds, in which the witness took part, were set up for the same reason.

[1407] Those who made rounds and served on the roadblocks carried traditional weapons. Later, there were guns for those who knew how to use them.

[1408] The witness was among those who encircled a group of people who were then killed by soldiers.

[1409] The next day, around 8 a.m., vehicles filled with soldiers arrived and the soldiers began to kill people who had taken refuge in the school or the church. The soldiers, who were from the Ngoma camp, spent two days killing Tutsi, and Hutu who wanted to collaborate with them.

[1410] The soldiers ordered the population to take part in the massacres. Those who had undergone training received weapons from the civil defence authority. The people in charge of the roadblocks had firearms at that point. Those who did not obey the leader of the roadblock were killed.

[1411] The two roadblocks were located 15 houses away from each other, but one could not be seen from the other. No enemy was ever detained at a roadblock.

[1412] Everyone was afraid and hid. Only looters ventured out in town. Only vehicles of the *Interahamwe* and soldiers, and Shalom's vehicle circulated in Matyazo during the war.

[1413] The witness knew the accused and identified him in a photo line-up. He had no dealings with him.

[1414] The witness saw the accused once in Butare during the war. The witness was looting property with a band of friends and he saw Désiré at home. They did not speak, as each of them was going about his business. The incident reportedly occurred in June, just before people fled as the RPF advanced.

[1415] The witness identified the drivers employed by Isaac: François Kanamugire, Albert, Dagirubwira and Benjamin.

[1416] The witness knew Shalom when he was a driver in Butare. During the war, he saw Shalom more than three times in Matyazo and frequently in Butare. He went wherever he wanted with his vehicle and his people. He was driving a Peugeot 504 pick-up belonging to the merchant Rwamukwaya.

[1417] Shalom was always with Kazungu, who wore a military shirt. They were accompanied by many other men.

[1418] The witness saw Shalom more or less everywhere in Butare while he himself was looting with his group. When he saw Shalom, he did not know where Désiré was.

[1419] The witness admitted helping to encircle people who would be killed by the soldiers at the start of the slaughter. Apart from that, he merely looted people and buildings continuously. He was with various other looters, depending on intentions and needs.

[1420] The witness fled Rwanda in July, and went to Gikongoro, Zaire and Gabon. He was brought back to Rwanda by force and imprisoned in July 1997. He was sentenced to death on March 10, 2000 and is appealing the verdict and the sentence. He was found guilty of genocide, murder and looting.

[1421] Questioned as to whether he believed genocide occurred in Rwanda in 1994, the witness responded that people, mostly Tutsi, died and that he played a role. His role was limited to looting and once encircling people whom the soldiers killed.

[1422] He contended that, in *gacaca* tribunals, one must always answer yes to the question as to whether one participated in genocide. That is the answer they want to hear. If you threw a stone, you participated in the genocide.

[1423] The witness said he was treated unfairly by the tribunal, which found him guilty of eight charges. Usually, at least some of the charges are dropped. But, he said, the judges were angry and that was what motivated their judgment.

[1424] He was found guilty of carrying arms, whereas he never used a gun, but only a stick. He was also found guilty of not helping a person in danger, whereas he was not even a leader. The same was true of the guilty verdict for associating with criminals, whereas he was not a leader.

[1425] At the beginning of the genocide, the people of Matyazo and those from outside took refuge in the church, the Protestant school and the Matyazo dispensary.

[1426] The soldiers arrived in Matyazo in four trucks and took control of security in the town. They killed the people who found nowhere to hid. They searched houses and killed Tutsi. They went, in particular, to the houses of Kobizaba, Mirinko and the veterinarian Joseph Butera. They also took away Charles Mulindahabi, the PSD (social democratic party) Member of Parliament, and his son, as well as Bonaventure Rwabulandi and his brother Joseph Bilikumana.

[1427] Around 3 p.m. on April 21, the soldiers went to the Matyazo school. The witness joined the group around 7 p.m. Civilians encircled the building in order to prevent the refugees from escaping, and the soldiers entered and killed all the refugees with grenades and guns. There were more than 500 refugees.

[1428] Around 3 a.m., the group went on to the dispensary and killed all the refugees according to the same *modus operandi*. There were even more people at the school. The operation ended at 10 a.m. and the witness returned home.

[1429] The witness explained that he would go the roadblocks every day, since that was all there was for young people to do, except loot in Matyazo or Butare, when it was possible to get there.

[1430] Isaac owned many vehicles, including a Renault 21, a Peugeot 504 and a 505, a Nissan, and a Toyota pick-up and a Daihatsu pick-up, both with a special body, as well as many trucks.

[1431] Désiré owned no vehicle but took one at random when he went out. The witness did not see the two pick-ups circulating during the genocide.

[1432] He knew Clément, Désiré's brother, but did not seem him or the rest of the accused's family during the genocide. He has not had any contact with them since then.

[1433] He said Shalom's pick-up was not camouflaged, but corrected himself by adding that all the headlights of the vehicles were dirty, which camouflaged them to some extent.

[1434] He did not see Désiré and Shalom together during the genocide. Isaac's family had two businesses: the family lived on the premises of one business where he sold cement and sheet metal, while in the other, oil and mattresses were sold.

[1435] The witness knew the Mahenga sons, but did not see them during the genocide and never saw them with Désiré.

[1436] Comments: The witness appeared to be totally amoral and without any realization of the scale of what he was describing. He was not credible. He was confused in cross-examination. He saw nothing, despite frequent visits to Butare, not even Théoneste, Mahenga's son, who was in charge of a roadblock.

#### **DDM-45**

[1437] The witness, a Hutu who was 38 years of age in 1994, was working for pastor of the ECR in Butare. He held administrative positions in the diocese.

[1438] The grounds of the Episcopalian church included the cathedral and three residences: that of the bishop, that of the witness and that of a colleague. There was also a diaconal centre for visitors, offices, an elementary school with six classrooms and a workshop.

[1439] In April 1994, the school had nearly 400 students from 6 to 14 years of age. The school was at one end of the property and the witness's residence was at the other end, 200 metres away.

[1440] The witness filed as Exhibit D-61 an aerial photograph of the site, which shows the school (E), the workshop (A) and the Ntahobali family's hotel, which was destroyed but had been next to the school. Pauline, Maurice Ntahobali's wife, was Minister for the Family and lived at the hotel.

[1441] Prior to April 6, 1994, there was relative peace in Butare. There were no soldiers and no roadblocks (except at the entrance and exit to the city).

[1442] On April 6, 1994, the worker was at home and the students were on Easter vacation (the school did not reopen). He learned of the president's death on the radio and a period of uncertainty and fear took hold against a backdrop of rumours of carnage in Kigali.

[1443] No one went out for three days. After that, people could venture out briefly to go to the market. There were soldiers everywhere. There was no question of going out at night. Refugees began to flock to Butare and houses were seen burning in the distance.

[1444] On April 19, President Sindikubwabo gave a speech, bits of which the witness heard on the radio. The president called for the population of Butare to join in what was happening in the country.

[1445] In late April or early May 1994, refugees gathered at the prefecture arrived at the ECR on foot. They were completely destitute and it was raining heavily. The witness opened the workshop and a classroom to shelter them.

[1446] They were starving and, the next day, the witness went to the Red Cross to ask for help. The Red Cross asked for a list of the refugees, which the witness quickly drew up. There were more than 500. The Red Cross supplied provisions for a week.

[1447] The soldiers frequently came and mistreated the refugees and extorted money from them. Some were taken into the neighbouring woods and beaten. Many never returned. The soldiers poured water on the wood fires the refugees lit in order to cook. They came at night to look for women and girls (the witness had to admit that, since he did not go out at night, that was reported to him).

[1448] Some refugees found shelter with friends. Others left on false promises that the soldiers would shelter them. They were never seen again.

[1449] When the provisions were exhausted, the witness again applied to the Red Cross; he was told that the authorities had prohibited the feeding of the refugees. He went to see the prefect, who told the witness that no one had given him responsibility for those people.

[1450] After two weeks at the ECR, the refugees returned to the prefecture starving. There were only 300 of them left.

[1451] The next day, three buses took the refugees away.

[1452] The refugees who left for Ruhengeri returned two or three days later. They said they were forced back.

[1453] It was hardly possible to circulate in Butare. People went to the market and returned home. It was not possible to circulate by car. The ECR was located between two roadblocks: the one in front of the university rector's office and the one in front of Pauline's house. There were roadblocks everywhere.

[1454] The witness saw Shalom for the first time when he was working at the roadblock in front of Shalom's house. The roadblock was set up and guarded by soldiers the day after the president's death. It was transferred to Shalom and his group after April 19.

The witness identified Kazungu, Enéas aka Padiri and Jean-Pierre Ndutiye as part of the group.

[1455] These people checked the identity of those wanting to get through and detained some, who were periodically transported by vehicles to unknown destinations.

[1456] On May 30, 1994, Shalom and his group abducted the witness's colleague who was living at the ECR. They came around 10 p.m. and took him and Immaculée, a young girl he was sheltering. Two young boys he was also sheltering alerted the witness, who tried in vain to negotiate with the group. They refused to let them go and threatened to kill the witness, who fled. He never saw his colleague again, but Immaculée came back in the morning.

[1457] Shalom was accompanied by Kazungu, Jean-Pierre, Enéas, and others whom the witness did not recognize. The two boys sheltered by the colleague were called Bizimana and Munyaneza, who was his nephew (not related to the accused). The colleague's wife was living with him.

[1458] The witness knew Grégoire Misigaro, a neighbour who was one of the guards at Shalom's roadblock. Shalom and Kazungu wore military garb, as did the other roadblock guards.

[1459] Désiré's family was known throughout Butare. Isaac was an important merchant who had two establishments. The witness did not see Désiré during the genocide. He knew him, however, and identified him in the photo line-up. Désiré had a large scar on his neck.

[1460] RCW-10 was the driver for the Episcopalian community. He stopped working after April 6, 1994, although he came from time to time to the ECR, since he lived right nearby.

[1461] The curfew during the genocide was from 2 p.m. to 8 a.m., according to the witness, who abided by it religiously.

[1462] The witness repeated that he circulated very little in the city during the genocide, mostly to buy provisions. From his home, he frequently saw Shalom travelling by car in Butare, always in a group. He used many cars, including the pick-up belonging to a neighbour.

[1463] The prefecture was five minutes' walk from the ECR but it was not within view. The witness went there once when the refugees were there. Disorder reigned and the police were mistreating the refugees. People were arriving from all over, fleeing the war.

[1464] The witness left Butare on July 3, 1994 and took refuge in Congo. He returned to Gitarama in May 1997.



[1465] He was arrested on August 24, 1999 and tried by a *gacaca* tribunal in Butare. He was sentenced to 30 years in prison for treason and illegally carrying weapons. On appeal, his sentence was reduced to 19 years in prison. He applied for a resumption of his trial and is awaiting an answer.

[1466] He was accused of treason, more specifically, of having denounced his Tutsi colleague. The witness said that the charge was false, but that his explanations were rejected.

[1467] The witness knew Désiré only by sight. He had known Isaac for a long time, since the family were parishioners of the Episcopalian church. But in 1990 or 1991, Isaac had a falling out with the bishop and the family went to church less often.

[1468] Isaac had many vehicles, including a blue Peugeot 505, a grey 504, which Désiré often drove, and two pick-ups (a white Daihatsu and a red Toyota), which the witness did not see during the war. Before the war, he saw Clément driving them sometimes, but not Désiré.

[1469] He knew Venant's, which was near Mahenga's. He acknowledged that Théoneste guarded the roadblock in front of Mahenga's and carried a gun. He went through the roadblock twice in April before the massacres.

[1470] He saw corpses in the adjacent forest and saw prisons burying them there.

[1471] He stopped by to see the refugees once or twice a day. In the morning, some of them had disappeared.

[1472] One community work day (Umuganda), the surroundings were cleared of brush so that the refugees could not hide there.

[1473] The witness saw corpses near the comprehensive secondary school, not far from the prefecture. Prisoners were loading the bodies into a Minitrap (Ministry of Transportation) vehicle.

[1474] Comments: The witness was credible and seemed honest. He hardly went out in Butare during the genocide and never went out in the evening or at night.

#### **DDM-41**

[1475] The witness, a Hutu who was 49 years old in 1994, was living in Ngoma with his wife and his seven children. He was sheltering a Tutsi couple. He is Muslim and lived near the mosque. He was a member of the PSD.

[1476] Between April 6 and 19, everyone was afraid. The killing began in Kigali and spread to Butare. Freedom of movement was very limited. Sector councillor Saïdi was killed.

[1477] The president gave a speech on April 19. What the witness understood from the speech was that the president criticized the people of Butare for pretending to be indifferent. He encouraged them to work, i.e. to kill Tutsi. The time had come to fight the enemy. "If you are not able, **let us**", the president said. Burgomaster Joseph Kanyabashi thanked the speaker on behalf of the other burgomasters.

[1478] The witness said he saw Burgomaster Kanyabashi three or four times during the war when he called the population to meetings.

[1479] The killing and the erection of roadblocks began in Ngoma three days after the president's speech. There were two kinds of roadblocks: one kind was set up by the population to protect itself and the other was built by the authorities in order to hunt down Tutsi by checking identities.

[1480] The burgomaster's first meeting was called when the killing began. The burgomaster invited the population to defend itself. The sector councillor was killed a week or two later and replaced by Jacques Habimana.

[1481] The first roadblock went up near the mosque and the witness worked there. The roadblock was set up to protect the people hidden in the ceiling of the mosque school. Despite everything, they were all massacred.

[1482] The patrols had the same purposes: to defend against the enemy and to hunt down Tutsi. The witness said he patrolled only to defend himself against the enemy.

[1483] The roadblock was guarded from 9 a.m. to 9 p.m., and the witness was there for two or three hours a day. There was no obligation to be there, but the authorities did not look kindly on those who were not.

[1484] There were two roadblocks in the witness's sector: the one near the mosque and the one at the court. Elsewhere in the city, there were roadblocks at the Faucon hotel, the Ibis hotel, the university extension and the university, and in Matyazo. Ngoma was completely in control of the military.

[1485] The witness patrolled mainly in the Muslim neighbourhood (8th and 10th avenues), but also elsewhere (1st and 2nd avenues). The patrols were from 7 p.m. to 5 a.m. Those on duty were armed with traditional weapons and some, such as former soldiers, had guns.

[1486] At the second meeting called by the burgomaster, the decision was made to set up roadblocks, and then cell and sector representatives were elected to what would be called the "crisis committee". The committee was in charge of security and was chaired by Jacques Habimana.

[1487] The witness left Ngoma three times during the genocide: once he went to Taba, once to the mosque near the university and once to Tumba.

[1488] The witness described the violence he saw during the genocide. In early April 1994, he saw attackers kill Kamina, a young Muslim, along with his young brother Musa, in Ngoma.

[1489] He saw attackers loading Tutsi into vehicles that took them to their deaths in Taba.

[1490] At the prefecture, he saw people being loaded into vehicles that would take them to their deaths.

[1491] He saw the presidential guards take people to Ngoma and kill them on 2nd Avenue. The witness helped to bury the dead.

[1492] He went to the soccer field adjacent to the Ngoma church for a meeting chaired by Prefect Sylvain, accompanied by Burgomaster Kanyabashi, at which it was ordered that the killing stop. The same evening, the refugees at the church were murdered.

[1493] The witness left Butare when the RPF arrived.

[1494] The witness knew Shalom, the Minister's son, whom he saw in Ngoma when he went to see Shalom's driver.

[1495] He knew Désiré, Isaac's son, whose home he often went to in order to see his friend Moïse Sadiki, a watch repairer who had his workshop on the veranda of Isaac's home. He also knew Clément, Désiré's brother, and their parents. He recognized Désiré in the photo line-up.

[1496] He did not think he saw Désiré during the war. However, he saw Clément many times. He has not seen the accused since 1994.

[1497] He knew Michel Muligande, who took part in the attack in Taba, a sector of Butare where the rich lived. Taba was attacked many times in order to loot it. The witness had gone to Taba to recover a debt when he saw Tutsi being loaded into vehicles in order to be killed. Some were bound. There were many people there, including the victims, presidential guards, the above-mentioned attackers and police officers.

[1498] The Faucon hotel roadblock was guarded by soldiers, while the Ibis hotel roadblock was guarded by Robert Kajuga's *Interahamwe*.

[1499] When he went by the prefecture, where refugees were taken to their deaths, they were being transported in buses. The same group of Taba attackers was there with police officers and soldiers. He saw, in particular, Jacques Habimana, DDM-32, Mirango, Safari, Barukimana and RCW-7.

[1500] After he returned to Butare in late 1994 or early 1995, the witness was appointed to administrative and religious duties. He stayed only a few months and left for Kigali in August 1995.

[1501] The witness met with the investigators in 1995 and testified in Arusha in the case of Joseph Kanyabashi.

[1502] He met with Canadian police officers at the Méridien hotel one evening. They asked him whether he knew the accused. Since it was late, they planned on meeting again the next day. That evening, three men came to see him—Polisi Mubera, RCW-5 and Innocent, Paul Gakuba's son—and asked him to testify against Désiré.

[1503] He was offered a million Rwandan francs and the witness accepted the offer. He did it for the money and also for his safety, because the three were important people in Butare. The meeting took place in 2004 and lasted 15 minutes.

[1504] He was asked to say that Désiré was in Taba among the killers, that he was Kajuga's man and that he took part in the killings at the university.

[1505] The next day, he told the Canadian police officers what he had been asked to say.

[1506] He revealed those facts to the defence for three reasons. First, because he did not receive the amount agreed on. Second, when they would see that he did not do what he had promised to do, they would exile him. Third, he was uncomfortable lying.

[1507] He claimed payment for his perjury many times, but in vain. He was supposed to be paid the following week.

[1508] He was accused by a *gacaca* tribunal in 2006 of criminal attacks, looting and serving at the roadblocks. His trial took place in August 2006 and the case was taken under advisement on Wednesday of the following week. One of the judges told him not to appear because the situation was serious and that the prosecution was asking for a sentence of 25 years in prison.

[1509] The witness left the country the day after the trial and took refuge in Burundi. The judgment was handed down, and the witness was found guilty and sentenced to 25 years in prison. He did not appeal, but wrote to the national president of *gacaca* tribunals to ask him to review the case. He will never return to Rwanda.

[1510] In cross-examination, the witness indicated that his trial took place on August 9, 2006 in his presence. He was accused of having been part of the group of attackers who killed Kamina. Many people testified against him.

[1511] He was also accused of looting Félici's television. Félici's wife testified against him, but he said that, since he already had a television, he could not have been the one who stole Félici's.

[1512] Lastly, he was accused of working at the roadblocks, which he admitted.

[1513] All those charges stemmed from the fact that he was on bad terms with certain people.

[1514] The witness admitted not having told the whole truth on June 20, 1995 to a Belgian investigating magistrate in the case of Joseph Kanyabashi. After President Sindikubwabo's speech, Kanyabashi simply thanked the president for being there, whereas the witness lied when he told the magistrate that Kanyabashi had assured the president that his instructions would be carried out immediately. It was Innocent who suggested that he incriminate Kanyabashi.

[1515] On May 14, 1996, the witness again lied when he met with the ICTR investigators examining the cases of Kanyabashi and Nsabimana.

[1516] Testifying before the ICTR in Arusha, on March 18, 22 and 23, 2004 in Kanyabashi's case, the witness repeated the same lie.

[1517] The witness admitted that he met with the Canadian police officers on September 16, 2003, and February 28 and March 1, 2005.

[1518] On August 10, 2006, the day after his trial, the witness took refuge in Burundi. He said the Canadian police officers contacted him by phone in Burundi to tell him to come and testify at the trial because he would be the main witness for the defence.

[1519] Questioned as to why he incriminated Kanyabashi before the ICTR in 2004, when testifying under an alias, whereas Innocent suggested the lie to him in 1995, the witness became entangled in vague explanations. He said important people pressured him after the war and he was redeeming himself by telling the truth about Désiré before this court.

[1520] A series of questions followed concerning the witness's statements to the Canadian police officers on September 16, 2003, which were recorded and transcribed in Kinyarwanda and translated into French.

[1521] First, he talked about the Taba attack and identified two soldiers from Ngoma—Mbarushimana and Safari—as attackers. There were also other soldiers and *Interahamwe*. The attack took place at 7 a.m. and Jacques was the leader.

[1522] Mahenga's son and Kazungu were not there and he did not know RCW-13.

[1523] In his statement to the Canadian police officers, the witness said he saw Désiré Munyaneza in Taba waiting for people and taking part in the attack. He was wearing a military uniform and carrying a Kalashnikov. He was loading Tutsi into vehicles.

[1524] He added that Désiré headed the university roadblock and asked people wanting to go through to identify themselves. The witness went through twice in May and Désiré was wearing military garb and was armed with a gun.

[1525] He also said that Désiré was involved in many other events, including one he saw at the prefecture in early May. That day, the witness saw Tutsi loaded into buses in to be taken to be killed. Désiré, again dressed in military garb and armed with a gun, was among those who were sending the Tutsi to their deaths by forcing them to get on the buses.

[1526] The witness told the police officers that, at the time, he hoped Désiré would be killed so that he would stop what he was doing.

[1527] Lastly, he told the Canadian police officers that the Ibis hotel was the headquarters of Robert Kajuga and that he once saw Désiré, dressed in military garb, go to meet with *Interahamwe* in the inner courtyard of the hotel.

[1528] Before the commission, the witness admitted that he made all those denunciations, but that everything was false and he did that because he had been promised money. The meeting with the three men who proposed the deal took place the day before the meeting with the police officers and it lasted about 15 minutes. They outlined the fabrication and the witness invented the details.

[1529] He agreed to the deal, above all, for the money and, secondly, because he did not really have a choice since the three men were part of the local authorities. He admitted that he agreed to the offer immediately.

[1530] The witness could not explain why he told the police officers he could not identify other attackers in Taba and then, before the commission, had no difficulty naming Ruhango, RCW-13 and RCW-7. The same holds true for the prefecture attack.

[1531] He added that the accused could not have committed those crimes because he was a very young man and did not know Robert Kajuga.

[1532] He acknowledged that he asked the three men, on two occasions in 2003, for payment for the promise he made. He was on good terms with them at that point.

[1533] The witness acknowledged that, when he met with the Canadian police officers in 2005, he was offered the possibility of adding to or amending his 2003 statement. The witness refused to do so since he was not at all worried and was on good terms with the three men who had bribed him.

[1534] What is more, if he were allowed to return to Rwanda and rejoin his family, he would agree to lie again. What is important is that God sees into people's hearts.

[1535] Comments: This testimony was completely disconcerting. The witness was far from destitute and held responsible duties in the Muslim community. He falsely incriminated Joseph Kanyabashi and seemed to feel no remorse. He also agreed to incriminate the accused for money. He decided to tell the truth mainly because he was not paid. His testimony about the purpose of the mosque roadblock was not reliable. The roadblocks did not serve to protect Tutsi. Furthermore, guarding the roadblocks was never optional. His dual conception of the patrols was not credible.

[1536] I gave no credibility to the witness's testimony, either in denouncing the accused or in exonerating him. He went where the lure of money took him. It was absurd to say that the accused was too young (28 years old) to participate in the war.

#### **DDM-27**

[1537] The witness, a Hutu who was 35 years of age in 1994, was single and lived alone on the road to the university in Butare. He was a merchant. His business and home were 150 metres from Pauline's house.

[1538] On the president's death, people heard that massacres had begun in Kigali. Butare's soldiers set up roadblocks in front of the Faucon hotel, the university and near Pauline's house. The latter roadblock was initially manned by soldiers, but they had to leave for the front and asked the population to take over for them.

[1539] Shalom was placed in charge of the roadblock and the witness worked there four or five times a week from 10 a.m. to 12:30 p.m. He rested at home in the afternoon.

[1540] The witness said that, besides him and Shalom, Jean-Pierre, the son of Pascal Enoch, aka Padiri; the two Kazungu brothers, one from Kigali and Samuel from Butare; Lambert, Jean-Pierre's brother; Bertrand and a number of others worked at the roadblock. Enoch was Shalom's assistant.

[1541] After April 6, the witness took seven people into his home, all Tutsi, except for his younger brother. He and his brother were members of the PSD. The witness could not operate his business during the war.

[1542] The drivers for Isaac's business were François Kanamugire (Mercedes truck), Benjamin Rutayisire (Mercedes truck), David (Mercedes truck), Youssef (white Daihatsu pick-up with Clément Mutanga written on it) and Bagirubwira (red Toyota pick-up). The first three were Tutsi and the last two were Hutu. He knew of no driver named Bertrand working for Isaac.

[1543] The witness had known Shalom for a long time; Shalom's father came from the same village as the witness. In 1994, Shalom was attending university. The witness saw him regularly at the wheel of many vehicles.

[1544] The one he used most often was a vehicle stolen from Gaétan Rwamukwaya. Besides Shalom, the two Kazungus, Jean-Pierre, Bertrand and two boys from outside rode around in it. The group had already tried unsuccessfully to steal Rwamukwaya's vehicle.

[1545] A few days later, Shalom was riding around in the vehicle and Rwamukwaya was never seen again.

[1546] Radio-Rwanda was the national radio station, with an antenna on Mount Huye. RTLM was a private radio station with no antenna. It could not be picked up in Butare.

[1547] The witness saw Shalom loading people into his pick-up one evening around 7 p.m. He was accompanied by armed *Interahamwe*: the two Kazungus, Jean-Pierre and others.

[1548] The primary purpose of the roadblock at Pauline's house was to prevent refugees from the ECR school from entering the military camp. In addition, the identity of people wanting to get through was checked. There were always three guns at the roadblock, and the two Kazungus and Jean-Pierre also had guns. Shalom was always dressed in civilian clothing.

[1549] The witness saw Pauline at her house during the war and once at the prefecture, where she went to see the prefect. It was the day after her visit that the decision was made to evacuate the refugees at the prefecture to the ECR.

[1550] The witness knew Désiré well. He has a scar on his cheek and he recognized him in the photo line-up. He saw him twice on foot with other students between April 6 and 19. He was dressed in civilian clothing.

[1551] He also saw him between April 19 and July on market days, when people were allowed to go and pick up provisions. In addition, he tended the family store, since his parents had left the city. The witness bought mattresses there. Désiré was dressed in civilian clothing.

[1552] The witness left Butare on July 3, 1994 and took refuge in the Turquoise Zone. He returned to his native village on September 3, 1994. He was arrested on November 15, 1994 and charged with murder. He was released on December 31, 1998, for lack of sufficient evidence, and he left Rwanda for Tanzania.

[1553] The witness was not a close friend of Isaac, whom he would merely greet, as is appropriate with an older person.



[1554] The witness explained that the four beverage distributors in Butare all had red pick-ups with tubular bodies. They were easy to distinguish by their licence plates and by the owner's name on the door.

[1555] The witness did not speak to anyone, including the accused's family, about his testimony. He learned of Désiré's arrest when listening to the BBC.

[1556] Donat, Désiré's Rwandan attorney, phoned him in February 2007 and said he wanted to meet with him. The witness asked if he could think about it. He immediately called Clément, the accused's brother, to find out what was going on. Clément confirmed that Désiré was being tried in Canada and that he knew Donat.

[1557] The witness explained that all Rwandans in exile stick together and consult one another regularly.

[1558] The witness went to see Clément in 1999 when he crossed over into Kenya and has seen him regularly since then. He calls him every three months, but calls Isaac only once a year.

[1559] When he had a car accident a few years ago, he turned to Rwandans and Clément for help.

[1560] In short, after hearing Clément's opinion, the witness called back Donat, who asked him if he knew Désiré, whether he had seen him in 1994 and whether he would agree to testify at his genocide trial. A meeting was set up in Nairobi.

[1561] The witness met with Donat and Mtre. Dimitri in a Nairobi hotel and a long conversation followed. The evening of the interview, the witness met with Clément and told him about it: "They're from the same family. He's his little brother. I had to tell him everything".

[1562] Clément assured him that he himself would have said the same things.

[1563] The witness returned to Nairobi three times after that, but saw Clément only once.

[1564] /The witness affirmed that he knows no other witness, either for the prosecution or the defence, testifying in the case. He candidly added that he even forgot to call Clément and Isaac to tell them that he was coming to testify that week.

[1565] Someone called him a few years ago to testify for the defence in Shalom's trial, but he refused.

[1566] The witness knew Mahenga and his sons Théoneste (who was his age) and Eugène. Before April 6, he saw Théoneste every day. He was a close friend.

[1567] After April 6, Théoneste had mental problems and his family no longer let him go out. The witness nevertheless went to visit him every market day. He saw Eugène from time to time.

[1568] There was a roadblock in front of Mahenga's. It was manned by Bosco and another, obese, person. He never saw either Théoneste or Eugène at the roadblock.

[1569] The witness never went out at night because it was too dangerous.

[1570] There was no tension in Rwanda before April 6, 1994. After April 6, the witness had no schedule. He had nothing to do but stay home. The roadblocks were set up two or three days after April 6.

[1571] A week after April 6, young people gathered and soldiers gave the civilians weapons training so that they could defend themselves. The witness, Clément and Bosco took the sessions together.

[1572] Armed *Interahamwe* came from Kigali. They were wearing the special clothing of the MRND youth. Little by little, the *Interahamwe* designated killers, such as Shalom, Padiri and their group.

[1573] The killing began on April 19. Shalom and Padiri were already in charge of the roadblock where the witness worked. A dozen people were working there in groups of five or six.

[1574] RCW-5's business had closed its doors several months before April 6, 1994.

[1575] The witness reaffirmed that the primary purpose of the roadblock was to prevent refugees from getting to the ESO. But none of them ever tried to get there. Later, identities were checked at the roadblock. No Tutsi was allowed through.

[1576] At home in the evening, the worker heard the cries of the refugees attacked by soldiers. Everything was calm during the day.

[1577] He never heard Pauline talking about refugees and saw no corpse during the war, either at a roadblock or elsewhere. Despite that, he believed most of the Tutsi of Butare were killed during the war. But when he was there during the day, nothing was happening.

[1578] The witness often saw Clément, who came to the roadblock and asked Padiri how things were going.

[1579] Comments: Listening to the witness, one wonders how genocide could have occurred in Butare. During the day, everything was calm and nothing was happening. The witness candidly acknowledged that the Rwandan diaspora sticks together and that the accused's family is following the trial closely. The witness contradicted the evidence

that his friend Théoneste was the instigator of, and the moving force behind, the roadblock at Mahenga's. He was wrong about the dates that the roadblocks went up and no doubt downplayed the role he played at the roadblock where he worked. He was contradicted by many people on numerous facts.

### **DDM-36**

[1580] The witness, a Tutsi who was 12 years of age in 1994, lived in Ngoma. He had a false identity card that enabled him to play soccer and indicated that he was 16 years old. He also altered his card so that it indicated he was Hutu, rather than Tutsi.

[1581] There was a roadblock at Mahenga's and, a little farther on, a "chic-choc" roadblock. The witness lived opposite Venant's and Mahenga's, with his Tutsi grandmother, his uncle and employees. Mahenga had three sons: Dieudonné lived in Tumba (he came only two or three times during the war), Théoneste, known as Shyaka, and Eugène.

[1582] The roadblock at Mahenga's was set up in late May 1994 by Théoneste and Bosco. Its primary purpose was to prevent Tutsi refugees at the prefecture from coming into the neighbourhood.

[1583] The witness went to the roadblock at Mahenga's every day and stayed there 24 hours a day, getting only a few half-hours of sleep here and there. He never went home to sleep. He slept very close to the roadblock.

[1584] Most of the people manning the roadblock were Hutu: Théoneste, Bosco, Jimmy and employees of Venant and Mahenga. One of the people manning the Nshimiye roadblock was Tutsi. Eugène never came to the roadblock.

[1585] Théoneste had a firearm and was dressed in civilian clothing. The witness bought a military jacket for 15,000 RWF, which he wore at the roadblock. He felt safe there and could avert any attack on his family from there. All the time the roadblock was in operation, nothing happened there and "nothing bad" was done there.

[1586] Mahenga's place was huge and included a restaurant and a hotel, in addition to the residence. The house was five or ten metres from the roadblock.

[1587] The only people who could get through the roadblock were soldiers, *Interahamwe*, and street children and young hoodlums who came to beg for food. Mahenga's restaurant was open until 10 p.m. and, after it closed, no one was allowed through.

[1588] One day, Shalom and his *Interahamwe* went to Semanzi's house, took him away and killed him. They came armed in a pick-up, and ordered the people at the roadblock to disperse. Everyone fled. Shalom said they had just come from Languira's house, that they were going to Semanzi's house and that they would go to Séraphine's house. The

witness quickly warned his family. The group took Semanzi and his brother. The camouflaged pick-up belonged to Rwamukwaya.

[1589] The witness had known Désiré for a long time, as he had his family: Isaac, Clément, Christine and their cousin Pierre Furaha. He identified him in the photo line-up and added that he had a scar on his face.

[1590] He saw him once during the war at the wheel of a blue car.

[1591] One day, the witness saw Shalom and his *Interahamwe* with a list of refugees at the prefecture whom they were going to take away to be killed. That happened at 8 p.m. The witness did not know where Désiré was during that event or during the attack at Semanzi's house.

[1592] Another day, the group searched Mahenga's for Tutsi.

[1593] The witness did not see Pauline during the war. He saw Clément, who went four or five times a week to the "chic-choc" roadblock in order to show his solidarity. That roadblock went up the same day as the one at Mahenga's.

[1594] Théoneste was in good health and was able to serve as leader at the roadblock until late June, when he began to have mental problems and Bosco had to replace him.

[1595] The witness saw buses at the prefecture three times. A first convoy took refugees from the school complex to the prefecture.

[1596] A second convoy was supposed to take the refugees from the prefecture to Burundi, but it was just a hoax, as some refugees returned and said that all the others had been killed.

[1597] A third time, buses came, but the refugees refused to leave and the buses left empty.

[1598] Refugees were arriving at the prefecture every day. Their number varied up to a maximum of 400 or 500 people. Some were taken to the ECR.

[1599] Red Cross trucks tried to bring the refugees provisions, but were prevented from doing so.

[1600] The witness then got bogged down in a series of accusations allegedly made against him: rape, attempted murder, assisting in an abortion. That whole part of his testimony was implausible.

[1601] Furthermore, his account of the meeting with the Canadian police officers was muddled. He thought Désiré was arrested in 2000 or at least before 2002.

[1602] Between April 6 and late May, when he went to the roadblock, he remained hidden. He saw no other roadblock in Butare besides the Mahenga and the "chic-choc" ones.

[1603] Between 10 and 15 people worked at the roadblock. Venant's and Mahenga's employees came at night, when some 15 people were there. The witness never slept at night because he wanted to know everything that was going on. The others knew that his grandmother was Tutsi.

[1604] At the roadblock, the witness did not see any violent incident or any corpse. It was soldiers who came to loot, search and intimidate people. But they came before the roadblock went up. Afterward, they were not seen again.

[1605] The witness never saw Théoneste commit a violent act.

[1606] The soldiers from the ESO, Shalom and his *Interahamwe* and a few soldiers who had returned from the front were the ones responsible for the genocide in Butare.

[1607] The witness recognized no one from Butare in Shalom's group.

[1608] Théoneste was always dressed in civilian, never military, clothing. He had given instructions to detain all Tutsi who tried to go through the roadblock.

[1609] It was impossible for the witness to see what was happening on the grounds of the prefecture in the evening.

[1610] The witness did not see Eugène offer the roadblock guards beer in order to avoid having to work there. There was no light at the roadblock at night. The light from Mahenga's and Venant's was sufficient to illuminate the site.

[1611] The witness had known Désiré since he was small. He lived 300 metres from Désiré's house. He had no dealings with him. He saw Désiré for the last time when he was driving around at the wheel of a blue vehicle during the genocide. He has had no contact with him since then. He thought he had learned of his arrest on the radio in 2000.

[1612] The witness did not see Isaac during the war and did not know Valentine. He also did not see Venant during the war.

[1613] He affirmed that, a month before, the defence did not know he would testify.

[1614] When Butare fell, he joined the RPF without revealing his age.

[1615] Comments: The testimony was very difficult to follow. The witness insisted that he was born on [...], 1981. So he was 12 years old during the genocide and his whole story is quite implausible. At 12 years of age, he would not have worked at the

roadblock or joined the RFP. At 12 years of age in Rwanda, one does not have an identity card.

[1616] It is quite implausible that he purchased a military jacket for 15,000 RWF when he was 12 years old.

[1617] The date on which the roadblock went up and the almost idyllic description of what happened is quite implausible. He was the only one to mention the "chic-choc" roadblock a few steps from the roadblock near Mahenga's.

[1618] He was the only one to talk about buses that returned empty because the refugees refused to get on them. All the stories of rape, abortion and ultrasounds are quite implausible.

[1619] So was his meeting with the Canadian police officer, and his story about a false identity card fabricated in February 1994 in order to play soccer.

[1620] He dated his knowledge of Désiré's arrest back to before 2002. He said that a month before he testified, the defence did not know that he was going to do so, whereas the motion for a rogatory commission mentioned him many months before that.

[1621] In short, his testimony had little credibility and seemed to have been invented as the questions were asked.

#### **DDM-42**

[1622] The witness, who was 47 years of age in 1994, was born abroad and had a foreign identity card. Married to a Tutsi, he had four children but took in the seven children of his deceased brother. He was living in Ngoma. He held religious responsibilities in the Muslim community.

[1623] On the president's death, there was no roadblock in Ngoma. Saïdi was the councillor. Between April 6 and 19, there were no public meetings in Ngoma. The rare violence was perpetrated by soldiers from the north. They killed Bosco, a young man who wore an RPF sweater.

[1624] On April 19, the interim president called for the population to kill Tutsi.

[1625] Two roadblocks appeared in Ngoma after April 19, one at the social centre and the other near the military camp. Civilian training camps were organized to teach people how to kill. Subsequently, soldiers could turn over control of the roadblocks to civilians.

[1626] At first, the people of Butare did not know that Tutsi had to be killed, but the soldiers told them that.

[1627] One week after President Sindikubwabo's speech, a crisis committee composed of six Hutu was created, chaired by Laurien. The witness served on the committee. It would exist until the arrival of the RPF.

[1628] The carnage began in Ngoma after the president's speech. For three days, soldiers and *Interahamwe* killed people everywhere. The *Interahamwe* were killers linked with the authorities, whose mission was to kill the Tutsi of Ngoma. The *Interahamwe* were not from Ngoma.

[1629] The witness recognized the following people among the *Interahamwe* who took part in the killing he saw: Jacques, DDM-32, Bizi, Gatera, Ruhango, Nyagashi, and many others whose names he did not know.

[1630] The witness saw corpses on 1st Avenue at the church and on 4th Avenue.

[1631] On 1st Avenue, while Saïdi was councillor, the witness saw five corpses of Hutu and Tutsi killed during the night. They were buried by a group of which he was part.

[1632] At the church, while councillor Saïdi was fleeing, the witness saw in the morning many corpses of Tutsi killed during the night. A Caterpillar power shovel and a trailer took away most of the bodies, which were loaded by prisoners. The witness and his group buried the remaining 30 to 40 corpses in the woods right next to the church.

[1633] The next night, soldiers and the *Interahamwe* mentioned earlier killed the family of James Kagamo, who was the witness's neighbour. Eight people were killed.

[1634] The group of about 15 people then destroyed the witness's house.

[1635] The witness gave 250,000 RWF to Jacques and his wife gave 150,000 RWF to Bizimungu to save their lives. They would try to take the witness's wife away a few days later, but she was hidden.

[1636] The crisis committee was to see to the safety of the population. It was in charge of the roadblocks and patrols. The roadblocks were set up to protect Tutsi and to prevent the *Interahamwe* from entering Ngoma. The witness did not work at the roadblocks but oversaw them.

[1637] Only healthy men worked at the roadblocks. Children and old men did not. A 12-year-old child would never have worked at a roadblock. The whole population had to work in shifts.

[1638] At first, there were no firearms at the roadblocks. But after training, each roadblock had one. Hussein Kungfu had the firearm at the roadblock located 100 metres from the witness's house. A number of *Interahamwe* were chosen from among those who had received firearms training.

[1639] The witness attended two meetings called by Prefect Kanyabashi after President Sindikubwabo's speech. At the first, an appeal was made to stop the massacres. The meeting took place after the attack on the church and people were elected to serve on the crisis committee.

[1640] Security problems were discussed at the second meeting. The witness told the prefect that Jacques and Nyagashi continued to kill despite instructions to the contrary. The two were arrested but returned three days later more violent than ever.

[1641] At the second meeting, Jacques became sector councillor, replacing Saïdi. Jacques and his group killed Saïdi.

[1642] The witness again had to pay Ruhango a ransom of 100,000 RWF because he threatened to kill the witness's son Rachid.

[1643] The witness saw RCW-7 during the war. He was with Jacques' *Interahamwe*.

[1644] The witness knew the accused, but had no dealings with him because he was too old. Désiré was a student at the university and, during the war, he brought the witness an 18-year-old Tutsi girl whom he asked the witness to shelter because her family was about to be attacked. The girl was the daughter of Augustin Bakundukize. Désiré brought her in a red Toyota and stayed only a few minutes. He was dressed in civilian clothing. The witness never saw the accused again. He identified him in the photo line-up.

[1645] During the war, the witness saw Shalom travelling in a pick-up with a group of people. He was wearing a military shirt. He said he was in charge of the roadblocks. The witness did not see him in the accused's presence. Shalom came to Ngoma many times during the war.

[1646] The witness contended that soldiers abducted and killed Paul Semana in Ngoma.

[1647] He knew Mama Amina. One day, soldiers went to her house and wanted to take her away. The villagers intervened and prevented them from beating her up. Mama Amina was married, her children were educated and she had everyone's respect.

[1648] RCW-12 was an important *Interahamwe* in Matyazo. The witness saw him at a roadblock he was in charge of.

[1649] The witness did not leave Ngoma at any time during the war. He never saw Clément during that period. He left his village when the RPF arrived and took refuge in Bujumbura for three months. He returned to Rwanda and was detained for one month for genocide. He was released without trial in September 1994.



[1650] Arrested again in October or November 1994, he was accused of murder. He was acquitted in 1997 and freed.

[1651] In cross-examination, the witness said that Isaac had a beer and potato business. He had three trucks. He had three businesses in Butare, as well as others in Kigali and elsewhere. The witness had no dealings with Isaac.

[1652] In addition to his trucks, Isaac had a red Toyota pick-up with a special body, driven by Yusuf. Neither Clément nor Désiré used it. He could not recall having seen a Daihatsu. Isaac had a dark-coloured Peugeot 505. He could not recall a Renault. Jacques had no bar in Ngoma. Vincent, from Kibuye, lived in Ngoma and was part of the group of killers. He had a business that sold soap and other general products.

[1653] It was impossible to go to Butare during the war because it was too dangerous. The witness and other Muslims did not leave Ngoma during the war.

[1654] Questioned as to whether genocide occurred in Rwanda in 1994, the witness said that, in his village, Hutu killed Tutsi. The witness never took part in the violence.

[1655] After April 19, there were three days of violent massacres in Ngoma. The attackers had a list and systematically attacked all those on it. The attackers would search the whole town to find the people and massacre them. Most Tutsi were killed during the three days.

[1656] After that episode of intense killing, the crisis committee was set up to end the violence. At the second meeting of the committee, Jacques served as councillor but continued to act like a criminal. He had great ambition and wanted Saïdi's position. He was also in conflict with Burgomaster Kanyabashi.

[1657] In response to the question as to whether the roadblocks were set up to track down Tutsi, the witness stated that the Tutsi did not try to get through the roadblocks, but remained hidden, as did Hutu who were not members of the MRND.

[1658] The witness admitted that he told the attorneys that Shalom was the head of the group of killers who acted ruthlessly in Ngoma, whereas in his testimony in chief, he said did not know anyone by that name. He denied having said that the killers in Ngoma called themselves the crisis committee, whereas the motion for a rogatory committee indicated that.

[1659] The witness said he saw Shalom frequently and regularly in Ngoma in the company of the killers led by Jacques. However, he had to admit that he told the defence attorneys that he had seen him four times during the war.

[1660] While he was at home one night, the witness heard cries coming from the Ngoma church. The next day, soldiers ordered him to go and bury the corpses.

[1661] Comments: The witness testified calmly and seemed sincere, although he downplayed his role in the genocide and accentuated the assistance he gave Tutsi. He could not admit that genocide occurred.

[1662] The roadblocks were never set up to protect Tutsi in Ngoma.

[1663] The witness seemed to say in chief evidence that he buried corpses out of a sense of civic duty, whereas the soldiers forced him to do it.

[1664] He never left Ngoma and never went out in the evening.

[1665] It is surprising that he did not talk about Shalom in his examination-in-chief, whereas he admitted in cross-examination that Shalom was the head of the *Interahamwe*.

[1666] It is inaccurate to claim that the *Interahamwe* who killed Tutsi were not from Ngoma. The witness named a number of them who lived in the commune and whom he knew.

[1667] The contention that neither Clément nor Désiré drove vehicles during the war was contradicted by many witnesses.

### **DDM-15**

[1668] The witness, a Hutu who was 49 years old in 1994, was a merchant in Butare. His home and business were next to Pauline's house. He is married to a Tutsi and has seven children. He also owned two gasoline stations, in Butare and Karubanda.

[1669] He knew Pauline and Shalom very well; they were neighbours. He has known Isaac since his youth, when he served as national Member of Parliament for Gikongoro. He knows his wife and children.

[1670] Isaac had two businesses in the downtown area of Butare. In his business, he used Mercedes trucks and two pick-ups, a Daihatsu and a Toyota. Yusuf, Bagirubwira, David, Benjamin and Kanamugire were his drivers.

[1671] On April 6, he was in Kigali on business. He took refuge at UNAMIR after the president's plane went down. On April 11, UNAMIR left and the witness took refuge in Butare on April 12. Everything was calm.

[1672] He took refugees into his home in Butare and there were soon 36 people there, including his family. Most were Tutsi.

[1673] On April 19, the roadblocks went up in Butare: at the entrance to the city, on the road to Kigali, at the Faucon hotel (soldiers), in front of the rector's office (soldiers), in

front of Pauline's house (*Interahamwe*), near the university laboratory (controlled by Amandin Rugire's sons) and near Sindi's house (police).

[1674] The roadblock at Pauline's house was controlled by Shalom, Jean-Pierre, Kazungu, and others whom the witness did not know and who seemed to be foreigners. The witness went through the roadblock twice a day. He saw no weapons there, apart from Kazungu's. People were prevented from going through. Manning the roadblocks was mandatory, but the witness did not go.

[1675] Shalom regularly road around the city in his vehicle. He was surrounded by *Interahamwe*. One day, the group went to the home of Gaétan Rwamukwaya, who was killed along with his entire family. The attack was at night and the witness did not see who took part in it.

[1676] The next day, Shalom and his group took Rwamukwaya's pick-up and looted the house. That attack took place in late May or early June 1994.

[1677] One day, the witness and Félix Semwaga were threatened by the *Interahamwe*. They went to Pauline's house, where Prime Minister Jean Kambanda was present. They explained the situation to the Prime Minister in front of Shalom's parents. Shalom responded that all those who were hiding Tutsi would be killed.

[1678] The witness asked the Prime Minister for military protection. The Prime Minister refused, but agreed to stop by the witness's home the next day. After that, the threats against the witness ceased.

[1679] All the times that the witness passed through the roadblock on his way to the hospital, he did not know where Désiré was.

[1680] The witness's two gasoline stations stopped operating in May or June, because there were no longer any gasoline supplies. The Karubanda gasoline station was run by the witness, but the Butare Ville station was run by the prefecture, which decided who had the right to buy gasoline. The prefecture issued gasoline vouchers only to the military, the civil authorities and certain VIPs.

[1681] The witness had been a member of the secretariat of the MDR party since the creation of the political parties. Isaac was chairman of the party at the Butare commune level. The MDR was the largest party in Rwanda, since everyone had left the MRND. Désiré was not a member of the party.

[1682] A meeting of Butare merchants was held during the war in April or May at the witness's home in order to decide on the best way to protect businesses, of those who had left and those who had stayed. Isaac took part in the meeting, where it was decided to hire watchmen.

[1683] The witness left Rwanda on July 3, 1994 with his wife and two youngest children. In fleeing, he ran into Isaac's family (Isaac, and his wife, daughters and sons). Isaac had his two vehicles, the Renault and the Peugeot 505. Clément was driving a red vehicle and Désiré, a Peugeot 504. He saw them in Mururu.

[1684] Isaac was the most important businessman in Butare. His family and the witness's family attended many of the same social activities. The two men were friends. Both intellectuals (whereas the others were ordinary merchants), they discussed politics and had many points in common.

[1685] In 1999, the witness left Rwanda to do business in Kenya. In 2002, he moved to Tanzania, where business was better. His family has remained in Rwanda.

[1686] During his stay in Kenya, he occasionally got together with Isaac and his family.

[1687] He had know Jean Kambanda since the creation of the political parties. He also knew Théodore Sindikubwabo, who was a physician in Butare, and Prefect Nsabimana, whom he would see from time to time, as he did Kubwimana and DDM-19. The latter was a teacher and a member of the PSD. The witness saw him regularly during the war, either at the prefecture or at the gasoline station.

[1688] The witness was also in contact with DDM-19 when the civil defence account was created during the war. He met with him in June 1994 in order to sign for the account at the Bank of Butare. He has not seen him since then but received an e-mail from him, and on April 18, 2008, he testified from Rwanda by videoconferencing in his Canada immigration case.

[1689] He heard on the radio that Désiré had been arrested. The witness has remained in constant communication with Isaac. They speak regularly on the phone and see each other occasionally. They met in April in Kigali. Isaac knew that the witness was to go to Canada to testify in favour of his son.

[1690] He spoke with Isaac about his son's arrest. In 2002, he made a statement at Isaac's request for Désiré's Canadian attorney. In it, he described Désiré's conduct during the war. He met with Isaac in Nairobi and gave him the statement.

[1691] Between April 12 and 19, there was no curfew in Butare and the situation was normal. People circulated freely and worked.

[1692] The witness understood that, in his speech, the president was asking the public to kill Tutsi. That was the social plan of the president, the prime minister and the government.

[1693] The witness listened to a number of radio stations, including RTLM, which every one could pick up in Butare. The station spread the government's message. Félicien

Kabuga, a rich merchant from Kigali, founded RTLM, but he did not own the station. His daughter married the son of President Habyarimana.

[1694] Before April 6, the *Interahamwe* composed the youth wing of the MRND, but on the president's death, young people from the other parties joined the *Interahamwe* and the parties splintered. Other people joined the *Interahamwe* and the massacres began.

[1695] The witness declared that that civil defence forces were created in order to protect the population from the RPF, but the plan was hijacked.

[1696] The witness met Robert Kajuga in 1990 in Kigali. He saw him again in Butare during the war. He stayed at the Ibis hotel with his group.

[1697] The witness stated that he was known in Butare, but he had no influence. Otherwise, he would not have been threatened.

[1698] A pacification movement was created and, on April 23, the burgomaster had a car with loudspeakers circulate in the city in order to announce that the massacres were over. The massacres continued.

[1699] Operations were organized to clear out the underbrush and cut grass so there would be no places for the enemy to hide. The operation also served to flush out Tutsi. No RPF soldier was seen in Butare before people fled in July.

[1700] The witness reiterated that he was designated by the prefect to be a member of the civil defence financing committee and to be in charge of collecting merchant contributions. The vice-rector of the university, Jean-Berchmans Nshimyumuremyi, collected contributions at the university and the hospital, DDM-19 collected contributions at the prefecture and Sevarinda collected them from the company Sorwal. The witness also managed the account opened at the bank in the committee's name.

[1701] He maintained that he made no contribution to the financing and did not ask merchants for contributions. He signed no cheque from the committee's account. He did not know whether it was true that, in late June 1994, 12 M RWF were in the account, and if that was true, what happened to the money. He acknowledged that part of the funds were from property seized from Tutsi by the government.

[1702] The witness first heard about the creation of the civil defence committee in late April or early May, when young people were asked to take part in weapons training.

[1703] The witness went to the hospital every day to feed patients he knew. He stopped doing that when the soldiers began to kill patients in June 1994. In April and May, patients were well treated, but the situation deteriorated in June.

[1704] He saw no corpses in Butare, except for one in a pit near the cathedral. There were none at the prefecture or at the roadblock near Shalom's house.

[1705] Because of his age, he did not have to work at a roadblock. There was no question of his sitting down with children at the roadblocks. He travelled around in his vehicle during the day, but did not go out at night because it was too dangerous.

[1706] Comments: The witness was educated, coherent and sure of himself. He downplayed his role during the war, and his version of the management of the account of the civil defence financing committee was not credible.

[1707] It is to his credit that he acknowledged that he has remained in contact with the accused's father, that he discussed the son's situation with him and that the father knew who was testifying in court.

[1708] The witness was contradicted by many witnesses, particularly about there being no weapons at the roadblocks and no corpses in Butare, and that life was normal in the city between April 12 and 19.

[1709] His testimony was devastating for DDM-19.

#### **DDM-44**

[1710] The witness, a Hutu, was 28 years of age in 1994. He was living in Ngoma with his 10 children, his parents and two children of his mother's sister. He was a taxi driver but did not work during the war.

[1711] From 1991 to April 6, 1994, the witness held an administrative position in the commune. On April 6, 1994, the soldiers from the Ngoma camp took control of the commune by force and eliminated all opponents.

[1712] After the president's speech, it was not possible to circulate between communes. The witness did not leave Ngoma at any time during the war.

[1713] Between April 6 and 19, Jean-Bosco was killed and his body was found in front of the military camp. The entire community was distraught.

[1714] After April 19, everything changed. Soldiers went out at night and fired shots. They supported Jacques Habimana, who, with his group, started to kill people. The whole population was hiding at home. All the businesses were closed.

[1715] In mid-May, Burgomaster Kanyabashi summoned the population and ordered that the killings stop. Things died down to a certain extent. The killings, which were very widespread and visible, became more circumspect. People were abducted at night and killed, and their corpses were discovered in the morning. At the meeting, Jacques was installed a councillor, whereas Saïdi, the elected councillor, had fled.

[1716] Two weeks later, Kanyabashi summoned the population again, while Jacques was still councillor. Kanyabashi reinstated Saïdi as councillor.

[1717] At a meeting called by Saïdi, three soldiers, including Pacifique, detained him, and Jacques took the councillor's seat. It was learned that Saïdi had been killed.

[1718] The witness knew DDM-42. He attended the burgomaster's meetings and was a member of the crisis committee, of which he was one of the leaders. He openly opposed Jacques as councillor and called for Saïdi's return.

[1719] The witness saw three corpses on the soccer field near the church. He noted that they had been dead for some time. The Caterpillar power shovel that loaded the bodies after the massacre at the church had not picked them up. They were eventually buried.

[1720] In June, around 7:30 p.m., soldiers from the Ngoma camp came to Mama Amina's house in order to attack her son-in-law.

[1721] Alerted by the public, the members of the crisis committee rushed to the site and forced the soldiers to leave.

[1722] A number of other attacks took place. Not everyone shared the burgomaster's peace-loving sentiments. The witness was present when a commune employee, Maria Gorette, and her daughter Laetitia were attacked. The attackers were led by Gatera, accompanied by Édouard Nyagashi, Bizimungu, Niyamungu, Etienne Bijumba and several others, including soldiers from the Ngoma camp.

[1723] The witness had known Désiré from childhood, but did not have any dealings with him. Désiré's parents were rich, while the witness's parents were poor. He thought he could identify him in the photo line-up. He had a scar on his face. The witness did not see him during the war and did not know where he lived. He did not see him in Ngoma at the time, and has not seen him since.

[1724] In the war, the *Interahamwe* changed from being the youth wing of the MRND to being an organization of youth from all the parties. After April 20, the *Interahamwe* constituted a group formed by Jacques Habimana and DDM-32 that included, in particular, Gatera, Édouard Nyagashi, Innocent Ntuyubwatsi, RCW-7, Nsengiyaremye Vincent, Nzajyibwami, Célestin (commanding the airfield), Blaise, Fils, Kamondo, Nsabimana from 2nd Avenue and his brother Marico, a Ngoma commune police officer, Bijumba Etienne, Nyandwi, Abdulilah and Dume.

[1725] The witness saw Shalom going by in town but he did not live there.

[1726] Asked by the attorney for the prosecution to admit that Rwandans are naturally warm people, the witness responded that a Rwandan "never says what is in his soul" when he is in front of you. He always lies. A Rwandan can never say what he feels in his heart because he is afraid of other Rwandans. He can never tell his secret to others because they may be spying on him, which is even more true of a Rwandan living abroad.

[1727] The witness did not know why he testified and was not aware that he was testifying for the defence in Désiré's trial. No one had told him.

[1728] In response to the question as to whether genocide occurred in Rwanda in 1994, the witness said he did not know what genocide is. Tutsi and politicians were massacred and there was war in Rwanda in 1994. He himself did not take part.

[1729] In July 1994, he left Rwanda and took refuge in Congo. From 1999 to 2001, he had to hide in the Congo forest at Masisi in order to avoid attacks by Rwandan soldiers and Banyamurenge.

[1730] In 2001, he went to Malawi, where he lived with his wife and child in a refugee camp. He will never return to Rwanda. He lost everything and his whole family was killed there. Why return?

[1731] One morning, the witness heard that the refugees at the Ngoma church had been massacred. The incident took place before the crisis committee was set up and after the first meeting called by Burgomaster Kanyabashi. The witness did not remember if it was after or before the second meeting called by the burgomaster.

[1732] Jacques Habimana used his alliance with the soldiers, particularly Captain Augustin Niyezimana, to undermine the civil authorities. He set himself up as leader of Ngoma. He was present at the two meetings called by the burgomaster.

[1733] Saïdi was not present at the first meeting, only the second. Kanyabashi reinstated him in his position as councillor. He never had Jacques imprisoned because he did not have the authority to do so. At the meeting, Kanyabashi did not discuss the RPF threat or the hunt for *Inkotanyi*. Nor did he say that Tutsi were sending their children to join the RPF. Those were the rumours circulating among the population.

[1734] Everyone remained hidden during the three weeks that followed the start of the massacres. When Saïdi was reinstated in his post, tensions eased to a certain degree. Then Saïdi was killed and the situation became just as dangerous as before. People hid again. The witness himself no longer left his home.

[1735] The soldiers played a front-line role in the massacres. The witness did not think they had a list, since they killed Tutsi and Hutu at random. Everyone was afraid of them. Everyone was afraid of dying.

[1736] Comments: The witness was sincere and generally credible. He did not leave Ngoma at any time during the war and remained hidden for much of the conflict.



**DDM-43**

[1737] The witness, a Hutu who was 25 years of age in 1994, was living in the Gishamvu commune of the Butare prefecture. He was working for the health department in Rango.

[1738] He learned of the president's death on the radio in Gishamvu. A curfew was immediately imposed. The following week, he went to work two days, but the situation was too dangerous. Houses began to be burned down and people were fleeing. He returned home and did not go out again.

[1739] Two weeks later, he returned to work at his boss's request in order to help the patients for whom he was responsible.

[1740] During the genocide, the witness had to travel regularly between his home and the Karubanda community school, where orphans were taken in. He filed as Exhibit D-71 a map of Butare indicating the route he took and the roadblocks he had to cross. He also had to go to Matyazo, where there was a roadblock near the market.

[1741] There were people in half-civilian, half-military dress at the roadblock at Pauline's house. Shalom was part of the group of guards, along with other young people. They all wore half-military, half-civilian gear.

[1742] Shalom travelled throughout the city in his vehicle, along with his gang. They went to drink at Venant's in particular.

[1743] The roadblocks were there in order to check the identity of those who wanted to go through. Shalom went to the university roadblock. He seemed to control a number of roadblocks.

[1744] When going about, the witness caught sight of five corpses in the bushes on the edge of the INRS forest. He did not dare to take a closer look.

[1745] When he went by the prefecture, he saw many refugees in a very poor physical state. He did not see Shalom.

[1746] He knew Désiré Munyaneza, who studied at the school complex, as he did. The witness was two years older and they did not have any dealings with one another. He identified Désiré in a photo line-up. He had a scar, but the witness could not recall where. He did not see him during the genocide. He knew Isaac, Delphine and Clément by sight.

[1747] Before the war, the *Interahamwe* made up the youth wing of the MRND. After the war started, there were young killers from all parties. The *Interahamwe* wore multi-coloured clothing decorated with a drawing of the MRND flag.

[1748] The witness saw no killings during the war.

[1749] He left Butare when the RPF arrived on July 4, 1994 and went to Congo. He returned to Rwanda in February 1997.

[1750] He left Rwanda in February 2007 and applied for refugee status in another country. He did not feel safe in his country.

[1751] He contended that, in February 2007, police officers came three times to urge him to testify in Arusha against Ngoma Burgomaster Joseph Kanyabashi. The witness refused to describe things he had not personally seen. The third time the police officers came, they hit him. He left the country.

[1752] Describing his movements in Butare Ville during the war, he said he was familiar with the Venant and Mahenga businesses, but did not go there during that period.

[1753] On April 6, 1994, a curfew was ordered. The witness remained at home for a week without going out. Then he worked two half-days. He subsequently did not go out for two weeks, then he returned to work two half-days a week in May and a day or two in early June.

[1754] The witness only went out during the day, never in the evening or at night, because it was too dangerous.

[1755] Comments: The witness was calm and credible. He told us little about the accused's alleged offences. He saw no killings at all during the war.

### **DDM-18**

[1756] The witness, a Hutu who was 34 years old in April 1994, is the accused's elder sister. She has six brothers and sisters: Jeannette, Clément, Christine, Désiré, Claire and Delphine.

[1757] She is married and has four children, who were 1 to 13 years of age in 1994.

[1758] Her father had two buildings in Butare and a third on the Ngoma road. In 1987, her father built a new, two-storey, house in Butare for his family and the business. It contained annexes in the inner courtyard where there were four rooms occupied in 1994 by Clément, Joseph, Désiré and Pierre.

[1759] On April 6, 1994, her father and Delphine were visiting her. The family took refuge in a convent when the president died, and fled to Butare on April 10, escorted by police.

[1760] The whole family took refuge in her father's house. Christine's family was also there. The witness remained in the house from April 10 to May 20, 1994.

[1761] The witness, her husband and their baby occupied Désiré's room. The three other children went with Delphine. Désiré left to live in the family's second home in Butare.

[1762] Besides the families of Isaac, the witness and Christine, there were Parfine, Diane, C-21, Jeannette and her children in Pierre's room, Rutayisire and domestic servants.

[1763] Rutayisire, a Hutu driver, stayed in Joseph's room.

[1764] Between April 10 and May 20, but after President Sindikubwabo's speech, Denis Karema came to the house to say that C-21 was at the school complex. The witness's mother gave him clothing and C-21 eventually came to live at the house. She was frightened when she arrived but was not traumatized. Her clothing was clean.

[1765] The witness visited C-21 and the other boarders every day. Everything was going well for C-21 and there was nothing unusual to report. She wore clothing provided by Delphine, as the other boarders did.

[1766] The whole family and the boarders ate the evening meal together. During the day, the boarders could not leave their rooms, for fear of being seen from outside.

[1767] Isaac was there every evening. His wife came when she was not bedridden. Désiré came especially to eat during the day, but not often in the evening.

[1768] Relations between the witness's mother and C-21 were good, as they were with everyone, except that the mother insisted that C-21 not leave her room during the day. The witness learned of the death of C-21's parents after the war.

[1769] She knew DDM-20, who came to the house in Butare during the war.

[1770] She also knew Prefect Jean-Baptiste Habyalimana and his wife, who came to the house since the two families were friends.

[1771] The witness stated that nothing abnormal happened at the house while she was there in April and May 1994. Her father's two vehicles and two pick-ups were in the house compound.

[1772] She knew Charles Butera, the father of Pierre Furaha, whom she saw regularly.

[1773] She knew the Ntahobali family, friends of her family who regularly saw one another before 1994. She knew Shalom and his sister Clarisse.

[1774] She also knew Mahenga and his sons Théoneste and Eugène. The family was also invited to family gatherings. She met Robert Kajuga in Kigali.

[1775] The witness knew Burgomaster Kanyabashi, Colonel Muvunyi and Shalom, but did not see them during the war.

[1776] There was no attack whatsoever on the family home while she was in Butare. Between April 19 and her departure, on May 20, 1994, the witness did not leave the family home. She kept abreast of events by listening to Radio-Rwanda.

[1777] She saw no roadblock in Butare. She did not listen to RTLM, which spread hate. There were no weapons at home.

[1778] The evening meal was served at 8 p.m. and brought together about a dozen people. The domestic servants were not invited. Désiré was rarely present for the meal.

[1779] On May 20, 1994, the witness and her family, her parents, her sister Delphine, Jovite and Adelphe left Butare for Cyangugu. Those who wanted to leave left. C-21 did not want to leave because she was afraid to go through her village.

[1780] After the exile of May 1994, she returned to Rwanda in 1997, but her husband returned for good in 2000. Christine and her parents also live in Rwanda. Her mother returned in 1999 and her father, in 2000. Clément lives in Nairobi.

[1781] She has not spoken to Désiré since his arrest, but asked his wife for news of him.

[1782] She knows that C-21 and DDM-15 testified at the trial, as did Delphine and her mother. DDM-15 told her to prepare well before testifying because she would be asked many questions.

[1783] The witness explained a few minor contradictions between her statement to the Canadian police officers in 2004 and her testimony in court. Her testimony was better prepared, although she denied having discussed it with her mother, Delphine, Christine or the other members of her family.

[1784] Comments: An intelligent and serious witness who was generally credible. She had to stay inside the house from April 19 until her departure on May 20, 1994 and saw nothing of the conflict. She was not credible when she said she did not discuss her testimony with her family, particularly her mother or Delphine, who had already testified. She was also not credible when she said that C-21 arrived from the school complex in a good physical state and well dressed.

#### **DDM-10**

[1785] The witness, a Tutsi who was 37 years old in 1994, was living a kilometre from the prefecture of Butare with his wife and his three children. He was working for MSF.

[1786] On the death of the president, the population was seized with fear and a curfew was imposed.

[1787] The witness only went out on April 12, to go to work. Roadblocks had gone up and Tutsi were piled up in the gutters. The witness explained to his boss, Rony Zachariah, the danger he was in at home and asked whether he could stay in the MSF compound.

[1788] He was convinced that no one would ever attack women and children, and that it would be better to leave his family so as not to expose them to danger.

[1789] Between April 12 and 19, he went out only for an hour, in order to set up a tent at the hospital for the wounded.

[1790] On April 19, Mr. Zachariah decided to evacuate the MSF employees, and a convoy of four vehicles set off for Burundi, taking the witness and his family, as well as other MSF workers. On April 19, 1994, the witness saw the accused near the entrance to the rooms at the Faucon hotel. He was part of a group of four people.

[1791] The witness knew Shalom, whom he saw at the roadblock in front of his parents' home. He saw civilians and soldiers there. The incident took place between April 6 and 19, 1994. Désiré was not with him.

[1792] Then, on April 19, 1994, the long flight to the Burundi border began. The convoy crossed many roadblocks manned by soldiers, police officers or civilians.

[1793] Many Tutsi were detained at the roadblocks. They were frightened. The people manning the roadblock were armed with machetes, clubs and sticks. The leaders had a gun.

[1794] One roadblock consisted of Tutsi corpses connected by means of a stick, blocking the way. The roadblock guards were aggressive and violent.

[1795] At the border between Rwanda and Burundi, guards tried to prevent the witness and his family from crossing. The witness and his family nevertheless managed to cross the bridge that served as the border and went to Bujumbura. The river marking the border between the two countries was full of murdered Tutsi whose bodies were drifting with the current.

[1796] The witness worked for MSF in Burundi and stayed there a year before returning to Rwanda.

[1797] The witness knew C-18. He saw him on April 20, 1994 in Bujumbura.

[1798] The witness explained that, in 1981-1982, Isaac had a general store where one could find all household items and cigarettes. Machetes were also sold there, as they

were in many stores in Butare. There were no firearms or traditional weapons in the store.

[1799] The witness knew Mahenga and his sons Théoneste and Eugène, whom he did not see between April 12 and 19, 1994.

[1800] Comments: Serious, credible testimony. The witness responded calmly to the questions, without evasion. He left Butare on April 19.

### **DDM-17**

[1801] The witness, a Tutsi who was 17 years old in 1994, was living in Ngoma with her parents, a brother and a sister.

[1802] On the death of the president, the family remained at home and refugees appeared here and there. On April 22, each member of the family left separately and the witness took refuge in a school in the vicinity.

[1803] Subsequently, she went to the hospital, where there were countless refugees. Every day, refugees were taken to their deaths. The witness recognized some of the assailants: Councillor Théogène; a soldier, Kinonyo; a woman called Mukamurena; soldiers from the ESO and others she did not recognize.

[1804] A red vehicle, driven by Kubwimana, took refugees, including the witness, to the prefecture. The refugees were moved to the ECR, then to the prefecture, back to the ECR and then returned to the prefecture, after which they were driven by bus to Nyaruhengeri, then to Rango.

[1805] The refugees slept outside at the prefecture. They were very numerous and lived in difficult conditions. Refugees were regularly taken away at night in a camouflaged vehicle in order to be killed. Shalom drove the vehicle and was assisted by many others, whom the witness could not identify, apart from Ntujenjeke, which is the nickname of Shyaka.

[1806] The witness tried not to look at Shalom's group. She covered herself when they appeared and she heard only the names Shalom and Shyaka.

[1807] She also knew Kazungu, who escorted Minister Pauline. The witness saw Pauline at her house when she was a refugee at the ECR.

[1808] At the ECR, where she twice sought refuge with a great many other people, who slept in the workshop, the witness was raped by a soldier. Many other women suffered the same fate. Other refugees were taken away and killed during the night.

[1809] Everywhere the refugees went, the women were raped, except in Rango.

[1810] One day, the authorities informed the refugees that they would be relocated to Nyaruhengeri. Two buses picked them up. Some refugees escaped from the convoy. They returned to the prefecture and warned that all those who had left had been killed.

[1811] The next day, the refugees were forced into other buses.

[1812] During her stay at the prefecture, the witness saw refugees arriving from the church supply centre. Most of them were taken away and killed the same day.

[1813] The witness saw Triphine, a refugee, be violently beaten.

[1814] To her knowledge, there was no other refugee with her family name or given name.

[1815] She saw three corpses at the prefecture: a child whose father had been taken away and killed, a man discovered dead in the morning and a young man who had been beaten to death by soldiers.

[1816] Some people sleeping next to her disappeared during the night, without the witness having seen or heard what happened. Sometimes, a vehicle came to pick up refugees at night and the facts were reported to her in the morning without her having had knowledge of them. It was impossible for her to see all the violence committed at the prefecture.

[1817] The witness had great difficulty recalling her departure and her stay in Rango. Generally speaking, she had great difficulty recollecting large parts of the genocide.

[1818] She recalled that, in Rango, a priest came to help the refugees and that Fidel and Alexis were in charge. People were tied up in sacks and beaten.

[1819] After the war, the witness met with a Canadian police officer, accompanied by an interpreter. The conversation was recorded.

[1820] The witness had heard the name Désiré, but not the name Munyaneza. Looking at the witness, she said she did not know him.

[1821] She knew C-16, whom she saw after the war. The two women ran into each other in the street. One day, C-16 asked the witness if she would agree to join an association of genocide survivors. The witness refused.

[1822] The witness knew C-15, whom she identified in Exhibit P-6. The two women often ran into each other in the street.

[1823] The witness knew Ngoma and Muzungu, two mixed-race people at the prefecture.

[1824] In cross-examination, the witness explained that this was the first time she was testifying before a court and that, given the difficult life she led, she could no longer recall details of the events of 1994.

[1825] On September 29, 2003, she made a statement to the Canadian police officers, but she was unable to recognize in court police officer Poudrier, who had questioned her: "To me, all White people look alike!".

[1826] She read the transcript of her statement in preparation for the trial. She spoke to no one about her testimony and she knew nothing about the trial.

[1827] She left her house on April 22, 1994 and took refuge at the school in Mpare, which was attacked 30 minutes later. She hid in a sorghum field, then in the INRS forest and, lastly, in the hospital, a very large complex where there were countless refugees.

[1828] There were tents on the site where Whites took care of the refugees. The Whites were angry because civilians and soldiers were attacking the refugees and killing the wounded being cared for under the tents. The hospital was so big and the attacks so numerous that it was impossible for her to see all the attacks against the refugees.

[1829] Every day and even at night, people were taken way to their deaths. There was no end to it.

[1830] The witness repeated that she lost all notion of time, but she admitted that she told the Canadian police officers that she stayed at the hospital for two and a half weeks.

[1831] The refugees left the hospital grounds for the prefecture. The witness admitted having told the Canadian police officers in 2003 that there may have been 5000 refugees at the prefecture. She found herself there with her aunt.

[1832] There were countless attacks against the refugees at the prefecture from two sides at a time. In fact, the witness tried not to see anything by hiding her face in a cover. She heard the voices and shouts of the attackers, but most of the time did not see them. She saw only Shalom and Shyaka.

[1833] There were old houses behind the prefecture, but she did not see women being taken there.

[1834] Triphine was taken away one evening and brought back the next day.

[1835] From the prefecture, she could see the roadblock at Venant's, but noted nothing in particular.



[1836] Two soldiers took her one evening to stay at Mahenga's. She found a pretext to leave them and she returned to the prefecture. She did not know what they wanted to do, but she did not trust them.

[1837] One day, she saw a group of *Interahamwe* come and take weapons from the prefecture. The witness knew only her relatives at the prefecture, not the other refugees.

[1838] Apart from Shalom and Shyaka, she recognized no other person among the many attackers at the prefecture. She did not know Isaac's children in 1994 or 2003, and does not know them now.

[1839] However, in her 2003 statement to the police officers, she said that one could not live in Butare without knowing Isaac's sons and that Isaac's son was friends with Shalom and accompanied him, along with Mahenga's son, in an attack on refugees.

[1840] Isaac's son took refugees to their deaths. He carried a gun and wore military garb.

[1841] The witness admitted that she made those statements in 2003, but she contended that, since then, so much has happened in her life that she has forgotten many details of those events.

[1842] In another excerpt from the statement to the Canadian police officers, she maintained that Isaac's son came to the prefecture and attacked refugees in the vehicle used by Shalom. Nights were terrifying; she hid her head so as not to see or be seen. Everyone saved his or her own skin; girls were taken to be raped and the next day described what they had experienced.

[1843] The witness could no longer recall those events, but admitted that she described them to the police officers in 2003.

[1844] The witness went twice to the ECR with the refugees. The first time, the sub-prefect called them filth and chased them out of the prefecture to the ECR.

[1845] In her statement to the police officers in 2003, she recounted that, at the ECR, Pauline's *Interahamwe* came to get young Tutsi in order to kill them. The witness admitted saying that, but she no longer remembered those facts.

[1846] The refugees were expelled from the ECR by Pauline and the pastor.

[1847] When the refugees left the prefecture for Nyaruhengeri, the second day, Prefect Kanyabashi accompanied the bus the witness was in. Once they arrived on the site, the prefect and the refugees were chased away by the roadblock guards, who were tired of killing Tutsi.

[1848] Comments: The testimony was difficult and very painful for the witness, whose appearance in court was torture for her. She frequently hid her face in her hands and cried. She constantly insisted on the fact that she had forgotten everything and it was obvious that she no longer wanted to think about the genocide. The cross-examination was devastating. She was no doubt sincere, but could no longer remember anything, although she admitted that she provided the Canadian police officers with many details in 2003. She was 17 years old and is a living illustration of the tragedy of genocide and its emotional consequences.

#### **DDM-40**

[1849] The witness is a Tutsi who was 28 years old in April 1994. She was living in the commune of Butamwa with her parents, her younger sister and a cousin. On the death of the president, she begged her parents to leave. They refused and she left her home with her sister on April 7.

[1850] She left with a bundle of belongings, her sister and 5000 RWF. She fled to Ruhango, Nyanza, then Butare. Five members of the group, all Tutsi, were killed in Butare. She went next to Matyazo, then to the Ngoma church.

[1851] She hid in the hedge surrounding the church. A patrol asked a young man for his identity card, then killed him.

[1852] She heard the burgomaster presiding over a meeting on the church grounds in which he urged an end to the massacres.

[1853] The witness later took refuge at the Ngoma church. She hid in a tool shed. At night, the refugees in the church were attacked by assailants throwing stones. It was April 28.

[1854] The witness took refuge with a young friend in a room of the presbytery. The next day, the assailants attacked the refugees. The soldiers twice discovered the two girls and allowed them to remain hidden because the girls gave them money.

[1855] The church was attacked from 10 a.m. to 3 p.m. The witness's friend was killed. After the attack, the witness left her hiding place and went to the priests' lounge. She saw corpses outside the grounds below the church, near the road and a little forest.

[1856] The next day, the corpses were stripped and taken away by prisoners. The survivors were killed off.

[1857] The assailants discovered the witness, who pretended to be a Hutu, and they left her alive. She remained on the grounds of the church until August 3, 1994, when the RPF arrived.

[1858] After the attack, RCW-2 took refuge on the grounds and dug a shelter in the courtyard, which he filled in with bricks and boards. He stayed hidden there during the day and came out at night with the refugees. About 15 refugees escaped the carnage. There were more than 500 of them before the attack.

[1859] Comments: The testimony was not always easy to follow and, in certain places, seemed incredible. It was difficult to believe that three assailants saw her in her hiding place and decided not to expose her.

### **DDM-11**

[1860] The witness, a Hutu who was 41 years old in 1994, was living in the commune of Ngoma. He was married and had six children. A civilian, he was a driver and mechanic for the Tumba police station.

[1861] On April 6, 1994, there were 250 to 300 police officers at the Tumba police camp. There was a police brigade in Butare opposite the prefecture, which had a dozen police officers, and a unit in Nyanza.

[1862] There were two military camps in the Butare prefecture, namely, the Ngoma camp and the ESO.

[1863] The witness often served as driver for DDM-20.

[1864] Before April 6, 1994, the *Interahamwe* were the youth wing of the MRND. After that date, the same people became killers.

[1865] On April 6, 1994, the president was assassinated and a curfew was ordered. The witness went out only on April 12 to get gasoline. A roadblock went up in Tumba in front of the councillor's house and was guarded by civilians.

[1866] Physician Gasitwe, university professor Abdul and the children of Bwanakeye, among others, guarded the roadblock.

[1867] The massacres began on April 21 in Tumba. By May, it was all over and everyone who was to be killed had been killed.

[1868] On that date, there were roadblocks at the following locations: one at the university laboratory, where eight to ten people served as guards, including the two Rugira sons. They were in their 20s and carried firearms.

[1869] Another was located near Pauline's house. Its leader was her son Shalom, assisted by Grégoire. Shalom was almost always there. He wore either a military jacket or civilian clothing. He had a firearm and there were five or six other people there wearing multi-coloured MRND shirts.

[1870] The witness went to the prefecture three times for gasoline vouchers issued by DDM-19. On his last visit, around April 18, the prefecture was full of refugees.

[1871] All those who wanted gasoline could have it without discrimination.

[1872] The witness saw no killings or corpses in Butare. He saw killings in Tumba on April 19. On April 22 or 23, he saw a group of assailants, including RCW-14, kill two young people and throw their bodies in a pit. He also saw RCW-14 looting several times.

[1873] The witness knew RCW-8, who was part of the group that attacked and killed Laurent Kaberanya in Tumba. He saw RCW-8 looting in the vicinity.

[1874] He also knew Isaac, his sons, Clément and Désiré, and their sisters. He identified the accused in court.

[1875] He saw Désiré once during the war on the second floor of his house, dressed in civilian clothing. He saw Clément at his father's beer business. Désiré was living in the two-storey house, but Isaac had another home in Butare. He saw the accused once during the war on the balcony of the family residence. To his knowledge, Isaac's general store, at the second home, was closed throughout the war.

[1876] During the events, he saw Clément five times at the police station when beer was delivered. He drove a red Toyota pick-up.

[1877] To his knowledge, RCW-5's business was closed before the war. He saw RCW-5 the day before he fled Butare when ESO soldiers were taking him to the police camp. RCW-5 was alone, he seemed physically normal, but his clothing was dirty. The witness and DDM-20 accompanied him home. His house seemed in good condition, as it had been throughout the war.

[1878] The witness fled Butare on June 29 or 30 as the RPF advanced. He returned to Rwanda, where he was imprisoned for 13 years. He was acquitted in 2006.

[1879] Comments: A serious and calm witness. He was contradicted by many other witnesses concerning the condition of RCW-5's home, the fact that the accused was living at his father's home and that gasoline was available to everyone during the genocide. He maintained that Désiré's store was closed during the war.

### **DDM-9**

[1880] The witness was 31 years old in 1994 and was living in Gikongoro. Her parents were Tutsi but her father registered her and her brothers and sisters as Hutu because Tutsi were ostracized. Her identity card therefore indicated that she was Hutu.

[1881] Her father is the brother of Désiré's mother. The two families saw one another regularly when the witness was younger. The witness often spent school vacations at Isaac's house and she was very close to Jeannette. Isaac found her a private secondary school and paid for her studies.

[1882] She recognized the accused in court.

[1883] After April 6, rounds were organized, but Tutsi quickly came to fear for their lives and hid. *Interahamwe* wore banana leaves and "no longer looked human". Tutsi became an enemy to be hunted down.

[1884] The witness's family again took refuge at the home of the burgomaster, but he was soon threatened for daring to hide *Inyenzi*. The family then took refuge with other Tutsi at the sub-prefecture.

[1885] The family took refuge in a military camp where they were again threatened. They first fled to Nyungwe, then to Butare. When her husband was detailed, the witness and her four children found refuge at Isaac's house on April 16, 1994.

[1886] The family slept upstairs at first, then in the annex, in the room of Pierre, who shared Clément's room. The family occupied the room with C-21, Parfine and Diane.

[1887] When C-21 arrived from the school complex, she was sad and had no clothing besides what she was wearing.

[1888] A few days after she arrived at Isaac's house, the witness, her children and her brother Égide took refuge in the family's second home, where Désiré lived. They occupied a room in the annex. The witness felt threatened by the *Interahamwe* at Isaac's house.

[1889] When she lived in Isaac's house, those living in the annex stayed in their rooms during the day and had their meals there. The evening meal was eaten on the second floor of the house in the company of Isaac's family. Désiré often came to his father's house and had his meals there. After the meal, each person went back to his or her room, since activities were limited.

[1890] At his house, Désiré dressed in civilian clothing and spent most of the day with his fiancée, Valentine. Relations between Désiré and C-21 were proper. Désiré came to the room from time to time to say hello to the occupants. Désiré's car, a Renault 21, was parked in the compound.

[1891] Two young men, Damase and Donatien, hid in a locked room in the annex. Désiré brought them food.

[1892] One day, attackers came to the house contending that *Inyenzi* were hiding there. They found Damase and Donatien, who were taken and killed a little farther away.

Désiré, who tried to intervene, came back in tears and was grief-stricken at the death of the two young men. Everyone helped him regain his composure.

[1893] One day, the witness heard a quarrel between Shalom and Désiré. Shalom wanted Désiré to join a group of young people to go and block the *Inyenzi* advance in Kigali. Désiré responded that he could not go. Shalom insisted, saying that all young people were going. Désiré persisted in refusing and Shalom reminded him that, although his father was Hutu, his mother was Tutsi.

[1894] Shalom was wearing military garb and was carrying a gun.

[1895] Once day, the fighting raged at Butare's gates. Everyone fled, including Désiré and those remaining in the house. Désiré told the witness that his vehicle was full, but that a Toyota pick-up would come and take her. It never came and the witness and her four children found themselves alone in the house with Égide, the witness's brother. A stranger found them and took them to Gikongoro.

[1896] Comments: The witness seemed sincere but she was not credible when she said that she left Isaac's house because she was afraid of the *Interahamwe*.

### **DDM-8**

[1897] The younger sister of DDM-9, she was 22 years old in 1994 and had a Hutu identity card, although her parents were Tutsi. She is related to the accused.

[1898] On April 6, the witness was in Kibuye, where she stayed for the entire month of April. She then went to Kigali and subsequently took refuge in Butare at Isaac's house until she fled before the RPF advance. She remained at Isaac's house for a month.

[1899] Isaac's house consisted of the main floor, where the beer business that Clément handled was located, and the upper floor, where the family lived. In the annex in the courtyard were a number of rooms, including those of Désiré, Pierre and Joseph.

[1900] Isaac had another property 100 metres from the family home, where Désiré ran a general store, belonging to his father.

[1901] Upon arriving in Butare at Isaac's house, the witness saw Christine and her husband, C-21, Parfine and Alphonsine, with whom she would soon occupy the room of Pierre Furaha. Pierre Furaha took Désiré's room and Désiré went to live at the general store. The parents had already fled Butare.

[1902] For his business, Isaac had two trucks and two pick-ups, a Daihatsu and a Toyota. The Toyota was parked inside the compound, while the Daihatsu was no longer there.

[1903] She went to Désiré's home only once during her stay at Isaac's house, to order to see her brothers and sisters. There she met Claire, a soldier and Valentine's family.

[1904] During the day, the boarders at Isaac's house ate in their rooms and at night, they ate upstairs in the company of the family, namely, Désiré, Clément, Pierre, Christine and her husband, and the three other people in her room. C-21 wore Delphine's clothing.

[1905] In response to the question as to whether Désiré really came to the house to eat every day, the witness said that he did not often come to visit the four girls in their room. Then she corrected herself and said he never came.

[1906] She indicated that Désiré did not have all his meals at home because he had some meals with Valentine's family.

[1907] At that stage in the examination, it was obvious that the witness was trying to give responses that were favourable to the accused and that her testimony was modeled on that of a number of defence witnesses.

[1908] Relations between Désiré and C-21 were cordial, as they were between all the people at the table. They talked, they laughed as they had before; nothing changed.

[1909] When the fighting grew closer, she fled Butare with Désiré and Clément. C-21 refused to leave because she did not want to go through her village. She preferred to die where she was.

[1910] The accused's parents paid for the witness's education and took her in. She considers them like her parents.

[1911] Since 1994, she has remained in contact with Isaac and his wife, Christine and Annunciata. Isaac and his wife give her money, clothing and provisions to help her get by with her child and the little sister she takes care of.

[1912] Her child is now in a private school paid for in part by Isaac's family. The witness receives money and clothing from Isaac, his wife, Christine and Annunciata.

[1913] It was Isaac who referred the witness to the accused's Rwandan attorney. She never discussed her testimony with her sister and did not tell her that she would go to Canada to testify for several weeks, even though her sister takes care of her son.

[1914] Mahenga's sons came regularly to the house.

[1915] Comments: The witness adjusted her answers as the examination progressed in order to help the accused. She is grateful to the family. She lost all credibility when she said that, during the genocide, relations at the table were cordial: "We talked, we laughed as we had before; nothing changed".

## VII – DISCUSSION

### 7.1 Generalities

[1916] As regards the evaluation of the credibility of certain witnesses, the defence asked the Court to warn itself within the meaning of *Vetrovec*.<sup>53</sup>

[1917] Canadian criminal law requires that the judge warn a jury about the danger of unjustifiably finding the accused guilty if guilt rests “exclusively or substantially on the testimony of a single witness of doubtful credit or veracity”.<sup>54</sup> The purpose of the warning is to ensure that the jurors understand “*when* and *why* it is unsafe to find an accused guilty on the unsupported evidence of witnesses who are “unsavoury”, “untrustworthy”, “unreliable”, or “tainted”.<sup>55</sup>

[1918] Firstly, it is up the trial judge to decide, after analysing the evidence, whether the credibility of a witness should be objectively in doubt and to possibly issue a warning to the jury. Among the factors to consider in the analysis are enmity, interest, the delay in coming forward, the extent of the criminal record, a prior contradictory statement, having already lied under oath or being an accomplice.

[1919] The testimonies of RCW-7, RCW-8, RCW-9, RCW-10, RCW-11, RCW-12, RCW-13 and RCW-14, who alleged that the accused was their accomplice in his violent acts or was among the Tutsi attackers, could prompt the Court to be cautious.

[1920] Fish J. explains in *Khela* why it may be necessary to warn the jurors:

[4] ... a specific instruction is ... meant to bring home to lay jurors the accumulated wisdom of the law's experience with unsavoury witnesses. Judges are alert to the concern that unsavoury witnesses are prone to favour personal advantage over public duty. ...

[5] Without a cautionary instruction, however, jurors may appreciate neither the need nor the reasons for skepticism and particular scrutiny in dealing with witnesses of this sort. ...

[1921] Just because the witness is an accomplice does not make the warning mandatory. The importance of the testimony must be considered even if it is not necessarily crucial. The tribunal must examine comprehensively the witness's credibility problems and the importance of the witness's testimony.

[1922] The Court, sitting without a jury, is aware of the potential dangers of that testimony. Hence, it is after careful study of the evidence that the Court concludes

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<sup>53</sup> *R. v. Vetrovec*, [1982] 1 S.C.R. 811; *R. v. Khela*, 2009 S.C.C. 4.

<sup>54</sup> *R. v. Khela*, *supra* para. 2.

<sup>55</sup> *Ibid.* at para. 3.



there is no reason to objectively believe that those versions are not trustworthy in terms of the specific facts related, the evidence of which is damning for the accused. Furthermore, as we will see in the analysis that follows, that testimony is amply corroborated by numerous credible and reliable witnesses who testified for the prosecution and the defence.

[1923] Ultimately, the Court saw and heard those witnesses and believes elements of their testimony, as explained for each of them in the framework of this judgment.

[1924] The objective of any judgment is to explain the decision to the parties, to render account before society and to allow a true examination in appeal. To that end, the Court is compelled to strictly respect the law and the jurisprudence, and examines comprehensively the witnesses' credibility problems and the importance of each testimony.

[1925] The defence opposed my acceptance of any hearsay evidence. It was correct, but we must agree on the definition of hearsay. Once again, I cite authors Béliveau and Vaclair:

It is settled law that the evidence of a statement made to a witness by a person who is not himself called as a witness is hearsay and inadmissible when the object of the evidence is to establish the truth of the statement. However, that evidence is not hearsay and is therefore admissible when it seeks to establish, not the truth of the statement, but simply that the statement was made. (See *Traité général de preuve et de procédure pénales*, 15th ed. (Cowansville, Qc.: Yvon Blais, 2008, at 265 to 267; *R. v. O'Brien*, [1978] 1 S.C.R. 591 at paras. 1 to 3.)

[1926] When General Dallaire learned that the president's plane had been shot down and that the president was dead, along with his chief of staff, and the general hurried off to the meeting of the crisis committee chaired by Colonel Bagosora, that did not demonstrate that the plane had actually been shot down. That would be hearsay. But it made it possible to understand why the general went to see Bagosora.

[1927] That evidence is admissible in order to explain the steps the general took, but not in order to demonstrate that the president's plane had been shot down.

## **7.2 Comments**

[1928] At the end of each testimony, I comment briefly on the testimony as a whole. Those comments have not prevented me from accepting or rejecting certain parts of the testimony from the overall standpoint of the evidence presented.

## **7.3 Theories of the parties**

[1929] The prosecution argued that all the elements constituting the offences were demonstrated beyond a reasonable doubt.

[1930] The defence pleaded the opposite, saying there was a conspiracy among the prosecution witnesses against the accused, as well as against his family.

[1931] The accused opted not to testify, as was his right.

#### **7.4     *Testimony and credibility***

[1932] There is a great difference in the quality, relevance and credibility of the prosecution's evidence compared to that of the defence.

[1933] Most of the prosecution witnesses spoke about what they had seen and experienced. They also spoke about the accused. Their credibility and the relevance of their testimony were superior to those of the defence witnesses.

[1934] Most of the defence witnesses did not see the accused during the genocide. According to a number of them, there was no rape, no murder, no corpses in Butare. In fact, there was no genocide.

[1935] Although they denied it, the witnesses from the accused's family prepared their testimony together in order to help him. That might be a natural reaction, but by repeatedly denying the obvious, one loses much credibility.

#### **7.5     *Identification***

[1936] After hearing all the evidence, I conclude beyond a reasonable doubt that the accused, Désiré Munyaneza, was indeed the person referred to by the prosecution witnesses.

[1937] The witnesses who testified outside Canada identified him in a photo line-up constituted and presented in accordance with Canadian law: independence and freedom of judgment of the witness, a series of photos presented one after the other, no leading of the witness, and so on.

[1938] The witnesses heard at the hearing identified the accused in the dock. I'm quite willing to warn myself against the danger of such a method of identification, but I saw and heard the witnesses, and was convinced. Furthermore, most of the witnesses had recognized the accused previously in a police line-up.

[1939] The accused was a well-known man in Butare and had a major scar on his face, to which most of the witnesses referred.

[1940] The prosecution's evidence as a whole, to which I refer more specifically in the section entitled "The facts" (including the confidential appendix), convince me beyond a reasonable doubt that the accused is the perpetrator of the alleged crimes.

## 7.6 Evidence

[1941] My analysis of the evidence lead me to accept the following elements as having been demonstrated. More specifically, I believe the following testimony adduced by the prosecution.

[1942] I believe **RCW-2** when he said he saw the accused distribute uniforms and weapons to the *Interahamwe* near Vincent's shop in Ngoma around April 6, 1994.

[1943] I believe **RCW-3** when she said the accused came to her house three times as the leader of a group in order to loot it and to try to find her daughters. The accused hit her, reproached her for being Tutsi and stripped her. He was carrying a weapon and grenades.

[1944] I believe **RCW-5** when he said that a group of *Interahamwe* led by Shalom and the accused looted his business while firing shots. He heard the accused say that he was heading toward the university, where the group would go to rape and kill girls. He saw the accused force Tutsi students to get into his pick-up.

[1945] I believe **RCW-6** when he said he saw the accused looting RCW-5's business while armed.

[1946] I believe **RCW-7** when he identified the accused, his brother, Clément, and Shalom as the people in charge of the Butare *Interahamwe*. They were armed and sometimes wore military garb. The group went to the roadblocks, gave the people manning them orders and participated in the leaders' meetings at the Ibis hotel. He saw the accused force five refugee girls into his pick-up.

[1947] I believe **RCW-8** when he said the accused distributed to the *Interahamwe* the weapons needed for the Tutsi slaughters. The accused personally gave him a grenade and gasoline to set fire to Tutsi homes. The Tutsi captured at the roadblocks were handed over to the accused and driven to their deaths.

[1948] I believe **RCW-9** when he said the accused was in charge of roadblocks and ordered the guards to detain Tutsi. The accused broke into Tutsi shops and looted them. He was wearing a military shirt.

[1949] I believe **RCW-10** when he said that the accused was in charge of roadblocks where Tutsi were killed. The accused and Shalom loaded some 40 Tutsi onto the pick-up and took them near the university laboratory. The accused and his group undressed the refugees and killed them. The accused was wearing a military shirt and killed Tutsi by his own hand.

[1950] The accused and his group loaded refugees at the prefecture and took them to their deaths.

[1951] I believe **RCW-11** when he said the accused was among the assailants who killed Tutsi refugees at the Ngoma church. He saw the accused try to attack RCW-3. He saw the accused kill a Tutsi girl at the home of a rich Ngoma Tutsi. The accused was wearing a military shirt. He saw the accused loading Tutsi refugees at the prefecture and taking them to their deaths.

[1952] The accused was one of the leaders of the hunt for Tutsi in Butare.

[1953] I believe **RCW-12** when he said that the accused, wearing a military shirt and armed, was in charge of the Butare roadblocks.

[1954] I believe **RCW-13** when he said the accused and his group led the attack on the Ngoma church.

[1955] I believe **RCW-14** when he said the accused and his group took Tutsi behind the university laboratory, where they were killed. The accused took part in meetings of VIPs in Butare.

[1956] I believe **C-15** when she said that the accused and his group took refugees many times from the prefecture to their deaths. The accused headed one of the roadblocks, where he killed a young man. With his group, he took female refugees from the prefecture to Mahenga's and repeatedly raped them. The accused was armed.

[1957] I believe **C-16** when she said that the accused and his group forced refugees from the prefecture to get into a pick-up and took them away after savagely beating them. They were never seen again. She herself was taken with other Tutsi to a common pit by the same group and left for dead. The accused was dressed in military garb and was armed.

[1958] With his group, the accused killed four Tutsi men near Venant's. "All Tutsi must die", the assailants said. The accused and his group repeatedly raped young Tutsi women who had taken refuge at the prefecture. It was the accused who selected the women.

[1959] The accused acted at all times as one of the leaders of the group.

[1960] I believe **C-17** when she said that groups of *Interahamwe*, of which the accused was a part, came to take Tutsi refugees at the prefecture, loaded them onto pick-ups and took them to their deaths.

[1961] The accused and his group repeatedly raped Tutsi women who took refuge at the prefecture. Armed, the accused raped C-17 several times. She saw the accused kill two men with a machete during a transport of refugees.

[1962] I believe **C-18** when he said he saw the accused force a Tutsi girl into his vehicle at the hospital. At the end of the genocide, he saw C-21, who revealed that she had hidden at Isaac's house during the war and that the accused had abused her.

[1963] I believe **C-19** when she said that the accused was considered a leader of the *Interahamwe* at the Butare prefecture. He killed a young Tutsi at the Venant roadblock. He carried out the instructions of Minister Pauline and regularly took refugees from the prefecture in vehicles with his group. The refugees were never seen again.

[1964] When evening fell, the accused and his group repeatedly raped Tutsi women who had taken refuge at the prefecture. They were assaulted on the spot or a little farther away, in houses next to the prefecture. The accused was armed and killed two young Tutsi men near the prefecture.

[1965] I believe **C-20** when she said that the accused, Shalom and Mahenga's son made the Tutsi refugees at the prefecture suffer the worst cruelties. The group beat a young man while the accused trained a gun on him. The accused and his group beat refugees from the prefecture and forced them into vehicles. They were never seen again. The accused was one of the leaders of the group.

[1966] The accused killed children tied up in sacks. He killed two refugees who arrived at the prefecture. He was armed and wore military garb. The accused and his group repeatedly raped Tutsi women who had taken refuge at the prefecture. They considered the women a reward.

[1967] I believe **C-21**, a Tutsi who sought refuge in the house of the accused's father during the genocide, whom the accused raped five times, knowing that she could not escape because she was Tutsi. When the family fled, C-21 was left to a certain death in Isaac's home.

[1968] I believe **C-22** when she said the accused and Shalom were part of the *Interahamwe* who took Tutsi refugees from the prefecture to their deaths. The accused was armed and wore military garb. The accused was one of the leaders of the *Interahamwe* and took part in the rape of Tutsi women who had taken refuge at the prefecture.

[1969] I believe **C-23** when she said that the accused, Shalom and Mahenga's son took Tutsi refugees by force from the prefecture to their deaths. The accused was one of the leaders of the *Interahamwe*. He took part in the collective rape of women who had taken refuge at the prefecture.

[1970] I believe **C-24** when she said the accused participated in a meeting of VIPs at the prefecture. He was part of the group that insulted refugees and called them vermin. The accused repeatedly raped women who had taken refuge at the prefecture. He wore a military shirt and was armed.

[1971] The accused was among those who woke up refugees at the prefecture and jammed them by force onto vehicles. They were taken far away and were never seen again.

\* \* \* \* \*

[1972] My analysis of the evidence lead me to retain the following elements from the evidence adduced by the defence.

[1973] From the testimony of **Delphine Uwimbabazi**, the accused's sister, I conclude that she testified essentially to help her brother. She had no knowledge whatsoever of a genocide in Butare in 1994.

[1974] Désiré, Clément and Pierre lied to her when they told her that C-21 had remained in Butare and married a soldier.

[1975] I give **DDM-19** no credibility, as he was contradicted in particular, by many defence witnesses. He held very high administrative functions in Butare and saw nothing unusual at the roadblocks or at the prefecture, where he went every day.

[1976] His testimony has no credibility when he contended that he witnessed no cruelty toward refugees at the prefecture and that they were sent to Nyange for their safety.

[1977] This witness, considering his administrative functions, was the basis of defence's theory concerning what occurred in Butare during the genocide.

[1978] I conclude from the testimony of **DDM-1** that Shalom and his group engaged in the worst violence during the genocide. He did not see the accused with Shalom.

[1979] His testimony was devastating for DDM-19. He rarely went out in Butare during the genocide.

[1980] **DDM-6** said the accused almost never left the house where he was living. She was contradicted in that regard by many witnesses, particularly defence witnesses. She saw nothing of the genocide and said there was never any rationing of gasoline in Butare. She was contradicted by everyone in that regard.

[1981] I give no credibility to **DDM-7**. She was on a mission to save the accused. She wanted to foil a plot against the accused and his family.

[1982] She affirmed that Shalom and the accused did not live in the same neighbourhood and were not of the same social class. She was contradicted by everyone on that subject. She never went to Butare after 4 p.m. during the genocide. Her testimony was devastating for DDM-19.

[1983] I give only little credibility to the testimony of **DDM-12**, who frequently contradicted himself. I noted that everyone had to work at the roadblocks. He worked at Shalom's roadblock. The accused was not one of the guards at that roadblock but he came by regularly and was known there.

[1984] The witness did not see anyone detained, any corpse or any refugees at the ECR school. There was never a curfew in Butare. He was contradicted by everyone on that subject.

[1985] He said he was threatened in Kigali by RCW-5, because he intended to testify in this trial. He left his family and his country for that reason. I do not accept his testimony on the subject.

[1986] I conclude from the testimony of **DDM-24** that the Ibis hotel was the meeting place of the elite of Butare. The witness often went there with Clément, the accused's brother. The accused also frequented the Ibis hotel.

[1987] Shalom was a hoodlum who terrorized the population. The witness did not see him with the accused. The witness worked at the university roadblock set up by professors and physicians. If Tutsi were discovered, they were killed. Everyone had to work at the roadblocks. The witness did not go out at night and almost never left his neighbourhood.

[1988] The witness saw the accused only once during the genocide. He was at the wheel of his car. The accused's father was an influential member of the MDR in Butare. The Rwandan community in Belgium discussed the fate of the accused. The witness talked with the accused's family and agreed to testify.

[1989] **DDM-29** saw the accused twice (on April 6 and 15) during the war. He was living at the ESO and went out for only a few minutes a day. He saw Shalom once, without the accused.

[1990] RCW-5 was taken with his wife to the ESO by soldiers in late June 1994. The witness saw no massacres. No one went to the Ibis hotel after Kajuga arrived. The witness saw no refugees at the prefecture and did not know whether genocide took place. I do not accept his testimony on the subject.

[1991] **DDM-26** was a nurse and took care of orphans. She took refuge at the Butare school complex on April 9. Hundreds of refugees were there. The *Interahamwe* intimidated the refugees. Shalom, Jean-Marie and teachers from the school complex were part of the group. On April 29, the *Interahamwe* killed the refugees. She did not see Shalom on that date.

[1992] The witness did not see the accused while she was at the school complex. She left Rwanda in early May.

[1993] The testimony of **DDM-23** was not relevant to this case.

[1994] **DDM-34** was credible but his testimony did not provide information on the actions of the accused during the genocide. He left his village three times during that period and never at night. Participation in the rounds and at roadblocks was mandatory for all able-bodied men. All Tutsi in his community were killed.

[1995] Witness **John Manzi** defended the theory of a plot by the prosecution witnesses against the accused and his family; however, he provided no evidence and refused to answer the prosecution's questions. He said the accused and his brother were the only two young people of their generation to have a car in Butare.

[1996] The testimony of **DDM-25**, who spent the period of the genocide hiding in Ngoma, did not help me determine the conduct of the accused during the genocide.

[1997] The testimony of **DDM-35** did not help me determine the accused's conduct during the genocide. He did not see the accused during that period and saw Shalom twice, dressed in civilian clothing and doing nothing in particular.

[1998] The testimony of **DDM-22** added little to the debate. He went to see friends living at the accused's house during the genocide. The accused was present and dressed in civilian clothing. He never saw Shalom during the genocide.

[1999] I do not believe **DDM-39**, who seemed to have missed the genocide. A number of witnesses identified him as having participated in the violence.

[2000] **DDM-33** added little to the debate. He hid in the Ibis hotel during the genocide. He was contradicted by a number of people regarding the role of the Ibis hotel during the genocide.

[2001] **Evanys Mukarwego** is the accused's mother and would do anything to help her son. She provided few elements for the debate. The events in Butare were discussed at the table and Désiré came regularly to eat at home and slept over sometimes during the genocide. She did not leave her home during the genocide. She prepared her testimony with her daughter.

[2002] The testimony of **DDM-20**, who was not in Butare during the genocide, did not help me determine the accused's conduct during that period.

[2003] I give but little credibility to the confused and contradictory testimony of **DDM-32**. He did not see the accused in the attacks at the home of RCW-3. He did not see the accused in any of the attacks in which he participated, which was contradicted by a number of witnesses.

[2004] I give no credibility to **DDM-38**, except when he described, without any remorse, all the violence he engaged in. Everyone played a part on the roadblocks, in the rounds



and in the killings. He recognized only Shalom and Kazungu among the people from Butare. He did not see the accused, Clément or the Mahenga sons during the genocide.

[2005] All that young people found to do during the genocide was to hunt down Tutsi at the roadblocks and loot in Matyazo and Butare.

[2006] The testimony of **DDM-45** was credible. However, he remained shut away at the ECR school throughout the genocide; he never went out in the evening and went out very little during the day. Five hundred refugees were crammed into the school and mistreated by the soldiers and *Interahamwe*.

[2007] He recognized Shalom and his friends, who manned the roadblock at Pauline's house. They abducted his colleague, who was never seen again. The witness was found guilty of denouncing his Tutsi colleague. The witness did not see the accused during the genocide.

[2008] I cannot give any credibility to **DDM-41**, who falsely incriminated Joseph Kanyabashi before the ICTR in 2004. Furthermore, he denounced the accused to the Canadian police and then retracted, contending that he was offered 1 million RWF to denounce him. He added that, if he had been paid, he would have maintained his denunciation.

[2009] **DDM-27** was contradicted by a number of prosecution and defence witnesses. He was a close friend of Théoneste, whom he visited regularly during the genocide. Everyone agreed that Théoneste (along with his brother) was the instigator of, and the person responsible for, the roadblock at Mahenga's. But the witness said he never saw him there.

[2010] He was also contradicted on these points: Shalom was always dressed in civilian clothes, RTLM could not be picked up in Butare, the roadblock at Pauline's house served to prevent the ECR refugees from going to the military camp and he saw no corpses in Butare. Little credibility.

[2011] **DDM-36's** basic premise that he was 12 years old in 1994, makes his account implausible. The roadblock at Mahenga's was set up by Théoneste and Bosco, and nothing reprehensible happened there. The witness saw Désiré only once during the genocide, at the wheel of a blue car. Désiré did not accompany Shalom when he engaged in his violent acts. No one from Butare accompanied Shalom.

[2012] **DDM-42** affirmed that the soldiers and *Interahamwe* killed the Tutsi in Ngoma according to a list. Almost all the Tutsi were killed. Shalom was the leader of the *Interahamwe*. Many people were killed at the Ngoma church.

[2013] All able-bodied men worked at the roadblocks. During the war, the accused entrusted an 18-year-old Tutsi girl to him because her family was about to be attacked.

That was the only time he saw the accused during that period. He did not see Clément at any time during the war. The witness did not leave Ngoma during the genocide.

[2014] A Butare merchant, **DDM-15** was a close friend of Isaac and of Pauline's family. The roadblocks went up on April 19 and Shalom, Kazungu and their friends manned the roadblock at Pauline's house. The witness did not see Désiré at that roadblock. Gasoline was reserved for the military, the civil authorities and certain VIPs.

[2015] Isaac was the Butare chairman of the MDR, the largest political party in Rwanda. Isaac was the most important businessman in Butare. The witness and Isaac were close friends and their families took part in many common activities. The political parties splintered on April 6, 1994.

[2016] The witness managed the civil defence committee responsible for collecting funds from communities. DDM-19 was one of the fund collectors. Young people received weapons training thanks to the civil defence committee. The witness testified in favour of DDM-19 in his Canada immigration case. The witness's testimony was devastating for DDM-19.

[2017] The witness has remained in contact with Isaac, who knew that the witness was coming to Canada to testify in favour of his son. He had already made a statement to Immigration Canada in favour of the accused in 2002.

[2018] On April 19, the witness understood that it was the aim of the president, the prime minister and the government to kill Tutsi.

[2019] **DDM-44** never left Ngoma during the war. On April 19, the situation changed dramatically. Jacques Habimana, his group and the soldiers started to kill. The population hid and stores were closed. In mid-May, Burgomaster Kanyabashi ordered that the slaughter end. The killings, which were very widespread and visible, became more circumspect. People were killed at night and the corpses were discovered in the morning.

[2020] The witness did not see the accused at any time during the war and did not know where he lived. He never had any dealings with him.

[2021] **DDM-43** told me nothing about the accused's conduct during the genocide. He had no dealings with him and did not see him at any time during the war. Shalom controlled a number of roadblocks and wore military gear. The witness saw refugees at the prefecture but Shalom was not there. The witness saw no killing during the war.

[2022] He left Rwanda in 2007, when the police wanted to force him to testify against Burgomaster Joseph Kanyabashi. He refused to testify, since he had seen nothing.

[2023] **DDM-18** is the accused's sister. C-21 came to live at Isaac's house and the witness noticed nothing unusual in her regard. Désiré come to the house during the day

but more rarely for the evening meal. Isaac's family was friendly with the family of Prefect Habyalimana, the Ntahobali family and the Mahenga family, who saw one another socially. She arrived in Butare on April 10 and left on May 20.

[2024] **DDM-10** added little to the debate. He worked for MSF and left Butare on April 19 because the situation had become too dangerous and Dr. Zachariah ordered the evacuation of the MSF staff.

[2025] On April 19, he saw the accused and three other people at the Faucon hotel. He saw Shalom at the roadblock in front of his house between April 6 and 19.

[2026] The testimony of **DDM-17** was disconcerting and extremely painful for her. She took refuge at the prefecture and described all the violence that occurred there. She recognized attackers Shalom, Shyaka and Kazungu. At the prefecture, the ECR school and the hospital, she tried not to see anything and would like to forget everything that happened. She was taken to Mahenga's by two soldiers one evening, but she managed to get away.

[2027] She acknowledged that she told the Canadian police officers in 2003 that Isaac's son accompanied Shalom and Shyaka when they engaged in their violent acts, but she has since forgotten everything.

[2028] **DDM-40** was at the Ngoma church at the time of the April 29 attack. She thought RCW-2 arrived at the church after the attack. I do not accept his testimony on the subject.

[2029] **DDM-11** recalled that there were two military camps in the prefecture of Butare: the Ngoma camp and the ESO camp. A curfew was ordered on April 6 and the massacres began on April 21 in Tumba. They ended in May. Shalom controlled the roadblock at Pauline's house, assisted by Grégoire.

[2030] **DDM-19** distributed gasoline vouchers at the prefecture to all those who wanted them, without discrimination. He saw RCW-14 and RCW-8 kill and loot in Tumba. He saw the accused once during the war at his father's house, where Désiré was living. His store was closed during the genocide.

[2031] RCW-5 was taken to the police station by soldiers. He was alone and in a good physical state. The witness and **DDM-20** accompanied him back home. His house was in a good state.

[2032] **DDM-9** is related to the accused. Isaac paid for her schooling. She took refuge at his house on April 16, then at Désiré's house. Désiré took his meals at his father's house. Désiré tried to prevent attackers from taking away two young people he was hiding in his house. Shalom asked Désiré to join a group and go and fight the *Inyenzi*. He refused. Désiré abandoned her in July at the house with her four children. She is close to the accused's family and testified to protect it.

[2033] **DDM-8** is DDM-9's sister and she took refuge at Isaac's house in May. Everything was normal during the genocide. The parents of the accused paid for the witness's schooling and that of her children. The Mahenga sons came regularly to the house. She is close to the accused's family and testified to protect it.

### **7.7    *The accused and the genocide***

[2034] On April 6, 1994, President Juvénal Habyarimana's plane was shot down over the Kigali airport.

[2035] The next day, April 7, the presidential guard, an elite corps of more than a thousand men, the army and the militias attacked Tutsi and members of any opposition.

[2036] It was apparent that the attacks were planned and the attackers were ready to act.

[2037] The die was cast as of April 7 by the assassination, in horrible circumstances, of Prime Minister Agathe Uwilingiyimana, a Hutu in favour of dialogue, her husband and ten Belgian soldiers of the UN contingent.

[2038] Belgium then withdrew its contingent from Rwanda.

[2039] Canadian General Dallaire, the military chief of the UN peacekeeping contingent, was abandoned to his fate with meager resources, despite many calls for assistance.

[2040] Kigali was plunged into a bloodbath.

[2041] The RPF, led by General Kagame, attacked the government forces and took control of the country in early July 1994.

[2042] Within three months, 800,000 Tutsi were killed, two million Rwandans were wounded and five million people were on the roads as refugees in one camp or another.

[2043] On April 6, 1994, the country had roughly eight million people.

[2044] In Butare, on the death of the president, the population held its breath. Prefect Jean-Baptiste Habyalimana, a moderate, succeeded in calming those who wanted to engage in violence. Everyone hid at home.

[2045] Butare is located in the commune of Ngoma, which had 26 000 people, a quarter of whom were Tutsi.

[2046] Prefect Habyalimana was quickly replaced by Sylvain Nsabimana, appointed by the interim government. (Prefect Habyalimana would later be assassinated, along with his family).

[2047] Sylvain Nsabimana was installed on April 19 at a public meeting at the MRND centre, a multi-purpose hall located on the main street. Prime Minister Jean Kambanda, and a number of Ministers, including Pauline Nyiramasuhuko, were present.

[2048] Interim President Théodore Sindikubwabo gave an inflammatory speech urging the population to join the government effort and get rid of the enemy. Although his comments might have seemed ambiguous to some, the general understanding was that Tutsi had to be killed.

[2049] From that day on, a torrent of violence rained down on the Tutsi population.

[2050] Roadblocks went up throughout the city and identity cards were required. Tutsi or those who did not have their cards were killed on the spot or taken to various locations in the city to be killed. All able-bodied men manned the roadblocks or participated in night rounds.

[2051] The soldiers and *Interahamwe* militias went from house to house hunting down and killing all Tutsi, sometimes with pre-established lists, sometimes at random.

[2052] Houses were looted and burned down.

[2053] Thousands of refugees from Butare and elsewhere were crammed into the prefecture, the ECR school, the school complex, churches and the mosque.

[2054] All these places were attacked several times between April 19 and early July 1994 by soldiers and *Interahamwe*. Tutsi were systematically beaten and killed. Tutsi women were raped and murdered. Most Tutsi from Butare and the prefecture were killed.

[2055] Shalom Ntahobari was the main leader of Butare's *Interahamwe*. Like his mother, Minister Pauline, he was fiercely anti-Tutsi and of rare savagery and cruelty.

[2056] The evidence showed beyond a reasonable doubt that the accused participated in the hunting down of Tutsi.

[2057] The educated son of an important bourgeois family in Butare, Désiré Munyaneza was at the forefront of the genocidal movement.

[2058] He was one of the few people, and one of the few young people in Butare, with access to motor vehicles.

[2059] His vehicles were used to commit violent acts against Tutsi.

[2060] He distributed arms and uniforms to *Interahamwe* so that they would attack Tutsi.

[2061] He participated in the attack against RCW-3 because she and her family were Tutsi. He hit RCW-3, stripped her and looted her home. He was armed.

[2062] He looted the business of RCW-5 because he was Tutsi. He went to RCW-5's house to track down Tutsi. He forced Tutsi students to get into his pick-up at the university.

[2063] With other *Interahamwe*, including his brother, Clément, and Shalom, the accused, armed and wearing a military uniform, gave instructions to the roadblock guards and participated in meetings of *Interahamwe* leaders at the Ibis hotel and the prefecture. Those in charge of roadblocks handed over to him the Tutsi who had been detained and he took them to their deaths.

[2064] The accused looted stores belonging to Tutsi.

[2065] He forced dozens of Tutsi detained at the roadblocks to get into his pick-up or that of Shalom, took them to the common pit near the university laboratory and took part in their murder.

[2066] He forced dozens of Tutsi refugees at the prefecture to get into his pick-up and that of Shalom and took them to their deaths.

[2067] He was among the assailants who killed hundreds of Tutsi refugees at the Ngoma church.

[2068] He raped, and took part in the sexual assault of, dozens of Tutsi women who had taken refuge at the prefecture.

[2069] The accused participated in the murder of four Tutsi near the Venant store, saying: "All Tutsi must die".

[2070] At all times during those violent acts, the accused was one of the leaders of the *Interahamwe*, gave orders and attacked people for the sole reason that they were Tutsi.

[2071] He forced a young woman to get into his pick-up at the university.

[2072] He hastened to follow the orders of Minister Pauline Nyiramasuhuko to clear the prefecture of all the Tutsi who had taken refuge there.

[2073] The accused and his group of *Interahamwe* made the Tutsi refugees at the prefecture suffer the worst cruelties.

[2074] At the prefecture the accused beat to death with sticks children tied up in sacks.

[2075] The accused several times sexually assaulted C-21, who had taken refuge at his father's house, knowing that, because she was Tutsi, she could not leave the residential compound without being killed at a neighbouring roadblock.

[2076] All these events took place in April, May and June 1994. Numerous times during the events, the accused was armed and was wearing military garb, at least in part.

## **7.8     *The indictment***

[2077] In Rwanda, as of April 7, and even more specifically in Butare, as of at least April 19, 2004, there was a plan to destroy the Tutsi ethnic group. The plan was supported by the president, the members of the government, the army, the *Interahamwe* and part of the civilian population.

[2078] Through his social status and his determination, the accused participated actively in the plan as *Interahamwe* leader and as a member of the local elite who implemented the elements of what was to become genocide.

[2079] The accused could have refused to participate or refrained from participating in a plan, but he chose to be one of its driving forces. I am prepared to acknowledge that he no doubt did not participate in a manner as cruel as did Shalom Ntahobali and his mother, but he is still fully responsible.

[2080] I am prepared to acknowledge that he did not take part in all of Shalom Ntahobali's violent acts, but he was in contact with him, participated in attacks with him and participated in many other attacks with other *Interahamwe*.

[2081] The accused's criminal intent was demonstrated beyond a reasonable doubt, as was his culpable violence.

[2082] Désiré Munyaneza specifically intended to destroy the Tutsi ethnic group in Butare and in the surrounding communes. To that end, he intentionally killed Tutsi, seriously wounded others, caused them serious physical and mental harm, sexually assaulted many Tutsi women and generally treated Tutsi inhumanely and degradingly.

[2083] In doing so, he committed the crime of genocide according to the Act.

[2084] Désiré Munyaneza intentionally murdered many Tutsi, a clearly identifiable part of the civilian population of Butare and the surrounding communes, knowing that his acts were part of a widespread and systematic attack encouraged and supported by the government, the army, the *Interahamwe*, the local elites of which he was a part, and a portion of the civilian population.

[2085] In the same circumstances and with the same wrongful intent, he committed numerous acts of sexual violence against Tutsi.

[2086] In doing so, he committed a crime against humanity according to the Act.

[2087] While an armed national conflict raged in Rwanda between the RAF and the RPF, Désiré Munyaneza intentionally killed dozens of people in Butare and the surrounding communes who were not participating directly in the conflict, sexually assaulted dozens of people and looted the homes and businesses of individuals who had nothing to do with the armed conflict.

[2088] In doing so, he committed a war crime according to the Act.

[2089] Désiré Munyaneza is guilty of the seven counts filed against him by the Crown.

## **VIII – BY WAY OF CONCLUSION**

[2090] The proof shows that no Rwandan came out unscathed from the events of spring 1994.

[2091] I granted anonymity to all the witnesses who requested and justified it, along with the right to testify behind a screen.

[2092] Nearly 15 years after the genocide, Rwandans are afraid. They distrust one another. They are silent and most do not want to, or cannot, talk about the genocide.

[2093] Their wound is immense, still present, unbearable and indelible, for both victims and executioners.

## **IX – CONCLUSION**

1. Désiré Munyaneza, I find you guilty of having, between April 1 and July 31, 1994, in the prefecture of Butare, in Rwanda:

1.1 Committed the indictable offence of genocide;

1.2 Committed the indictable offence of a crime against humanity;

1.3 Committed the indictable offence of a war crime.

2. I accordingly find you guilty of the seven counts set forth in the indictment, which are described in more detail in this judgment.



---

ANDRÉ DENIS J.S.C.

Mtre. Pascale Ledoux  
Mtre. Richard Roy  
Mtre. Alexis Gauthier  
Counsel for the prosecutor

Mtre. Richard Perras  
Mtre. Mylène Dimitri  
Mtre. Paul Skolnik  
Counsel for the accused

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# **APPENDIX 1**

## **TESTIMONY'S SUMMARY**

CONFIDENTIAL DOCUMENT

# **APPENDIX 2**

## **INDICTMENT**

CANADA

PROVINCE DE / OF QUÉBEC  
DISTRICT DE / OF MONTRÉAL

NO: 500-73-003500-OS2

COUR SUPÉRIEURE DU QUÉBEC /  
QUEBEC SUPERIOR COURT  
(Chambre criminelle / Criminal Chamber)

SA MAJESTÉ LA REINE /  
HER MAJESTY THE QUEEN

c. / v.

DÉSIRÉ MUNYANEZA (1966.12.31)

accusé / accused

### ACTE D'ACCUSATION / INDICTMENT

DÉSIRÉ MUNYANEZA, se trouvant au Canada, est inculpé / being present in Canada  
stands charged:

PNC

(1) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, intentionally murdered members of an identifiable group of persons, namely: the Tutsi, with the intention of destroying the Tutsi, in whole or in part, committing an act of genocide as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **genocide**, as provided in paragraph 6(1)(a) of the said *Crimes Against Humanity and War Crimes Act*;

PNC

(2) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, caused serious bodily or mental harm to members of an identifiable group of persons, namely: the Tutsi, with the intention of destroying the Tutsi, in whole or in part, committing an act of genocide as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **genocide**, as provided in paragraph 6(1)(a) of the said *Crimes Against Humanity and War Crimes Act*;

PNC

(3) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, intentionally murdered members of a civilian population or an identifiable group of persons, namely: the Tutsi, knowing that the said intentional murder was part of a generalized or systematic attack against the Tutsi, committing a crime against humanity as defined in subsections 6(3), 6(4) and 6(5) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **crime against humanity**, as provided in paragraph 6(1)(b) of the said *Crimes Against Humanity and War Crimes Act*;

PNC

(4) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, committed sexual violence against members of a civilian population or an identifiable group of persons, namely: the Tutsi, knowing that the said sexual violence was part of a generalized or systematic attack against the Tutsi, committing a crime against humanity as defined in subsections 6(3), 6(4) and 6(5) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **crime against humanity**, as provided in paragraph 6(1)(b) of the said *Crimes Against Humanity and War Crimes Act*;

PNC

(5) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, during an armed conflict, namely: hostilities between the Rwandan Armed Forces

(FAR) and the Rwandan Patriotic Front (FPR), intentionally murdered persons who were not directly participating in that conflict, committing a war crime as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **war crime**, as provided in paragraph 6(1)(c) of the said *Crimes Against Humanity and War Crimes Act*;

PNC

- (6) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, during an armed conflict, namely: hostilities between the Rwandan Armed Forces (FAR) and the Rwandan Patriotic Front (FPR), committed sexual violence against persons, committing a war crime as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **war crime**, as provided in paragraph 6(1)(c) of the said *Crimes Against Humanity and War Crimes Act*;

PNC

- (7) Between April 1, 1994 and July 31, 1994, in the prefecture of Butare, Rwanda, during an armed conflict, namely: hostilities between the Rwandan Armed Forces (FAR) and the Rwandan Patriotic Front (FPR), engaged in pillaging, committing a war crime as defined in subsections 6(3) and 6(4) of the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, thereby committing the indictable offence of **war crime**, as provided in paragraph 6(1)(c) of the said *Crimes Against Humanity and War Crimes Act*;

Montréal, district de / of Montréal,  
ce / this

2005

M<sup>re</sup> RICHARD ROY

Substitut du procureur général du Canada /  
Agent for the Attorney General of Canada

I hereby consent that this indictment be filed in accordance with section 577 of the *Criminal Code* and I authorize, for the purposes of subsection 9(3) of the *Crimes Against Humanity and War Crimes Act* the prosecution by way of indictment

Given on the \_\_ day of \_\_\_\_\_ 2005  
at Ottawa, Ontario

DEPUTY ATTORNEY GENERAL OF CANADA



# **APPENDIX 3**

## **ADMISSIONS**

- A) Document dated April 14, 2008
- B) Document dated March, 11, 2008
- C) Document dated October 4, 2007
- D) Undated document Dave Larin
- E) Undated document Adesola Adeboyejo

A)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Criminal Division)

NO: 500-73-002500-052

HER MAJESTY THE QUEEN

vs

DÉSIRÉ MUNYANEZA

---

## ADMISSIONS

---

THE DEFENCE ADMITS THE FOLLOWING FACTS FOR THE PURPOSE OF  
THE TRIAL IN THE PRESENT MATTER:

1. Between April 1<sup>st</sup>, 1994, and July 31<sup>st</sup>, 1994, throughout the territory of Rwanda, including in the prefecture of Butare, Rwanda, genocide, as defined in subsections 6(3), in conjunction with subsection 6(4), of the *Crimes against humanity and war crimes act*, S.C. 2000, c. 24, was committed;
2. Without limiting the generality of the foregoing, the defence further admits that:
  - a. Between April 1<sup>st</sup>, 1994, and July 31<sup>st</sup>, 1994:
  - b. Throughout the territory of Rwanda including in the prefecture of Butare, Rwanda:
  - c. Some members of the Rwandan government and the interim Rwandan government, of the civilian administration of the said governments, of political parties affiliated to the said governments, of militias affiliated to the said political parties, of the Rwandan armed Forces, of the Rwandan national police, of the communal police forces, and civilians, throughout Rwanda:
  - d. Were parties to the willful killing of hundreds of thousand of individuals, a large part of whom were part of an identifiable group of persons, i.e., the Tutsi ethnical group;
  - e. Were parties to the causing of serious bodily or mental harm to hundreds of thousands of individuals, a large part of whom were part of an identifiable group of persons, i.e., the Tutsi ethnical group; these conducts included, but were not necessarily restricted to, rape, sexual violence or inhuman or degrading treatment;

- f. These conducts by these persons were intended to destroy, in whole or in part, the Tutsi ethnic group;
3. Between April 1<sup>st</sup>, 1994, and July 31<sup>st</sup>, 1994, throughout the territory of Rwanda, including in the prefecture of Butare, Rwanda, and throughout the territory of Rwanda, crimes against humanity, as defined in subsections 6(3), in conjunction with subsections 6(4) and 6(5), of the *Crimes against humanity and war crimes act*, S.C. 2000, c. 24, were committed in a systematic and / or widespread way;
4. Without limiting the generality of the foregoing, the defence further admits that:
  - a. Between April 1<sup>st</sup>, 1994, and July 31<sup>st</sup>, 1994;
  - b. Throughout the territory of Rwanda including in the prefecture of Butare, Rwanda,
  - c. Some members of the Rwandan government and the interim Rwandan government, of the civilian administration of the said governments, of political parties affiliated to the said governments, of militias affiliated to the said political parties, of the Rwandan armed Forces, of the Rwandan national police, of the communal police forces, and civilians, throughout Rwanda:
  - d. Were parties to the willful killings of hundreds of thousands of members of a civilian population, a large part of whom were part of an identifiable group of persons, i.e., the Tutsi ethnic group;
  - e. Were parties to the rape and sexual violence of a large number of members of a civilian population, a large part of whom were part of an identifiable group of persons, i.e., the Tutsi ethnic group;
  - f. These conducts were committed by these persons knowing that they were part of a widespread and/or systematic attack directed against the said members of a civilian population and/or an identifiable group of persons, i.e., the Tutsi ethnic group;
5. Between April 1<sup>st</sup>, 1994, and July 31<sup>st</sup>, 1994, throughout the territory of Rwanda including in the prefecture of Butare, Rwanda, war crimes in the context of an armed conflict, as defined in subsections 6(3), in conjunction with subsection 6(4), of the *Crimes against humanity and war crimes act*, S.C. 2000, c. 24, were committed;
6. Without limiting the generality of the foregoing, the defence further admits that:
  - a. Between April 1<sup>st</sup>, 1994, and July 31<sup>st</sup>, 1994;
  - b. Throughout the territory of Rwanda including in the prefecture of Butare, Rwanda,
  - c. Some members of the Rwandan government and the interim Rwandan government, of the civilian administration of the said governments, of political parties affiliated to the said governments, of militias affiliated to the said political parties, of the Rwandan armed Forces, of the Rwandan national police, of the communal police forces, and civilians, throughout Rwanda:
  - d. Were parties to the intentional killings of some of the hundreds of thousands members of a civilian population taking no active part in the armed conflict that were killed;

- e. Were parties to the rape and sexual violence on a large number of members of a civilian population;
- f. Amongst the persons mentioned in paragraph 6(c), some were parties to pillaging;
- g. These conducts took place in the context of and were, knowingly by these same persons mentioned in paragraph 6(c), associated with an armed conflict between the Rwandan government armed Forces and the Rwandan Patriotic Front;

SIGNED AT MONTREAL, DISTRICT OF  
MONTREAL, This 4<sup>th</sup> day of October  
2007



Désiré MUNYANEZA



Me Richard PERRAS- Laurence Cohen  
Counsels for Mr. Désiré MUNYANEZA

B)

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE  
(Chambre criminelle)

---

NO: 500-73-002500-052

SA MAJESTÉ LA REINE

C.

DÉSIRÉ MUNYANEZA

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## ADMISSIONS SUPPLÉMENTAIRES

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POUR LES FINS DU PROCÈS, LES PARTIES ADMETTENT LES FAITS  
SUIVANTS :

1. Le 6 avril 1994, l'avion qui transportait, entre autres, le président rwandais, Juvénal Habyarimana, a été abattu dans les environs de l'aéroport de Kigali, au Rwanda.
2. Le 9 avril 1994, un gouvernement intérimaire fut mis en place à Kigali, au Rwanda.

3. Au sein de ce gouvernement Intérimaire, le président de la république rwandaise et le premier ministre étaient, respectivement, Théodore Sindikubwabo et Jean Kambanda.
4. Le 19 avril 1994, le président Théodore Sindikubwabo a prononcé un discours lors d'une cérémonie qui se déroulait au Palais du *MRND* à Butare, au Rwanda.
5. Lors de cette cérémonie du 19 avril 1994, Sylvain Nsabimana a été nommé préfet de la préfecture de Butare, en remplacement de Jean-Baptiste Habyalimana.
6. Le 30 avril 1994, une grande partie des réfugiés qui se trouvaient dans l'église de Ngoma, à Butare, ont été massacrés.
7. Le ou vers le 17 juin 1994, le préfet de la préfecture de Butare, Sylvain Nsabimana, a été remplacé par Alphonse Ntéziryayo; ce dernier est entré en fonction dans les jours qui ont suivi.
8. Butare ville est dans la Commune de Ngoma.
9. D'avril 1994 à juillet 1994, le bourgmestre de la commune de Ngoma était Joseph Kanyabashi.
10. Le 4 juillet 1994, Butare a été conquise par le Front patriotique rwandais.
11. Pauline Nyaramasuhuko était la mère de Shalom Ntahobali. Elle était la ministre de la condition féminine au sein du gouvernement intérimaire.
12. Maurice Ntahobali était le père de Shalom Ntahobali. Il était le recteur de l'Université nationale du Rwanda pendant les événements de 1994.

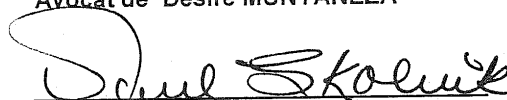
SIGNÉ À MONTRÉAL, DISTRICT DE  
MONTRÉAL, CE 11<sup>e</sup> JOUR DU MOIS DE  
MARS 2008,



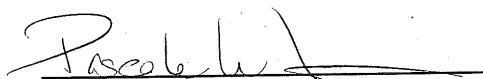
Désiré MUNYANEZA



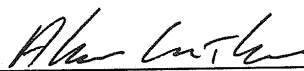
Richard PERRAS  
Avocat de Désiré MUNYANEZA



Paul Skolnik  
Avocat de Désiré MUNYANEZA



Pascale Ledoux  
Substitut du Procureur général du  
Canada



Alexis Gauthier  
Substitut du Procureur général du  
Canada

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CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

QUEBEC SUPERIOR COURT  
Criminal Division

No: 500-73-002500-052

SA MAJESTÉ LA REINE

v.

DÉSIRÉ MUNYANEZA

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Admissions in relation to statements of the accused

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THE ACCUSED ADMITS THE FOLLOWING:

- In relation to a form dated August 18<sup>th</sup> 1997 filed by the accused to Canadian immigration officials
  1. He arrived in Canada on August 18<sup>th</sup> 1997 by plane at Mirabel International Airport.
  2. On arrival he filled up, and signed, a two page form as part of his claim for refugee status in Canada.
  3. He understood the form and he completed it wilfully without being coerced in any way by Canadian immigration officials.
  4. He admits that the prosecution can use this document in cross examination should he choose to testify in his own defence and that it was obtained without a violation of his rights under the *Canadian Charter of Rights and Freedoms*.
- In relation to a Personal Information form, dated September 12<sup>th</sup> 1997
  5. Upon arrival, he was given by Canadian immigration officials a document entitled « FORMULAIRE DE RENSEIGNEMENTS PERSONNELS POUR DEMANDEURS DU STATUT DE RÉFUGIÉ AU SENS DE LA CONVENTION ». This 11 page document consisted of a form he had to fill up as part of his claim for refugee status in Canada, with instructions in that regard.
  6. He filled up form and signed it on September 12<sup>th</sup> 1997.
  7. He understood the form and he completed it wilfully without being coerced in any way by Canadian immigration officials.
  8. He admits that the prosecution can use this document in cross examination should he choose to testify in his own defence and that it was obtained without a violation of his rights under the *Canadian Charter of Rights and Freedoms*.



- In relation to a videotaped statement given on December 12<sup>th</sup> 2002

9. On December 12<sup>th</sup> 2002, he went to the RCMP Airport Attachment in Toronto where he was interviewed by Inspector Guy Poudrier of the RCMP and Sergeant Dave Larin of the RCMP.
10. This interview began at 10h59 am and was videotaped with his prior knowledge. It ended at his request at 11h50 am.
11. His counsel M Leon Damonze was present throughout the whole interview.
12. Prior the proceeding with the interview
  - The police officers informed him that he may be charged of crimes against humanity in relation to the events in Rwanda from April to July 1994.
  - They asked him if he understood the matter under investigation and he answered yes.
  - They informed him that he was not obliged to say anything unless he wished to do so, but that whatever he said may be given in evidence.
  - He was informed that he had the right to retain and instruct counsel without delay.
13. The answers he gave throughout the interview were given voluntarily, without threats or promises whatsoever from the police officers. He also admits that he had the mental capacity to voluntarily give these answers, that is to say he had an operating mind.
14. He admits that the prosecution can use the recordings, and the transcripts, of this interview in cross examination should he choose to testify in his own defence and that his answers were obtained without a violation of his rights under the *Canadian Charter of Rights and Freedoms*.

- In relation to a videotaped statement given on October 19<sup>th</sup> and October 20<sup>th</sup> 2005.

15. On October 19<sup>th</sup> 2005 at 7h40 am, he was arrested by Constable Roberto Salomao of the RCMP pursuant to an arrest warrant granted in Montreal on October 18<sup>th</sup> 2005 by the Superior Court of Quebec.
16. Upon arrest, he was immediately informed of his right to instruct counsel without delay, of his right to silence and the charges laid against him were read to him from the indictment that was annexed to the warrant for his arrest. He understood the charges, his right to instruct counsel without delay and his right to silence.
17. He was taken to a York Regional Police Station in Toronto at 9h10 am where he was put into custody.
18. He had a private telephone conversation with his counsel M Laurence Cohen from 10h02 to 10h25 am.
19. He met in private his counsel M. Laurence Cohen at the police station from 12h34 to 13h16 pm.
20. At 15h17 pm he was taken to a room where he was interrogated by Corporal Greg Bishop from 15h19 to 18h30 pm.
21. At 21h54 pm he was again taken to the room where he was interrogated by Corporal Greg Bishop from 21h55 pm to 00h21 am on October 20<sup>th</sup>. Greg Bishop then left the room and came back at 00h47am to continue the interrogation. The interrogation concluded at 1h01am of October 20<sup>th</sup>.
22. His interrogation was videotaped.
23. The answers he gave throughout the interrogation were given voluntarily, without threats or promises whatsoever from the police officers. He also admits that he had the mental capacity to voluntarily give these answers, that is to say he had an operating mind.
24. He admits that the prosecution can use the recordings, and the transcripts, of this interview in cross examination should he choose to testify in his own defence and that his answers were obtained without a violation of his rights under the *Canadian Charter of Rights and Freedoms*.

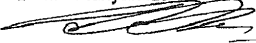
DATED AT MONTREAL, THIS <sup>4<sup>th</sup></sup> ~~7~~ DAY OF <sup>OCTOBER</sup> ~~September~~ 2007.

~~Me Richard Roy~~  
~~Public Prosecution Service of Canada~~

~~TRUE COPY OF~~ ORIGINAL

~~Me Richard Roy~~

  
Desiré Munyaneza

  
Me Richard Perras  
Counsel for Desiré  
Munyaneza

D)

Admissions regarding Mr. Dave Larin, RCMP officer:

1. That in a continuation report dated October 16, 2000, Mr. Larin noted; he travelled with Mr. Régean Tremblay, investigator for ICTR to meet RC-W 9 at the jail where he was incarcerated, that RC-W 9 was a « chef des gacacca », that he knew their suspects (including Désiré Munyaneza) and that he will talk to the Gacaca group to obtain names of witnesses.
2. That in his notebook, on October 22, 2000, M. Larin noted that RC-W 9 gave them a written statement and that he gave names of other possible witnesses : in the written statement were 2 names of possible witnesses regarding Désiré Munyaneza (which are not among the witnesses heard by the court), and 3 other names regarding another suspect.
3. That RC-W 11 did not mention in his interview of October 20<sup>th</sup>, 2000 to M. Larin that the reason why he did not mentioned Désiré Munyaneza in his previous statements, was because he was threatened or afraid to be threatened by a driver of the Munyagasheke family, who was in jail.
4. That in his statement of October 20<sup>th</sup>, 2000, RC-W 11 did say to Mr. Larin that he saw Désiré Munyaneza kill many people : "plusieurs personnes" in Taba.

Admissions regarding Mr. Ste-Marie, RCMP officer:

1. That on October 19, 2000, during the interview of C-18, Mr. Ste-Marie noted that C-18 said "I was travelling from Byumba to Kigali on April 6<sup>th</sup>, 1994"

E)

CANADA  
PROVINCE DE QUEBEC  
DISTRICT DE MONTREAL

COUR SUPÉRIEURE  
(Chambre criminelle)

NO: 500-73-002500-052

SA MAJESTÉ LA REINE

- vs -

DÉSIRÉ MUNYANEZA

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ADMISSION

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Les parties admettent que :

1. Mme Adesola Adeboyejo est avocate depuis 1987 et procureur en poursuite au TPIR depuis 1999.
2. Au cours de l'année 2000, elle a été assigné à l'équipe de procureurs de la poursuite dans le dossier Nyiramasuhuku et al., soit le "dossier Butare".
3. QY fait partie des témoins qu'elle a eu à préparer en vue de leur témoignage devant le Tribunal.
4. C'est elle qui a procédé pour la poursuite à l'interrogatoire en chef du témoin QY devant le Tribunal.
5. QY a témoigné devant le Tribunal dans le dossier Butare les 19, 20, 24, 25 et 26 mars 2003.
6. Dans le cadre de sa préparation du témoin QY, faite avec un(e) interprète, Mme Adesola Adeboyejo n'a jamais suggéré au témoin de nier connaître Rose Burizihiza .

SIGNÉ À MONTRÉAL, DISTRICT DE  
MONTREAL, Ce jour de 2008

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Désiré MUNYANEZA

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Me Richard PERRAS  
Avocat pour. Désiré MUNYANEZA

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Me Pascale LEDOUX  
Procureur pour le Service des poursuites  
pénales du Canada

# **APPENDIX 4**

## **MAPS OF THE PREFECTURE OF BUTARE**

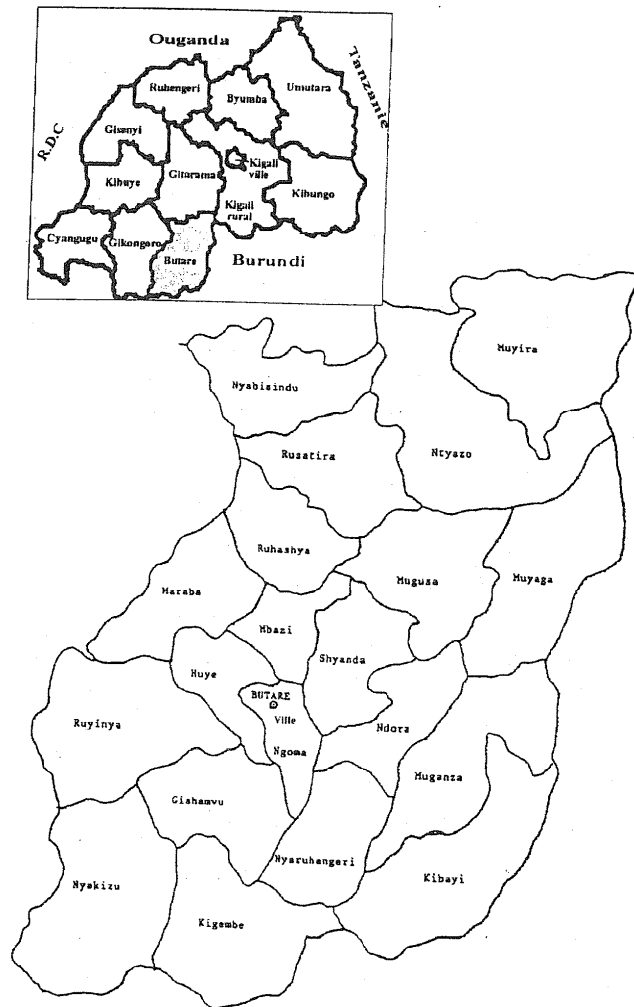
Map 1 – Prefecture and communes of Butare

Map 2 – Commune de Ngoma

Map 3 – Butare Ville and surroundings

## Les politiques et les acteurs du génocide à Butare

**Carte 1 – Préfecture et communes de Butare**

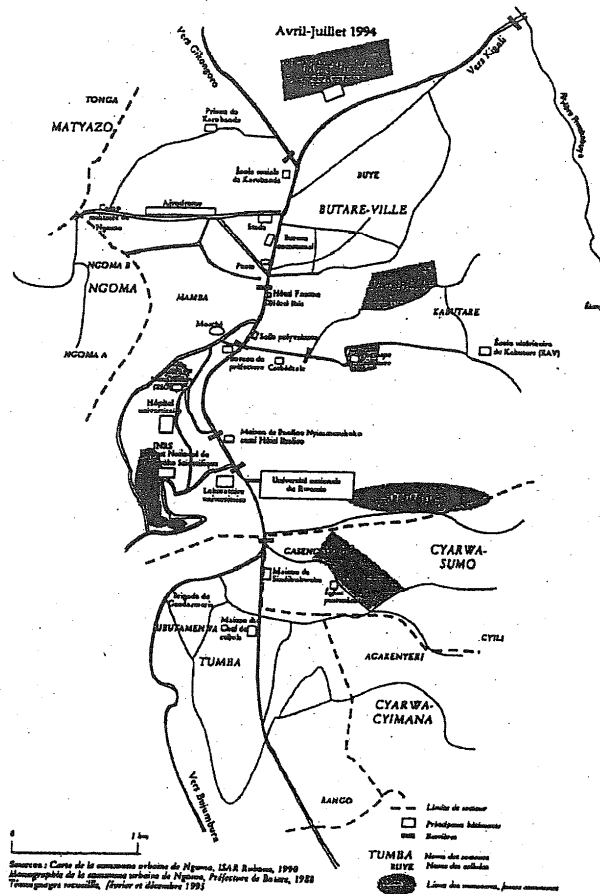


### Carte 2 – Commune de Ngoma



## Les politiques et les acteurs du génocide à Butare

Carte 3 – Butare Ville et ses environs



Carte réalisée par Christine Deslaurier pour FIDH/HRW, 1996