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HAM

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. Adama Dieng

Date Filed: 14 December 2009

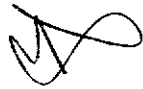
THE PROSECUTOR

v.

JOSEPH NZIRORERA

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

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The Office of the Prosecutor:

Mr. Don Webster  
Mr. Saidou N'Dow  
Mr. Takeh Sendze

Defence Counsel:

Mr. Peter Robinson  
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

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

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## I.

INTRODUCTION

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

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

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

## II.

RUHENGERI EVENTS

## A. Post 6 April 1994 Events Charged in the Indictment

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

## a. Indictment:

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

## b. Prosecution Evidence:

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

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

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

## i. Witness GBU

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

<sup>1</sup> Transcript of 4 December 2006 @ 22

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

8. Witness GBU testified that he observed the following:

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

9. Witness GBU did not see Nzirorera on the morning of 7 April.<sup>7</sup>

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

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

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

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

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

<sup>2</sup> Transcript of 4 December 2006 @ 23

<sup>3</sup> Transcript of 5 December 2006 @ 14-17

<sup>4</sup> Transcript of 5 December 2006 @ 14-15

<sup>5</sup> Transcript of 5 December 2006 @ 16

<sup>6</sup> Transcript of 5 December 2006 @ 14

<sup>7</sup> Transcript of 5 December 2006 @ 31

<sup>8</sup> Transcript of 4 December 2006 @ 23-24

<sup>9</sup> Transcript of 4 December 2006 @ 41-42; Exhibit DNZ-244

<sup>10</sup> Transcript of 4 December 2006 @ 22

<sup>11</sup> Transcript of 4 December 2006 @ 56

<sup>12</sup> Transcript of 5 December 2006 @ 13-14; Exhibit DNZ-260

<sup>13</sup> Transcript of 5 December 2006 @ 15; Exhibit DNZ-274

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

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

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

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

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

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

## ii. Witness BTH

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

<sup>14</sup> Transcript of 5 December 2006 @ 16; Exhibit DNZ-265

<sup>15</sup> Transcript of 5 December 2006 @ 16; Exhibit DNZ-275

<sup>16</sup> Transcript of 5 December 2006 @ 16; Exhibit DNZ-275

<sup>17</sup> Transcript of 5 December 2006 @ 14; Exhibit DNZ-274

<sup>18</sup> Transcript of 5 December 2006 @ 18; Exhibit DNZ-277, 278

<sup>19</sup> Transcript of 5 December 2006 @ 17

<sup>20</sup> Transcript of 5 December 2006 @ 17; Exhibit DNZ-276

<sup>21</sup> Transcript of 14 June 2007 @ 34

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

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

22. Witness BTH testified that he did not see Nzirorera, General Bizimungu, or Casimir Bizimungu on 7 April 1994.<sup>24</sup> He did not see Setako or Brigadier Bazimenyera at Nzirorera's mother's house that morning.<sup>25</sup>

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

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

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

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<sup>22</sup> Transcript of 8 June 2006 @ 56

<sup>23</sup> Transcript of 8 June 2006 @ 56-57

<sup>24</sup> Transcript of 14 June 2006 @ 62-63

<sup>25</sup> Transcript of 14 June 2006 @ 63-64

<sup>26</sup> Transcript of 14 June 2006 @ 57

<sup>27</sup> Transcript of 14 June 2006 @ 58; Exhibit DNZ-151

<sup>28</sup> Transcript of 19 June 2006 @ 55-56

<sup>29</sup> Transcript of 14 June 2006 @ 58

<sup>30</sup> Transcript of 14 June 2006 @ 60; Exhibit DNZ-152

<sup>31</sup> Transcript of 19 June 2006 @ 55

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

27. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that his earlier testimony concerning the meeting at Mr. Nzirorera's mother's house on the morning of 7 April<sup>34</sup>, and the telephone calls from Mr. Nzirorera<sup>35</sup> on 7 April was false. Witness BTH further testified that he was not aware of any authorities having ordered the killings in Mukingo commune on 7 April 1994.<sup>36</sup>

### iii. Prosecution Exhibits

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

29. In his testimony in the *Bagosora* trial, Mathieu Ngirumpatse testified that he received a call from Colonel Bagosora after midnight on 7 April asking to meet with the MRND leadership that morning.<sup>37</sup> Ngirumpatse contacted Nzirorera by telephone in the early hours of the morning.<sup>38</sup> He then met Nzirorera at the Ministry of Defence at around 7 a.m. on 7 April 1994.<sup>39</sup>

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

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

<sup>32</sup> Transcript of 14 June 2006 @ 64

<sup>33</sup> Transcript of 14 June 2006 @ 64; Exhibit DNZ-153

<sup>34</sup> Transcript of 10 April 2008 @ 36

<sup>35</sup> Transcript of 10 April 2008 @ 40

<sup>36</sup> Transcript of 10 April 2008 @ 40

<sup>37</sup> Exhibit P61 @ 52

<sup>38</sup> Exhibit P61 @ 53

<sup>39</sup> Exhibit P61 @ 55

<sup>40</sup> Exhibit P69 @ 70

SRSB Booh Booh suggested that they ask the MRND to propose a candidate to replace President Habyarimana. After meeting with SRSB Booh Booh, he had called Mathieu Ndirumpatse and asked him to meet at the Ministry of Defence at 7 a.m. on the morning of 7 April 1994.<sup>41</sup> On the morning of 7 April 1994, the MRND executive committee came to the Ministry of Defence.<sup>42</sup>

c. Defence Evidence

32. **Edouard Karemera** testified that he met with Ndirumpatse, Nzirorera, Bagosora, and General Ndirindiyimana at the Ministry of Defence at around 7 a.m. on the morning of 7 April 1994.<sup>43</sup>

33. **Witness DB11-2**, whose testimony from the *Ndirindiyimana* trial was admitted into evidence pursuant to Rule 92 bis, was a neighbor of Mr. Nzirorera's mother. He testified that he was at home during the night and morning of 6-7 April 1994 and that no vehicles passed by on the way to Nzirorera's mother's house. Only the people who usually stayed at Mr. Nzirorera's mother's house were present there during 6-7 April 1994.<sup>44</sup>

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

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

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

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<sup>41</sup> P258 at p. 1

<sup>42</sup> P258 at p. 2

<sup>43</sup> Transcript of 28 May 2009 @ 3

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

<sup>45</sup> Transcript of 16 November 2009 @ 34

37. **Witness DE9-7**, whose prior testimony was admitted pursuant to Rule 92 *bis*, testified that he was not at any meeting at the home of Joseph Nzirorera's mother on 6-7 April 1994.<sup>46</sup> At that time he was in Kigali.<sup>47</sup>

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

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

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

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

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

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

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

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

<sup>46</sup> Exhibit DNZ-688; *Ndindiliyimana* transcript of 5 June 2007 @ 74

<sup>47</sup> Exhibit DNZ-688; *Ndindiliyimana* transcript of 5 June 2007 @ 79

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

<sup>49</sup> Transcript of 21 October 2009 @ 46; Transcript of 27 October 2009 @ 38

<sup>50</sup> Transcript of 23 November 2009 @ 23

<sup>51</sup> Transcript of 20 October 2009 @ 3

<sup>52</sup> Transcript of 3 November 2009 @ 7

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

d. Evidence the Defence Wished to Bring

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

48. However, the Trial Chamber refused to admit the written statement of Mr. Nteziyaremye<sup>54</sup> and refused to issue a subpoena to compel his live testimony.<sup>55</sup>

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

a. Indictment

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

b. Prosecution Evidence

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

i. Witness BTH

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

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

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

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

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

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

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

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

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

55. Witness BTH was confronted with the fact that he had been with Niyigaba the entire morning from the time except for the few minutes Witness BTH had gone to get his gun and therefore there was no opportunity for Niyigaba to have a phone call with Nzirorera<sup>62</sup> Witness BTH then changed his story and claimed that Niyigaba was not with him at all times while they were attacking the Tutsi in the area of Samvura's property, but had gone off to attack Tutsi across the road.<sup>63</sup> When asked how Niyigaba would have called Nzirorera, such as calling from a phone at one of the homes of the Tutsis, Witness

<sup>56</sup> Transcript of 16 June 2006 @ 10

<sup>57</sup> Transcript of 16 June 2006 @ 10

<sup>58</sup> Transcript of 8 June 2006 @ 61

<sup>59</sup> Transcript of 16 June 2006 @ 10

<sup>60</sup> Transcript of 8 June 2006 @ 61

<sup>61</sup> Transcript of 16 June 2006 @ 10

<sup>62</sup> Transcript of 16 June 2006 @ 3-7

<sup>63</sup> Transcript of 16 June 2006 @ 10-11

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

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

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

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

59. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that his earlier testimony concerning the telephone calls from Mr. Nzirorera on 7 April was false.<sup>70</sup> Witness BTH further testified that he was not aware of any authorities having ordered the killings in Mukingo commune on 7 April 1994.<sup>71</sup>

c. Defence Evidence

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

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

<sup>64</sup> Transcript of 16 June 2006 @ 11

<sup>65</sup> Transcript of 16 June 2006 @ 7

<sup>66</sup> Transcript of 16 June 2006 @ 9

<sup>67</sup> Transcript of 16 June 2006 @ 9; Exhibit DNZ-156

<sup>68</sup> Transcript of 14 June 2006 @ 64; Exhibit DNZ-153

<sup>69</sup> Transcript of 14 June 2006 @ 64

<sup>70</sup> Transcript of 10 April 2008 @ 40

<sup>71</sup> Transcript of 10 April 2008 @ 40

<sup>72</sup> Transcript of 21 October 2009 @ 46; Transcript of 27 October 2009 @ 38

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

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

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

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

3. Orders by Kajelijeli for the Killings  
In Mukingo Commune

a. Indictment

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

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

b. Prosecution Evidence

i. Witness BTH

<sup>73</sup> Transcript of 3 November 2009 @ 8-9

<sup>74</sup> Transcript of 4 November 2009 @ 14

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

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

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

ii. Witness GBU

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

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

iii. Witness GAV

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

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

c. Defence Evidence

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

<sup>75</sup> Transcript of 8 June 2006 @ 59

<sup>76</sup> Transcript of 8 June 2006 @ 60

<sup>77</sup> Transcript of 10 April 2008 @ 44-45

<sup>78</sup> Transcript of 4 December 2006 @ 24

<sup>79</sup> Transcript of 4 December 2006 @ 57; Exhibit DNZ-252

<sup>80</sup> Transcript of 4 October 2007 @ 47-48

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

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

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

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

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

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

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

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

<sup>81</sup> Transcript of 21 October 2009 @ 46

<sup>82</sup> Transcript of 4 November 2009 @ 15-17

<sup>83</sup> Transcript of 12 November 2009 @ 4

<sup>84</sup> Transcript of 3 November 2009 @ 9-10

<sup>85</sup> Transcript of 3 November 2009 @ 10

<sup>86</sup> Transcript of 23 November 2009 @ 23

<sup>87</sup> Transcript of 19 October 2009 @ 36

<sup>88</sup> Transcript of 20 October 2009 @ 21

<sup>89</sup> Transcript of 29 October 2009 @ 29-30

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

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

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

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

d. Evidence the Defence Wished to Bring

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

86. However, the Trial Chamber refused to admit the written statement of Mr. Nteziyaremye<sup>93</sup> and refused to issue a subpoena to compel his live testimony.<sup>94</sup>

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

a. Indictment

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

b. Prosecution Evidence

<sup>90</sup> Transcript of 29 October 2009 @ 33

<sup>91</sup> Transcript of 29 October 2009 @ 32-33

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

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

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