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A

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

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

Registrar: Mr. Adama Dieng

Date Filed: 8 December 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S PRE-DEFENCE BRIEF

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I.

INTRODUCTION

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

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

II.

RUHENGERI EVENTS

A. Post 6 April 1994 Events Charged in the Indictment

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

a. Indictment:

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

recruited armed civilians should attack and kill the Tutsi population in Mukingo and Nkuli *communes*.

b. Prosecution Evidence:

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

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

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

i. Witness GBU

6. Witness GBU testified that on the morning of 7 April, he left his house and went to the Isimbi house in the Byangabo center.¹ When he arrived at around 6 a.m., he observed Major Bizabarimana, Colonel Setako, Karorero, Baheza, Bambonye, Bazimenyera, Kajelijeli, and Muhunde heading for Nzirorera's mother's house.²

7. Witness GBU testified that he observed the following:

- (1) Colonel Setako, driving a vehicle with Karorero, Bizabarimana, and Casimir Bizimungu as passengers.³
- (2) Esdras Baheza, driving in his own vehicle with no passengers.⁴
- (3) General Augustin Bizimungu driving his own vehicle.⁵

¹ Transcript of 4 December 2006 @ 22
² Transcript of 4 December 2006 @ 23
³ Transcript of 5 December 2006 @ 14-17
⁴ Transcript of 5 December 2006 @ 14-15
⁵ Transcript of 5 December 2006 @ 16

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

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

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

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

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

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

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

⁶ Transcript of 5 December 2006 @ 14

⁷ Transcript of 5 December 2006 @ 31

⁸ Transcript of 4 December 2006 @ 23-24

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

¹⁰ Transcript of 4 December 2006 @ 22

¹¹ Transcript of 4 December 2006 @ 56

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹ Transcript of 5 December 2006 @ 17

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

²¹ Transcript of 14 June 2007 @ 34

ii. Witness BTH

19. During his first appearance in this trial, Witness BTH testified that he heard about the death of the President between 1 and 3 a.m. on 7 April. He went to Byangabo market early that morning. While outside the place where he took tea, he saw Dusabimana and Michel Niyigaba. They were called to Nzirorera's mother's house by a child.²²

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

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

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

23. Witness BTH initially testified that (1) he arrived at Haguma's for tea; (2) Niyigaba and Dusabimana then arrived; and (3) the three of them went together to Nzirorera's mother's house.²⁶ However, at the trial of General Bizimungu, he had testified that he remained at the tea shop and went to Nzirorera's mother's after

²² Transcript of 8 June 2006 @ 56

²³ Transcript of 8 June 2006 @ 56-57

²⁴ Transcript of 14 June 2006 @ 62-63

²⁵ Transcript of 14 June 2006 @ 63-64

²⁶ Transcript of 14 June 2006 @ 57

Dusabimana and Niyigaba.²⁷ On further cross examination, he claimed that Dusabimana went first from the tea shop to Nzirorera's mother's house, then returned for Niyigaba, then Witness BTH accompanied them.²⁸ Thus he gave three different versions of how he came to be at the house of Mr. Nzirorera's mother on the morning of 7 April.

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

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

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

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

²⁸ Transcript of 19 June 2006 @ 55-56

²⁹ Transcript of 14 June 2006 @ 58

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

³¹ Transcript of 19 June 2006 @ 55

³² Transcript of 14 June 2006 @ 64

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

³⁴ Transcript of 10 April 2008 @ 36

³⁵ Transcript of 10 April 2008 @ 40

³⁶ Transcript of 10 April 2008 @ 40

iii. Prosecution Exhibits

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

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

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

30. In a handwritten letter dated 8 August 1994, submitted by Luc de Timmerman, Colonel Theoneste Bagosora recounted how on the evening of 6 April 1994, SRSB Booh Booh suggested that they ask the MRND to propose a candidate to replace President Habyarimana. After meeting with SRSB Booh Booh, he had called Mathieu Ngirumpatse and asked him to meet at the Ministry of Defence at 7 a.m. on the morning of 7 April 1994.⁴¹ On the morning of 7 April 1994, the MRND executive committee came to the Ministry of Defence.⁴²

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

c. Defence Evidence

i. Karemera case

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

ii. Nzirorera case

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

33. **Casimir Bizimungu, General Augustin Bizimungu, Juvenal Kajelijeli, Lt. Colonel Ephrem Setako and Witnesses 4 and 8** will all testify that they did not attend any meeting at the house of Mr. Nzirorera's mother on 6 or 7 April and are unaware of any such meeting taking place.

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

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

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

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

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

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

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

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

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

a. Indictment

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

b. Prosecution Evidence

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

i. Witness BTH

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

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

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

46. Witness BTH testified, "I don't know if they had spoken about it on telephone or some other means." When confronted with his testimony on direct examination that Niyigaba said he had spoken to Nzirorera on the telephone, Witness BTH said: "He told me they had spoken on the phone, only I did not know **where** they had spoken by telephone."⁴⁴

47. Witness BTH was confronted with the fact that in his direct testimony, he had testified that Niyigaba had told him this around 1 p.m.,⁴⁵ but he now said they left Rwankeli to Iingabire's at 11 a.m. at the latest. He said he was just estimating the time and did not have a watch.⁴⁶

48. Witness BTH was confronted with the fact that in his direct examination, he said he received this information when they were on the road going down from Busogo,⁴⁷ and on cross examination he testified that he received the information while going up towards Busogo. He denied saying in direct examination that they were coming from Busogo when he received this information.⁴⁸

⁴³ Transcript of 16 June 2006 @ 10

⁴⁴ Transcript of 16 June 2006 @ 10

⁴⁵ Transcript of 8 June 2006 @ 61

⁴⁶ Transcript of 16 June 2006 @ 10

⁴⁷ Transcript of 8 June 2006 @ 61

⁴⁸ Transcript of 16 June 2006 @ 10

49. Witness BTH was confronted with the fact that he had been with Niyigaba the entire morning from the time except for the few minutes Witness BTH had gone to get his gun and therefore there was no opportunity for Niyigaba to have a phone call with Nzirorera⁴⁹ Witness BTH then changed his story and claimed that Niyigaba was not with him at all times while they were attacking the Tutsi in the area of Samvura's property, but had gone off to attack Tutsi across the road.⁵⁰ When asked how Niyigaba would have called Nzirorera, such as calling from a phone at one of the homes of the Tutsis, Witness BTH said he could not speculate, but that he knew that Niyigaba had told him of the telephone conversation with Nzirorera.⁵¹

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

51. Witness BTH testified that he had seen Kaberwa in Mukingo about three times from 1991-94, but at Mr. Nzirorera's first trial, testified that he had not seen her at all in Mukingo during this period.⁵⁴

52. Witness BTH had told an entirely different version of the telephone call from Mr. Nzirorera at Mr. Nzirorera's first trial. At that trial, he testified that he was told at Mr. Nzirorera's mother's house that Nzirorera spoke to them on the telephone, and had

⁴⁹ Transcript of 16 June 2006 @ 3-7

⁵⁰ Transcript of 16 June 2006 @ 10-11

⁵¹ Transcript of 16 June 2006 @ 11

⁵² Transcript of 16 June 2006 @ 7

⁵³ Transcript of 16 June 2006 @ 9

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

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

53. When recalled at the request of Mr. Nzirorera, Witness BTH acknowledged that his earlier testimony concerning the telephone calls from Mr. Nzirorera on 7 April was false.⁵⁷ Witness BTH further testified that he was not aware of any authorities having ordered the killings in Mukingo commune on 7 April 1994.⁵⁸

c. Defence Evidence

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

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

56. **Witnesses 11 and 14** will testify that they were living at the house of Mr. Nzirorera's mother on 6 and 7 April 1994 and no one at the house had any contact by telephone with Joseph Nzirorera on 6 or 7 April.

3. Orders by Kajelijeli for the Killings
In Mukingo Commune

a. Indictment

62.9 Some time thereafter, Juvenal KAJELIJELI ordered and instigated *Interahamwe* and AMIHINDURE in Mukingo and Nkuli *communes* to

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

⁵⁶ Transcript of 14 June 2006 @ 64

⁵⁷ Transcript of 10 April 2008 @ 40

⁵⁸ Transcript of 10 April 2008 @ 40