LJN: BK0520, Rechtbank 's-Gravenhage , 09/750009-06 09/750007-07 English translation

Datum uitspraak:	23-03-2009
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Rechtsgebied:	Straf
Soort procedure:	Eerste aanleg - meervoudig
Inhoudsindicatie:	[Translation from Dutch] 40 year old Rwandese Joseph M. sentenced to a term of 20 years imprisonment on charges of torture (committed multiple times and resulting in death) during the genocide in Rwanda in 1994. Chapter 1: Brief description of the seven criminal offences charges, principally charged as war crimes, alternatively as acts of torture. Chapter 2: The Dutch Court has jurisdiction based on Article 3 (old) of the Criminal Law in Wartime Act and Article 5 of the Convention against Torture Implementation Act respectively. In this context, it is important to observe that the Defendant was in the Netherlands at the time of the start of the investigation against him. Chapter 3: Explanation of (the historical background of) the genocide in Rwanda in 1994. Chapter 4: The Defendant as a person. In the publication of the judgement, the Defendant is referred to as Joseph M. As many other persons in Rwanda, he has a different family name than his father; the last name of his father was Murakaza. Chapter 5: Report of and account for the criminal investigation. The Court rejects the Defence's criticism regarding the quality of the investigation. Chapter 6: Explanation of the evaluation of the evidence rendered by witnesses. In this respect, the Court formulated a framework for the assessment of the credibility of the witnesses and the reliability of their statements, with reference to the ruling of the Appeals Court in The Hague in the case against K. (LJN BC 6068). Chapters 7 - 9: Proven facts regarding charges (i) a German doctor and his Tutsi wife together with their few months old baby who were on the run from the genocide and (ii) the passengers of an ambulance (a Hutu driver, two Tutsi women with their (at least four) young children and a 12 year old Tutsi girl), who were on the run from the genocide. In this incident, the two Tutsi women and their children were killed with machetes and clubs. Chapters 10 - 14: Acquittal of Defendant for being involved in the other crimes charged against him for lack of (reliable) evidence. Chapter 15: The Court concludes that the crimes committed by the Defendant do not qualify as war crimes. The requirement of the existence of a close relation between the indictable offence and the armed conflict (nexus) in Rwanda between the Rwandese government army (the RAF) and the rebel army of the Rwandan Patriotic Front (the RPF, which mainly consisted of Tutsi), has not been fulfilled. The Court puts first that the penalization of war crimes intends to protect civilians from the consequences of war between combating armed forces. It establishes that in the prefecture where the Defendant committed his crimes no fighting took place between the RAF and the RPF, that the Defendant did not hold a military position, that Defendant did not have any control over the progress of the armed conflict, nor had a special relation with the government army and finally, that his crimes did not serve any military purpose and did not contribute to the ultimate objective of the RAF in its fight against the RPF. The Court admits that the armed conflict against the RPF offered the Rwandese regime the excuse for ethnic violence against the Tutsi population and that the regime's propaganda, that equated all Tutsis with the RPF, provided the Defendant with a motive and a licence to commit his crimes. However, the Court is of the opinion that this mere circumstance is not sufficient to assume a nexus. Chapter 16: The Court concludes that the Defendant, a civilian, is guilty of committing acts of torture, which had been solicited and deliberately allowed by public officials. In this chapter each individual element (maltreatment, the qualification of the Defendant as a public official, deprivation of liberty of the victim, the requirement that the maltreatment took place with a special intent) is described and subsequently the available evidence is evaluated accordingly, also in relation to the requirements for the forms of participation 'incitement' and 'deliberately permitting'. Chapter 18: The claims of the three plaintiffs. Concerning the admissibility of these claims, the Court establishes that the law which was in force before the introduction of the Terwee Act is applicable. According to the old law, a plaintiff's claim is not required to be of simple nature in order to be heard in a criminal case. The claims of the German doctor and his wife are admitted, each for the current amount of 680,67 euro , which is the equivalent of the maximum amount in guilders laid down at the time. The claim of another victim/survivor is not admitted, because the

Defendant was acquitted of the charge concerning this plaintiff. Chapter 19: Sentencing. The Court considers that the qualification of the Defendant's conduct as torture, committed multiple times and resulting in death, does not make his acts less serious than in the case that his crimes could have been tried on charges of genocide and/or if the criminal offences could have been qualified as war crimes. In determining the appropriate sentence, the Court also takes into consideration the sentencing regime applied by the ICTR and the present form of enforcing life imprisonment sentences, whereby in practice 'for life' really means being in prison for life (see also the advice given by the RSJ dated 1 December 2006 and the relevant additions made on 20 April 2008, as well as the conclusion drawn by Advocate General mr. Knigge, dated 30 September 2008 (LJN BF41)). The Court considers that a risk of reoffending has not become apparent and imposes on the Defendant a term of 20 years imprisonment, although the Court considers that the imposition of this sentence does not sufficiently do justice to the gravity of the crimes committed by the Defendant. [End of translation]

Uitspraak

[Translation from Dutch]

DISTRICT COURT IN THE HAGUE
Criminal Law Section

Three-judge Division for Criminal Matters

Case numbers 09/750009-06 and 09/750007-07

Date of Judgement: 23 March 2009

Judgement

Based on the charges and further to the investigation during the court hearing, the District Court in The Hague has rendered the following judgement in the criminal case of the Prosecution against the Defendant:

Joseph [M.],
born in [place of birth] (Rwanda) on [date of birth] 1968,
address: [address],
presently detained at the Penitentiary Institution Haaglanden, Penitentiary Complex Scheveningen, Remand Prison Unit 2.

The investigation was held during the court hearings on 13, 14, 16, 17, 20, 21, 23, 24, 27, 28 October, 3, 10, 11, 17, 18, 19, 24 November, 1 and 4 December 2008, 2 February and 9 March 2009.

The Court has taken cognizance of the requests of the Public Prosecutors Mrs. H.C.M. van Bruggen and Mr. W.N. Ferdinandusse and of the submissions by the Counsel for the Defendant Mr. A.B.G.T. von Bóné, Lawyer in Rotterdam, and by the Defendant himself.

Chapter 1: The charges and the requests.

1. The Defendant stands trial for his involvement in serious criminal offences, allegedly committed in Rwanda in the period between April through July 1994. These facts are described in the Indictment with case numbers 09/750009-06 (Indictment I)(1) and 09/750007-07 (Indictment II)(2). Both Indictments were handled in a joint action.

2. In brief, the charges of Indictment I imply the following:

I: On or around 13 April 1994, the Defendant, together with others, stopped an ambulance in Birogo (prefecture Kibuye). This ambulance was driven by [witness 1] and carried two Tutsi-women. (Dativa and Brigitte) with their children and a girl named [witness 2]. After the ambulance had been stopped, the Defendant, together with others, forced it to drive to nearby Mugonero. During this drive, the ambulance was surrounded by attackers while arms

were shown and the ambulance was hit by the attackers. The people surrounding the ambulance also yelled words such as 'Inkotanyi'. In Mugonero the passengers were forced to leave the ambulance. Threats were uttered such as “Before the cockroaches are going to be killed, the driver must be killed first”. Subsequently, the two Tutsi-women and their children were hit/hacked with machetes, clubs and/or other weapons. As a consequence, all passengers had to fear for their lives for a considerable time, the two Tutsi-women and their children died (after which a number of the children were thrown into Kivu Lake) and [witness 1] and [witness 2] suffered (serious) bodily harm.

II: On 16 April 1994, the Defendant, together with others and using all kinds of weaponry, attacked Tutsi civilians who stayed at the Seventh Day Adventists Complex in Mugonero. The Defendant and others shot at these civilians, hit and hacked them with machetes and other weapons and threw teargas into the buildings in which part of the Tutsis were hiding. Consequently, these persons were forced in a situation in which they had to fear for their lives and the lives of their family and friends. As a consequence of this attack, a large number of these people died and one or more of them suffered (serious) bodily harm.

III: On 27 April 1994, the Defendant, together with others, refused passage to [witness 3], her partner [witness 4] and their baby [B1] at a road block in Mugonero. Weapons were shown openly to the victims and they were able to hear remarks such as “cockroach(es)”, “Look well at that Tutsi woman, these are the people who murdered the president”, “Would you like to be treated as a Tutsi?”, “You can choose whether you are going to be killed in Kibingo, in Mugonero or in Gishyita”, “Look how bad these Tutsis are, they even laugh when we are going to kill them” and “Hutu-power”. As a consequence of this, [witness 3] found herself in a situation in which she had to fear for her life and that of her son for a prolonged time, while she was seriously humiliated in public by these actions. [Witness 4] was put in a situation in which he had to fear for his life and that of his partner for a prolonged time, while he was seriously humiliated in public by these actions.

3. In brief, the charges of Indictment II imply the following:

Ia: On 13 May 1994, the Defendant, together with others, at Muyira Hill, in the Bisesero area, grabbed a woman named Consolata Mukamurenzi, pushed her to the ground and said to her: “If you do not tell me where they are, we will kill you. If you tell me, we will leave you alone.” Subsequently, the Defendant told his co-perpetrators that they could rape her and that he would guarantee their safety. Upon this, his co-perpetrators raped her repeatedly, after which the Defendant stabbed a bayonet into her vagina and shot bullets in her back and head, as a consequence of which she died.

Ib: On 16 April 1994, the Defendant, together with others, threatened Marie Mukagatare and Gertrude Mukamana, who, while being on the run for the large scale violence towards Tutsi civilians, had taken refuge in a hospital room at the Adventists complex in Mugonero, by pointing a fire arm at them. Subsequently, he said to them: “For a long time we asked you to have sex with us. Then you refused. Now you cannot refuse anymore”, after which he raped both women and cut their throats as a consequence of which they died.

Ic: On or around 14 April 1994, at the Adventists Complex in Mugonero, the Defendant, together with others, grabbed, hit and raped a woman named Kayitesi.

II: In the period between 6 April through 1 July 1994, in Kibuye prefecture, the Defendant, together with others, took three grand children of [witness 5] and [witness 6] from the home of the grandparents, after which they were never heard of again.

4. In brief, all these facts have been charged principally as war crimes (article 8 Criminal Law in Wartime Act (3), and alternatively as torture (article 1 and 2 The Convention against Torture Implementation Act(4).

5. The Public Prosecution Service has demanded the Court to acquit the Defendant of the charges in the Indictment II under 1b, and shall deem legally and convincingly proven that the Defendant has committed the other charges in both Indictments, as principally charged. Furthermore, the Prosecution has demanded the Court to convict the Defendant to life imprisonment.

Chapter 2: Jurisdiction

1. Originally, all these facts were also charged to the Defendant as genocide. On 24 July 2007, the District Court of The Hague decided the Netherlands had no jurisdiction to bring the Defendant to trial for this charge.(5) On 17 December 2007, the Court of Appeal in The Hague came to the same decision.(6) The appeal in cassation, brought by the Prosecution, was dismissed by the Supreme Court.(7)

2. Although this subject did not lead to a discussion during the hearing of the case, the Court will, however,

investigate whether the Netherlands has jurisdiction with respect to the facts as charged at present. As the Court considered in the afore mentioned decision dated 24 July 2007, the Defendant is not of Dutch nationality, nor are the victims mentioned in the charge, the Defendant is charged with committing the facts in Rwanda and furthermore, any (specific) Dutch interest is lacking.

3. However, other than in cases of genocide, Dutch law has, respectively in the Criminal Law in Wartime Act and the Torture Convention Implementation Act, provided for universal jurisdiction with respect to war crimes and torture committed in 1994.

4. Article 3 (old) of the Criminal Law in Wartime Act at the time of the facts as charged:

“Notwithstanding the provisions in the Dutch Criminal Code and the Code of Military Criminal Justice, Dutch criminal legislation is applicable to:
1°. any person who is guilty of a crime as described in articles 8 and 9 (...), committed outside the kingdom of the Netherlands”.

5. Recently, the Supreme Court has confirmed that on the basis of this provision the judge in the Netherlands has universal jurisdiction with respect to war crimes.
“Assuming that since the taking effect of the Convention, acting contrary to art. 3 of the Convention constitutes the serious offence as described in art. 8 of the Criminal Law in Wartime Act and that – as results from the decision of the Supreme Court of 11 November 1997, LJN ZD0857, NJ 1998, 463 – in such cases the Dutch judge has jurisdiction pursuant to art. 3 (old) of the Criminal Law in Wartime Act.”(8)

6. At the time of the charges, Article 5 of the Criminal Law in Wartime Act read as follows:
“Dutch criminal law is applicable to any person who commits a serious offence outside the kingdom of the Netherlands as described in articles 1 and 2 of this law.”

7. In its judgement in the Bouterse case, the Supreme Court considered the following with respect to the universal jurisdiction as defined in this article with respect to torture, with reference to the Torture Convention Implementation Act:

“8.4 (...) that at the time of implementation of the jurisdiction rule of art. 5 of the Convention against torture and other cruel, inhuman or degrading punishment, the legislator did not want to go further than the terms to which the Netherlands are obliged pursuant to art. 5, first and second paragraph.

8.5. As a consequence, the prosecution and trial of the Defendant of an offence as meant in art. 1 and 2 of The Convention against Torture Implementation Act, committed in a foreign country, are only possible if there are reference points mentioned in that Convention for the establishment of jurisdiction, for instance because the Defendant and/or the victim are of Dutch nationality, or because the Defendant, at the time of his arrest, stayed in the Netherlands.”(9)

8. It is the Court’s opinion that this restriction of the execution of the universal jurisdiction should also be valid with respect to legislation for war crimes in cases as described in art. 3 under 1 (old) of the Criminal Law in Wartime Act.

9. In the meantime, in article 2, paragraph 1, under a of the International Crimes Act (10), the legislator has restricted the execution of the universal jurisdiction for all international crimes included in the International Crimes Act (such as war crimes and torture) to those cases in which the Defendant is staying in the Netherlands. This provision includes (in so far as is important):

“Article 2:
1. “Notwithstanding the provisions of the Dutch Criminal Code and the Code of Military Criminal Justice, Dutch criminal legislation is applicable to:
1°. any person who is guilty of a crime as described in this law and committed outside the kingdom of the Netherlands, if the Defendant is staying in the Netherlands; (...)”

10. The explanatory memorandum to the bill that resulted in the International Crimes Act, provides the following reasons for this choice made by the legislator:

“There are good arguments to be put forward for the restriction of the universal jurisdiction with respect to Defendants who are staying within the territory of the state. First, trial in absentia, without any reference point

with the case (offence committed within the territory, Defendant is a national subject etc.) is generally not considered correct. Furthermore, trial in absentia may easily lead to jurisdiction conflicts with states that do have a reference point with the case. These jurisdiction conflicts may undermine an effective international cooperation for the administration of justice regarding international crime, among others because of the rule that a country which itself has initiated prosecution in a certain case, will not decide to render (limited) legal assistance in that case to another country (ref. our article 5521, first paragraph, under c, CP).”(11)

11. At the time of initiating investigative actions or prosecution against him, the Defendant was staying in the Netherlands.

12. Therefore, based on the provisions of art. 3 (old) of the Criminal Law in Wartime Act and art. 5 of the Torture Convention Implementation Act, the Court has jurisdiction with respect to the serious offences which the Defendant is charged with.

Chapter 3: Rwanda

Introduction

1. Between 6 April and mid July 1994, hundreds of thousands of Rwandese citizens were killed. The estimations of the number of victims made by experts vary;
most come to six hundred thousand to – most probably – eight hundred thousand deaths(12), roughly 10% of the entire population. The large majority of the victims belonged to the Tutsi population. It is estimated that during those 100 days, 75% of the Rwandese Tutsi population was murdered. These mass murders occurred, as was established in many (scientific) publications and as mentioned in a large number of judgements by the International Criminal Tribunal for Rwanda (ICTR)13), with the aim to eradicate the Tutsi population as such. Therefore, there cannot be any doubt that during these months in 1994, a genocide took place in Rwanda. In the words of the Appeals Chamber of the ICTR(14): “The fact of the Rwandan genocide is part of world history, a fact as certain as any other, a classic instance of a ‘fact of common knowledge’.”

2. During those same 100 days, an armed conflict was fought out on Rwandese territory between the Rwandese government army (Forces Armées du Rwanda, hereafter: FAR) and the armed forces of the Rwandese Patriotic Front (hereafter: RPF), an army of rebels mainly consisting of (descendants of) Rwandese Tutsi who fled from Rwanda in preceding decennia. The RPF was a structured and disciplined army under a responsible command; it had a recognized command structure headed by general Paul Kagame.(15)

3. During this period, Defendant stayed at his parents’ house in Mugonero, a village in the Kibuye Préfecture in the western part of Rwanda. In this part of Rwanda there was no fighting between units of the RAF and the RPF. It is the opinion of the Prosecution that the Defendant committed the offences as charged to him in close relation with the war between these fighting forces and therefore they can be regarded as war crimes. The Prosecution also accuses the Defendant of the fact that these serious offences were acts of a policy of systematic terror against the Tutsi population, that also materialised in Mugonero and surroundings.

4. In this chapter, the Court will give a brief summary of the (political) historical background of the dramatic events that occurred in Rwanda during the period between 6 April and mid July 1994. The Court will also generally describe the course of the horrific events, based on documents accessible to the public and that form part of the criminal case file(16), as well as some reports that were written for the purpose of this criminal case.(17) In this summary, the Court will limit itself to facts which are essential for an adequate interpretation of the (context of the) charges against the Defendant. That is why in this summary hardly any attention is paid to the role of international participants (essentially France, Belgium, the United States of America, Rwanda’s neighbouring countries, the (security Council of the) United Nations and the Organisation of African Unity.

Period up to 6 April 1994

5. In its first judgement (in the Akayesu case), the Trial Chamber of the ICTR set out a detailed explanation of the history of Rwanda.(18)
Below, the Court will cite (parts from) paragraphs from this judgement about the colonial period and the decolonisation process, amplified on the relation between the different population groups.

“80. Prior to and during colonial rule, first, under Germany, from about 1897, and then under Belgium which, after driving out Germany in 1917, was given a mandate by the League of Nations to administer it, Rwanda was a complex and an advanced monarchy. The monarch ruled the country through his official representatives drawn

from the Tutsi nobility. Thus, there emerged a highly sophisticated political culture which enabled the king to communicate with the people.

81. Rwanda then, admittedly, had some eighteen clans defined primarily along lines of kinship. The terms Hutu and Tutsi were already in use but referred to individuals rather than to groups. In those days, the distinction between the Hutu and Tutsi was based on lineage rather than ethnicity. Indeed, the demarcation line was blurred: one could move from one status to another, as one became rich or poor, or even through marriage.

82. Both German and Belgian colonial authorities, if only at the outset as far as the latter are concerned, relied on an elite essentially composed of people who referred to themselves as Tutsi, a choice which, according to Dr. Alison Des Forges, was born of racial or even racist considerations. In the minds of the colonizers, the Tutsi looked more like them, because of their height and colour, and were, therefore, more intelligent and better equipped to govern.

83. In the early 1930s, Belgian authorities introduced a permanent distinction by dividing the population into three groups which they called ethnic groups, with the Hutu representing about 84% of the population, while the Tutsi (about 15%) and Twa (about 1%) accounted for the rest. In line with this division, it became mandatory for every Rwandan to carry an identity card mentioning his or her ethnicity. The Chamber notes that the reference to ethnic background on identity cards was maintained, even after Rwanda's independence and was, at last, abolished only after the tragic events the country experienced in 1994.

85. From the late 1940s, at the dawn of the decolonization process, the Tutsi became aware of the benefits they could derive from the privileged status conferred on them by the Belgian colonizers and the Catholic church. They then attempted to free themselves somehow from Belgian political stewardship and to emancipate the Rwandan society from the grip of the Catholic church. The desire for independence shown by the Tutsi elite certainly caused both the Belgians and the church to shift their alliances from the Tutsi to the Hutu, a shift rendered more radical by the change in the church's philosophy after the second world war, with the arrival of young priests from a more democratic and egalitarian trend of Christianity, who sought to develop political awareness among the Tutsi-dominated Hutu majority.

87. In 1956, in accordance with the directives of the United Nations Trusteeship Council, Belgium organized elections on the basis of universal suffrage in order to choose new members of local organs, such as the grassroots representative Councils. With the electorate voting on strictly ethnic lines, the Hutu of course obtained an overwhelming majority and thereby became aware of their political strength. The Tutsi, who were hoping to achieve independence while still holding the reins of power, came to the realization that universal suffrage meant the end of their supremacy; hence, confrontation with the Hutu became inevitable.

88. Around 1957, the first political parties were formed and, as could be expected, they were ethnically rather than ideologically based. (...)”

6. In November 1959, political tension ran up high and this accumulated in a first eruption of ethnic violence. Hundreds of Tutsi were killed and many thousands of Tutsi fled to neighbouring countries. The disturbances resulted in the end of the Tutsi monarchy and the proclamation of the (First) Republic by Grégoire Kayibanda, leader of the Mouvement Démocratique Républicain Parmehutu (hereafter: MDR Parmehutu), by far the largest political party, which proclaimed itself (literally) as a movement exclusively of and for Hutus. On 1 July 1962, Rwanda officially became independent. Kayibanda was its first president.

7. The early years of this First Republic were also characteristic of ethnic violence. The victims were mainly Tutsi. The MDR Parmehutu-regime considered supremacy by Hutus, the “majority population” (rubanda nyamwinshi), after all it made up for 85% of the population, equal to democracy and preached an aggressive and exclusive Hutu solidarity.(19) During these years, Tutsi refugees regularly executed small scale guerrilla attacks in Rwanda. Every time this lead to retaliation attacks against the Tutsi population, most of the time encouraged by the authorities and/or executed by Rwandese army units. Again, this violence forced thousands of Tutsi into exile. During the years between 1961 and 1967, in this cycle of violence, fleeing and armed attacks roughly 20.000 Tutsi were killed and some 300.000 fled to neighbouring countries. From this period derives the practice under Hutus to call the Tutsi attackers “inyenzi”, cockroaches.(20) Also around this time, Hutu authorities started to accuse Tutsis living in Rwanda of being accomplices (“ibyitso”) of these attackers. (21) In 1972-1973, a new period of heavy ethnic violence against Tutsi followed which resulted in them fleeing again in large numbers to neighbouring countries.(22)

8. These – and later – developments in Rwanda cannot be regarded separately from those in neighbouring country

Burundi. In the words of the OAU-report: “Its partner on a deadly seesaw”.(23) Burundi also had known a colonial administration by Germany first and Belgium thereafter and also in Burundi, the population was made up of 85% Hutu and 15% Tutsi and Burundi became independent in 1962 as well.(24) However, different from the situation in Rwanda, the Tutsi minority in Burundi remained in power. The OAU-report summarises the developments in Burundi as follows:

“Since 1962, Burundi's Tutsi minority has dominated successive governments, the army and other security forces, the judiciary, the educational system, the news media, and the business world. In Rwanda, such domination was seen to legitimise the country's own rigid quota system. In Burundi, it has led to a state of almost permanent conflict. The decades-long struggle for power between the elites of the two groups has led to the deaths of hundreds of thousands of Burundians, most of them civilians. Repeated Hutu challenges to Tutsi domination have been followed each time by vicious reprisals by the Tutsi army and police against Hutu civilians that were invariably disproportionate to the original provocation. In the years between independence and the genocide in Rwanda, no fewer than seven giant waves of killings occurred in Burundi: in 1965, 1969, 1972, 1988, 1991, 1992, and 1993.”(25)

And about the interaction between the developments in both countries, the report mentions:

“Victimisation of the Tutsi in one country was first aggravated by, and then used to justify, persecution of the Hutu in the other country and vice versa. Each act of repression in the one state became the pretext for a renewed round of killing in the other. Such retaliation was fuelled by the constant refugee movements across the shared border, the inflammatory tales told by all who fled, and the eagerness felt by many of them to join in any attempts to wreak revenge from their new refuge. Perhaps refugees were also emboldened by yet another perverse, common characteristic of the two nations: In both countries, massacres by governments went largely unpunished, and a pervasive culture of impunity began to complement the growing culture of violence that was emerging.”(26)

9. In 1973, primarily regional differences within the Hutu elite lead to the fall in Rwanda of the Kayibanda regime. General Juvénal Habyarimana, chief of staff of the Rwandese army, seized power and proclaimed the Second Republic. In 1975, he founded the Mouvement Révolutionnaire National pour le Développement (MRND), a party of which every Rwandese was a member from the day he or she was born.(27) Some years later, Rwanda also officially became a one-party State. The Habyarimana regime ended the ethnic violence, but not the policy of systematic discrimination against the Tutsi population and Tutsi exiles were still not allowed to return to Rwanda. When Hutu from other regions than the president’s (the north west) were increasingly barred from important positions in the administration and the army and the economic situation deteriorated, the regime was increasingly confronted with unrest among the population and opposition from dissident Hutus.

10. In the meantime, Rwandese exiles in Uganda and Kenya (mainly Tutsis) founded the RPF in December 1987. The objects of the Front, a political organisation with a military wing, were to secure the right of all Tutsi exiles to return to Rwanda and to end the one-party regime of Habyarimana.(28) On 1 October 1990, thousands of RPF fighters invaded the (north eastern part of) Rwanda. With that, an armed battle broke out between the RPF troops and the Rwandese army, which – although interrupted by negotiations and truces – continued until July 1994. The attack of 1 October 1990 was countered successfully by the government army while the RPF also did not succeed in permanently occupying a large part of Rwandese territory in the period afterwards (until 6 April 1994. But, in the words of the OAU-report:

“Even those sympathetic to the invaders' cause acknowledge that the attack triggered a series of pivotal consequences that ultimately led, step by step, to the genocide. In the words of one human rights group, “...it is beyond dispute that the invasion ... was the single most important factor in escalating the political polarisation of Rwanda.”(29)

11. The military operations of the RPF in – mainly – the north eastern part of Rwanda, which included serious offences against the civilian population, together with cynic anti Tutsi propaganda, generated a large flow of Hutu refugees towards the centre of Rwanda. In 1990, There were approximately 300.000 refugees, early 1993, after a new large scale RPF attack, roughly 1.000.000 more.(30) The OAU-report describes how the invasion and the guerrilla war increased the influence of radical Hutu factions in the government and the army, how they worsened the already immense economic problems and most of all how they gave credibility to the ethnic strategy of the regime(31) that was based on the retention of power and more in particular of the small circle around Habyarimana, known as the Akazu (the small house)(32):

“The invasion gave an ethnic strategy immediate credibility. The carefully inculcated fears about Tutsi conspiracies - fears about alleged plots to regain control of the republic and launch merciless attacks on all Hutu - that had been dormant for so many years were deliberately revived. The nation was reminded that the Tutsi were,

from the first, the “other”; they were all alien invaders. Was is therefore not self-evident that all Tutsi were accomplices of the invaders? Any question of class or geographical division among Hutu had to be submerged in a common front against the devilish intruders. It was not difficult for the government to exploit its own failures in order to rally the majority behind them. In a country where so many had so little land, it took little ingenuity to convince Hutu peasants that the newcomers would reclaim lands they had left long before and on which Hutu farmers had immediately settled.”(33)

12. From October 1990 onwards, massacres among the Tutsi population took place on a regular basis. The OAU-report says:

“On virtually each occasion, they were carefully organised. On each occasion, scores of Tutsi were slaughtered by mobs and militiamen associated with different political parties, sometimes with the involvement of the police and army, incited by the media, directed by local government officials, and encouraged by some national politicians.”(34)

At that moment it became clear what would develop into a mass event after 6 April 1994: massacres among the Tutsi population just because of their ethnicity, organised and stimulated by the authorities, executed by Hutu civilians and militiamen who were incited by a poisonous anti Tutsi propaganda and assisted by the police and the army.

13. In June 1991, president Habyarimana, being confronted with the war against the RPF, growing political unrest, a further deteriorating economic situation and heavy international pressure – in the military sense, Rwanda depended on France and in the economic senses on different donor countries – was forced to allow the formation of opposition parties and to start peace negotiations with the RPF. In April 1992, a government was formed consisting of the MRND (in the meantime renamed as the) Mouvement Révolutionnaire National pour la Démocratie et le Développement (MRNDD) and some former opposition parties. In that government, the MRNDD was the largest party, but still a minority. As a reaction to these developments, radical Hutu formed the Coalition pour la Défense de la République (CRD), a party that took an even more extreme position than Habyarimana, at various times opposed him violently and by doing so exercised a large influence on the MRNDD. Despite the criticism, CRD and MRNDD also often worked together.(35)

14. From June 1992, the new government held negotiations with the RPF in Arusha (Tanzania) about peace arrangements and a new division of power in Rwanda. This resulted in sub-agreements with respect to repatriation of refugees, the integration of the armed forces of the FAR and the RPF and, on 4 August 1993, in the signing of a final agreement based on which a broad transit government would be formed by the MRNDD, the former opposition parties and the RPF.(36) These agreements, extracted from Habyarimana, encountered heavy opposition from the Akazu, because in their opinion, execution of the agreements would mean loss of power, and the CRD, and would increase the polarisation in the country. Almost all former opposition parties broke up either into moderate parties or into so-called Hutu Power wings. The latter siding with the increasingly radicalising MRNDD and the CDR.

15. On 23 October 1993, the first Hutu president Melchior Ndandaye, democratically elected shortly before, was killed by Tutsi soldiers of the Burundi army. In the following massacres, an estimated 50.000 Burundians, Hutu as well as Tutsi, were killed and another 1.000.000 Hutus fled the country, many of them to Rwanda. These events contributed anew to the fear among Rwandese Hutu for (domination by) Tutsi, which fear was totally cashed in on by opponents of the division of power, agreed to in Arusha. In a joint statement, President Habyarimana’s own MRNDD and the CDR denounced the Arusha agreements as ‘treason’.(37) The battle between the supporters of Hutu Power and the moderates, who pursued implementation of the Arusha agreements, became more serious and violent.(38)

16. There is overwhelming evidence for the conclusion that from 1990, Hutu extremists incited the Hutu population continuously and systematically to hatred against their Tutsi compatriots.(39) Once again, the Court cites the OAU-report:

“A constant barrage of virulent anti-Tutsi hate propaganda began to fill the air. It was designed to be inescapable, and it succeeded. From political rallies, government speeches, newspapers, and a flashy, new radio station, poured vicious, pornographic, inflammatory rhetoric designed to demonise and dehumanise all Tutsi. With the active participation of well-known Hutu insiders, some of them at the university, new media were founded that dramatically escalated the level of anti-Tutsi demagoguery.”(40)

17. Publications in the Kangura paper were infamous. In December 1990, an article was published titled “Appeal on

the conscience of Hutus". The article opened with the theory that Tutsi extremists, who had invaded Rwanda in October (i.e. the RPF), relied on the support of "infiltrators in the country and the complicity of Tutsi in the country". Subsequently, all Tutsis were depicted as bloodthirsty and power mad and Hutus were called up to stand firm and be on their guard with regard to the Tutsi enemy "who is among us and waits for the right moment to decimate us";(41) the article finished with the "Ten commandments for Hutus", in which Hutus were incited to have no more mercy on Tutsis. Also in many later articles in Kangura, Tutsis - meaning all Tutsis – were depicted as "inyenzi" (cockroaches), "inkotanyi" (members of the RPF), "ibyitso" (accomplices); enemies against whom the Hutus had to defend themselves without showing any mercy.(42)

18. From mid 1993, that same message was disseminated in broadcasts of the radio station Radio-Télévision Libre des Milles Collines (RTLMC), co-founded by some members of the Akazu and rapidly becoming very popular. This radio station was used by the CDR to spread propaganda messages.(43) According to expert Des Forges, this radio station played "the most important role in convincing Rwandese that Tutsis were enemies who had to be eliminated".(44)

19. Party meetings also gave a stage to carry out the message that all Tutsis were "ibyitso" of the RPF and that Hutus had to defend themselves against them. In a saved speech of a vice president of the MRNDD, Léon Mugesera, to party militants, the following can be heard:

"And what are we going to do about those accomplices (ibyitso) here who send their children to the RPF? Why are we waiting and why don't we rid ourselves of those families? (...) We have to take responsibility ourselves and eliminate this scum... In 1959 we made a fatal mistake by letting them [the Tutsis] get away... They belong in Ethiopia and we can provided a short route back for them by throwing them into Nyabarongo river... I emphasize this point. We have to act now... Eradicate them all!"(45)

An announcement of the upcoming genocide

20. One remarkable element in the anti Tutsi propaganda was the continuous warning to Hutu men not to get seduced by Tutsi women. Tutsi women, was the message, were the secret sexual weapon the inkotanyi used to conquer Rwanda and therefore, the first of the above "Ten Commandments" was that every Hutu man who married a Tutsi woman, made her his concubine or hired her as his secretary, was a traitor.(46)

21. After the transition towards a multi party system (see above in paragraph 13), some political parties founded youth groups associated to them. The youth movement of the MRND(D) was called Interahamwe ("those who stand together" or "those who attack together"). These groups assisted in the organisation of party meetings, they took care of publicity and they spread propaganda material. In the strongly polarised and increasingly violent climate, youth groups were often mobilised as a gang of thugs to disturb meetings of rivalling parties and to attack their members. Gradually, the Interahamwe extended their violent actions to attacks on Tutsi civilians, organised by the authorities and executed in collaboration with soldiers.(47) Moreover, from 1992 onwards, the army, which was fully controlled by Hutu extremists, provided military training to the Interahamwe, who also received weapons and ammunition. This way the Interahamwe became an armed militia group that was put into action against political adversaries (moderate Hutus) and Tutsi civilians. The CRD youth movement, Izapuzamugambi ('those who have the same goal' or 'those who have one goal), played a similar role.

22. From October 1990 onwards, political and military leaders started to speak about the necessity of citizen self defence against the possible advancement of the RPF army. Early 1994, a commission of army officers drew up a secret action plan, called "Organisation de l' Auto-Défence Civile". Central point in that plan was that, in case the armed battle would resurge, the army and the civilian authorities would cooperate with leaders of the MRND and parties allied to it (which also meant its militias(48) in mobilising and armouring the civilians (i.e. the Hutu population). Whether or not within the scope of this plan, during 1993 and 1994 a huge amount of firearms was distributed to the municipalities and in the period between January 1993 and March 1994, 3.385.000 kilograms of machetes were imported, which was by large the double quantity of the preceding years.(49)

23. From times immemorial, from an administrative point of view Rwanda was known for its very efficient administration, its strong hierarchy and its intricate structure. The country was divided in 11 "prefectures", each headed by a "préfect" who received his instructions from the government (more in particular: the Minister of Interior Affairs). In turn, the préfect gave instructions to his "sub-préfects and burgomasters, who were political leaders as well as administrators in the communes in his préfecture.(50) The burgomasters instructed the "conseillers" of the sector within their municipalities. These "secteurs" were divided in "cellules" (700 to 1000 persons per cellule) each headed by a "chef de cellule".(51)

24. From early days, Rwanda was known for its very law abiding population.(52) This culture of extreme obedience to the higher authorities, lead to the fact that the Rwandese were used to submissively carry out all orders from above. Especially under the regime of Habyarimana there was strict obedience as to the carrying out of development related activities down to the lowest level of the administrative organisation of the country, the local community.(53) The OAU-report says that some have described this as “a culture of blind obedience”.(54)
6 April - mid July 1994

25. At the beginning of April 1994, the Arusha agreements were still not implemented and president Habyarimana – his country troubled by political violence and economically on the verge of bankruptcy (55) – was under severe international pressure to still accomplish this. On 6 April 1994, he travelled to Dar es Salaam (Tanzania) for a meeting about this with heads of state of the neighbouring countries. When he returned home that same evening, his plane, that just had started its descent to Kigali airport, was shot down by a rocket that was fired from the ground. The plane crashed on the terrain of the presidential palace. All passengers, including president Ntaryamira of Burundi and a number of important assistants of president Habyarimana, were killed. It is still not clear at present who was responsible for the shooting of the plane.(56)

26. What happened next is briefly summarised as follows in the judgement of the Trial Chamber of the ICTR in the so-called 'Media trial'(57):

“On 6 April, the plane carrying President Habyarimana was shot down, a crime for which responsibility has not been established. Within hours, killings began. Soldiers and militia began systematically slaughtering Tutsis. The Presidential Guard, backed by militia, murdered government officials and leaders of the political opposition. On 7 April 1994, the RPF renewed combat with government forces. (...)
On 9 April 1994, an interim government was sworn in, with Jean Kambanda as Prime Minister. A meeting of prefects took place on 11 April, and on 12 April the Minister of Defence appealed through the radio for Hutu unity, saying partisan interests must be set aside in the battle against the common enemy, the Tutsis. On 16 April, the military chief of staff and the prefect best known for opposing the killings were replaced. This prefect was later executed. Three burgomasters and a number of other officials who sought to stop the killings were also killed, in mid-April or shortly after. In the instructions given to the population, killing was known as “work”, and machetes and firearms were described as “tools”. In the first days of killing, assailants sought out and killed targeted individuals, Tutsi and Hutu political opponents. Roadblocks were set up to catch Tutsis trying to flee. Subsequently a different strategy was implemented: driving Tutsis out of their homes to churches, schools, or other public sites where they were then massacred in large scale operations. In mid-May the strategy turned to tracking down the last surviving Tutsis, who had successfully hidden in ceilings, holes, or the bush, or who had been protected by their status in the community. Throughout the killing, Tutsi women were often raped, tortured and mutilated before they were killed.”

27. As can be derived from the above, the genocide was no spontaneous eruption of violence, but a massacre, organised by the authorities, on a part of their own population, with the object to exterminate this population Group once and for all. The OAU-report describes this as follows:

“(...) A clique of Rwandan Hutu consciously intended to exterminate all Tutsi in the country, specifically including women and children so that no future generations would ever appear. (...)”(58)

And:

“(...) The Rwandan genocide did not occur by chance. It demanded an overall strategy, scrupulous planning and organisation, control of the levers of government, highly motivated killers, the means to butcher vast numbers of people, the capacity to identify and kill the victims, and tight control of the media to disseminate the right messages both inside and outside the country. This diabolical machine had been created piecemeal in the years after the 1990 invasion, accelerating in the second half of 1993 with the signing of the Arusha accords and the assassination in Burundi by Tutsi soldiers of its democratically-elected Hutu President. In theory at least, everything was ready and waiting when the President's plane went down.”(59)

28. Although preparations for the civilian self defence program had not been finished yet when the battle resurged on 7 April 1994, the guidelines were clear enough to put the process to work: the interim-government, the army and the civilian authorities (the regional and local authorities), political parties, the militia and the media closely worked together as a unit.(60) The interim government (Hutu-power leaders) gave orders to the prefects who, in turn, would transmit those to the burgomasters. These burgomasters instructed the conseillers and chefs de cellules of respectively the secteurs and the cellules, who finally gave the instructions to the population which mobilised their men. (61)

In addition, the political leaders used their authority and power to gather their militias and to supply them weapons and to send them to the country there where they were needed. (62) Also the high military sent the gendarmes and the militias in a very efficient way to parts of the country where they were needed. (63) Additionally, members of the armed forces provided military know-how.

29. The propaganda of the government was continued in all severity, also after 6 April 1994. The radio kept on broadcasting calls for hatred against the Tutsi population. Broadcasts from the RTLM were listened to intensely. Radio was also used on a large scale to transmit instructions to the Interahamwe, among others. A remarkable phenomenon in those radio calls was the use of language that was aimed to underline that the country was under siege; therefore, Hutus were called to “protect themselves” by using their “tools” for their “work” against “the accomplices of the enemy”.(64) With respect to the radio broadcasts of the RTLM, the Trial Chamber of the ICTR judged as follows in the 'Media Trial':(65)

“486. The Chamber finds that RTLM broadcasts engaged in ethnic stereotyping in a manner that promoted contempt and hatred for the Tutsi population. RTLM broadcasts called on listeners to seek out and take up arms against the enemy. The enemy was identified as the RPF, the Inkotanyi, the Inyenzi, and their accomplices, all of whom were effectively equated with the Tutsi ethnic group by the broadcasts. After 6 April 1994, the virulence and the intensity of RTLM broadcasts propagating ethnic hatred and calling for violence increased. These broadcasts called explicitly for the extermination of the Tutsi ethnic group.”

30. Everywhere in Rwanda road blocks were set up. From both the recent judgement of the Trial Chamber of the ICTR in the Bagosora e.a. case ('Military I'), and the reports written by Des Forges(66) and Clingendael, it appears that a distinction must be made between road blocks set up by the army and other road blocks that were set up by civilian authorities, being civilians with or without the permission of the authorities. The road blocks set up and manned by the army were located close to the frontline/army positions.(67) The other road blocks were the most dangerous and served uniquely to stop fleeing Tutsis and to subsequently eliminate them summarily. The selection of Tutsis was primarily based on identity papers.(68)

31. Numerous Hutus were the willing executioners of the genocidal policy of the authorities. According to expert Des Forges, fear was the biggest motive for common Rwandese to participate in the attacks on Tutsi. A fear that was based on the widespread and incorrect assumption that all Tutsis were supporters of the RPF and would be prepared to support the RPF in its military advance.(69)

32. In the meantime, at the battlefield the fight between the FAR and the RPF ended disastrously for the government army. From its north-eastern basis, the RPF army rapidly conquered large parts of the Rwandese territory. On 4 July, it captured Kigali.(70) Mid July, the opposition of the RAF was broken definitively, the interim government fled the country and the RPF announced a cease-fire. The civil war that had started on 1 October 1990 ended in a total victory for the RPF. The advance of the RPF army in western direction (including the Kibuye prefecture) and towards the South western part of the country was halted temporarily by the presence (as from the end of June) of armed forces, directed by France, in an operation which was ratified by the Security Council of the United Nations and called ‘Opération Turquoise’, which object it was to create a safe zone in that part of Rwanda. From the end of August, after the foreign troops had left, this (last) part of Rwanda also came under the authority of the RPF.

33. In order to answer the question whether Defendant is guilty of war crimes, the Court will, later in this judgement, pay explicit attention to the interrelation between the (course of the) civil war and the genocide and the meaning of it all. The Court already notes here that the Trial Chamber of the ICTR, in its first judgement (the Akayesu case) explicitly came up with the question whether, as contended in some circles, (71) the massacres among the Tutsi population(72) were solely part of the war between the RAF and the RPF. In the paragraphs 127 and 128, the Chamber answered this question as follows:

“127. Finally, in response to the question posed earlier in this chapter as to whether the tragic events that took place in Rwanda in 1994 occurred solely within the context of the conflict between the RAF and the RPF, the Chamber replies in the negative, since it holds that the genocide did indeed take place against the Tutsi group, alongside the conflict. The execution of this genocide was probably facilitated by the conflict, in the sense that the fighting against the RPF forces was used as a pretext for the propaganda inciting genocide against the Tutsi, by branding RPF fighters and Tutsi civilians together, through dissemination via the media of the idea that every Tutsi was allegedly an accomplice of the Inkotanyi. Very clearly, once the genocide got under way, the crime became one of the stakes in the conflict between the RPF and the RAF. In 1994, General Kagame, speaking on behalf of the RPF, declared that a cease fire could possibly not be implemented until the massacre of civilians by the government forces had stopped.

128. In conclusion, it should be stressed that although the genocide against the Tutsi occurred concomitantly with the above-mentioned conflict, it was, evidently, fundamentally different from the conflict. The accused himself stated during his initial appearance before the Chamber, when recounting a conversation he had with one RAF officer and Silas Kubicaana, a leader of the Interahamwe, that the acts perpetrated by the Interahamwe against Tutsi civilians were not considered by the RAF officer to be a way to help the government armed forces in the conflict with the RPF. Note is also taken of the testimony of witness KK which is in the same vein. This witness told the Chamber that while she and the children were taken away, an RAF soldier allegedly told persons who were persecuting her that “instead of going to confront the Inkotanyi at the war front, you are killing children, although children know nothing; they have never done politics”. The Chamber's opinion is that the genocide was organised and planned not only by members of the RAF, but also by the political forces who were behind the “Hutu-power”, that it was executed essentially by civilians including the armed militia and even ordinary citizens, and above all, that the majority of the Tutsi victims were non-combatants, including thousands of women and children, even foetuses. The fact that the genocide took place while the RAF was in conflict with the RPF, can in no way be considered as an exculpatory circumstance for it.”(73)

34. The OAU-report writes in this context: “For three weeks, the conspirators attempted to hide the rural genocide from the outside world. Shrewd manipulators of the media, the Hutu Power leaders blamed the carnage on civil war, which confused foreign correspondents who knew little about the real situation.”(74)

35. About this matter, Des Forges remarked that from the beginning, the war was intertwined with the genocide because government officials described the enemy foremost in ethnic terms rather than in pure political or military terms.(75) In this context, the Clingendael report refers to a politicide: during the initial phase of the genocide, with the aid of lists, the entire political opposition was murdered, regardless of their ethnic background. Since this materialised at the time of the battle between the advancing rebel army of the RPF and the government army FAR, for a considerable time, the killings could be presented as 'unmeant' side effects of the war. For months, this mystification of the truth was presented as a cover by the interim government to the outside world.(76)

36. The rapid advance of the RPF, as described earlier in paragraph 32 and the ensuing total collapse of the Hutu regime, forced millions of Hutu to flee; approximately 2 million of them to the neighbouring countries, many to Zaire.(77) One of them was Joseph M.

Chapter 4: The Defendant

1. Defendant was born on 1 July 1968 in [place of birth] (Rwanda) as the son of Eli Murakaza and [F1]. At a very early age he moved to Mugonero in the Kibuye préfecture in the western part of Rwanda. He has one brother,(Obed Ruzindana) and eight sisters ([F2], [F3], [F4], [F5], [F6], [F7], [F8] and [F9]). Originally, his father was the burgomaster of [place of birth], but after an accident, in which he became handicapped, he started a (trading) business in Mugonero. It is a Hutu family.

2. For a part, the Defendant went to primary school at the Seventh Day Adventists complex in Mugonero and after that he went to a boarding school in Kigali for his secondary education. After this he studied building engineering for three years in Bari (Italy).

3. At the end of 1992 Defendant returned to Rwanda and went to work for his father’s company for which he alternately stayed in Mugonero and Kigali. The business of Elie Murakaza included a shop in the centre of Mugonero, a coffee export company in Kigali and coffee and banana plantations around Mugonero. The shop sold food stuffs, household effects and building material. Defendant served on the clients of the shop in Mugonero, bought the shop’s stock and, together with his father, inspected the plantations.

4. The Murakaza family was very prosperous and was highly respected by the population of Mugonero and its vicinity.

5. Mid July 1994, Defendant fled to Kenya, via Zaire. During that period, his brother and some of his sisters also fled to a foreign country. On 20 September 1996, Obed Ruzindana was arrested in Nairobi (Kenya), in presence of [Defendant], on the suspicion of having been involved in the genocide. On 21 May 1999, Ruzindana was convicted by the Trial Chamber of the ICTR to 25 years imprisonment for genocide(78), which judgement was confirmed by the Appeals Chamber.(79). At this moment, he is serving his sentence in Mali. One of Defendant’s sisters, [F2], formerly a Judge in Kigali, was convicted by the District Court of Gitarama (Rwanda) to the death

penalty for crimes committed during the genocide. Later on, this punishment was converted into life imprisonment. The parents of [the Defendant] served time in prison on charges of involvement in the genocide. They were both released, his father for lack of evidence and his mother (temporarily) because of illness. After his detention, Elie Murakaza passed away. [F1] has left Rwanda.

6. At present, [F8], [F7] and [F3] are staying in Finland. [F6] and [F4] live with their mother in France and [F5] lives in the United States of America. [F9] is staying in Congo as a refugee.

Chapter 5: The investigation

Introduction

1. A criminal case such as this one is no routine business for a Dutch Judge. Not only does he have to judge crimes committed during the genocide in Rwanda in 1994, statements of witnesses from a foreign country far away and statements made before foreign organisations, but also the period of time during which the court hearing took place was very long in comparison with other cases. The court started hearings on 21 November 2006, which were closed on 9 March 2008. 13 pro forma court sessions took place and the actual trial lasted 21 days in court. From the day of his arrest, the Defendant spent approximately 2 years and seven months in pre-trial detention before judgement was passed on him.

2. Because of the special nature of this case, the complexity of the investigation it involved and the time of the legal proceedings, the Court has decided to report on and to account for the investigation which was carried out in this case in its judgement and not only in the official reports. Primarily, the Court will keep to the chronological order of the investigation. With respect to the actual trial, the ranging of the chapter will be thematically. Strong criticism came from the Defence Counsel – especially against the Prosecution – with regard to the quality of the investigation. In this chapter, the Court will deal with this criticism.

Course of the proceedings

IND proceedings

3. On 11 November 1998, Defendant travelled with a false Ugandan passport and under a false name [false name] from Kenya to the Netherlands. Upon arrival in the Netherlands, he applied for asylum and he was interviewed by the Immigration and Naturalisation Service (IND).(80) On 1 July 1999, another interview was held and Defendant stated then – rendered briefly – as follows.(81) In July 1994, the Defendant fled his domicile Mugonero because the RPF (see Chapter 3) massacred the Hutus. He was a sympathiser of the MRND and expected - being a Hutu – that upon his return to Rwanda he would be killed by the RPF. Defendant also feared for his life because he had acted as a defence witness at the ICTR in the case against his brother, Obed Ruzindana. Besides, he was afraid to be arrested by the RPF since this had also happened with family members of his (his sister, brother and parents). Finally, he expected to be prosecuted by the regime because he is an academic. This is what the Defendant said to the IND.

4. On 12 August 1999, the Secretary of Justice turned down the Application of Defendant for admission into the Netherlands and a residence permit because there was no reason whatsoever to assume that the Defendant had good reason to fear prosecution in Rwanda in the sense of refugee law.(82) Defendant submitted a notice of objection against this decision.(83) The Court is not aware of any decision on this objection and if there is, when it was taken and what it consists of. However, the case file mentions that several years later, on 8 February 2005, the (authorised representative of) Defendant was informed about the fact that his file for processing his application had been transferred to “Unit 1F” of the IND, since there were indications that article 1F of the Convention Relating to the Status of Refugees (84) would be applicable to his application for asylum.(85)

5. On 14 February 2006, the Minister of Foreign Affairs wrote an individual official report with regard to the Defendant.(86) In this report, the following is stated, among others:

2. (...) it is clear that this person was in charge at a road block which was set up 50 metres from his home in Mugonero and that he escorted a group of soldiers at their departure for the attacks and the men-hunt. There are numerous witness statements against this person and his brother mentioning that at the road block, they decided about life and death of other people.
3. There are strong reasons to assume that this person was involved in the massacres in Rwanda in 1994. There are

a number of charges uttered against him, being:
(...)
Killed a man, named Murego, with his own hands after he became at odds with this person;
Ordered to kill Tutsis in an ambulance in the vicinity of the road block in Mugonero.
5. The person involved has been indicted directly in the Kibuye region by the Gacaca of Gabiro, Mahembe district, Rusenye area, for his participation in the genocide.
6. To the best of our knowledge, no warrant has been issued against this person, but it is very likely that this will happen.

Additional information:
(...)
Almost all interviewed sources were certain about the fact that this person participated in the massacre in Mugonero.

Investigation carried out by the National Criminal Investigation Service (NCIS) prior to the arrest of the Defendant

6. On 18 May 2006, the IND transferred Defendant's file to the National Office of the Public Prosecution Service (Prosecution).(87) Subsequently, on 23 May 2006, this Service handed over the file to the NCIS, International Crimes Team (ICT) and ordered that the ICT initiate an investigation into possible indictable offences by the Defendant. The NCIS consulted public sources, including via the internet, (88) and wire tapped the telecommunication services that were used by Defendant.(89)

Contact between the Public Prosecution Service and the Rwandese Parquet Général

7. After this investigation, the Prosecution consulted the Parquet Général in Rwanda. At the Parquet Général Defendant appeared to be known in relation to an investigation by the Provincial Parquet of Cyangugu (south west Rwanda) in 1999. This investigation did not include an arrest warrant because Defendant was staying abroad and the Parquet Général concentrated on the prosecution and trial of already arrested accused in Rwanda. On 14 June 2006, the Prosecution issued a first request for legal assistance to the Rwandese authorities and requested their permission to interview witnesses in Rwanda.(90) In connection with this request for legal assistance the Rwandese authorities, at their own initiative, heard the witnesses from the so-called 'Cyangugu file' anew.(91)

Continuation of the investigation carried out by the NCIS.

8. In the period between 22 July and 5 August 2006, the NCIS, with permission granted by the Rwandese authorities, heard 12 witnesses.(92) Eight of them appeared in the 'Cyangugu file' and the other four were traced by the police in connection with the statements of these witnesses.(93) The examination of the witnesses by the NCIS in Rwanda gave cause to the hearing of witnesses outside of Rwanda. For instance: witness [witness 7], who appeared in the 'Cyangugu file', testified about a German doctor and his family who allegedly were threatened to be killed "at the road block of Defendant". (94) Via internet the name and the address of this German doctor were found - [witness 4] – and subsequently the doctor and his wife were traced and heard as witnesses (see also chapter 8: crimes against the family) [witnesses 3 and 4]).

Arrest of the Defendant

9. With the permission of the Public Prosecutor, the Defendant was arrested on 7 August 2006 in Amsterdam on suspicion of having committed war crimes.(95) Right after the arrest, the Examining Judge carried out a search for the purpose of seizure in the house where Defendant was arrested and in his own house. In the house of Defendant, the following goods were found and seized: various articles, DVD's and books about the genocide in Rwanda, a computer containing a large number of email messages (to and from persons who are suspected of involvement in the genocide), the Rwandese passport of the Defendant and three lists of genocide accused (not including the name [Defendant] or Joseph Murakaza).

Contact between the Public Prosecution Service and the ICTR

10. In a letter dated 11 August 2006, the Public Prosecution Service made mention of the arrest of Defendant to the Prosecutor of the ICTR, S. Rapp, and asked him to indicate his wishes with respect to the prosecution of the Defendant. Subsequently, during the months of August and September 2006 there were contacts between the Prosecution and the ICTR Prosecutor. During these contacts it was discussed that the ICTR, in view of resolution 1503 (2003) and resolution 1534 (2004) of the UN Security Council, would have to finish off matters and would be unable to try the Defendant. Extradition of the Defendant to Rwanda was no option either. The Public Prosecution

Service also indicated to the ICTR Prosecutor that it was not possible to try the Defendant for genocide with respect to the afore mentioned unlawful conduct since Dutch law, with respect to this serious offence, does not have universal jurisdiction regarding facts that were committed prior to October 2003. In addition, the possibilities that the Dutch law offers to take over prosecution and the possibilities of the ICTR to transfer prosecution to national organisations have already been discussed. The Public Prosecution Service and the ICTR Prosecutor agreed that a so-called `prosecutor's referral´ would be the right way to transfer prosecution for genocide to the Netherlands. This resulted in a letter from the ICTR Prosecutor, dated 3 October 2006, to the Ambassador of the Netherlands in Dar es Salaam, Tanzania, with the request to redirect the appendix containing the “request to accept transfer for national prosecution from the Prosecutor of the International Criminal Tribunal for Rwanda to the Minister of Justice of the Kingdom of the Netherlands” of 29 September 2006. On 27 November 2006, the Minister of Justice granted this request which refers to the 'prosecution for the crimes of genocide and complicity in genocide', and he authorised the Public Prosecutor at the Dutch Public Prosecution Service to take over the prosecution of Defendant.(96)

Investigation by the NCIS after the arrest of the Defendant

11. The Prosecution asked the Finnish authorities to hear three sisters of Defendant who live in Finland.(97) The Finnish National Bureau of Investigation answered that, in view of their family relationship with Defendant, these three witnesses had indicated that they did not want to testify before the Dutch authorities.(98) Subsequently, the Prosecution requested the French authorities to hear two other sisters and Defendant’s mother.(99) These three persons made a statement before the NCIS. Furthermore, with the permission of the ICTR, the NCIS travelled to Arusha (Tanzania) and Mali to interview nine witnesses who were in detention either as accused or as convicts of the Tribunal, including Defendant’s brother.(100) These witnesses were heard by order of the Prosecution because they could possibly render exculpatory statements for the Defendant.(101) The brother of Defendant, Obed Ruzindana, refused to make a statement.(102)

12. After the Defendant’s arrest, the NCIS travelled five times to Rwanda. During these trips, witnesses were heard, crime scenes were visited and photographed and measurements taken. In addition the NCIS interviewed a witness in France(103), a witness in Switzerland(104) and two witnesses in Finland.(105)

Preliminary judicial inquiry I

13. On 12 October 2006, at the request of the Public Prosecutor the Examining Judge initiated a preliminary inquiry with respect to the case with case number 09/750009-06 (hereafter: GVO I).(106) The charges on the request involved, briefly represented, crimes against the passengers of the ambulance and against the family [witnesses 3 and 4] and crimes committed during the attack on the Seventh Day Adventists complex. These offences were principally charged as war crimes and alternatively as torture.

14. On 7 November 2006, the Examining Judge appointed Mrs. dr. A. des Forges as expert in order to initiate an inquiry to get answers to the different questions formulated by the Examining Judge about the situation in Rwanda prior to and during the genocide in the period between April and July 1994.(107) The expert report written by A. des Forges was received on 20 November 2006.

15. In the period between 11 and 18 November 2006, the Examining Judge, on his own initiative and in the presence of the Defence Counsel and the Prosecutor, heard three witnesses in Rwanda within the scope of this preliminary inquiry.

First Pro Forma hearing of the Court

16. The Defendant was summoned to appear in Court on 21 November 2006. The charges on the indictment were the same as on the order to initiate the GVO I (see above). This hearing had a pro forma nature. The Defendant and his Counsel were present. At that time, the Defence Counsel did not give an indication of his requirements as to the investigation. The Court gave the Examining Judge the order to hear the following persons as witnesses: [witness 1], [witness 8], [witness 10], [witness 7] and [witness 15] – witnesses of which the Examining Judge had already decided ex officio to hear them – and to perform all investigative activities that she deemed necessary.

Preliminary inquiry II

17. On 5 January 2007, at the request of the Public Prosecutor the Examining Judge initiated a second preliminary inquiry (hereafter: GVO II) with respect to the charges that were mentioned on the second indictment. These charges involved the rape and murder of a number of women and the crimes against the grand children [name

witness 5]. In addition, in this indictment all charged facts, also those on the first indictment, are also charged as genocide. In her decision dated 11 January 2007, the Examining Judge rejected this request in so far as the alleged criminal acts by Defendant in the indictment qualified as genocide, but allowed the request for the remaining part.(108)

Pro Forma hearings

18. On 12 February 2007, a second Pro Forma hearing took place. The Defendant and his Counsel were not present then. Despite a written request by the Court to appear at the hearing on 5 March 2007, in order to give an indication as to the requirements with respect to the investigation, neither the Counsel of the Defendant, nor Defendant himself, appeared at the hearing. During that hearing, the Court instructed the Examining Judge to a) hear as witnesses (for the Prosecution)[witness 9], [witness 14] and [witness 20], to b) perform an on-site visit at the Seventh Day Adventists Complex and to c) hear 18 defence witnesses in Congo-Brazzaville and Cameroun (the Counsel had given notice of these witnesses to the Examining Judge). First by letter of 10 May 2007, the Defence Counsel indicated his requirements regarding the investigation to the Court. Among other matters, the Counsel requested then to add the statements that had been made by the witnesses heard so far before other organisations – as witnesses or Defendants – to the criminal case file. These involved statements made before the gacaca, the judicial authorities in Rwanda, the ICTR and the judicial authorities in the United States of America (hereafter: US). The Counsel explained the reason why he wanted to have these statements added to the criminal file: this way, the consistency of the subsequent statements given by a certain witness before different authorities could be tested.

19. The Counsel's requests regarding the investigation were dealt with extensively during the hearings on 11, 16 and 21 May 2007, in presence of the Counsel and the Defendant. Before this hearing, the Prosecution issued a second indictment. The charges in this indictment were the same as on the request to initiate the GVO II (see above). During the hearing of 16 May 2007, the Prosecution agreed with the request of the Counsel to add statements made by witnesses elsewhere to the criminal file and informed the Counsel that requests for legal assistance for this purpose had already been prepared. In addition, during these Pro Forma hearings, the Prosecution and the Counsel took positions (partly written) concerning the question whether the Court had jurisdiction with respect to the crime of genocide. The Prosecution as well as the Defence replied to written questions asked by the Court.

20. During the subsequent Pro Forma hearings - 24 July, 8 October and 20 December 2007, 18 February, 23 April, 11 July and 5 September 2008 – the progress of the investigation was discussed, every time in presence of the Counsel and the Defendant.

Investigation carried out by the Examining Judge at the instruction of the Court

21. On 19 March 2007, the Examining Judge conducted the on-site visit at the Seventh Day Adventists Complex, the church near the 'École primaire de Ngoma', the two bridges near Mugonero and the market square in Mugonero. The Public Prosecutor, the Counsel of the Defendant and the NCIS were present during these on-site visits.

22. In May 2007, the Examining Judge travelled to Cameroun to hear seven (out of 18 indicated by Counsel) witnesses. Three witnesses were heard.(109) The other four witnesses did not respond to the call to be heard by the Examining Judge.(110) During the period between May and June 2007, the Examining Judge heard four witnesses for the defence in Brazzaville (Congo).(111) The other witnesses, who were to be heard in Congo, did not appear.(112)

23. In total, the Examining Judge made seven rogatory trips to Rwanda to hear witnesses on the instruction of the Court. In addition, the Examining Judge heard a witness in Switzerland,(113), a witness in France(114), and three witnesses in the Netherlands.(115)

24. During the Pro Forma hearing on 24 July 2007, the Court informed the parties to the proceedings that, following the expert report written by A. des Forges – through the intermediary of the Examining Judge – would put some additional questions to the expert. The Court also provided the Prosecution and Counsel the opportunity to present additional questions to the expert. The Court received the answers of the expert to the questions of the Court, the Public Prosecutor and the Defence Counsel in December 2007.(116)

25. The Counsel requested the Court to hear one of the officers [reporting officer 1], of the NCIS in Court concerning the cause of the investigation, the manner in which the investigation was held and the way in which the NCIS 'tracked down' certain witnesses. On 18 February 2008, the Court rejected the request to hear the above

mentioned [reporting officer 1], but it provided the opportunity to the Counsel to submit written questions – through the intermediary of the Examining Judge – to the officer. Subsequently, [reporting officer 1] answered the questions submitted by Counsel in writing.

General remarks with respect to the witness examinations

26. The NCIS and the Examining Judge heard a large number of witnesses. With regard to the procedure around witness examinations, the Court makes the following remarks.

Compensations, remunerations and transportation

27. On request of the Prosecution, employees of the Parquet Général traced the witnesses who were heard by the NCIS and the Examining Judge in Rwanda and escorted them to Kigali for examination.(117) This choice was made in connection with the safety of the witnesses; if the Prosecution would have sent out a couple of white Dutch detectives to look for witnesses in order to interview them, it would have been quite clear in the area who was acting as a witness in this case.(118) The witnesses who were heard by the NCIS did not receive a payment for their statements; however, the NCIS provided food and beverages on the day(s) of examination. The NCIS refunded the costs for travel and residence of the witnesses to the Parquet Général. These costs have been justified to the NCIS by an administrative employee of the Parquet Général who had been assigned by the Procurator General.(119) During the last trip of the NCIS, five witnesses requested to be eligible for compensation because of loss of income as a consequence of the witness examination. The Parquet Général awarded the requested compensation to the witnesses. Upon consultation with the Prosecutor, the NCIS refunded those costs (RF 7000 in total) to the Parquet Général.(120)
The witnesses for the defence who were heard by the Examining Judge in Congo and Cameroun only received a refund for their costs. The amount of this refund was established in accordance with calculations used by the UN criminal tribunals. The witnesses in Congo received € 16 each and the witnesses in Cameroun received € 40.

28. During the rogatory trips of 26 March and 3 April 2008, the Examining Judge heard three witnesses. These examinations lasted several days. The witnesses received a compensation for each day, which amount had been established by the Chief Prosecutor of the Parquet Général at (roughly) € 7.(121) The same applies to the witnesses who were heard by the Examining Judge in December 2008 and in January 2009. [Witness 18], heard by the Examining Judge in Switzerland, received compensation for the costs he had made in accordance with Swiss rules and regulations.

Psychologist & social worker

29. No psychologist was involved during the examinations carried out by the NCIS. During some interviews of the Examining Judge, a trauma psychologist was present to provide support to those witnesses who needed this and to render advice to the Examining Judge when asked for. For the second rogatory trip to Rwanda, the Examining Judge engaged a Rwandese social worker who was available to the witnesses before and after the examinations and during breaks.(122) During the examinations of the witnesses for the defence, no psychologist and/or social worker was present.

Contacts by telephone between Counsel and Defendant

30. On 11 October 2006, the Examining Judge instructed the police, based on article 177 CP, to find out whether video- and/or audio connection could be established between the location of the (witness)examinations in Rwanda and the detention centre where the Defendant stayed at that moment, in order to provide the opportunity to the Defendant to be ‘present’ during the examinations of the witnesses.(123) This did not appear to be possible.(124) Subsequently, the Examining Judge provided the opportunity to the Defence Counsel to have contact by telephone with his client, during the breaks of each interview, by means of a telephone made available to the Counsel by the Examining Judge.

Influencing and disappearance of witnesses

31. As mentioned above, during the hearing of 21 November 2006 the Court gave the instruction to the Examining Judge to hear, among others, witnesses [witness 7] and [witness 15]. The NCIS and the Examining Judge have not been able to hear these witnesses, because they could not be found. At the time of the second Pro Forma hearing of 12 February 2007, the Prosecution put forward that there were indications that the Defendant and/or his brother tried to influence witnesses and that the two said witnesses had ‘disappeared’. Prior to this hearing, the Prosecution made documents available to the Court and the Defence which contained indications to that respect.

32. In the course of the investigation, it became clear that great pressure had been exercised on a number of witnesses not to tell the truth. Based on facts and circumstances detailed hereafter, the Court has established that the family of the Defendant was involved in the disappearance of the two witnesses mentioned above and the pressure exercised on other witnesses and that Defendant was informed about this (afterwards) by his sister.

33. The relevant facts and circumstances are as follows.

34. In November 2006, the witness [witness 1], witness in the case concerning the serious offences against the passengers of the ambulance, testified by telephone to the NCIS that there were rumours 'in the village' – the Court assumes that he means Mugonero - that [witness 7] and [witness 15] had fled to a foreign country because they did not want to testify anymore in the case against Defendant. [Witness 1] had heard that the group around [Defendant] was involved since his brother, Obed Ruzindana, had contacted people in the area by telephone. [Witness 1] stated before the NCIS that he suspected that [witness 7] and [witness 15] had been taken abroad to make sure that they would "withdraw" their statements.(125)

35. In addition, [witness 1] stated that a month earlier, he had been approached by [witness 21] who told him that the brother of Defendant wanted him out of the country so he could not testify anymore. After [witness 1] refused to cooperate, Obed Ruzindana contacted [name] – i.e. [witness 28] - (126), a friend of [witness 1]. Obed Ruzindana gave [witness 28] the instruction to "kindly ask [witness 1] to change his statement": [witness 1] should say that the ambulance had to turn around by order of the soldiers who collaborated with Ruzindana instead of at the instruction of Joseph. [Witness 28] transmitted the request of Obed Ruzindana to [witness 1], but he also advised [witness 1] to contact the Rwandese authorities because he was afraid of Obed Ruzindana.(127) [Witness 1] did not feel safe because he had not agreed to Obed Ruzindana's proposition and that is why he got in touch with M. Kagiraneza, Prosecutor of the Parquet Général in Kigali.(128)

36. In November 2006, the NCIS also heard [witness 21]. He stated that he knew Obed Ruzindana via [F 10], who lived in the same village. [F 10] is the son of [F 3] and therefore a cousin of the Defendant. [F 10] had contacted him because he wanted to know what the people had said about Defendant during the gacaca. [Witness 21] told [F 10] that [witness 1] had made a statement about an incident at a barrier. Shortly thereafter, Obed Ruzindana contacted [witness 21] with the request to approach [witness 1] and to ask him whether he actually had made such a statement and whether he would be willing to withdraw the statement. If [witness 1] would be willing to do that, Obed Ruzindana would help him to "relocate". [Witness 21] did approach [witness 1] who told him that he was unable to change his statement and that [witness 7] was the one who had made a statement about [the involvement of the Defendant] in a massacre in Mugonero.(129)

37. [Witness 21] also stated that he, at the request of Obed Ruzindana, visited [witness 7], after which [witness 7] and Obed Ruzindana had a telephone conversation with the mobile telephone of [witness 21]. He could not hear very well what was being said, but he heard [witness 7] say the following to Obed Ruzindana: "Yes, that is okay, no problem". After this, [witness 21] had not seen [witness 7] anymore.(130)

38. Historical data recovered from the GSM of [witness 21] show that in the period from September up to and including November 2006 there have been incoming and outgoing telephone calls with Obed Ruzindana.(131)

39. In March 2007. [witness 29], the partner of witness [witness 7], and [witness 30], the wife of witness [witness 15] confirmed to the NCIS that their husbands had disappeared since September 2006.(132) [Witness 29] stated additionally that her husband had told her that he would be going away, just like [F 10] (the cousin of Obed Ruzindana and Defendant).(133) These witnesses could not be traced.(134)

40. From wiretapped conversations the following appears:
On 3 January 2007, Defendant talked to his sister, [F3]. During this conversation she told Defendant that she had recently talked to someone who had told her the following: "that ambulance driver was the meanest one". Upon this, Defendant asked his sister who the ambulance driver was. [F3] answered: "You know we are talking about three people... whom we knew beforehand... those two were able to escape and when they approached the third one, this person told this story to the authorities... he had been approached to flee as well, but he refused to cooperate... and he told it... and the person who had given the telephone number was also terrorised and in the end he told everything... and the person who helped them flee the country was supposedly murdered... in any case, he cannot be traced anymore".(135)

41. During a conversation between the Defendant and his brother, Obed Ruzindana, on 7 January 2007, the following excerpt can be overheard:

Defendant: For the remaining part... I will be informed about what was said a couple of days ago.
Ruzindana: That is the way it goes, will those people in Arusha show you everything?
Defendant: Everything... Everything... I already know the names... and shortly I will have all kinds of information... everything they...[B3] and others have told.
Ruzindana: These [B3]... I know them all.
Defendant: I will have all this information tomorrow.
Ruzindana: Whether or not the statement is incriminating or exculpatory?
Defendant: Everything... I know them all.
Ruzindana: A couple of days ago they also heard 5 other people in Rwanda ... among whom the person who stole the goods... and he also testified... I will get all the information tomorrow.
Defendant: I will have everything tomorrow.(136)

42. Based on the above, it has become apparent that, in early January 2007, both [F3] and Obed Ruzindana, knew about (in any case part of the contents of) the statements which had been rendered by various witnesses against the Defendant until then, and the fact that still more witnesses were to be heard. Furthermore, it has been established that [witness 21] and [witness 28] were approached by the brother of Defendant and requested to convince other witnesses to adjust their statements in favour of the Defendant. For this purpose promises were made in exchange for the adjustment of the statements.

43. Of all witnesses about whom it is clear that they had been approached, only one witness stuck to his statement ([witness 1]); the other two witnesses ([witness 7] and [witness 15]) disappeared and therefore could not be heard by the NCIS and the Examining Judge. During the hearing, Defendant stated that he did not discuss the proceedings substantially with his family.(137) The opposite appears from the above.

44. The Court considers this procedure, i.e. the influencing and disappearance of witnesses extremely shocking and alarming.

45. From statements by other witnesses in the case file, such as [witness 8](138), [witness 22](139) and [witness 17](140), it appears that the fear for the family of the Defendant, in particular for Obed Ruzindana, is deeply rooted.

Obtaining ‘foreign documents’

General

46. As mentioned above, Counsel has requested to add statements to the criminal file which already had been rendered by witnesses before other organisations, being statements before the gacaca, the judicial authorities in Rwanda, the ICTR and the judicial authorities in the United States of America (hereafter: US) and from the start, the Prosecution made it clear that it would make a serious effort to obtain those statements. In the course of the investigation, statements were added to the file which had been rendered by witnesses in this case before investigators and/or judges of the ICTR, the US and Canadian authorities, and the gacaca. The perseverance it took the Prosecution to obtain these different statements and the time it took, is illustrated by the following.

Documents from the ICTR

47. At different moments in time during the criminal proceedings, the ICTR made statements available which witnesses had rendered before investigators and/or judges of that Tribunal in their capacity of accused or witness. The Prosecution encountered the problem that it was not clear from the beginning to the ICTR that the Prosecution wanted to submit the statements in public criminal proceedings in the Netherlands. On 21 December 2007, the ICTR Prosecutor filed a motion to the ICTR Trial Chamber to accomplish that the statements be made available to the Dutch Prosecution Service (disclosure).(141) On 4 March 2008, the ICTR Trial Chamber decided that these statements could indeed be made available, but that the protective measures would still have to be applied mutatis mutandis in any proceedings before judicial authorities in the Netherlands.(142) Therefore it was not allowed that the Court would read from the statements in a public hearing or would include them as evidence in the judgement.(143) After consultation with the Prosecution, the ICTR Prosecutor requested the ICTR Trial Chamber on 17 July 2008 to lift these protective measures.(144) The NCIS asked all witnesses involved individually for their permission to lift the protective measures that were in force for them. They all gave their permission. On 13 August 2008, the Trial Chamber subsequently lifted all protective measures, making it possible to use the statements from that moment onwards in a public trial in the Netherlands.(145) Prior to the Pro Forma hearing of 5 September 2008, the Prosecution added five document files to the case file containing witness statements from witnesses for whom the protective measures were still in force. Already in July 2008, the Prosecution had made

statements of witnesses, who did not fall under the protective measures, available to the Court and the Defence.

48. Shortly before the beginning of the trial, the Defence Counsel submitted a witness statement to the Court from witness [witness 8] that was rendered before ICTR investigators. Subsequently, the Court added this statement to the file.(146) During the trial the Prosecution added three more witness statements to the file which had been rendered by witness [witness 24] before ICTR investigators.(147)

Documents from the United States of America and Canada

49. The Prosecution sent two requests for legal assistance to the U.S. which included the request to supply the statements rendered by three witnesses in the case against Enos Kagabe. In first instance the Prosecution received the statements which two of the three(148) witnesses had rendered before US police officers in Rwanda. However, it appeared that these witnesses had also been heard during a hearing in the U.S. The recording of a testimony during a hearing is represented in so-called transcripts. These are verbatim recordings of questions and answers during the hearing. Subsequently, the Prosecution requested these transcripts from the US judicial authorities. On 20 December 2007, the U.S. contact officer of the Ministry of Justice had received the case file. If transcripts had been made available, they should be included in this case file. During the Pro Forma hearing on 23 April 2008, it was clear that the contact officer had indeed found the transcripts but that he still awaited permission to transfer these documents to the Netherlands. At that moment the Prosecution had no clue as to the date on which this permission would be granted.

50. During the Pro Forma hearing of 11 July 2008, the Prosecution announced that the statements of two witnesses from the U.S. had been received by the National Office of the Public Prosecution Service, but that these statements appeared to be incomplete. On enquiry it turned out that part of these statements had been possibly destroyed during a flood and that the statement of the third witness had been entirely destroyed during this flood. However, during trial the Prosecution announced that part of the statements had 'surfaced', but that the US authorities had objected to the use of these documents in a Dutch trial. The U.S. authorities adopted the standpoint that the already forwarded statements had been forwarded by mistake.(149) After oral pleadings by the Counsel, the Prosecution received permission from the US authorities after all, and the transcripts provided by the US authorities were added to the case file.(150)

51. With respect to the statements which had been rendered in this case by witnesses in Canada, the Court received the statement of one witness. During the Pro Forma hearing on 5 September 2008, it became apparent that the Canadian authorities refused to submit the statement of the second witness, since this could harm the Canadian investigation. Apparently, the first statement was supplied by mistake by the Canadian authorities.

Documents from the gacaca

52. In 1996, a law was enacted in Rwanda regulating the prosecution of persons who had been accused of genocide at a national level.(151) Early 2000, approximately 2.500 persons had been tried by the courts in Rwanda and another 120.000 people waited their trial in overcrowded prisons.(152) In 2000, the authorities regenerated the traditional court, the gacaca, to lift the pressure off the national Courts.(153) A gacaca is a traditional form of dispute settlement in the community and the word literally means 'lawn' or 'grass' and refers to the fact that parties and members of the gacaca were actually sitting on the grass during the proceedings.

53. Every gacaca is formed by a General Assembly, consisting of all members of the community. From this group the General Assembly elects nine judges and five deputies. The judgement of a gacaca court may be contested by a gacaca court of appeal. The gacaca operates in two phases: in the first phase, statements are collected from both the perpetrators and the victims. In the second phase, the accused are divided into different categories and brought to trial. Those categories depend on the seriousness of the crime.

54. On 9 July 2007, the Prosecution sent a request for legal assistance to Rwanda in order to obtain the gacaca testimonies of 14 witnesses.(154) In the period between 31 July 2007 and 15 August 2007, the NCIS stayed in Rwanda for this purpose. During this investigation, the NCIS received various gacaca-cahiers from the Rwandese authorities. Most of the time, the gacaca testimonies are written by hand in continuing cahiers or files.(155) The documents included charges against Defendant before the gacaca of the Uwingabo, Karongi region(156) and before the gacaca of the Cyanya secteur and Gitovu, Karongi region(157), and a conviction of Defendant to 15 years imprisonment before the gacaca in the Gishyita secteur, Karongi region.(158) In the latter document, Defendant is referred to as a 'category 1' Defendant, i.e. belonging to the heaviest category of persons accused of genocide.

55. During the Pro Forma hearing of 18 February 2008, the Counsel indicated that – as far as he could see – at least three gacaca testimonies were lacking in the file and he requested the Prosecution to add these to the file as yet. The Prosecution promised to do this. Furthermore, following the Pro Forma hearing of 23 April 2008, the Prosecution promised that it would instruct the NCIS to carry out an additional investigation into possible gacaca testimonies in Mugozi. During that hearing, the Prosecution asked the attention of the Court and the Defence for the difficulties they encountered in their search for gacaca testimonies. In fact, there is no central registration system for gacaca testimonies which are written by hand and not stored under a certain name. Every testimony must be studied one after the other "in hopes of recognizing the names of the witnesses and/or Defendant between the piles of paper". In March and May 2008, the NCIS received additional gacaca documents.(159) On 16 May 2008, the NCIS went to the office of the gacaca in Mugozi, Kibingo, in order to obtain the gacaca testimonies of three witnesses. Once at that location, it appeared that the administration and storage system of the witness statements were of such a nature, that looking for names would be a very labour-intensive action. Since it was impossible to search the administration within such limited time, in consultation with the Prosecution it was decided to call off the search.(160)

56. During the trial it appeared that the dates on the gacaca testimonies were rather unclear. Many testimonies did not carry a date of rendering. As a consequence, the NCIS drew up an additional official report containing some indications for the Court and the parties to the proceedings to get some idea of the dates of these testimonies.(161)

The Trial

57. The trial could not start earlier than October 2008 because, until that time, a large number of foreign statements were still 'in the pipeline' and consequently the file was not yet complete. The postponement of the trial until October 2008 had no relation to the expected judgement of the Supreme Court concerning the District Court's jurisdiction on the genocide crimes in this criminal case. That judgement was rendered on 21 October 2008, shortly after the beginning of the trial. As already mentioned, the Supreme Court confirmed what the Court had decided on 24 July 2007, i.e. that the Dutch Criminal Court Judge had no jurisdiction in so far as the alleged crimes concerned genocide.(162) As a matter of fact, the Court had urged the president of the Supreme Court, by way of a written request, to hear the case with priority, in view of the upcoming trial. The president of the Supreme Court granted this request.

58. The trial took place on 13, 14, 16, 17, 20, 21, 23, 24, 27, 28 October, 3, 10, 11, 17, 18, 19, 24 November, 1 and 4 December 2008, 2 February and 9 March 2009. The following aspects of the trial deserve mentioning and/or a short discussion.

Interpreters

59. The Defendant, being a man with a university education who has been living in the Netherlands for more than ten years, perfectly understands the Dutch language and speaks it rather well. This already became clear at the beginning of the court hearings. The NCIS interrogated the Defendant in the Dutch language all along, since the Defendant had indicated that he understood the language well, spoke it sufficiently and had no objection against an examination in Dutch. Moreover, from the reactions of the Defendant – whether or not verbally – to the proceedings it became clear that the Defendant could follow everything in Dutch without any problem. However, at the request of the Defence, an interpreter in the Kinyarwanda language was present all the time during the court hearings. The Court left it up to the Defendant to decide at which moments he desired the assistance of the interpreter. This way not everything that was said during the hearing had to be translated all the time. During the trial the Court noticed that Defendant corrected the interpreter regularly when he thought that the latter did not translate something correctly, or he helped the interpreter with the correct Dutch words or expressions when the interpreter seemed to be unable to find those. In addition, the Defendant regularly expressed himself directly in Dutch or French to the Court.

Defendant's conduct during the trial

60. After his arrest, Defendant was interrogated seventeen times by the NCIS. During the first six interrogations he stated about his personal circumstances, his family members, the area where he lived and worked in Rwanda etc. and he signed these statements. After the sixth examination Defendant claimed his right to remain silent and he did not want to sign his statements anymore. From the third interrogation onwards, the NCIS recorded the statements of the Defendant with audio and/or video equipment.

61. During the Pro Forma hearing of 11 July 2008, the Defendant stated that he knew the contents of his criminal

file “for a 100%” and that he would be prepared to answer the questions asked by the Court during the trial. He said that he would be glad to cooperate with the investigation.(163)

62. From the second day of the trial, on 14 October 2008, the Defendant regularly claimed his right to remain silent when the Court asked him certain questions, also when this involved questions to which Defendant had replied earlier on during the proceedings. Almost always, Defendant claimed his right to remain silent when questions from the Prosecution were involved. The Court confronted Defendant with the fact that, several times in the initial phase of the trial, he had indicated that during the examinations by the NCIS several misunderstandings had arisen which he would like to clear up during the trial. However, during the trial Defendant, when asked, did not clarify which parts of the examinations were involved and in what sense he would like to add to them or change them. More than once, Defendant sighed and said that he wanted and hoped that the “the truth be disclosed” and that the Prosecution and the Examining Judge “did not make any efforts to just do that”. When asked, Defendant stated that he did believe that the Court was focused on finding the truth. In connection to this, the Court mentioned to Defendant that he was not very helpful in this quest each time he invoked his right to remain silent in case of crucial questions, either on his own initiative or that of his Counsel. In this context the idea could arise that Defendant was not looking for the truth and that, with respect to certain points, he preferred the Court not to discover the truth. However, Defendant did not change his attitude during the proceedings.

63. During the trial, Defendant made a statement about the situation in his village, Mugonero, during the genocide. Briefly summarised he stated that he had not noticed any differentiation in his village between Hutu and Tutsi(164), that he did not know who was Hutu and who was Tutsi in his village(165), and – after his return from Italy – that he had not noticed any increased tension or problems between Hutus and Tutsis(166), that he had not noticed any hate propaganda against Tutsis(167), that he had not seen any violence(168) and that he had never seen any Interahamwe in Mugonero(169). In short, according to the Defendant, during the genocide Mugonero was a peaceful place, where Hutu and Tutsi lived together in peace without ethnicity playing any role in daily life. According to the Defendant, the only form of insecurity in the village came from people who were fleeing from the war between the RAF and the RPF.(170)

64. It is self-evident that these remarks of Defendant, i.e. a total denial of reality, and his attitude during the trial as described above had their influence and gave colour to the way in which the trial took place. Any way, the Court did not include these mendacious statements made by Defendant in any of the evidence considerations. Finally it should be reported that at some point during the trial Defendant happened to state that the Court should not only ask itself whether Hutus killed Tutsis, but also “what the Tutsis had done to deserve to be killed”. When requested to give an explanation, the Defendant claimed his right to remain silent.

The examination of witnesses in general

65. In the build-up to the trial, the Court asked the Prosecution and the Defence several times if they wanted to examine witnesses during the court session. Every time, both parties replied negatively. The Court did not see the need to hear witnesses proprio motu in court.

66. However, on 20 December 2007, the Prosecution did suggest to the Court to appoint one of the Court Judges as Examining Judge in order to go and hear two witnesses in Rwanda. The Prosecution mentioned that, in its vision, it would contribute to the “sharpness of the reference framework” of the Court if one of the Court Judges would experience for him/herself the witness examination procedure, under which circumstances the Examining Judge had had to work up to that moment and to see Rwanda with his/her own eyes. The Defence Counsel expressly joined this proposal.

67. After deliberation on this proposal during a session on 18 February 2008, the Court notified both parties that it would not make use of the power to appoint one of the Court Judges as Examining Judge. The Court considered the motives of the Prosecution and the Counsel to proceed to such an appointment understandable and relevant, but this would include that in this manner one of the Court Judges would carry out some sort of on-site visit. Moreover the Court explained that the authority to appoint a Court Judge as Examining Judge was not meant for this purpose and that article 318 CP stated that relocating a court session for the purpose of judicial inspection was only possible within the jurisdiction of the Court. Besides, the concrete added value of an examination conducted by one of the Court Judges of these two specific witnesses had not become manifest. On the side, the Court remarked here that it would be preferable if the Court could also perform on-site vistis outside of its own jurisdiction. For instance this could be important in order to determine whether a witness was able or not to witness certain events from a certain (hiding) place.

The examination of witness Adrien Harorimana

68. As mentioned before, the Court did not see the need to call witnesses and when requested, the Prosecution indicated several times that it did not want to hear any witnesses during court sessions either. However, this point of view of the Prosecution changed when it became known that Adrien Harorimana would appear in Court as aggrieved party and surviving relative of one of the victims of the crimes charged against the Defendant. In a letter dated 2 October 2008, the Prosecution informed the Court and the Counsel that it had the intention to summon Adrien Harorimana to appear as a witness during trial. In court the Prosecution explained that because of the danger of collusion, the chance of witnesses being influenced by the Defendant and/or his family and the possible disproportionate pressure put on a witness by having to testify in court, it was originally decided not to summon any witnesses to appear during the trial. Now that Adrien Harorimana had joined in the proceedings as a plaintiff against the Defendant, and that he had indicated that he was going to appear in his capacity of aggrieved party and surviving relative and that he was prepared to appear as a witness during the trial, the objections against a witness examination played a minor role. Furthermore, the Prosecution explained that it wanted to hear the witness during the trial for the purpose of “underlining the trustworthiness of this witness”. In addition, the witness would be able to “raise understanding for the contextual situation in Rwanda and the possible differences in culture”.(171) The Counsel objected to the examination of this witness.(172)

69. At the hearing the Court established that, according to the Examining Judge, the examination of witness Adrien Harorimana had been concluded(173) and that the Examining Judge had not barred any questions during the examination of the witness. The Court mentioned that, although it considered the Prosecution to have a prosecution interest with respect to hearing the witness (the interest of underlining the trustworthiness of this witness), the Court indicated beforehand that it would not have any questions for this witness. (174) During the session of 23 October 2008, the Prosecution stated that it would no longer keep to the request to hear Adrien Harorimana. Subsequently the witness did not testify in court.

Aggrieved parties

70. [Witness 4] and [witness 3] (count 3 on indictment I) and Adrien Harorimana (count 1 on indictment II) all submitted claims and, represented by their Counsel Mrs. Zegveld, they appeared in court in order to explain their claims.

Right to speak

71. Since 1 January 2005, victims of certain indictable offences have the right to submit a written victim statement or to render a verbal statement in the court room: the right to speak. The right to speak was introduced in the Dutch criminal proceedings to give victims and/or surviving relatives the possibility to explain the consequences they suffer as a result of the commission of an indictable offence against them.

72. During the court session on 20 October 2008, [witness 4] and [witness 3], as victim of count 3, used their right to speak.

73. In principal, only the victim has the right to speak; only in case of death, the victim may be substituted by a surviving relative. Article 336 CP restricts this right to speak to a limited group of surviving relatives (in the family line up to the second degree). From the statement of Adrien Harorimana it becomes clear that his father is the brother of Consolata Mukamurenzi’s grandfather.(175) In Rwanda, such a family relation is regarded as a direct family relation; however, in the Netherlands, Adrien Harorimana and Consolata Mukamurenzi would have had a family relation in the fifth degree. Adrien Harorimana also stated that most likely he was the only surviving family member of Consolata Mukamurenzi.(176)

74. Therefore, Adrien Harorimana does not fall within the group of surviving relatives who would have an enforceable right to speak. In so far as the Court can see, Adrien Harorimana is the only surviving family member of Consolata Mukamurenzi. The fact, such as in this case, that within the legally determined circle of persons with a right to speak there are no more family members alive to make use of the right to speak, represents a circumstance to which the Legislator had not anticipated. In this special circumstance, the Court decided to allow Adrien Harorimana to exercise the right to speak, especially since there is no conflicting legal regulation. During the session of 23 October 2008, Adrien Harorimana exercised his right to speak. The Defence did not object to this.

New inquiries conducted by the Examining Judge following the reception of foreign documents

75. After the Public Prosecutor’s closing speech and the closing plea of the Defence, the Court officially suspended the trial on 24 November 2008, in order to allow the Examining Judge to hear five witnesses in Rwanda

again. This involved the five victims who rendered statements about the attack at the Seventh Day Adventists Complex before ICTR investigators, the ICTR Trial Chamber and/or the authorities of the US and/or Canada. The testimonies concerned were only included in the proceedings after the examinations of the five witnesses by the Examining Judge had been completed (see paragraph 47 above). If the Examining Judge would have had those statements and testimonies available during his/her examinations, then he/she would, without any doubt, have asked questions about this subject, especially since it was noticeable that the name of the Defendant almost never appeared in those documents, in any case not with respect to the attack on the Seventh Day Adventists Complex. The questions that raised on account of these documents were also discussed during the court session. The Court judged that the inquiry by the Examining Judge could not have been complete because, before and during the examination of the witnesses, he/she had not yet been confronted with the contents of the said statements and testimonies.

76. The Court discussed in which way the witnesses would have to be heard once more: during a court hearing, by way of telecommunication or by the Examining Judge in Rwanda. The Court preferred a rogatory mission by the Examining Judge. The considerations of the Court that lead to this decision were that the investigation of the Examining Judge had not been complete and therefore needed continuation to finalise the instruction that had been given to the Examining Judge earlier. Examination by means of telecommunication was no option because of differences in culture and possible technical problems. Furthermore, the Court considered that, in view of the facts about which the witnesses would have to testify, it would be better for the peace of mind of the witnesses to have the Examining Judge interview the witnesses personally. In addition, the Examining Judge could take precautions to prevent the witnesses from seeing each other and talking to each other, which would present a better way for arriving at the truth.

77. For the benefit of further examinations by the Examining Judge, the Court drew up a list of questions accompanied by an explanation with finding locations, and made this list available to the Examining Judge. The parties were allowed to signal possible misstatements of facts and to submit additional questions. Especially the Prosecution made use of this opportunity; the Defence Counsel only on a single point. In December 2008 and January 2009, the Examining Judge heard the five witnesses anew.

Criticism by the Counsel on the quality of the investigation

Criticism on the Prosecution

78. The criticism of the Counsel on the Prosecution was extensive and severe. Within the scope of the investigation, the Prosecution supposedly was “negligent” and “faulty”; the Prosecution supposedly was “ignorant”; “not looking for the truth”, “closing their eyes for reality” and “getting carried away by emotions”. More concretely the Defence Counsel, among other matters, reproached the Prosecution for the fact:
a. that it had not conducted sufficient investigations into statements that had been rendered earlier by witnesses before international organisations;
b. that none or little forensic investigations had been carried out;
c. that no so-called foslo confrontations1 had taken place.

79. Re a. From the report about the investigation, as described above, it appears that this criticism lacks factual grounds. The Court has observed that from the start, the Prosecution distinguished the importance to obtain statements and testimonies rendered elsewhere and that it made a considerable effort to be able to add these statements to the case file.

80. Re b. During the discussion about the indictable offences, on several occasions, the Counsel argued that the statements of witnesses were at no point supported by “objective and indisputable evidence”: this evidence supposedly should indicate, among other matters, which people were “dead, how they died, what was used to kill them, where these people came from all together”. According to the Counsel, the file offered sufficient reference points. There should have been forensic excavations (177), in connection with investigations into the cause of death,(178) or how old these corpses were and DNA-research should have been carried out. Pictures of the corpses should have been taken. More detailed information about the victims should have been requested from the Register of Births, Deaths and Marriages in Rwanda.(179) The Counsel noted that neither clothing of victims was found, nor murder weapons or shotgun wounds.

81. These theories of the Counsel are based on the assumptions that it is known where the victims in this case are buried, that reference material (DNA) of the victims is available for the purpose of identification of the corpses and that the Rwandese authorities keep certificates of births and deaths of the people who perished during the genocide. These assumptions lack all sense of reality. In fact, with respect to the rape and murder of Consolata

Mukamurenzi, Counsel argued that there should have been an excavation of Consolata Mukamurenzi at the location that witness Adrien Harorimana had indicated. In this, Counsel completely ignored the remark of this witness about the situation in which he had to leave Consolata Mukamurenzi: “We were able to cover Consolata Mukamurenzi a little bit with earth, but not enough because we had to run and when we came back at the location three days later, I saw that Consolata Mukamurenzi was not in that grave anymore; apparently she had been removed by dogs. We never found her again.”(180) Another example is that Counsel argued that there should have been forensic excavations at the location where the passengers of the ambulance were buried, because there are witnesses who have testified about that exact location. Again, Counsel completely ignored the fact that these witnesses indeed indicated the location where the victims of the ambulance were buried, but they also testified that, after the genocide, all victims were reburied in mass graves.(181) Therefore, a forensic excavation was not possible.

82. The Court supports the conclusion of the Prosecution that all possibilities for forensic investigation were employed sufficiently (182) and that the contents of the case file does in no way offer a realistic perspective on obtaining relevant forensic evidence, other than the evidence that has been included into the case file.

83. Re c. The individual witnesses in this case indicated that they knew Defendant (183), for instance because he was the son of an important merchandiser, or because they were in school with him or members of his family, or regularly sold coffee to him etc. Notwithstanding the circumstance that with respect to almost every witness for the prosecution, Defendant indicated that he did not know this witness, the Court has no reason whatsoever to doubt the witness statements on this point. After all, in the area where he lived, Defendant was a well known person, which makes it imaginable that there are witnesses who do know Defendant, but Defendant does not know them. The Court distances itself from the reproach of Counsel that the Prosecution’s investigation was faulty because no confrontations between witnesses and Defendant took place. On this point, all authoritative scientists agree on the principle that for an identification test it is a strict condition that the witness should not have seen the defendant in any other situation than at the scene of the crime.(184) If not, the problem of “locating” arises, which means the situation in which the witness knows that he knows the defendant shown to him, but that he does not know from what circumstance. With respect to all witnesses for the prosecution – except for [witness 4] – it can be established that they had seen Defendant under other circumstances than during the indictable offences. On this point, professional literature tells us that the problem of identification of a person known to the witness cannot be tested with the aid of controlled identification procedures and that identification should actually be accepted on the authority of the witness. However, according to the experts, the identification situation may be evaluated, focussing on the items for consideration in Chapter 6 (assessment of witness evidence).(185)

84. The Prosecution is also right in asserting that a (f)oslo2 in 2006 or later, exclusively says something about the question whether the witness still recognizes the Defendant ten years later, but very little about the question whether the witness could identify the Defendant in 1994.

Criticism on the Examining Judge

85. In his closing plea, Counsel paid considerable attention to all the questions that he would have liked to put to the witnesses, but were, in his opinion wrongly, prevented by the Examining Judge from being asked.(186) Although Counsel did not attach any conclusions to his assumptions, the Court considers that Counsel wanted to argue that under these conditions, Defendant’s right to a fair trial was not acknowledged. This argument is rejected based on the following.

86. The Court considered that it is true that the Examining Judge has prevented certain questions by Counsel from being answered.(187) The Examining Judge has the legal authority to bar questions in order to avoid the witness being forced to answer questions from the Defendant (or his counsel) or from the Prosecution, that are unnecessary, that may harm him or that may injure his reputation. Furthermore, the Court has established that, for the major part of the barred answers by him/her, the Examining Judge has provided his/her motivation in the official report of the examination of the corresponding witness. It is the opinion of the Court that, in view of the motivation included in the official report, the Examining Judge has barred the answer to most of the questions with good reason.(188) For example, it is evident that the question from Counsel in which he asks the witness [witness 14] why he did not help the women who were being raped when he was lying under a pile of corpses, was barred as being unnecessary harmful to the witness and devoid of any human empathy.(189)

87. Not in all cases the motivation to bar the answer to a question was related in the official report which, after all, is not required by law. There are no indications in the official report that in those cases, Counsel had explained the relevance of the question to the Examining Judge.(190)

88. It is remarkable that in his plea, Counsel continuously mentioned the questions barred from being answered by the Examining Judge, but only in one single case requested the Court to put those barred questions to the relevant witnesses once more.(191) Subsequently, on the instruction of the Court, these questions were put anew to the witness, or answered in a different way.(192) A number of other questions, barred by the Examining Judge from being answered by witnesses during earlier examinations, were finally answered during the rogatory missions in December 2008 and January 2009.

89. In view of the above, it is considered that Defendant's right to a fair trial was not breached.

Chapter 6: Evaluation of the evidence

Introduction

1. The evidence with respect to the crimes charged against the Defendant mainly consists of statements by (eye)witnesses. The Maton file includes over 50 witnesses and the file contains over 100 witness statements. The oldest statement dates from 10 September 1996 and the most recent from 27 January 2009.

2. The file contains statements from witnesses rendered before:
- National Criminal Investigation Service (NCIS);
- Examining Judge;
- ICTR, in the form of testimonies and witness statements;
- gacaca Courts;
- Canadian and/or U.S. authorities;
- Parquet Général in Rwanda.

3. In this criminal case, for the Court the evaluation of the different witness statements represents the "pièce de résistance", as formulated by the Prosecution. This evaluation will have to take place on a 'paper' basis. After all, the Court did not hear any witnesses in court, although three witnesses rendered a statement during the court session in their capacity of victim and/or plaintiffs and/or surviving relative.

4. This chapter will deal with the manner in which this evaluation will take place, from which points of view and points of particular interest.

General remarks

5. The assessment of this case is based on Dutch law which, among other matters, means that only those factual findings are recognized as legal evidence that are described in article 339 of the Code of Criminal Procedures (hereafter: CP) and that the rules for minimum evidence of article 341-344a CP are applicable. Hence, the judicial factfinding cannot be based on the statements of only one witness (the "unus testis nullus testis" -rule). This evidence minimum gives expression to the principle of double confirmation, which means that there must always be two independent sources in order to come to a judicial finding of fact with respect to an indictable offence. This principle is based on the assumption that it is irresponsible to convict a person solely on the statements and testimonies of just one person. Furthermore, our criminal system starts from the principle that the Judge is free in his selection and evaluation of the (legal) evidence.

6. The ICTR has no rules for minimum evidence. It is standard case-law that the Tribunal does not apply the "unus testis nullus testis"-rule;(193) a conviction based on the testimony of one person, without any supporting evidence, is possible, even when this involves a hearsay testimony. (194)

7. Research shows that eye-witness statements, even rendered under the most favourable circumstances, are inaccurate in many cases. For that reason, in general, witness statements must be considered scrupulously. Reference: "Justice Inside, Psychology of the Law" [Het Recht van Binnen, Psychologie van het Recht]:

"Memories are not reliable by definition and the subjective certainty about their correctness is no guarantee for accurateness. Errors may be caused by different circumstances. There are even so many factors that may lead to errors and there is so little that can be done to prevent them from happening, that one can ask oneself whether memories can be trusted at all. Is everything that we think we remember not an illusion? (...) However, for the administration of justice, the answer is not very reassuring. In particular in those situations that occur often during proceedings, such as having to remember emotional and unexpected events that receive a lot of attention and in

which it is essential that specific details are correct, appear to be most sensitive to error. This does not mean that from now on, all (eye)witness statements should be mistrusted. It does mean however, that such statements must be studied scrupulously and that their role in the factfinding should be evaluated carefully".(195)

8. The boundaries of human perceptivity and memory are evident. By internal processes as well as external influences, the memory trail from the original experience is altered or complemented. There, the problem is that those alterations or additions are not noted or they are forgotten. That source may consist of internal processes, such as selective observation and interpretation during the experience of the original event or the reconstruction during the recollection of that event. The source may also consist of external factors, such as the integration of later obtained information in the memory trail of the original experience, or the acceptation of suggested events as real memories. Often, the cause of "errors" in the memory is a form of source confusion, also called source amnesia.(196)

9. Dutch case law has no 'strict criteria' on the basis of which it may be established whether a witness is credible and his statement reliable. However, it is a generally excepted starting point that, in view of the person who renders a statement, the circumstances under which it was rendered and the facts it contains, the Court needs to verify whether this testimony is sufficiently reliable to be used as evidence.

10. Evaluating the credibility of the witness and the reliability and credibility of the witness statements in this case is rather difficult and should be dealt with scrupulously, all the more since almost all witnesses in this case come from a different background and culture than ours, they have given evidence of events that date back almost 15 years, in a different part of the world, and these statements are of such a dramatic nature that they almost exceed our imagination.

11. In the past years, Dutch Courts more often had to deal with witness evidence in international criminal cases, in which the crimes charged against the accused took place a long time ago, in a different part of the world and in which the case file mainly consisted of testimonies rendered by witnesses from a 'faraway country'. For those reasons, witness statements were evaluated with caution; the same caution that the Court will apply in this criminal case. This is illustrated by the District Court in The Hague in its case against the Afghan general [F.]:

"The criminal proceedings against the defendant refer to offences allegedly committed more than twenty years ago in a country torn apart by political, religious and ethnic disputes and by acts of violence. Many of those disputes still exist today. This fact, but especially the lapse of time, calls for prudence when studying the witness statements. This is even more important because it concerns events in a society, which in all areas – cultural, technical, economical and political – is so totally different from the Dutch society, that the Court can hardly relate anything to facts and circumstances 'that are generally known' and to the understanding of common organisation structures and relations, so therefore the Court is obstructed in its assessment of the witness statements".(197)

12. In addition, the Court of Appeal in The Hague, in its case against [K.], also pointed out these particulars with respect to the defendant's own statements and urged caution:

"[By way of the above mentioned considerations], the Court would like to emphasize how difficult it is to establish the actual situation in such a 'faraway country' and why it is therefore necessary to cautiously deal with the evaluation of the correctness or incorrectness of the rendered statements, against the background of that actual situation, which is, a priori, not a familiar situation to the Dutch judicial authorities".(198)

Criteria for the assessment of the evidence

13. The Prosecution indicated that, for the evidence in this case, it mainly relied on statements that the witnesses rendered before the (Dutch) Examining Judge. In addition, the Prosecution drew evidence from statements of these witnesses rendered before the NCIS and the ICTR.(199)

14. The Court recognizes the position of the Prosecution that primarily those incriminating statements by the witnesses that were rendered before the (Dutch) Examining Judge are considered to be relevant. After all, these statements were rendered before a judge and were explicitly aimed at determining whether this Defendant is guilty or not guilty. In addition, both the Prosecution and the Defence were offered the opportunity to interview the witnesses at length and to verify the credibility of the witnesses and the reliability of their testimonies.

15. With respect to the manner in which trial testimonies in this case file should be assessed, the Prosecution and the Defence have expressed their views and taken up their standpoints. In connection to this, the Prosecution has formulated frameworks for the assessment of the testimonies and has presented those to the Court and in addition,

it has given extensive consideration to factors that could be of importance when assessing testimonies. In this chapter, the Court shall formulate an assessment framework to be used for the assessment of testimonies. In order to come to an assessment framework, the following needs to be addressed.

I: The witness

16. The Court will investigate whether circumstances have arisen which may possibly have an influence on the credibility of the witness. For this purpose, the Court will investigate whether there was any involvement of the witness in any of the crimes charged against the Defendant, as well as the fact whether the witness had an interest or a – personal, ethnic, financial or other – motive that would entice him, contrary to the truth, to render a false incriminating statement.(200) Furthermore, it may be of importance whether the witness knew the Defendant and, if so, in what relation or to what extend and also whether the witness knew one or more other witnesses who rendered testimonies that incriminated the Defendant.

17. The Court will also investigate whether witnesses were able to make a distinction between events which they actually saw for themselves and events that they heard others talk about (hearsay). Furthermore, the Court will consider possible disrupting effects as a result of cultural differences. Within this scope, the Court will investigate whether a witness has difficulty with aspects of determining time, space and distance and/or his/her orientation with the aid of maps, photo or film footage, as well as the way in which a witness reacts and answers to questions, especially delicate ones.(201)

18. Most witnesses in this case file are traumatised witnesses. It cannot be said that a traumatised witness is less reliable than a non-traumatised witness. However, it is a fact that memories of central details of a traumatic event often are more accurate and complete than memories of incidental details of that same event. There are two reasons for this: the attention is focused on threatening, central details of an event (the co-called “weapon focus effect”). (202) In addition, the boundaries of the traumatic image have a tendency to narrow (“boundary restriction”), meaning that the person observes less background information, thus forgetting elements which appear in the margin of the traumatic image.(203)

19. In this case file appear two witnesses who were a child at the time. (Legal) psychological research has shown that the memory of a child is indeed accurate and that children are able to tell about events that took place several years earlier.(204) Therefore, there are no reasons to assume a priori that statements rendered by a child would not be accurate because of the child’s age, even when they speak about events that occurred several years earlier.

II: The formation of the testimonies and the statements

20. The Court will investigate whether, in the manner of the formation of the testimony, or at the time of the testimony, there were circumstances that could have had an influence on the reliability of the contents of the testimony. In this respect, the Court emphasizes on the formation of statements rendered before the Examining Judge, because those, as mentioned above, are primarily considered to be relevant. In connection to the manner in which the statement was obtained, it is relevant to consider the way in which the questions were asked, the type of questions asked, the contents of the questions and the attitude of the interviewer. Furthermore, it is important to establish whether there are any indications of communication problems or misunderstandings between the interviewer and the witness or between the interpreter and the witness. In addition, it is important whether the witness knew one or more of the other witnesses who incriminated the accused or had discussed the case in question prior to the rendering of a testimony.

21. Subsequently, the Court will have to establish whether, in view of the factual information it contains, the witness statement is sufficiently reliable and credible to be admitted as evidence.

Reliability of the testimony in objective terms

22. For the assessment of the reliability of the testimonies in objective terms, the Prosecution has adopted the assessment framework which the Court of Appeal in The Hague used in the case against [K.]. The relevant considerations of the Appeals Court are as follows:

“With respect to the evidence ‘testimony’ (and for the statement of the accused as well) it is generally considered that this testimony or statement, because of the subjectivity of the observation, per definition has a less strict character, even without considering a possible failing memory or malicious intentions of the witness involved. The assessment (in objective terms) of the integrity of the testimony rendered by the witness will also have to take place by reference of:

a) the verification with objective elsewhere obtained information such as relating to the local situation;
b) the consistency of successive testimonies rendered by the witness involved;
c) the consistency of the testimonies with the statements of other witnesses and - finally -
d) the plausibility of the contents of the rendered statement(s) (which is more difficult to establish."(205)

23. Just like the Prosecution accentuated, from case law at the ICTR, it appears that the Tribunal uses the same assessment framework when assessing the witness testimonies as the Appeals Court in the case against [K.] and also when looking at it from a different angle, such as with respect to the personality of the witness and the formation of the examination. In addition to the relevant considerations in the cases against Akayesu(206) and Semanza(207), one should take a look at the judgement of the Trial Chamber in the case against Nchamihigo:

"15. The jurisprudence on the recollection of details is also well formulated. The events about which the witnesses testified occurred more than a decade before the trial. Discrepancies attributable to the lapse of time or the absence of record keeping, or other satisfactory explanation, do not necessarily affect the credibility or reliability of the witnesses. The Chamber will evaluate the testimony of each witness in the context of the testimony as a whole and determine to what extent it can believe and rely on the testimony. In making this assessment, the Chamber will consider whether the testimony was inconsistent with prior statements made by the witness and, if so, the cause of the inconsistency. The Chamber will also consider the internal consistency and integrity of the testimony and the context in which it was given. The Chamber will compare the testimony of each witness with the testimony of other witnesses and with the surrounding circumstances. The Chamber will explain the criteria on which it acts on a case-by-case basis." (208)

as well as – even more recently – the judgement of the Trial Chamber of the ICTR in the case against Bikindi of 2 December 2008:

"31. When evaluating viva voce evidence, the Chamber considered various factors, including the witnesses' demeanour in Court, the plausibility and clarity of their testimony, and whether there were contradictions or inconsistencies within their testimony or between their testimony and their prior statements relied upon in Court or admitted as exhibits. It also considered the individual circumstances of the witnesses, including their role in the events in question, their relationship with the Accused and whether the witnesses would have an underlying motive to give a certain version of the events." (209)

24. The Court shares the vision of the Prosecution that this assessment framework can offer something to hold on when assessing testimonies in this case.

III: The verification of objective information, obtained elsewhere, with respect to the local situation.

Forensic investigation

25. Already in Chapter 5, the Court established that all possibilities for forensic investigation were used. However, the possibility to verify the testimonies of witnesses against objective data is, apparently, limited. The verification can only take place with the aid of background material concerning the Rwandese genocide in 1994 in the case file, the established facts of the ICTR, for example, about the Seventh Day Adventists Complex (Mugonero), the footage with respect to the investigation about the Seventh Day Adventists Complex, the photographs of the NCIS and the footage of the on-site visit which was carried out. Furthermore, the case file contains -[family witnesses 3 and 4] reports of the Netherlands Forensic Institute (hereafter: NFI) concerning a letter that was made available by the married couple. In any case, the fact that the objective evidence, as meant by Counsel, is not available, does not mean that a reliability assessment would in principle not be possible.

Conclusions ICTR

26. Counsel has argued that the Court cannot be allowed to adopt findings of the ICTR to the disadvantage of Defendant, if they are based on witness investigation, document research and/or expert research and if the Defence has not been able to examine these witnesses and experts and/or has not been able to study the documents involved.(210)

27. Some factual findings of the Tribunal, such as the finding that on 16 April 1994, at the Mugonero-complex, an attack on Tutsi refugees took place and on 13 May 1994, at Muyira Hill, should also be valid as a starting point in this case. The factual findings were made by the Tribunal after extensive investigations and the Court sees no reason whatsoever to doubt its correctness. Although the findings were partly based on statements of witnesses and experts as well as on documents, without the Defence being able to exercise any influence on the realisation

thereof, this does not mean that the Court cannot adopt the factual findings, especially now that the Defence has not indicated (concretely) which findinds it disputes and on what basis.

IV: The consistency of successive testimonies rendered by the witness in question; and
VI: the correspondence of those testimonies with testimonies rendered by other witnesses.

Status of statements

28. The assessment of the statements rendered by witnesses before the Examining Judge and the NCIS, will take place in view of, among others, a) the statements, in so far as relevant, rendered earlier before other organisations – including the ICTR, the Parquet Général in Rwanda, Canadian and U.S. authorities and the gacaca Courts -, b) the statements rendered by other witnesses before one or more of the above mentioned organisations and c) the statements rendered by Defendant.

29. As indicated above, the documents include various statements rendered by witnesses before investigators and/or judges of the ICTR. These involve witness statements and trial testimonies. Witness statements are statements which (potential court-) witnesses have rendered before ICTR investigators. In general, these statements are not very comprehensive and certainly not worked out literally. In most cases, the ICTR investigators (or of the Rwandese authorities(211) (only) asked the witnesses about a particular person against whom an investigation was being carried out(212) or about a certain incident.(213)
Trial testimonies are statements of witnesses rendered during a court session - public or closed – before judges of the ICTR, in the presence of the Prosecution and the Defence. In general, verbatim reports of this type of testimony are available. The same distinction may be made with respect to statements rendered by witnesses before Canadian and U.S. investigators respectively judges.
30. The Prosecution mentioned the limitations of the statements which were rendered before ICTR investigators and the possible presence of errors in these statements. The Prosecution explained that, immediately after the genocide, hundreds of U.N. investigators spread over Rwanda to collect as much information as possible. In this way, many thousands of statements, also called interviews, were put on paper. Also during later years, statements were taken down, often directed to ongoing investigations against certain accused persons or in relation to specific incidents. There can be no doubt about the fact that these statements, especially during the first years, were taken down under primitive conditions. After all, “the country was in shambles”. Moreover, the statements were taken down by investigators from all over the world, with unknown skills, customs and backgrounds and with the aid of interpreters whose quality levels are not known either. For these reasons, only relative value should be attributed to these statements. The Prosecution indicated various considerations of the ICTR, devoted to different “weaknesses” in statements, which is why the Tribunal considers these statements – partly because of the above reasons – to have considerably less value than the trial testimonies rendered before judges in court.(214)

31. Furthermore, the Prosecution argued that the gacaca-statements, at least the gacaca-statements in the case file, are of very limited value as an instrument to assess their reliability. In connection to this, the following factors are considered important by the Prosecution: no comparison can be made between a witness examination carried out in Dutch criminal proceedings, or before international tribunals and the aforesaid gacaca records. The nature of a gacaca record is more like the minutes of a meeting. There is no way to tell how gacaca meetings proceeded: whether certain persons or events played a central role, whether everybody who wanted to say something got the chance to do so, whether everything could be said or not, etc. The records are very fragmentary. It is not possible to establish whether the records adequately represent the procedure during the meetings. Furthermore, according to the Prosecution, it is rather difficult to say whether the person who is quoted made his remarks in relation to another person or in relation to someone else’s remark, etc.(215)

32. The Court has taken due note of the theories of the Prosecution with respect to the statements and the gacaca statements, - theories which the Counsel did not contest – and where necessary it shall pay further attention to them during the discussion of the charges and the individual witness statements. At this moment, the Court considers it sufficient to conclude that in any case, the theories of the Prosecution give no reason to determine that the statements, in general, should be labelled as factual findings to which only limited conclusive force can be attributed. The given fact that at the time a statement was rendered, in general considerable less time had passed since the events in 1994 – and therefore the memory of these events were much 'fresher' – than the time passed until the moment when the other statements were rendered, already means that the contents of the statements may be of great importance indeed. After all, it is a well known fact that in the course of time memories become less detailed. Every time it should be considered in which context a certain statement was rendered, what the witness was asked exactly and what his or her answer was.

33. The Court understands the Defence Counsel’s argument that the Court is bound to the contents of a statement

or trial testimony if a witness, who gave evidence to the investigators or the judges of the ICTR, promised that he/she would testify truthfully.(216) This argument is rejected. It is up to the Court to establish the reliability of the statement in question and the affirmation of the witness that he rendered a truthful statement only plays a marginal role. The argument of the Counsel also implies that each time the Court should consider the different incriminating statements rendered before the Examining Judge to be correct because the witness would have stated before a judge to have testified according to the truth. It must be assumed that this is not what the Counsel wanted to submit.

Investigation into the (source of) discrepancies, inconsistencies or contradictions

34. The Counsel submitted that the statements of the witnesses could only be considered reliable and would serve as conclusive evidence of the charges, if the statements were consistent in relation to each other. Since none of the witnesses has stated consistently, the Counsel argued that either the statements will have to be excluded from the evidence, or they cannot be used as evidence.

35. In brief, it is the Prosecution's theory that when witnesses render different statements over the years, it is almost evident that differences arise between those statements. Only substantial inconsistencies should be analysed and weighed. In this respect the Prosecution is of the opinion that a number of possible causes for such inconsistencies need to be studied, including: cultural aspects, trauma, laps of time, the circumstances under which the statements were taken or the purpose of the taking of the statements, the fact that a lot that was said can be lost in translation, errors made by the witnesses and/or the other participants in the proceedings, etc. When there is no satisfactory explanation for fundamental inconsistencies, this may have an influence on the conclusive force of a statement. As consequences which may be the result of these inconsistencies, the Prosecution indicated successively: the determination of the inconsistency without further consequences; the fact that the inconsistent part of the statement should be used as evidence; the requirement for supporting evidence for the inconsistent part; and total disqualification.

36. The Court considers that this vision of the Prosecution not only finds support in national case law, but also in case law of the international tribunals. Case law of the international tribunals shows that, on a regular basis, inconsistencies are attributed to the same causes as mentioned by the Prosecution and do not necessarily imply that statements cannot be used as evidence. In paragraph 31 of the judgement in the case against Kupreškic, the Appeals Chamber of the ICTY considered the following:

"The presence of inconsistencies in the evidence does not, per se, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence."(217)

The Special Court for Sierra Leone has also considered that inconsistencies do not automatically disqualify the witness. In the case against Fofana(218), the Trial Chamber pointed out the passage of time and the way in which the memory functions as possible causes for mixing up certain details and forgetting other aspects. In the case against Furundžija(219), the Trial Chamber of the ICTY indicated that inconsistencies can also be an indication that the witness was actually not influenced and therefore told the truth.

37. Furthermore, the Court adopts the vision of the Prosecution that substantial inconsistencies should be analysed and weighed. When discussing the individual facts, the Court will pay attention to those inconsistencies in statements which are of substantial value for the evidence or which evidently call into question the credibility of the witness and/or the reliability of his/her statement. In imitation of the ICTR(220), it is the Court's opinion that a fundamental discrepancy or inconsistency should be brought to the attention of the witness, thus enabling the witness to explain the inconsistency. Against this background, on 4 December 2008 the Court decided to suspend the court hearing and to have five witnesses examined by the Examining Judge again.

38. The most striking discrepancy that came forward in this case, is that various witnesses mentioned the name of the Defendant only to the NCIS and the Dutch Examining Judge, but not in earlier statements and/or trial testimonies. In this respect, the Prosecution argued that for the ICTR, where witnesses were blamed "repeatedly" that they had not mentioned a certain incident or accused earlier, it hardly appeared to be a "factor of importance" whether a witness mentioned the name of an accused earlier or not. Therefore, the Prosecution stated: "the judges simply think that it is "not significant", or that witnesses cannot be blamed, if they have not been specifically examined with respect to a certain accused. This is valid in case the witness does not mention the name of an accused in his statements, but also in trial testimonies. In connection to this, the Prosecution quoted certain

passages from the cases against Ntakirutimana and Kayishema & Ruzindana.

39. On the basis of this case law the Prosecution concluded that, within the scope of the Rwandese genocide with so much violence and so many attackers, it is not suspicious or curious that in this case different witnesses did not mention the name of Defendant in earlier statements, gacaca statements and trial testimonies with regard to other accused, when they had not been asked for it.

40. The Court adopts the conclusion of the Prosecution that the ICTR does not always consider it to be relevant whether a witness mentioned a certain accused or a certain incident earlier or not.(221) However, the Court notes here that the ICTR does not “simply” consider it to be “not significant”, but looks at many factors, including the explanation for this omission and the attitude of the witness during the court session. Many times and in different cases, the ICTR also concluded that a witness did not give a satisfactory explanation of such an “omission” and based on this, did not accept his/her statement as reliable.(222)

V: Identifications and recognitions

41. The Prosecution takes the view that, when verifying the quality of the identifications of the Defendant by the witnesses, the Court needs to ask the following questions:
a. Did the witness know Defendant?
b. What was the distance between the witness and Defendant?
c. How long and/or how often did the witness see Defendant?
d. Was that during day time or when it was dark outside?
e. To what extend are the observations supported by other evidence of (witnesses)?
f. Are there any other aspects which make the observations reliable or less reliable? (For example, was the witness capable of describing the actions, the weapon, the clothing or the co-perpetrators of Defendant?)

42. In this respect, the Prosecution pointed out the Anglo Saxon legal practice, in which, through the years, a consistent verification framework to measure the quality of identification by witnesses was formulated. The British Turnbull-case is one of the most important leading cases about witness identification (judgement of 1976 of the Court of Appeal Criminal Division in the cases Regina - v -Turnbull and Another; Regina - v - Whitby; Regina - v - Roberts, 6 July 1976, hereafter: Turnbull). In many cases, the International Tribunals made reference to this judgement and they expressed the view that visual identifications, pre-eminently are sensitive to error and therefore should always be treated with “extreme caution”.(223) Also in relevant authoritative literature, the questions mentioned by the Prosecution clearly appear to be relevant regarding the assessment of the quality of the identification of defendants by witnesses.(224)

43. Every time, when assessing the reliability of witness testimonies with respect to the identification of Defendant, the Court will make an effort to answer the questions as mentioned above under a through f. With regard to the question formulated under a, the Court deems it important to stress that it is a commonly known fact that, for the quality of an eye witness observation it is important to know whether this observation involves the recognisance of an acquaintance ('recognizing') or the identification of a person unknown to the witness ('identification'). It is a generally accepted principle that the recognisance of an acquaintance under favourable circumstances is considerably more reliable than the identification of a stranger.(225)

44. As mentioned above in Chapter 5 (The investigation), all witnesses(226) - individually – indicated with motivation to know Defendant. As said before, the Court distances itself from the reproach expressed by Counsel that the investigation carried out by the Prosecution was inadequate because there were no confrontations of the witnesses with Defendant. Concerning this point, the Court recalls that among all authoritative scientists it is a well known principle that when carrying out identification verifications, it is a strict condition that the witness could not have seen the Defendant on any other occasion than at the scene of the crime.(227) Otherwise, the problem of “locating” arises, which means the situation in which the witness is aware that he knows the defendant shown to him, but that he does not remember under which circumstances. With respect to all witnesses for the prosecution – except for dr. [witness 4] – it can be established that they had seen Defendant under other circumstances than during the commission of the indictable offences. On this point, professional literature tells us that the problem of identification of a person known to the witness cannot be tested with the aid of controlled identification procedures and that identification should actually be accepted on the authority of the witness. However, according to the experts, the identification situation may be evaluated, whereby the points mentioned under a through f are important.(228)

VII: The plausibility of the contents of the rendered statement(s)

45. As the Prosecution rightly notes, when assessing the plausibility of the statements and testimonies in this case, considerable reticence should be observed. With the aid of visual material that had nothing to do with this case, the Prosecution made it clear to the Court that what seems to be (physically) unimaginable from one's own frame of reference, still appears to be possible or credible. Furthermore and in particular in this case, the events during the genocide in 1994, seem to touch the boundaries of our imaginative powers.

Conclusion

46. Based on the above, the Court shall, when judging the facts individually, verify the credibility of the witnesses and the reliability of their statements and testimonies by reference to the points of attention mentioned above:
I: The witness;
II: The formation of the testimonies and the statements;
III: The verification of objective information, obtained elsewhere;
IV: The consistency of successive testimonies rendered by the witness in question; and
V: The quality of identifications and recognitions;
VI: The correspondence of those testimonies with testimonies rendered by other witnesses.
VII: The plausibility of the contents of the rendered statement(s)

In this respect, it will become clear that not everything which was put forward earlier needs additional discussion. Where necessary, those relevant points of attention that were made concerning the indictable offences involved, will be indicated.

Chapter 7 The roadblock in Mugonero

General

1. As mentioned above in Chapter 5 (The investigation), on 14 February 2006, the Minister of Foreign Affairs delivered an individual official report with regard to the Defendant. This report stated that it is clear that Defendant was in charge at a road block which was set up 50 metres from his home in Mugonero. Furthermore, the report mentions that there are many witness statements against Defendant and his brother, stating that they both decided about life and death of other people at the said roadblock.

2. Many of the witnesses who were examined in this investigation(229) mentioned a roadblock in Mugonero, in the vicinity of the bridge over Kiboga river. Below, the Court will briefly represent only some of these statements.

Witness testimonies

[Witness 3]
3. On 18 October 1996, [Witness 3] rendered a statement before investigators of the ICTR. This statement was particularly related to the role of the brother of Defendant, Obed Ruzindana, during the genocide. In this statement she also mentioned a roadblock which she saw on 27 April 1994 in Mugonero. This roadblock was manned by soldiers or militia(230) and gendarmes. According to the witness, the younger brother of Obed Ruzindana, Joseph Murakaza, was in charge of this roadblock.(231)

4. The statements she rendered in 1996 before ICTR investigators, she later repeated and completed before the Dutch authorities. These statements, (the statement rendered before the NCIS as well as the statements rendered before the Examining Judge), will be discussed comprehensively below in Chapter 8 (Crimes against the families [witnesses 3 and 4]).

5. This witness was not able to indicate the precise location of the roadblock. However, she did know that this roadblock was located near the bridge in Mugonero. That was on the road from Kibuye to Cyangugu.(232) At this roadblock she had to show her identity papers to the people manning the barrier.(233) The witness had destroyed her papers because they disclosed that she was Tutsi and at the time, Tutsis were tracked down and killed. The people at the barrier did not accept this.(234)

6. This witness also stated that she knew this Joseph as Murakaza and that she knew that others called him [family name of Defendant]. Murakaza is his father's name. His brother's name is Obed Ruzindana and he came from a large family. His sisters are called [F2] and [F9]. She was in school with [F2] and [F9] was attending the same school but one grade higher. About the Defendant's family she stated that it was a well known family of traders,

living in the commercial centre of Mugonero. The shop was located in front of their home and the family owned shops in Kigali as well.(235)

[Witness 4]
7. With respect to the roadblock, this witness rendered a largely similar statement. In his recollection, this barrier was at a bigger roadblock. He could not remember in detail what kind of people were at the barrier.(236)

8. In addition, he stated that he thought that the person who was tending the shop was also the owner. About this person his wife had said that his name was Joseph. The name Murakaza stuck in the memory of this witness, because that man had signed the letter – to be discussed in detail later in Chapter 8 - with that name.(237) Furthermore, the witness stated that, according to his observation, there seemed to be a connection between the owner of the shop and the guards at the barrier. As a matter of fact, the salesman in the shop had regular contacts with the 'personnel' at the barrier and exchanged opinions with them, which made this witness think that the person in the shop was the coordinator of the activities at that location.(238) He also had the impression that the shop owner was authorised to take decisions and that he was in charge of maintaining the rules there.(239)

[Witness 12]
9. This witness stated that he had seen a barrier in Mugonero. This barrier was located near the bridge over Kiboga River. This bridge was between Rwamatamu and Mugonero. Before the Examining Judge, this witness stated that he did not know who had put that barrier there and who owned it.(240) After the witness had been confronted with his statement before the NCIS mentioning that [Defendant] had his own barrier in Mugonero, he stated that [Defendant] was the man in charge at the barrier. To the question how he knew this, the witness replied that it was obvious that [Defendant] was the chief of that barrier.(241)

[Witness 28]
10. This witness stated that Joseph [family name of Defendant] had appointed a certain Murego – whom he killed later – as chief of the barrier and that he had told him that everybody should show their identity cards at the barrier. According to this witness, Joseph was in charge of the situation at this barrier and he saw and noticed Joseph giving orders and instructions to the people there.(242)

[F6]
11. [F6], one of Defendant's sisters, stated that the distance between Kiboga River and their home was a walk of about 2 to 3 minutes. There was a bridge over this river and at the time of the war, there was a barrier on this bridge which was manned by Hutu men.(243)

Defendant's own statement

Before the National Criminal Investigation Service (NCIS)

12. When interrogated by the NCIS, Defendant stated that the nearest barricade, from his home and from the shop in Mugonero, was located between the market square and the bridge over Kiboga River. He described this barricade as a bunch of stones that were removed when someone was allowed passage. There was no barrier.(244)

13. In a later statement he mentioned about this barricade that it was located next to the bridge on the road in the direction of Kibuye and Cyangugu. During this interrogation, he repeated that this barricade was only made of stones. To the question whether there was also wood on this barricade, he answered that he only saw stones and that he could only tell what he saw.(245)

14. Furthermore, he denied having been involved in that barricade at all.(246) According to Defendant, there were soldiers at this barricade. He added that the people who manned this barricade were gendarmes, wearing uniforms. They were government people. To the question whether these people were soldiers or police officers, he answered that they were actually police officers working for the government.(247)

15. When he was questioned by the NCIS, Defendant denied that, at times, he was called Joseph Murakaza.(248) However, during his interrogation he did say that if a witness speaks about Joseph Murakaza, member of the Murakaza family, of whom one of the sisters is called [F2] and who has a brother with the name Obed Ruzindana, they mean him.(249)

During the court session of 14 October 2008
16. Defendant stated that he knew that a barricade had been erected over Kiboga River in Mugonero. The distance between his home and this barricade was about 100 metres. He was unable to see this barricade from his home.

According to Defendant this barricade consisted of stones.

17. Shortly after the erection of this first barricade, a second barricade was created. This second barricade was made of trees: two vertical trees with a horizontal tree on top. This barricade was located at about 150 to 200 metres from his home and from Kiboga River in the southern direction (Cyangugu) and not towards the direction of Kibuye. When leaving from the river towards Kibuye, one would first pass the stone barricade. Seen from the river, the wooden barricade was located in the other direction.

18. Defendant stated that he could not remember when exactly the barricade had been set up, but he thought that it was done within a week of the death of the president. Supposedly, the second barricade was set up a few days later. After the second barricade had been set up, the first one had become useless.

19. In addition, Defendant stated that he did not know whether people could set up a barricade just like that. He never heard about people being called to set up barricades, nor did he learn that someone else had been called, for instance by radio, to do so. The barricades were manned by civilians as well as soldiers. He did not know any of the civilians who did that; they had come from different places. He did not know the names of the soldiers either.

20. When he was asked about the purpose of such barricades, Defendant said that he could not answer that question. He thought that the barricades had been set up because of the security problem. When asked about this, he was unable to indicate what this security problem exactly was.

During the court session of 16 October 2008
21. At this day of the hearing, Defendant denied ever having been active at any barricade in Mugonero.

During the court session of 17 October 2008
22. On this day of the hearing, Defendant stated that he did not see who set up the second (wooden) barricade. He thought the authorities did that. He could not say whether these were civilian, military or other authorities. No one ever told him who gave the instructions to set up this barricade. He had never heard instructions being given to the people who manned the barricade.

23. Furthermore, Defendant stated that he could not remember ever having seen any civilian authorities such as a prefect, at the barricade, nor could he say anything about the ranks of the soldiers he had seen at the barricade. Asked about the number of soldiers at the barricade he answered that he thought he had seen about ten soldiers. Regarding the difference between soldiers and gendarmes he said that he was unable to distinguish them. About the involvement of civilians in manning the barricades he stated that he did not know whether civilians played a role at the barricade. He did not know the civilians he had seen there and therefore, he could not tell whether they were manning the barricade.

24. About the wooden barricade he stated that from his shop, he was unable to see this barricade. Asked whether he was able to see the barricade from his home, he answered that he thought this was impossible. Trees were blocking the view at the barricade and it was not possible to climb on the roof of the house, so it was impossible to see the barricade from the roof either.

25. Additionally, Defendant stated that one could see the stone barricade from the veranda in front of the house/shop. One could not see the wooden barricade from the veranda.

26. To the question whether he happened to pass the barricade or went there to have a look, Defendant stated that he did not pass the barricade very often. In his recollection, there was a café not far from the wooden barricade to which he went from time to time to see other people. He also stated that he thought having been at the barricades about once or twice.

27. He never saw any incident at one of the barricades and he could not remember ever having heard anything about incidents in which people had been killed. However, he did see that cars would come to the stone barricade and stop there, but he never saw passengers being searched or having to show identification papers.

28. Furthermore, Defendant stated that he could not remember having seen cars stopping at the wooden barricade. The persons manning this barricade were civilians and soldiers. He could not remember any names. With respect to the civilians at the barricade he could not say whether they were in function or just curious.

29. The soldiers at the barricades had weapons, but in his recollection, the civilians he sometimes saw at the barricades did not have any weapons. To the question who he thought was the boss, Defendant answered that he

did not know exactly.

30. He also stated that he had never heard shots coming out of the direction of the first barricade. He could not remember ever having heard shots coming from the second barricade.

31. About the precise location of the barricades and the pub, Defendant stated that the café was located in the direction of Cyangugu, close to the bridge. The second barricade was located 150 metres after the bridge in the direction towards Cyangugu. When walking over there, one had to pass the café first. The café was located at about 10 metres from the barricade.

32. At the request of the Court, Defendant indicated the location of the barricades on an aerial photograph, after which he also made a drawing of them on an aerial photograph. In this respect the Prosecution and the Court noted that at first, Defendant pointed out the café to be very near to the bridge and after that, considerably further away from the bridge.

During the court session of 20 October 2008
33. At the hearing Defendant denied ever having been called Joseph Murakaza. To the question who is meant when a witness speaks about Joseph Murakaza, member of the Murakaza family, of whom one of the sisters is called [F2] and who has a brother with the name Obed Ruzindana, Defendant refused to answer. However, he did say that the police asked him about Joseph, son of Murakaza, who worked in the shop and who was the brother of Obed Ruzindana and that in view of this form of formulating things, it could only be him whom they were referring to.

Conclusion of the Court with regard to the roadblock

34. In view of the above, the Court establishes that, shortly after the president's plane crashed on 6 April 1994, a roadblock was set up in Mugonero in the vicinity of the bridge over Kiboga river. As will follow from the facts to be discussed hereafter, the purpose of this roadblock was the identification of Tutsis.(250) The Court also establishes that Defendant played a leading role at this barrier and that, when Defendant was not present at the roadblock, there was a conscious and close cooperation between Defendant and the persons who were manning this roadblock at those moments.

35. Based on the above, the argument of the Counsel that Defendant could not have had actual control over the soldiers at the barrier since he was only a civilian who could not be related to the army, is rejected.

Chapter 8 The crimes against the family [witnesses 3 and 4]

Origin of the suspicion

1. As already mentioned in Chapter 5 (The investigation), witnesses were interview in Rwanda by the NCIS following the transfer of the so-called Cyangugu file. One of these witnesses was [witness 7]. In his statement he mentions a German doctor and his family who were allegedly threatened to be killed at the barrier of Defendant.(251) Through the internet, the NCIS traced the name and the address of this German doctor, dr. [witness 4], after which he and his wife were heard as witnesses.

Representation of the most relevant eye witness statements

2. First, the Court will briefly present the most important eye witness statements as they were rendered before the Examining Judge, completed with parts of statements of these witnesses as rendered before the NCIS.

[Witness 3]
3. This witness stated that on 27 April 1994(252), she, together with her husband [witness 4], a German doctor, and their baby son who was born in February of that year, wanted to flee Kibuye (Rwanda)(253). They wanted to flee because, on 25 April 1994, her brothers and friends had been killed. She also stated that they were often threatened and that many people had entered and plundered their house.(254)

4. In order to make their escape possible, her husband had gone to the prefect to request a document enabling them to leave. Shortly after they received such a document from the prefect, she, her husband and their baby left in an ambulance. The driver of this ambulance was [B4] and they were escorted by a gendarme.(255)

5. The witness continued by stating that, during that escape, they passed different barriers and that, in Mugonero, they had to stop at such a barrier. This barrier was manned by militias.(256) These militias were armed with machetes,(257) some sort of wooden clubs and sticks.(258) The witness could not remember how many people were at this barrier, nor did she remember whether these people wore uniforms.(259)

6. The people at the barrier asked for papers that would mention their permission to leave. They also wanted to see the identity papers of this witness. About this, the witness stated that she had destroyed her papers because they mentioned that she was Tutsi and that, at that time, Tutsi were tracked and killed. The people at the barrier did not accept this and said: “This is not the way these things go, we are going to ask Joseph”. Upon this, they had to go to Joseph.(260) When they drove to the Murakaza home, several people followed them by foot. These people were yelling things like: “Tutsis must be killed, Tutsis killed the president so we must kill them; we must see to it that the white man does not pay money to corrupt”. They also yelled: “You Tutsi, you cockroaches”(261) and they said that “Tutsis were mean”, “That they all had to be killed”, “That they never wanted to see a Tutsi again”, “That they wanted their children and grand children to ask them some day what Tutsis actually looked like”, “That nobody could be satisfied and happy as long as there were still Tutsis alive” and “That Tutsis were just like snakes”. The witness also kept on hearing the word “Inyenzi” (cockroach).(262) The driver of the ambulance stopped at the shop of Joseph and she, her husband, their baby and the gendarme got out of the car and there they met Joseph.(263)

7. To the question of the Examining Judge whether the witness recognized Joseph right away, she answered that it was no secret that Mugonero was a dangerous place which was under control of Murakaza.(264) When she arrived at the shop, she met a man who was wearing a military uniform. [B4] told her that this man was Joseph.(265)

8. After Joseph had asked what was the matter, [B4] explained that they could not be killed because this would be dangerous since her husband was German. If he would die, there would be trouble with Germany. According to the witness, Joseph, [witness 4] and [B4] negotiated a lot. She did not follow this very well, because she was a bit distracted.(266) She did notice however, that Joseph was the leader, everybody was focused on him; he had the last word.(267) He also cooperated with the militias. The witness noticed this because, from the barrier, they were taken to Joseph and had to stop at him, the chief. When the situation was explained to him, he said: “Be careful not to hurt the white man”. After that, he encouraged the militia with slogans. She could not repeat word by word what they said to each other.(268) To her, Joseph was also the boss because the militia obeyed him. Joseph was not influenced by anyone and it was him who took the decisions.(269)

9. After the situation had been explained to Joseph he negotiated with [B4] and [witness 4] and subsequently he sent [B4] to the prefect to enquire what had to be done with the German doctor. The gendarme who escorted the ambulance [witness 4], the witness and their baby remained with Joseph. During the time they had to wait for the answer of the prefect, the other people present kept on threatening the witness.(270)

10. At one point, [B4] returned with the prefect’s answer. He had said that the doctor and the baby would have to be released, but that the witness would have to stay. She was not allowed to leave because she came from Rwanda. She was yelled at, humiliated and she was told how she was going to be killed. They also said that the baby would have to be killed since she and [witness 4] were not married and therefore the baby was not German but Tutsi. About this, the witness said that, at that moment, she did not realise what they meant; she actually felt she was dead already and she saw a bunch of madmen around her.(271)

11. After he returned with the answer from the prefect, [B4] also negotiated with Joseph. [B4] pointed out to him that it would be dangerous to hurt [witness 4] because of international cooperation with Germany. Upon this, Joseph decided that the question had to be laid down before the burgomaster of Gishyita. For that purpose, Joseph wrote a letter to the burgomaster to ask him to come over to Mugonero to give his judgement in this matter.(272) The witness did not see for herself whether or not Joseph wrote that letter himself; she only saw him coming out of the shop with that letter. Furthermore, she saw that the letter was signed with the name Murakaza Joseph.(273)

12. [B4] left with this letter and after it had become dark, he returned with the answer of the burgomaster. The answer was that the burgomaster gave them his permission to return to Kibuye and that he would think about this matter and that he would check the books to find out whether the witness was married to the German or not. After this answer was read aloud, Joseph told them they could leave, upon which they got into the ambulance and returned to Kibuye.(274)

13. During the time that the witness, her husband and their baby were held and had to wait, many people came in who insulted her and yelled at her. These people also had weapons and they did not stop yelling at her.(275)

Joseph stimulated this and incited them. One of the things those people yelled was: “Hutu-power”.(276) The children who were there were told: “Take a good look at this Tutsi woman, she belongs to the people who killed the president”. When a woman, who had bought oil from Joseph, complained about the measured quantity, he told her that he did not care, unless she wanted to be treated like a Tutsi.(277)

14. To the question whether Joseph personally threatened or insulted the witness, she answered that she did not know whether it could be called an insult, but that for her – in view of the context – Joseph’s question “You are leaving with a white man, but did you think of saying goodbye to your mother?” sounded as such. She explained this by pointing out that she was unable to react. This hurt her because almost all Tutsis had been killed. In addition, she explained this by referring to her mental state of mind at the time; she felt like she was already dead.(278)

15. About the events that happened during the hours that they had to wait, the witness also stated she was there, but that she did not really realise what was happening. She remembered that there were a lot of militia who said that everybody had to be careful not to be corrupted. The first instruction was to kill all Tutsi and after the killing they would share out the Tutsi belongings.(279) She also stated that sometimes she spoke and sometimes she laughed, upon which Joseph reacted: “Look how bad these Tutsis are, they laugh even when we are going to kill them”.(280) The people present also told the witness that she could choose where she would be killed: in Kibingo, Mugonero or Gishyita.(281)

16. To the question how long they had to wait at the shop of Joseph, the witness answered that she did not know because she was not aware of time. She did remember that, during that period, Joseph was not in the shop all the time. Sometimes he would go outside to talk to the people there. There were many people outside who yelled all kinds of things at her, and Joseph heard that too. The people yelled slogans like “Hutu power, Hutu power” and sometimes Joseph joined them.(282)

17. To the question about how she felt that afternoon, the witness replied that she did not feel anything. She was like a spectator and somehow, had accepted that maybe, she was dead already.(283) Furthermore, she stated that all this time she was afraid for her son, because people also yelled at her that she would have to give up her baby and that it did not belong to her. Other people said that the child was a Tutsi, maybe returning over 30 years to revenge its mother.(284)

[Witness 4]
18. This witness stated that, on 27 April 1994(285) he and his wife, [witness 3], and their only 2 months old son [B1](286) wanted desperately to flee Rwanda via Cyangugu (Rwanda) to Congo.(287) Prefect Kayishema had given him documents to enable them to pass the barriers.(288) At the barrier in Mugonero, the car, made available to them by the hospital, was stopped.(289) The witness said about this that he could not remember the people who were at the barrier. He was not sure about the kinds of weapons these people were wearing, but usually, people at these checkpoints were armed with sticks, machetes or rifles. The witness was not sure but he thought he could remember seeing people with rifles.(290)

19. After they had been stopped, he was told that his wife, being Tutsi, was not allowed to travel any further, because she resorted under Rwandese power and so did their son. The witness himself was allowed to pass because he was a foreigner and because the prefect had granted his permission in the travel documents.(291)

20. The driver of the hospital conducted negotiations for their permission to carry on travelling. Finally, the driver was allowed to return to prefect Kayishema as an intermediary, to ask for permission to continue the journey. The witness and his family had to wait; in particular his wife was not allowed to leave and the witness stayed with her. They were taken to a shop(292) where they waited under a shed. The waiting took the longer part of the day.(293) They were taken to the shop and were guarded by the person who was tending that shop. (294)

21. While waiting, they were continuously regarded by a changing amount of people who, according to the witness, were waiting for the moment to kill her, which they were discussing all that time. The witness saw people making gestures such as slicing their throats. The witness did not understand everything that was said in detail. According to him, understanding some of the things that were said was sufficient, things like: Tutsi and Inyenzi.(295) The witness had experienced this situation, in which people around them continuously spoke about them and used words like “Inyenzi” (cockroach) as very threatening.(296) At some point in time, the guards also started to lose their patience and tension increased considerably.(297)

22. The witness stated that he did not know whether the shop, in front of which they had to wait, was owned by the person whom he saw there. However, according to him the person who was in the shop was the owner. The

witness heard from his wife that this person was Joseph. The name Murakaza stuck with the witness because the letter, written by the shop owner was signed with that name. His wife told him that the shop owner was the brother of Obed Ruzindana.(298) Furthermore, the witness stated that he supposed that people in the shop addressed the owner as Joseph, but that remembering this is not important to him.(299) For the witness, Joseph was just an official.(300)

23. During the afternoon, the witness noticed that the salesman in the shop was in regular contact with the guards at the barrier. The witness saw that this person was the coordinator there and on top of that, he was the contact person for the witness.(301) He was also under the impression that the shop owner had power to take decisions and he noticed that the owner, at least in the background, participated in all decision taking. It is the witness's opinion that the shop owner was responsible for maintaining the rules, that he had influence and that he had the power to take the decisions.(302)

24. At some point in time, the driver came back with the information that there was nothing the prefect could do for the family and that the decision regarding the fact whether the family could continue their travels was up to the local authorities. About this matter, the witness stated that this meant that his wife would be killed. The witness himself was allowed to continue, but he would not give up on his wife. Upon this, the driver suggested to ask the burgomaster of Gishyita for help. This was accepted, upon which the driver left for the 'town hall' with a written application.(303)

25. To the question whether the witness saw that Joseph wrote that application himself, he answered that he assumed Joseph did. The witness does not remember whether Joseph gave the letter to the driver or not. In any case, the witness did not see this letter prior to the driver leaving, he only saw it later. He kept the letter on him because he assumed that he would need it to return.(304) This letter was signed with the name Murakaza.(305)

26. After approximately one hour and a half, the driver came back and told them that the burgomaster was prepared to marry them the following day, thus allowing them to leave together to return to Kibuye to start up the procedure.(306) The answer of the burgomaster was written on the back of Joseph's application.(307) The witness described the situation at that moment as very tense: the people were frustrated and disappointed. At some point in time, the driver told the family to get into the ambulance, after which they left for Kibuye.(308) The witness recollects this situation as being very hectic.(309)

Additional possible evidence

27. In addition, the criminal file contains statements of the witnesses [witness 28], [witness 17], [witness 7], [witness 15] and [witness 9], as well as research by the Netherlands Forensic Institute (hereafter NFI) of the letter that was made available by the family [witnesses 3 and 4].

28. At this moment, the Court limits itself to just mentioning the additional witness statements. In the next paragraphs the Court will first discuss the research conducted by the NFI, the Defendant's own statement and the viewpoints of the Prosecution and the Counsel. Subsequently, the Court will proceed to investigate the reliability of the statements of [witness 3] and [witness 4].

The letters made available by the family [witnesses 3 and 4]

29. In their statements rendered in August 2006, [witnesses 4 and 3] both mentioned a letter allegedly written by Joseph to burgomaster Charles Sikubwabo. Mr. [witness 4] stated that he still had this letter and that, the following day, he would make a copy of it available to the officials of the Bundeskriminalambt.(310)

30. This letter, including the answer of the burgomaster written on the back, was translated by a court interpreter. The contents of the letter written to burgomaster Charles Sikubwabo are as follows:

27 April 1994
Mister burgomaster of the municipality of Gishyita

I would like to ask you to be patient with your important work. Right now, it is very urgent that you come to Mugonero to solve the problem concerning that Tutsi whom we found with a white man. But we wanted to send the car that transported them to the governor. The governor said that this person had to stay. The white man must continue his travels to Icyangungu. That is why I am sending this car, escorted by a soldier, to fetch you. The same car will take you back.

I am Joseph Murakaza(311)

31. The answer, written on the back of the letter, reads as follows:

Mister Joseph Murakaza

They will have to return to Kibuye, because we do not know whether they are married or not. With respect to the lady, this will be regarded later. We can have a look in the books that are meant for this purpose. Please be careful as to not disturb society, the relation between the Germans and the Rwandese.

May peace be with you
Sikubwabo Charles
Burgomaster.(312)

32. In order to conduct a handwriting test, on 9 August 2006, Defendant was submitted to a writing test.(313)

33. On 18 December 2006, [witness 4] telephoned the investigation team. During this conversation he said that, after his examination, he had started to look for the original letter that Joseph had written to the burgomaster, including the answer of the latter. After he had succeeded in tracing the letters in Rwanda, they were mailed to him to his home address in Germany.(314) Subsequently, the letters were handed over to the investigation team on 28 December 2006.(315)

34. On 29 January 2007, the NFI filed its first expert report. When comparing the letter signed by Joseph Murakaza with the available test material, the report showed, besides differences, also similarities, or at least traces thereof. The conclusion of the report is that the letter that was signed with the name Joseph Murakaza, was possibly written by [Defendant].(316)

35. On 10 May 2007, the NFI filed its second expert report concerning research of the little folder which contained the letters that had been made available by [witness 4]. The investigation was focused on exposing the text on the little folder and to try to indicate where on the folder the text was found and the substance of the text. This investigation showed that pieces of text ended up on the outside of the folder. These pieces of text ended up there because the copies of the letters stuck to the folder and this way, the ink was transferred to the plastic.(317)

36. On 23 May 2007, The NFI filed its third expert report. This report shows that some five dactyloscopic traces - (NFI-01; NFI-02; NFI-03; NFI-04 and NFI-05) – were found on the letters that were made available by [witness 4]. These traces were handed over to the National Police Agency (NPA) for identification. (318) Subsequently, the NPA researched these traces and on 14 June 2007, they reported that the traces NFI-01, NFI-03, NFI-04 an NFI-05 did not belong to the person mentioned in the report.(319)

37. On 29 August 2007, the NFI reported that research into the age of the letter in question could not be executed by researching the ink that was used to write the letter, if the letter was older than 6 months. In that case, the research could not be carried out with the necessary accuracy, so an official opinion with respect to the age of the letter could not be given. Also, determining the first possible date of introduction of the ink used on the document would be extremely difficult and could only be an indication whether something could have been drawn up in a certain period.
In addition, the expert explained that it was difficult, or impossible, to determine the origin (country) of the means (paper, ink) used to write the letter. Furthermore, the NFI pointed out that it was very difficult to answer questions such as whether it was possible to determine the personality of the author of the letter or under what circumstances he wrote the letter, based on his handwriting. In that respect, the reliability and validity of such graphological results have never been scientifically established, nor can reliable opinions be given about the sex of the author, based on the character of his handwriting.(320)

38. At the court hearing of 20 December 2007, the Court put forward the question whether the fact that no dactyloscopic traces of Defendant were found on the letter made available by [witness 4], could be an indication of the possibility that Defendant never had this letter on him. Very much against the will of the Counsel, the Court requested the Public Prosecutor to approach an expert of the NFI with the question whether a conclusion could be drawn from the fact that no dactyloscopic traces of Defendant were found on the letter, and if there were, what traces.

39. On 28 April 2008, reporting officer [reporting officer 2], Forensic Consultant/Expert Forensic Research with the NPA, reported that no forensic research could be conducted on the letters in question. In this respect he noted

that, in view of the smoothness of the surface, the absence of an indication of specific contact, a relative low frequency of contact, various contacts by other donors and the passage of time (over 14 years) the letter could not be qualified as a very likely piece of conviction for DNA-research.(321)

40. On 19 May 2008, the NCIS requested the Immigration Service in Kigali to supply a handwritten letter, which Defendant allegedly wrote to apply for a passport. On 20 May 2008, a copy of this letter was received. The authorities in Kigali also mentioned that the original could be supplied as well, but this would need an explicit request submitted by the prosecutor general of the Parquet Général in Kigali.(322) At some point in time, the NPA received this letter as well.

41. On 12 June 2008, the NFI reported that the fact that no fingerprints of Defendant had been found on the letter in question, could not lead to the conclusion that Defendant never had this letter in his hands. In addition, the NFI reported the fact that the second dactyloscopic trace (NFI-2) appeared to contain too little dactyloscopic information. Therefore, this trace could not be used for identification purposes.(323)

42. On 30 September 2008, at the request of the Public Prosecutor of 19 September 2008 for additional research, the NFI reported that the new reference material (i.e. the handwritten letter for the application of a passport as referred to in paragraph 40) was written five years prior to the disputed letter. According to the expert, this time passage is a limitation for comparative research. Furthermore, this report mentioned that, next to signs of similarity, the new reference material in particular showed differences as well. However, these differences were not substantial to the point that they could exclude the possibility that they were connected to the developments in the handwriting of Defendant in the five years prior to the writing of the disputed letter. In this respect, the expert mentioned that, by using reference handwriting that could be dated closer to the date of the disputed letter, it could be possible to obtain more clarity. Therefore, the conclusion, as mentioned in the report of 21 June 2007, that the letter might have been written by [Defendant], shall be maintained.(324)

43. At the hearing of 18 November 2008, the Prosecution noted that on 26 May 2008, a request for legal assistance was sent to Italy, the reason being that the Prosecution deemed it possible that handwritten material of the Defendant would still be available at the University of Bari. Such material would have been written shortly before 1994, which would make it possible to obtain the clarity as referred to above. Reference material from Italy was finally received on 14 November 2008, upon which the Prosecution requested the NFI for additional research.

44. On 8 December 2008, the NFI reported in a letter that the conclusion, as worded in the report of 21 June 2007 and the letter of 30 September 2008, (that the letter possibly had been written by [Defendant]) was still valid.(325)

Defendant’s own statement

45. Before the NCIS as well as at the trial, Defendant denied that he had anything to do with this charge.

At the NCIS
46. During his examination on 8 August 2006, Defendant stated that, during the period between April 1994 and June/July 1994, he had seen no foreigners in Mugonero and that he had heard that the foreigners had been evacuated a week after the president’s plane had been shot down. However, around June/July 1994, he had seen French soldiers.(326)

47. At questions about a German doctor who supposedly was in Mugonero in April 1994, Defendant stated during a later interrogation that he had actually seen a white man on the street in Mugonero, about a week after the plane had crashed. He had not seen any woman or child with this man. Defendant saw this man when standing on his veranda, from which he could see the barrier, looking in the direction of the road. He saw then that this man was talking to a gendarme. However, he had not seen how this ended because at a certain moment he went home. In any case, the white man never visited his shop.(327)

48. As already mentioned in Chapter 7 (the roadblock in Mugonero) paragraph 15, Defendant denied that he was sometimes called Joseph Murakaza.(328) However, he did say that if a witness stated about Joseph, who worked in a shop in Mugonero and who was the brother of Obed Ruzindana and the son of Murakaza, it was clear that the witness referred to him.(329)

49. In a later interrogation, Defendant also acknowledged that if a witness mentioned Joseph Murakaza, member of the Murakaza family, of which one sister is called [F2] and who had a brother named Obed Ruzindana, the witness referred to him.(330)

50. To the question of the NCIS why she would make an incriminating statement, Defendant stated the following: “His wife is Tutsi and he is German. If you read the witness statement, it says that he knew me and my sister. Now we are talking about his wife, it was she who knew me and my sister. She said that in 1996, she went back to my town to look for me and to take revenge on me. When looking at the relationship between her and her husband, isn’t it logical that his wife, being a Tutsi, would do anything to get me into trouble.”(331)

During the hearing on 20 October 2008

51. In his testimonies at the trial, Defendant acknowledged that during the interrogations by the NCIS he had spoken about a white man whom he had seen about a week after the death of the president. He withdrew the part in the statement that he had not seen any foreigners in Mugonero during that period. During the trial, he testified that, after the plane had been shot down, he saw many white people walking by and passing by in cars. He also testified that he had heard on the radio that foreigners were being evacuated and that when he saw white people, he assumed that they were being evacuated. Furthermore, Defendant testified that he could not remember this very well and that he was unable to say where he had seen white people and during what period, nor could he determine from which moment he stopped seeing white people in Mugonero.

52. After being confronted with his statement before the NCIS in which he referred to only one white man whereas, during the trial, he repeatedly mentioned many white men, he stated that in that case the statement rendered before the NCIS must be based on a misunderstanding. He clarified his remark by stating that he had understood that the NCIS had asked only about “white people in the shop”.

53. Defendant also testified that if he remembered well, he saw the man somewhere on the street. This is very difficult for him to remember because he saw many white people at various moments.
He also said that his statement before the NCIS could not be taken to mean that he saw the white man at the barrier. He explained this by pointing out that every car that passed by had to stop at the barrier. The white man had to stop there, just like all other people. Since there were soldiers at the barrier, Defendant testified that he thought the white man at the barrier was chatting with the soldiers.

54. During the trial, the Court asked Defendant questions about some of the remarks he made before the NCIS. It was put to him that before the NCIS, he mentioned some possible motives for people to make false statements, such as: manipulation by the government, illiteracy and envy with respect to successful people. The Court suggested that, in any case, [witness 4] is no illiterate and asked Defendant whether there was reason to believe that [witness 4] was manipulated by the government. Defendant answered that he saw no reason to assume this.

55. During the trial, Defendant was confronted with his statement that it was only logical that Mrs. [witness 3] and Mr. [witness 4] as well, incriminated him because Mrs. [witness 3] was a Tutsi. To this he answered that he did not mean “someone in particular”. It was put to Defendant that even if the Tutsi background of Mrs. [witness 3] would play a role, this would not be an explanation for the fact that she incriminated him in particular and not another Hutu man, who would have stopped her and who would have written the letter instead of him. Defendant did not react to this.

Position of the Prosecution

56. The Prosecution deems this fact legally and convincingly proven on grounds of the letter written by Defendant to burgomaster Sikubwabo, the testimonies of [witness 3] and [witness 4], in conjunction with (regarded as supporting evidence) testimonies from [witness 28] and [witness 7].(332)

57. According to the Prosecution it is an established fact that Joseph Murakaza is Joseph M. and that, when writing this letter, he consciously used the well known name of his father. The main reason being, according to the Prosecution, that there would have been a considerable chance that an important man like Sikubwabo would have had no idea whom he was dealing with. The Prosecution thinks that another important indication for the fact that [Defendant] falls back on the use of the name Joseph Murakaza is the email address he chose: murajos@[X].com. According to the Prosecution, the only logical conclusion is that this email address is composed of the names Murakaza and Joseph.(333)

58. Therefore, the Prosecution argued that the letter, deemed as objective evidence, was written by Defendant. In this respect, the Prosecution also argued that although the handwriting analysis did not result in anything certain, it did not provide any contra-indications either.(334)

59. With respect to the statements and trial testimonies of [witness 3] the Prosecution argued that the reliability of this witness is no point of discussion, since she stated and testified in detail and consistently. Therefore, her

statements and testimonies are considered to be reliable and credible by the Prosecution.(335)

60. With regard to the point of recognition of Defendant by [witness 3], the Prosecution made reference to the circumstance that she already knew Defendant well before 27 April 1994, and that she also knew Mugonero and surroundings. In addition, the Prosecution argued that the witness saw Defendant during quite a long period and that he was also pointed out to her by the driver.(336)

61. The statements of [witness 4] are less detailed, but according to the Prosecution, they support the statements of [witness 3] significantly. About the degree of detail, the Prosecution noted that also the witness himself observed that he cannot remember some details very well. In addition, he noted that he was unable to understand everything because Kinyarwanda is not his native language. In view of the consistency and credibility of the statements of [witness 4], the Prosecution deemed them reliability and therefore useful for the evidence.(337)

62. With respect to the statements of [witness 28] and [witness 7], the Prosecution observes that they differ on certain parts. In view of this, the Prosecution used these statements only where they are supported by other findings of fact.(338)

63. Furthermore, the Prosecution noted that the armed conflict has had (substantial) influence on the realization of the facts declared proven and the way in which these facts were committed. According to the Prosecution, Defendant's acts must be qualified as defamation of the personal dignity, humiliation and degrading treatment and as threat of violence aimed at a person's life. Therefore, the Prosecution has demanded that the Court deems the principal charge proven in its entirety.(339)

64. In case the Court gets into the alternative charge of torture, the Prosecution notes that [witness 3] and [witness 4] did not have the possibility to withdraw from the situation and the actions of Defendant. In view of this, they were deprived of their freedom as defined in the Torture Convention Implementation Act.(340)

Counsel's point of view

65. The Counsel pleaded that Defendant should be acquitted on this charge for lack of legal and convincing proof. To substantiate his plea, the Counsel put forward the following.

With regard to witness [witness 3]
66. The statement of this witness that she was in boarding school with one of the sisters of Defendant, is not supported by any finding of fact. Besides, even if this is assumed, the fact is that she only saw Defendant in the 1970's. In addition, she stated that she could not describe Defendant. Since a perpetrator can only be identified by someone who knows him, no other conclusion can be drawn than that this witness has not been able to identify the perpetrator in a proper manner. The circumstance that the driver [B4] told her that Joseph was the perpetrator does not change this, after all, the witness must be capable of identifying the perpetrator herself. According to the Counsel, no evidential value whatsoever can therefore be attached to the statements of this witness. Hence, her statements cannot be used as evidence in this case.(341)

With regard to witness [witness 4]
67. The Counsel pleaded that this witness only describes an incident and is unable to identify the perpetrator as being Joseph M. The witness did not know the perpetrator, cannot describe him nor does he have any recollection as to the age of the perpetrator. This witness only heard the name Joseph from his wife and later from the NCIS and the Examining Judge. According to the Counsel, it is very well possible that as a consequence, this witness started to call the perpetrator Joseph. Furthermore, the Counsel brought forward that the witness testified that the name Murakaza only stuck with him because it is the name with which the disputed letter was signed.

68. It is the Counsel's opinion that based on the statements and testimonies of this witness, no certainty can be obtained with respect to the question whether Defendant is actually the person who committed the alleged crimes. Therefore, the Counsel takes the standpoint that relevant evidence has not been furnished.(342)

With regard to [witness 28]
69. With respect to this witness, the Counsel brought forward that it is presumed that he is a 'parrot' or at least someone who bases his statements on facts that he may have heard from someone else. In addition, this witness went through a great deal to incriminate Defendant and mentioned incidents about which the other witnesses did not say anything. Therefore, according to the Counsel, the Court shall have to make a choice: either Mr. and Mrs. [witnesses 4 and 3] have lied in their statements or [witness 28] must be considered to be a storyteller whose statements were just a pack of lies.(343)

70. According to the Counsel, the latter is the case: the statements rendered by [witness 28] are incredible and inconsistent. Therefore, the statements of this witness cannot be used at all, in particular since they are filled with all kinds of details about which no other witness reported. The Counsel argues that selecting certain usable parts from his statement impairs the total judgement of the witness.(344)

With regard to the statements of [witness 7] and [witness 15]
71. With respect to the statements of these witnesses, the Counsel brought forward that they cannot be used as evidence since the Examining Judge and the Counsel have not been able to hear these witnesses.(345)

With regard to the letter written to Charles Sikubwabo
72. Concerning this letter, the Counsel has brought forward that the Court should look at positive evidence based on which something can be established as being true. The reasoning of the Prosecution that, despite the fact that Defendant's fingerprints are lacking on the letter it cannot be excluded that Defendant has had this letter in his hands, is false, according to the Counsel. (346) In addition, the Counsel brought forward that since fingerprints of another person on this letter have been secured, this is a very good indication that Defendant never had this letter in his hands.(347)

73. Furthermore, the Counsel brought forward that the handwriting analysis did not provide any positive evidence. With respect to the second reference research, the Counsel argued that this reference material, i.e. the handwritten letter for the passport application, cannot serve as supporting evidence for the first letter. For this purpose the Counsel brought forward that there is no evidence showing that this letter was written by Defendant. After all, Defendant was never heard about it, the data were not verified and the handwriting was not compared with the handwriting obtained from the writing test. Therefore, there are no clues that Defendant is the author of this letter. In view of the above, this letter cannot serve as evidence.(348)

Alibi
74. Furthermore, the Counsel brought forward that [witness 18] stated that on 27 April 1994, Defendant conducted an attack on Kizenga Hill. Since Defendant cannot be in two places at the same time, the Court shall have to dare to make a choice: the Court either deems this witness unreliable or incredible, or Mr. and Mrs. [witnesses 4 and 3]. If the Court deems witness [witness 18] unreliable, the Counsel thinks the Court will do this because it cannot be explained that this witness – like so many other witnesses in this case file, for that matter – did not mention the name of Defendant prior to the initiation of the Dutch criminal investigation, while right now the witness assigns a crucial role to the Defendant. The Counsel argues that another reason to consider this witness unreliable is the fact that other witnesses saw Defendant at the same time in another place. In view of the importance of this judgement, the Counsel mentions that he hopes the Court has the courage to actually make this consideration. (349)

The judgement of the Court

75. As mentioned above in paragraph 28, concerning this point, the Court sees reason to investigate the statements of the witnesses [witness 3] and [witness 4] expressly as to their reliability. For this purpose, the Court will apply the points of attention as mentioned in chapter 6 (Assessment of witness evidence) paragraph 46, which will be explained below (without wanting to be exhaustive), but only if the statements give cause for it.

[Witness 3]

Ad I: The witness as a person
76. Before the Examining Judge, this witness stated that she is Tutsi.(350) During the first weeks of the genocide, she lived in Kibuye, together with her partner, [witness 4], and their baby son, who was born in February.(351)

77. About Defendant she stated that she knows him as Joseph Murakaza. In addition she said that via the internet she learned that others call him [name of Defendant].(352) About Joseph Murakaza she heard that he had been in Europe for a study.(353) Furthermore, the witness stated that she has known Joseph for a long time because she was in school with his sisters [F2] and [F9].(354) The witness was in the same grade as [F2] and [F9] was one grade up.(355) As mentioned above in chapter 7 (The roadblock in Mugonero) paragraph 6, she stated that Murakaza is the name of the father of Joseph.

78. About the family of Joseph she stated that his brother's name is Obed Ruzindana. In addition she stated that Joseph comes from a large family and that the Murakaza family was a well known family of traders (356), who lived in the commercial centre of Mugonero. The shop was located in front of their home and they had shops in Kigali

as well. The shop sold all kinds of goods.(357)

79. During the court session on 20 October 2008, Defendant stated that he does not know this witness. He also stated that he does not know whether this witness was in boarding school with his sister, nor can he remember if [F2] and [F9] were in boarding school together.

80. It appears from the charges that this witness was actually mentioned as being one of the victims of the indictable offence. In view of this, there is no reason to discuss the question as to the involvement of the witness, other than as a victim.

81. The Court is not convinced of the fact that the witness has any interest or motive to render an incriminating statement in violation with the truth. The fact that the witness stated, before the Examining Judge, that she went back to Rwanda after the genocide and that she asked people for the [Defendant](358), is no reason for the Court to assume that she would have any interest or motive to render a statement which would incriminate Defendant and be in violation with the truth. Finally, the Court notes that, during the court session, Defendant has not demonstrated in any way that this witness incriminated him because of the fact that she is Tutsi and he is Hutu.

82. As appears from the above, in the meantime, this witness got married to [witness 4], who is also considered to be a victim in the charges. When asked, the witness testified that she and her husband [witness 4] did not make any arrangements as to the contents of their statements.(359)

83. The Court has not noticed any evidence of any harmonization of statements between these witnesses, for that matter. Nevertheless, source amnesia cannot be excluded. Although the case file does not expressly shows this, it is very likely that these witnesses have often spoken to each other about the events. As discussed earlier in chapter 6 (Assessment of witness evidence) paragraph 8, in the scientific world it is a well known phenomenon that it is rather difficult for witnesses who have knowledge from their own experience of an incident, to differentiate additional information from other sources (for instance details they hear from other people) from the facts they actually experienced personally. However, also in view of what the Court will consider later with respect to her testimonies, the Court sees no reason to deem the statements and testimonies of this witness less reliable.

84. Furthermore, the statements rendered by this witness show that she is very capable of making a distinction between facts she experienced personally and facts that were told to her by others.(360)

85. Therefore, it is the Court’s opinion that the witness as a person gives no reason to doubt her credibility.

Re II: The formation of the statement
86. As far as the formation of the witness statements during the examinations is concerned, there are no indications that at the time of the examinations circumstances occurred that could have had an influence on the reliability of the contents of the statements.

Reliability of the statement in objective terms

Re III: Verification with elsewhere obtained, objective data
87. In view of the earlier observations in paragraphs 34 up to and including 44, the outcomes of the investigations carried out by the NFI and the NPA are not in violation with the statements of this witness.

88. It has been established that the dactyloscopic traces on the letter are not the Defendant’s. Therefore, the outcome of this investigation does not expressly support the statements of this witness. However, since the lack of these traces does not justify the conclusion that Defendant never could have had this letter in his hands, the outcome of this investigation is not in violation with the statements of this witness either.

89. The same goes for the handwriting analysis. To the question whether the handwriting on the letter corresponds with the handwriting of Defendant, based on the research carried out by the NFI, the experts could not indicate that this could be 'probable' or anything stronger than that. However, the research does not preclude the possibility that Defendant wrote this letter, since the conclusion of this research remains that the disputed letter may have been written by Defendant. From professional literature enclosed with this conclusion appears that the said conclusion was reached because - although the findings of the research are not in violation with the assumption that this letter was produced by Defendant - there is no combination of writer typical characteristics either that would justify the statement 'probable' or anything stronger than that.

Re IV: The consistency of successive statements rendered by this witness

90. As already mentioned in chapter 7 (The roadblock in Mugonero) paragraph 3, on 18 October 1996, this witness rendered a statement before ICTR investigators. Within the scope of the investigation against Defendant, on 2 August 2006, she was heard as a witness in presence of investigators of the NCIS and on 5 and 6 February 2007, by the Examining Judge.

91. Already in 1996, this witness mentioned the barricade in Mugonero, the role of Joseph Murakaza there as well as his role in the currently charged fact. Especially in comparison with later statements, this statement was rendered relatively shortly after the incident as defined in the charge. Besides, in broad outline, her statement rendered in the investigation against Obed Ruzindana, corresponds with the contents of her later (more detailed) statements. Finally, it is important to realize that she rendered these incriminating statements already more than 10 years prior to the Dutch criminal investigation.

92. In view of the above, it is the Court's opinion that the statements rendered by this witness are consistent to a high degree. The differences in the statements of this witness are limited to differences in small details which cannot be regarded in any way as being substantial contradictions. Therefore, these small differences do not deserve any discussion. The Court reached this conclusion because these differences – not in interrelation either – do not constitute a circumstance as a result of which the statements rendered by this witness may be considered to be unreliable.

93. Another point of attention in this respect is that when rendering more than one statement, there will be differences in those statements. In some statements certain elements are hardly mentioned, or not mentioned at all. These differences may very well be caused by the passage of time, the chaotic nature of the incident in which the witness seriously feared for her life and that of her baby, the emotions caused by the recollection of the dramatic events for the witness, or by an error of the witness or another party to the proceedings. In addition, a comparison of differences cannot be allowed to lead to it that the statement is considered inadmissible.

94. In view of the above, it is the Court's opinion that the differences in the statements of this witness are not detrimental to the reliability of those statements.

Re V: The quality of the identification of Defendant by [witness 3]
95. The witness stated that she had not seen Defendant since her school days. (361) During her witness examination in Germany, she stated that from 1975 until 1979, she was at a boarding school in Kibuye-City.(362) She also stated that she was in this boarding school with [F2], one of the Murakaza daughters.(363) Furthermore, she stated that, during the five years prior to the genocide, she had not seen any persons of the Murakaza family anymore.(364)

96. In view of the above, it is the Court's opinion that it is an established fact that she had not seen Defendant for about 15 years prior to the indictable offence. Therefore, the Court considers that there is no recent, especially strong and reliable basis for recognition and identification of Defendant. As mentioned before in chapter 6 (Assessment of witness evidence) paragraph 42, visual identifications, pre-eminently are sensitive to error and therefore should always be treated with extreme caution, especially in case this identification takes place under difficult and traumatic circumstances.

Re VI: Conformity of the statements of this witness with statements rendered by other witnesses
97. In view of the nature of this verification and the concurrence with the assessment of other witness statements, the Court will discuss this point later in paragraphs 128 - 130.

Re VII: The plausibility of the contents of the rendered statements
98. The contents of the statements rendered by this witness do not give cause for explicit discussion.

[Witness 4]

Re I: The witness as a person
99. This witness is a German doctor who worked in Congo/Zaire between 1984 and 1989. From 1989 until the end of 1991, he lived in Germany after which he left for Rwanda at the beginning of 1992. In October 1993, he moved to Kibuye City to work at the hospital there.(365) During the first weeks of the genocide, he and his partner, [witness 3], and their 2 months old son [B1] lived in Kibuye City.(366) The witness worked at the hospital until the end of April 1994, but decided, out of desperation, they would try to flee the country on 27 April 1994. After they had failed to flee the country, on 21 May 1994, they were rescued by the honorary consul in Bukavu and taken to Germany. From August 1994 until the end of 1998, the witness worked in Rwanda again.(367)

100. Before the Examining Judge, the witness stated that, prior to the genocide, he had never heard of [Defendant], nor did he ever have contact with him. The witness also stated that he thinks he had never heard anything about the Murakaza family in the days before the genocide started. In any case, he had never had contact with this family, but he did know that they owned a shop at a market place in Mugonero. Prior to the genocide, he had often driven on the road passing the market place, but he had never visited the market itself. He had never been in the shop of the Murakaza family.(368)

101. To the question whether he had ever seen Joseph before, the witness answered that he is not aware of that.(369) He also stated that he cannot describe Joseph and that, most probably, he would not recognize him when he saw him.(370) During his examination in Germany the witness said about this that he thinks he remembers that his wife told him that the younger brother of Obed Ruzindana could be seen in the shop as well and that he even could be the owner of the shop.(371)

102. After the incident at the roadblock on 27 April 1994, the witness never saw Obed Ruzindana or his brother again.(372)

103. During the trial on 20 October 2008, Defendant stated that he does not know this witness.

104. From the indictment appears that this witness was personally mentioned as one of the victims of the alleged crime. In view of this, there is no direct reason to discuss the involvement of this witness, other than as a victim.

105. The Court sees no reason to believe that the witness has any interest or motive to falsely render a statement that would incriminate Defendant.

106. As mentioned above, this witness got married to [witness 3], who is also mentioned as a victim in the indictment. When asked about it, the witness stated that he and his wife indeed spoke about the examination, but that they did not make any agreements as to the contents and did not harmonize their statements.(373)

107. The Court has not noticed any evidence of any harmonization of statements between these witnesses, for that matter. Nevertheless, source amnesia cannot be excluded. Although the case file does not expressly shows this, it is very likely that these witnesses have often spoken to each other about the events. As discussed earlier in chapter 6 (Assessment of witness evidence) paragraph 8, in the scientific world it is a well known phenomenon that it is rather difficult for witnesses who have knowledge from their own experience of an incident, to differentiate additional information from other sources (for instance details they hear from other people) from the facts they actually experienced personally. However, also in view of what the Court will consider later with respect to her testimonies, the Court sees no reason to deem the statements and testimonies of this witness less reliable.

108. Furthermore, the statements rendered by this witness show that he is very capable of making a distinction between facts he experienced personally and facts that were told to her by others.(374)

109. Therefore, it is the Court opinion that the witness as a person gives no reason to doubt her credibility.

Re II: The formation of the statement
110. The official record of witness examination before the Examining Judge shows that the witness was very assertive regarding the examination procedure (375) and indicated on several occasions that he was not happy with the translation procedure.(376) Clearly the witness was capable of sustaining his own evidence by making reference to his observations, by which the Court has obtained a clear view of the local situation.(377) The witness was able to draw his conclusions from what he had seen at the local situation of the alleged crimes (378) and also about what he failed to remember.(379) There are no indications that at the time of the examinations circumstances occurred that could have had an influence on the reliability of the contents of the statements.

Reliability of the statement in objective terms

Re III: The verification of objective information, obtained elsewhere, with respect to the local situation.
111. Considering the observations contained in paragraphs 34 through 44, which was further discussed in paragraphs 87 though 89, the results of the research carried out by the NFI and the NPA are not contradictory to the statements made by this witness.

Re IV: The consistency of successive statements rendered by this witness
112. On 25 September 1995, 19 September 1996 and 20 September 1996, this witness rendered statements before ICTR investigators. In none of these statements did the witness mention this alleged act during the incident.

113. The witness explained this during his examination before the Examining Judge. He noted the fact that he only stated with regard to the general situation, prior to, during and after the genocide. Furthermore, he said that, during his examination before the investigation he did state about Kayishema but not about Joseph and the militia in Mugonero. He has clarified this by saying that Joseph was just 'side figure'. Although on that particular day he was of crucial importance to the witness and his partner, for the ICTR he was just a side figure with an unimportant role at the time.(380)

114. In view of the contents of these witness statements, the Court deems the explanation of the witness with respect to his not mentioning the charged fact very plausible. After all, these witness statements show that the witness, just like he stated before the Examining Judge, first only spoke about the general situation, prior to, during and after the genocide, in particular in his town Kibuye. In his last statement before ICTR investigators, he stated about what he had seen and/or heard in Kibuye concerning the attack on the 'Home St. Jean'-complex. Only at the end of his statement, this witness made a statement about his attempt to flee the country on 27 April 1994, about which he did not give any detail. Under these circumstances it is not surprising that, in his statements, he did not mention Defendant and the incident at the barrier in Mugonero.

115. Therefore, it is the opinion of the Court that the fact that the witness did not mention this count with which the Defendant is charged in the indictment during his statements before the investigators of the ICTR, in no way affects the reliability of his statement.

116. For the rest it can be stated that the statements of this witness are consistent to a very high degree. The differences in the statements of this witness are limited to differences in small details which cannot be regarded in any way as being substantial contradictions. Therefore, these small differences do not deserve any discussion. The Court reached this conclusion because these differences – not in interrelation either – may constitute a circumstance as a result of which the statements rendered by this witness may be considered to be unreliable.

117. Another point of attention in this respect is that when rendering more than one statement, there will be differences in those statements. In some statements certain elements are hardly mentioned, or not mentioned at all. These differences may very well be caused by the passage of time, the chaotic nature of the incident in which the witness seriously feared for her life and that of her baby, the emotions caused by the recollection of the dramatic events for the witness, or by an error of the witness or another party to the proceedings. In addition, a comparison of differences cannot be allowed to lead to it that the statement is considered inadmissible. In view of the above, it is the Court’s opinion that the differences in the statements of this witness are not detrimental to the reliability of those statements.

Re V: The quality of the identification of Defendant by [witness 4]
118. As mentioned above in paragraphs 22, 100 and 101, the witness did not know the person under whose guard they had been placed and who took the decisions with respect to their continuing their travels or not. His partner told him that this person was called Joseph and the witness remembers the name Murakaza, because the letter to burgomaster Charles Sikubwabo was signed with the names Joseph Murakaza.

119. In view of this, reference to actual visual identification by this witness cannot be made, and therefore cannot be verified either.

Re VI: Conformity of the statements of this witness with statements rendered by other witnesses
120. In view of the nature of this verification and the concurrence with the assessment of other witness statements, the Court will discuss this point later in paragraphs 128 up to and including 130.

Re VII: The plausibility of the contents of the rendered statements
121. The contents of the statements rendered by this witness do not give cause for explicit discussion.

Other witness statements in the case file

122. As mentioned above, [witness 7], [witness 15], [witness 28], [witness 17] and [witness 9] rendered statements that (possibly) are related to this count in the charge. At this moment, the Court limits itself to briefly mentioning these statements.

With respect to [witness 7] and [witness 28]
123. These witnesses rendered a very general, brief statement with regard to this incident. In summary, these statement mention that they both saw that a white man and his Rwandese wife were stopped at the barrier.

Subsequently they were taken to the house of (the father of) Joseph. There, the man and the woman had to wait until the prefect notified them that they were allowed to pass though.(381)

124. Remarkable points can be indicated in the statements of both witnesses. For instance, [witness 7] stated that in front of Joseph's house, German was spoken with the white man(382), while [Witness 28] stated that at the moment the white man and his wife were allowed by Joseph to leave, a certain Murego refused to open the barrier whereupon Joseph shot him to death. After this, the white man and his wife drove off.(383)

With respect to [witness 15]
125. This witness stated that in April 1994, a white man and his Rwandese wife arrived at the barrier. According to this witness, Joseph took the woman with him and killed her.(384) This white man came from Kigali and together with his wife, he was stopped at the barrier and taken to the house of Joseph. There, Joseph said to his Interahamwe that the woman should be taken away and killed. The witness stated that upon this, the white man, who also held the baby, left without saying a word. The woman was taken away and never came back. That is why the witness assumes that the woman is dead. When the NCIS asked the witness had heard of an incident in which a white doctor was stopped at the barrier, the witness answered that he had heard nothing about that.(385)

126. Now that this witness stated that the woman was murdered and that he had heard nothing about an incident involving a white doctor, it cannot be excluded that this statement of this witness is about another incident than the alleged crime during this incident. In so far as this statement does relate to the alleged crime, the Court establishes that the statement is evidently incorrect, since [witness 3] obviously was not murdered.

With respect to [witness 17] and [witness 9]
127. Witnesses [witness 17] and [witness 9] are considered not to have any personal knowledge about this fact and have only stated what they heard from other persons. Therefore, at this moment the Court just concludes that the essence of the statements rendered by these witnesses corresponds with the contents of the statements of [witness 3] and [witness 4], represented above.

Assessment of the charge

Considerations with respect to the relative differences between the statements of [witness 3] and [witness 4]
128. The Court shall now assess the statements of [witness 3] and [witness 4] with the aid of the verification framework as defined in the point of attention under VI.

129. The statements of [witness 3] and [witness 4] only differ from each other on small details. In no way, these small differences(386) can be marked as fundamental contradictions.

130. Therefore, the Court notes that these differences do not need any further discussion. In this respect, the Court refers to its earlier consideration with respect to not reducing statements to loose elements. Furthermore, the Court once again points to the fact that when rendering more than one statement, there will be differences in those statements. In some statements certain elements are hardly mentioned, or not mentioned at all, for instance because of the manner in which the examination is conducted, the circumstance that witnesses saw different parts of the incident and thus remembered different parts thereof.

Considerations with respect to Defendant's involvement
131. As mentioned earlier with regard to the recognition of Defendant by [witness 3] in paragraphs 95 and 96, there can be no reference to a recent and particularly strong, reliable basis to recognize Defendant and identity him.

132. However, this have no effect on the 'recognition' of Defendant by the witness and therefore, her statements about the involvement of Defendant should be considered to be very reliable. The Court has considered that this 'recognition' is largely and convincingly supported in other evidence.

133. In fact, the witness stated that the driver [B4] told her that the person in the shop was called Joseph and that she concluded that he was called by that name by other people. Besides, there is no doubt that the witness, in view of her description of Joseph, referred to Defendant. As mentioned earlier, Defendant acknowledged this before the NCIS. Furthermore, the Court – together with the Prosecution – notes that the email address used by the witness, i.e. email address murajos@[X]. can only be composed by using the names Murakaza and Joseph. Therefore, the conclusion can be drawn that Defendant uses the name Joseph Murakaza more frequently.
The Court arrived at this conclusion by taking into consideration its conclusion in chapter 7 (The roadblock in Mugonero paragraph 34) concerning the leading role Defendant played at the barricade in Mugonero, where the family [witnesses 3 and 4] were stopped. Finally, it can be concluded that the statements of this witness, as

represented already in paragraphs 87 - 89, are not in contradiction with the outcomes of the NFI research, although this research does not explicitly supports the statements rendered by this witness.

134. Although that fact that the statement from the witness [witness 4] concerning the name of the person in the shop under whose guard they had been put, is based on remarks from [witness 3], his statement also contributes to the evidence with respect to the involvement of Defendant in this incident.

135. In addition, Defendant himself stated that when a witness speaks about Joseph, who works in a shop in Mugonero, who is the brother of Obed Ruzindana and the son of Murakaza, it is obvious that this witness refers to him.(387) He repeated this actually during a later examination. After all, he admitted that if a witness speaks about Joseph Murakaza, member of the Murakaza family, of whom one of his sisters is called [F2] and who has a brother with the name Obed Ruzindana, the witness refers to him.(388)

136. Furthermore, the contents of the letter provided by [witnesses 3 and 4] which is signed with the name Joseph Murakaza, perfectly match the contents of their statements about the incident.

Considerations regarding the statements of [witness 18]
137. This witness has rendered a brief statement concerning the attacks on the Kizenga Hill and Defendant's involvement. The attacks on this hill supposedly took place between 11 April and 27 or 28 April 1994. In addition the witness described Defendant as one of the instigators who often could be seen during the attacks.

138. Different from the Counsel, the Court - together with the Prosecution – considers that this witness never stated that he saw Defendant during the attack on Kizenga Hill on 27 April 1994. In view of this, the statement of this witness does not refute the assertion that Defendant could have been at the barrier in Mugonero on 27 April 1994.

Considerations concerning other witness statements
139. As mentioned earlier in paragraphs 123 and 124, remarkable differences can be pointed out in the statements of [witness 7] and [witness 28]. These differences raise questions about the reliability of the witness statements with respect to this incident. In view of this, the Court has decided not to accept the statements of these witnesses as evidence with regard to the charge. Therefore, according to the Court, there is no need to discuss the statements of these witnesses explicitly with the aid of the earlier mentioned attention point in the assessment framework.

140. With respect to the statements of [witness 17] and [witness 9], the Court has established that these witnesses have no personal recollection with regard to this fact and only stated what they had heard from other people. Although there is no legal rule barring these statements from being used as evidence, the Court, together with the Prosecution, shall not include these statements in the evidence with respect to the charge. Therefore, according to the Court, there is no need to discuss the statements of these witnesses explicitly with the aid of the earlier mentioned attention point in the assessment framework.

141. With regard to the statement of [witness 15] it can be established that in view of the contents of paragraphs 125 and 126, it is not indisputable that the statement of this witness refers to the charge. Therefore, the Court has decided not to accept this statement as evidence with regard to the charge and sees no need to discuss the statements of these witnesses explicitly with the aid of the earlier mentioned attention point in the assessment framework.

Final considerations

142. The Court uses the statements of witnesses [witness 3] and [witness 4] as evidence, with reference to Defendant's own statement when he said that if the witnesses speak about Joseph Murakaza they refer to him and with reference to the letter signed by Joseph Murakaza.

143. Based on the above, it has been firmly established that Defendant was in charge of the roadblock in Mugonero, where [witness 3], [witness 4] and their two-months old son [B1] were stopped, after which they were taken to the house of Defendant. In the hours that they had to wait close to that house, they were insulted and threatened by Defendant, among others. In addition and based on the above, it has been established that, only because [witness 4] was a foreigner and Defendant feared trouble if they would kill a foreigner, he finally wrote the letter to burgomaster Sikubwabo to explain the situation to him.

144. Therefore, the Court considers the following acts as defined in the indictment to be legally and convincingly

proven. However, the principally and alternatively charged acts are somewhat different in a linguistic meaning, although in essence, they are identical. In view of this difference and because of the fact that this difference is unrelated to the later to be answered question with respect to which legal qualification that should be applied to this fact, for now the Court shall just render briefly which acts it deems legally and convincingly proven. In view of the difference between the principal and alternative option, the Court opts for the most detailed description of the facts which, based on the earlier mentioned findings of fact, are considered to be legally and convincingly proven, without anticipating the decision to be taken hereafter.

The Court deems legally and convincingly proven that Defendant:

On 27 April 1994, the Defendant, together with others, refused passage to [witness 3], her partner [witness 4] and their son [B1], who was only a couple of months old, at a roadblock in Mugonero. Weapons were shown openly to the witnesses and during the hours in which they were not allowed passage, they [witness 3, witness 4 an [B1] were able to hear remarks such as “cockroach(es)”, “Look well at that Tutsi-woman, these are the people who murdered the president”, “Would you like to be treated as a Tutsi?”, “You can choose whether you are going to be killed, in Kibingo, in Mugonero or in Gishyita”, “Look how bad these Tutsi’s are, they even laugh when we are going to kill them” and “Hutu-power”, while [witness 3] belonged to the Tutsi population and her son [B1] was considered by the bystanders to belong to the Tutsi population. As a consequence of this, [witness 3] found herself in a situation in which she had to fear for her life and that of her son for a prolonged time, while she was seriously humiliated in public by these actions. [witness 4] was put in a situation in which he had to fear for his life and that of his partner for a prolonged time, while he was seriously humiliated in public by these actions.

Chapter 9 The crimes against the passengers of the ambulance

Origin of the suspicion

1. As mentioned earlier in Chapter 5 (The investigation) paragraph 5, On 14 February 2006, the Minister of Foreign Affairs delivered an individual official report with regard to the Defendant.(86) In this report, the following is stated under 2 that according to informants, that is was clear Defendant was in charge of a roadblock which was set up 50 meters from his home in Mugonero. Furthermore, this report mentions that there are numerous witness statements against this person and his brother mentioning that at the road block, they decided about life and death of other people. Point 3 mentions the fact that Defendant is accused of giving orders to kill Tutsis in an ambulance near the roadblock in Mugonero.

2. As indicated earlier in chapter 5 (The investigation) paragraph 7, following the above mentioned official report, the Prosecution consulted the Parquet Général in Rwanda. These consultations showed that the name of Defendant already appeared in an investigation of the Provincial Prosecution Service of Cyangugu (the so-called Cyangugu file). Following these consultations, on 14 June 2006, the Public Prosecutor sent a request for legal assistance to Rwanda. After receipt of this request for legal assistance, the Rwandese authorities, at their own initiative, conducted an investigation during which they heard the witnesses form the Cyangugu file a new. Among these witnesses was [witness 7]. The Rwandese authorities made these statements - rendered after 14 June 2006 - available to the Dutch authorities, after which the NCIS took receipt of them on 14 July 2006.

3. More than a year later, on 13 August 2007, the NCIS received the actual Cyangugu file of the Rwandese authorities. This file contains a statement rendered by [witness 34](389) and dated 9 April 1999, in which she states about Defendant and his brother, whom she calls Interahamwe ((see chapter 3 for an explanation of the word Interahamwe (Rwanda) paragraph 21)). In addition, she spoke about an incident involving an ambulance in which a certain Joseph was involved.

4. Shortly after the NCIS received the Rwandese statements on 14 July 2006, the statements were scanned by an interpreter in the Kinyarwanda language on relevancy, after which a selection was made of witnesses to be heard in more detail in Rwanda. [Witness 7] was classified in the first selection and the NCIS heard him on 26 July 2006 and 9 August 2006 as a witness. Among other matters, he stated about a barrier which was set up by Defendant and his brother Obed Ruzindana. He also stated that he had seen an incident involving an ambulance at this barrier. He pointed out [witness 1] as being the driver of the ambulance. About this witness [witness 1] he also stated that he is still alive and the often go to the gacaca together. In addition, this witness mentioned the name of [witness 15], a civilian who had to guard the barrier. Finally, he stated that a girl of 7 at the time had been in that ambulance and that she had survived the massacre.

5. Subsequently, the NCIS traced [witness 1] and [witness 15] and heard them as witnesses. [Witness 1] confirmed that one of the passengers of the ambulance, a young girl, had survived the incident. He told that the aunt of the

girl was a nun who is called [witness 16]. Supposedly, this aunt is still alive and living in Kiruhura.

6. Following this statement, the NCIS traced this [witness 16] and heard her as a witness. She said that her niece [witness 2] had been in the ambulance at the time of the incident and that she had survived the massacre. Subsequently, the NCIS also heard [witness 2] as a witness.

7. As mentioned earlier in chapter 5 (The investigation) paragraph 31 and further, the NCIS, following signals that witnesses in this investigation possibly were threatened and/or influenced and that two witnesses had disappeared, heard [witness 28] and [witness 29], the wife of [witness 7]. These witnesses not only stated about influencing and disappearances and that this seemed to be related to the statements of [witness 1] and [witness 7], they stated that they had also witnessed parts of the ambulance incident. [Witness 28] further stated that his (late) uncle, police-sergeant [B12] had also told him about the incident.

8. During the investigation by the NCIS, it appeared that a number of witnesses [witness 21], [witness 26], [witness 9] and [witness 20]) had heard other people speaking about this incident, whether or not before the gacaca. These witnesses were also heard about this incident.

9. During the investigation by the NCIS that was focused another fact (family witnesses 4 and 3), Mr. and Mrs. [witnesses 4 and 3] were heard as witnesses by the NCIS. These witnesses knew [witness 17] from the period when they were living in Rwanda. In 2007 and not in relation to this case, the latter got in touch with the family [witnesses 4 and 3]. During this conversation, the couple [witnesses 4 and 3] told him that had been heard as witnesses in the criminal case against Defendant. Upon this, [Witness 17], by way of the [witnesses 4 and 3] family, got in touch with the NCIS in order to render a statement himself. Subsequently, this witness was heard by the NCIS and he stated about the things he had seen during the ambulance incident.

10. Finally, at the request of the Counsel, the Examining Judge heard a number of witnesses for the defence. Four of these witnesses ([witness 31], [witness 32], [witness 35] and [witness 33]) also stated about this incident.

Representation of most relevant eyewitness statements

11. First, the Court shall briefly present the most important eyewitness statements, as they were rendered before the Examining Judge, supplemented by parts of the statements, which these witnesses rendered before the NCIS. However, shortly prior to them being heard by the Examining Judge, two witnesses disappeared. Just like in the case of witness [witness 29], i.e. not having been heard by the Examining Judge, the Court shall represent a brief summary of the statements which the above mentioned witnesses rendered before the NCIS.

[Witness 1]
12. This witness stated that on 13 April 1994(390), as the driver of an ambulance, he left from the Centre de Santé in Kibingo to find shelter in Rwamatamu. The passengers of the ambulance consisted of the families of Gerard Muhutu and Anaclet Munyanziza(391): Dativa and Brigitte with their children(392) and a seven to eight year old girl. Her father’s name was [B5](393) and the girl resembled the daughter of burgomaster Furere.(394) Police sergeant [B12] was also in the ambulance.(395)

13. Near Birogo, the road was blocked by a car that belonged to Obed Ruzindana and which was driven by the Defendant, preventing the ambulance from continuing. There were about 8 to 10 persons in Ruzindana’s car. Some of these passengers wore military uniforms and others wore civilian clothing. By way of gestures, the Defendant ordered the witness to turn the ambulance and to return to Mugonero. At that moment, the Defendant held a rifle in his hands. The witness fulfilled the Defendant’s order to return to Mugonero right away.(396)

14. But before he had managed to turn the ambulance around, he saw that many people had approached to take a look. He also saw soldiers at the side of the Defendant.(397) The Defendant ordered the bystanders to escort the ambulance to Mugonero. This group consisted of people in military uniforms as well as people in civilian clothing. Other people from the area were also attracted by the noise and they came to look what was going on. They pushed and shook the ambulance. Because of the fact that the escorting group walked at a footpace, the ambulance drove at that same speed. Therefore, it took about an hour and a half before they arrived in Mugonero.(398)

15. Although this cannot be found in his statements before the Examining Judge, before the NCIS witness stated that during the drive from Birogo to Mugonero, soldiers and civilians who escorted the ambulance kept on yelling: "where we are taking the cockroaches", while hitting the car all the time.(399)

16. Just before the ambulance arrived at the barrier in Mugonero, soldiers approached the ambulance.(400) The ambulance stopped at the barrier which was situated near the bridge. There, the leader of the soldiers said to the witness that "before killing the cockroaches, they should kill the driver".(401)

17. Then, the witness had to step out of the ambulance. At the same time, he saw the Defendant's car approaching, driven by the Defendant himself.(402) He noticed that a soldier took him by the hand and lead him the other way.(403) Upon that, the witness was able to run away. That is why he did not see what happened to the passengers of the ambulance; whether Dativa or other passengers were clubbed (to death) with machetes.(404)

[Witness 2]
18. At the time of the genocide, this witness lived with her father [B5], mother[B6](405), sisters and a brother in the cellule Gabiro, secteur Kirimbi, municipality of Rwamatamu in the prefecture Kibuye.(406) During the genocide, she fled to the hospital of Kibingo, where she met Dativa and her family.(407)

19. Before the Examining Judge, the witness – 12 years old at the time – stated that approximately one week after 6 April 1994, police sergeant [B12] said to her that she had to step into an ambulance and that, together with others, she would be taken from the hospital of Kibingo to the town hall of Rwamatamu. The other persons who stepped into the ambulance were, in any case, Dativa and her children. The ambulance was driven by [witness 1].(408)

20. In Birogo, the ambulance had to stop. There were Interahamwe, soldiers and police officers. The Interahamwe told the driver to turn the ambulance around and to return to Mugonero.(409) At that moment, the witness saw other people as well; she only knew the Defendant and Ruzindana.(410) However, in a later statement, before the Examining Judge, the witness stated that she had not seen Ruzindana there after all.(411)

21. In her statement before the NCIS, the witness stated that the people who had stopped the ambulance in Birogo, were happy to see the ambulance, because they were clapping their hands and waving their weapons in the air. Then she heard them yelling, shouting that they were happy they had found these women because they were going to kill these beautiful women out in the open. Furthermore, she heard the Interahamwe say that they had received orders from [Defendant] and Obed Ruzindana to search for these two mothers and their children in order to kill them. They also heard the Interahamwe say that they had received orders from [Defendant] and Ruzindana to take these women to Mugonero when they had found them.(412)

22. The driver turned his ambulance around and, together with his passengers, returned to Mugonero. According to the witness, the ambulance was accompanied from Birogo, by cars in front of it and behind it. The Interahamwe were in the cars that accompanied the ambulance. When cars passed the ambulance, Interahamwe slapped it. This only happened in Birogo. When the ambulance continued, this slapping stopped. The ambulance drove from Birogo to Mugonero, not very slowly, but not very fast either. A person would not be able to catch up with the ambulance by foot.(413) The Interahamwe who were standing in the cars leading or following the ambulance, sang "we will massacre them". They also yelled, clapped their hands and sang just to scare the passengers.(414)

23. When the ambulance arrived in Mugonero, Defendant and "his" Interahamwe were already there; they had driven ahead of the ambulance.(415) In Mugonero, the ambulance had to stop.(416) Subsequently, the passengers had to step out of the ambulance and they had to go and stand next to a river. In this respect, the witness stated that she was very afraid. When she had stepped out of the ambulance, she saw Defendant and "his" Interahamwe. Next to it was a group of curious people looking on. This group included soldiers who did not do anything, they were just looking.(417)

24. The passengers had to stand in line. The witness, standing in the back of the row herself, did not see the driver again.(418) While standing in line, the witness saw that Dativa was hit on the head with a club. Since the witness found it very hard to talk about the killing of the passengers, the Examining Judge – after the witness had confirmed that she had spoken the truth during the examination by the NCIS – did not discuss this subject in detail anymore.(419)

25. Before the NCIS, [witness 2] stated about the killings that she saw Dativa trying to protect her head with her hands and that she cried for mercy. She saw Dativa bending her head forwards and receiving a second blow on her head with a club. She saw Dativa falling to the ground and remaining there, after which an Interahamwe gave her a third blow on her head with a club. After the first blows, the witness heard Dativa still cry, but after the third blow, she remained silent, although she still made some movements, like someone who is dying. The witness also saw that Dativa's head was full of blood.(420) The other passengers were all crying loudly. Subsequently, the witness saw that the other Interahamwe killed Dativa's children with machetes.(421) The Defendant did not participate himself. The people whom he led, were "cutting" people with their machetes. However, Defendant was the man

who had said that passengers had to be killed.(422)

26. After this, the witness was taken away by someone.(423) She is unable to remember whether this person was the Defendant or someone else. At that moment she was crying and she "did not know anymore who she was".(424) About an hour later, she passed the market square of Mugonero again and she saw that the ambulance was parked near the house of Murakaza.(425)

27. To questions from the Examining Judge whether she saw then what had happened to the passengers of the ambulance, she answered that she saw the bodies of Dativa's children lying there. The children were half dead and were taken to a car by soldiers. Then she saw the car driving off in the direction of the water. To additional questions from the Examining Judge whether she was able to see what had happened to the other people, she answered that they had been killed. (426)

28. The witness was taken to the house of [B10] after which soldiers took her to burgomaster Abel Furere. The burgomaster pardoned her and took her to his children. Later, she went back to her mother.(427)

[Witness 15]
29. This witness stated that he was having a beer in the centre of Mugonero when he saw that an ambulance had arrived from Kibingo.(428) He saw that [witness 1] was driving the ambulance. According to the witness, [witness 1] wanted to help the passengers to flee to Cyangugu, but on the way, had run into Joseph. Joseph forced the ambulance to return to Mugonero.(429)

30. When the witness saw the ambulance arriving in Mugonero, he went over there to have a look.(430) The ambulance was parked about 50 meters from the house of Joseph,(431), near the barrier that was set up on the bridge in the centre of Mugonero.(432) When he arrived there, the passengers of the ambulance had not yet been killed.(433) He saw Joseph standing there, holding a firearm.(434) He also saw [witness 1] escape.(435) He heard Joseph order the Interahamwe to take the passengers out of the ambulance and to kill them.(436) The witness heard Joseph say: "Get these cockroaches out of the car and kill them".(437) At the time he heard Joseph say this, he was standing at about 5 meters from Joseph. (438)

31. Subsequently, the witness saw that the passengers were taken out of the ambulance, one after the other.(439) Apart from the 'daughter of Abeli Furere', he knew none of the passengers. These passengers were sad; some were crying and others were praying.(440) Some of the passengers were crying aloud and calling God for help.(441) The 'approximately ten year old daughter of Abeli Furere', who was one of the passengers, survived the massacre because she was taken away by Joseph.(442)

32. Subsequently, the remaining passengers were killed with clubs and machetes(443) by about 15 men.(444) This took approximately twenty minutes.(445) Joseph did not hit any of the victims personally, by he was the boss.(446) He was the first one to give the order to kill these people(447) and if he had said that he did not want the people in the ambulance killed, they would not have been dead now.(448)

33. After the passengers had been killed, the witness saw a number of men standing next to the corpses holding clubs and machetes. He also saw that their machetes were covered with blood.(449) After this, he had left. Later, he saw the corpses still lying there. He saw wounds to the heads, shoulders and to the rest of the bodies. Those were wounds inflicted by machetes or clubs.(450)

34. The witness indicated that he does not remember the exact date of this incident. He thinks it happened around May 1994, but he is not sure about the date(451), although he does remember that it happened during daylight. (452)

[Witness 7]
35. This witness stated that the brother of Defendant, Obed Ruzindana, had set up a barrier in Mugonero at approximately 30 meters of the house of the witness.(453) On the Monday after the Wednesday when the plane of the president had been shot down, the witness saw an ambulance arriving. The ambulance belonged to the church in Kibingo. The driver of the ambulance was [witness 1].(454)

36. The witness saw the ambulance arriving at the barrier at around 9.00 o'clock and that [Defendant] was at the barrier and stopped the ambulance.(455) He also saw that the ambulance was followed by Ruzindana in his car in which also some Interahamwe were seated. The witness heard Ruzindana saying to [Defendant]: "See to it that these people are killed". After this, the witness saw Ruzindana drive off with "his" Interahamwe.(456)

37. The witness heard [Defendant] ask the driver: "where are you taking these cockroaches?" and [Defendant] continued by saying that the passengers of the ambulance had to be taken out.(457) The witness saw that the passengers were taken out of the ambulance and taken to the cattle market.(458) The, [Defendant] ordered the Interahamwe to kill these people.(459) He told "his" Interahamwe: "You must kill these cockroaches between now and 30 minutes". Subsequently, the witness saw these people being killed by the Interahamwe.(460) [Defendant] did not personally kill people, but he gave the order and was there when it happened.(461)

38. The Interahamwe killed the passengers of the ambulance by clubbing them to death. Since some people did not die directly from these blows, they were finished off with machetes. The witness heard the victims scream terribly while the clubbing by the Interahamwe was going on.

39. Of the passengers of the ambulance, only the driver survived, because other people helped him to escape.(462) Also a seven-year-old girl, 'the daughter of Abel Furere', survived. Before the massacre started, the girl was taken away by [Defendant] to his house because [Defendant] did not want the girl to see the massacre.(463)

[Witness 29]
40. This witness (the wife of [witness 7]) stated before the NCIS that, from her home, she saw during the genocide, passengers from an ambulance being killed.

41. [Witness 1] was the driver of this ambulance and he tried to help people to flee. This plan failed because the ambulance ran into Ruzindana and other soldiers and had to return to Mugonero.(464) In Mugonero, at the barrier near the Kiboga river (on the bridge in Mugonero into the direction of Kibingo), the passengers were killed.(465) According to the witness, this happened at the cattle market.(466)

42. Although her house is located at twenty minutes walking from the place where the passengers were killed, the witness indicates that she is very well able to see it because her house is situated on a higher spot. However, she was unable to see how exactly these people were killed, because so many people from the village were standing around.(467)

43. The witness did see that the passengers were being killed by Ruzindana's men.(468) When asked, the witness indicated that she had not seen Defendant at that time. However, she stated that prior to that, Joseph and his brother and those soldiers and other people who were forced to participate in the attack, were following the ambulance. That was at the time when the ambulance was on its way back to Mugonero.(469)

44. The witness did not see the passengers of the ambulance, but some time after they had been killed, she saw the bodies. There were many bodies and it was a terrible sight. These were bodies of women and children who had been killed in a barbaric way.(470) From the wounds on their heads she could see that the children had been killed by blows with clubs. The witness also stated that she thinks she saw the children of Gerard Muhutu there as well, but she is not sure. She did hear however that his wife and children were passengers of the ambulance.(471)

Other witness statements
45. With respect to this count, the file further contains statements rendered by [witness 17], [witness 28], [witness 16], [witness 21], [witness 26], [witness 9], [witness 20], [witness 31], [witness 32], [witness 35] and [witness 33].

46. At this moment, the Court confines itself to mentioning these other witness statements. In the next paragraphs, the Court will discuss Defendant's personal statement, the standpoints of the Prosecution and those of the Counsel first. Subsequently, the Court will proceed to the assessment of the reliability of the statements rendered by [witness 1], [witness 2], [witness 15], [witness 7] and [witness 29].

Defendant's personal statement

National Criminal Investigation Service (NCIS)
47. In his third examination before the NCIS, the Defendant stated that he had not seen that an ambulance had been stopped at the barricade in Mugonero. However, he had heard about it from people in the street: the ambulance had arrived at the barricade, had not been allowed passage and subsequently had returned to where it had come from. He had not heard that the passengers of the ambulance had been killed, nor did he know what had happened to the people in the ambulance. To the question whether he had seen ambulances at the barricade more often, the Defendant had answered that he had not seen any other ambulances there.(472)

During the court session on 17 October 2008
48. During the Court session on 17 October 2008, Defendant denied having had anything to do with the ambulance

incident. In brief, he stated that on the day the incident took place, he had "heard people talking about it".

49. Furthermore, the Defendant stated that he was at home when he heard people saying that an ambulance, coming from Kibingo had been stopped at the barrier in Mugonero. After having had to wait for a long time at the barrier, the ambulance had to return into the direction of Cyangugu. He had not heard anything about the passengers of that ambulance, nor had he been told that people had been killed during that incident.

50. When asked, Defendant confirmed that this was the only thing he could remember from the incident: the fact that the ambulance had been sent back, without someone being killed then. When confronted with the remark that his recollection of this fact is surprising since it is so insignificant in a time when massacres were taking place all the time in Rwanda. The Defendant answered that this incident came back to his memory after he had read the case file. When told that he stated the above on 8 August 2006, at a time when he could not have read anything from the case file, the Defendant answered that it had come to mind because it had been mentioned in the official report drawn up by the Minister of Foreign Affairs.

Standpoint of the Prosecution

51. The Prosecution deems this fact legally and convincingly proven on grounds of the testimonies of [witness 1] and [witness 2], in conjunction with (regarded as supporting evidence) testimonies from [witness 28] and [witness 17], [witness 7] and [witness 29].(473)

52. However, the Prosecution requested that Defendant be (partially) acquitted of the part in the indictment that involves throwing (a number of) children in Lake Kivu(474), as well as of the principal charge that [witness 1] and [witness 2] have suffered serious bodily harm as a result of these alleged acts.(475)

53. In addition, the Prosecution requested the Court to correct the writing error in the name of [witness 2] in the charges so that the Court will read [witness 2] in stead of [name spelled differently].(476)

54. During its closing speech, the Prosecution extensively paid attention to the differences between the witness statements, i.e. differences in statements from one and the same witness, as well as in statements from different witnesses. According to the Prosecution, the differences cannot be considered to be fundamental inconsistencies without a reasonable explanation. In this respect, the Prosecution pointed out that [witness 1] and [witness 2] each only saw 'part of the movie'.(477) In addition, the influence of the traumatic event on [witness 1] and [witness 2] should be considered.(478)

55. With respect to the statements rendered by [witness 17] and [witness 7], the Prosecution referred to the differences in their respective statements and with regard to the statements of [witness 17] also to the differences in his statements. The source of these differences remains unclear. Because of these differences, the Prosecution shall consider the statements of these two witnesses (only) to be supporting evidence. In this respect, the Prosecution further argued that the Defendant and his family are to blame for the fact that [witness 7] could not be examined by the Examining Judge about the differences in his statement, since this witness has disappeared and Defendant’s family is directly involved in this disappearance.(479)

Standpoint of the Counsel

56. Counsel argued that the Defendant should be acquitted of this count by lack of legal and convincing proof. With respect to all other statements of witnesses regarding this incident, the Counsel expressly pointed to the inconsistencies in the different statements of the same witnesses as well as relative differences with respect to statements of different witnesses.

57. Furthermore, Counsel put forward that several witnesses, including [witness 32], saw Defendant and his brother on 11, 12, 13, 14 and 15 April 1994 elsewhere. Therefore, it is impossible that on 13 April 1994 they were in Birogo and/or at the barrier in Mugonero.(480)

58. In addition, Counsel pleaded that no investigation was done with regard to the passengers of the ambulance. Therefore, it has not been established that the people mentioned in the charges actually died at the barrier in Mugonero. Assuming they are dead, the cause of their death was not established either. The Counsel argued that the Prosecution should have conducted forensic excavations.(481) Counsel also pointed out that the murder weapon (Defendant’s firearm) is construed by the Prosecution.(482)

59. Furthermore, the Counsel pleaded that the greater part of the witnesses did not know the Defendant personally,

so in his opinion, confrontations between the witnesses and Defendant should have taken place.(483)

60. In addition, the Counsel brought forward that the statement of [witness 34] as well as the statement of [witness 29] cannot be used as evidence since these witnesses have not been heard by the Examining Judge in presence of the Counsel.(484)

61. It is the opinion of the Counsel that the statements of [witness 1] cannot be used as evidence with respect to the assumed killings of the passengers. In this respect, he argued that this witness did not see the assumed killings. Finally, with regard to this witness, the Counsel put forward that this witness made notes during his examination. The Examining Judge allowed this and Counsel cannot exclude the possibility of the witness passing on his notes to [witness 28].(485)

62. The statements of [witness 2] cannot be used as evidence with respect to the assumed killings either, since this witness did not see this either. Counsel also brought forward that the witness did not know the Defendant very well and therefore, it cannot be assumed that this witness was capable of identifying and recognizing Defendant.(486) In this respect, Counsel expressly pointed out that his request to go on an on-site visit in Kibingo in order to verify whether this witness could actually have seen the Defendant then and there and if so, from what distance and under what circumstances, was rejected.(487) According to Counsel, it cannot be assumed that this witness could have recognized the Defendant, so her statement cannot support the assumed involvement of the Defendant. Furthermore, Counsel referred to the young age of the witness at the time of the incident. In view thereof, her statement should be considered with great caution.(488) In addition, Counsel argued that this witness did not mention the name of Defendant when, in November 1994, she told her aunt what had happened.(489)

63. With respect to the statements of the witnesses [witness 15] and [witness 7], Counsel put forward that these statements should be excluded from the evidence since the Counsel was not allowed the possibility to examine these witnesses.(490)

64. In addition, Counsel, with regard to witness [witness 7], expressly pointed to the possible motives of this witness, for rendering, in defiance of the truth, an incriminating statement. Concerning the statements of this witness, the Counsel also pointed out that this witness did not know the passengers of the ambulance. Therefore, his statements do not contain the confirmation as to the identity of the persons who supposedly died in that incident.(491)

65. With respect to witness [witness 28], Counsel expressed his surprise about the fact that, according to his statements, this witness did not discuss this incident with this friend [witness 1]. In addition, Counsel does not exclude that this witness received the notes which [witness 1] made during his examination and with the help of these notes harmonized his statement with the statement of [witness 1].(492)

66. About the statements of [witness 28] and [witness 29], Counsel remarked that these statements are exculpatory. [Witness 28] did not see the Defendant giving the order to the Interahamwe and [witness 29] did not see Defendant do anything at all.(493)

67. Counsel called [witness 17] a big storyteller. He has an enormous imagination and he tries to incriminate the Defendant in a very transparent manner. Therefore, the statements of this witness are incredible and totally unreliable and cannot be used as evidence.(494)

68. With respect to the witnesses [witness 16], [witness 9] and [witness 26], the Defence argued that these witnesses did not see anything personally. They only stated the fact that they had heard about the incident, and that is not relevant.(495)

69. About this witness [witness 9] Counsel remarked that three days after the examination of [witness 1] by the Examining Judge this witness had already heard about the examination. According to Counsel, this shows clearly that the witnesses had mutual contact.(496)

70. With regard to the statement of witness [witness 20], Counsel put forward that he had seen the ambulance in Birogo, but that he did not followed it. Although this witness is a neighbour of the Defendant, he does not know anything about this incident.(497)

71. Furthermore, Counsel referred to the statements of [witness 35] and [witness 31]. These witnesses were involved in redirecting the ambulance, but they each stated individually that they had not seen the Defendant at that time. Besides, [witness 31] also stated that he had walked with the ambulance from Birogo to Mugonero. Once

in Mugonero, the witness had left and he had heard shots. Shortly after that, he had seen the Defendant, but that was not at the barrier, but at the shop of the Murakaza family.(498)

The opinion of the Court

Witnesses which the Counsel was not able to examine
72. As mentioned above in paragraphs 60 and 63, the Counsel put forward that the statements of [witness 7] and [witness 15] should be excluded from the evidence, while the statement of [witness 29] cannot be used as evidence. In so far as Counsel wanted to rely on the provisions of article 6 European Convention on Human Rights (ECHR), the Court considers the following.

73. Article 6, third paragraph under d, ECHR includes the following:

(3) Any person against whom prosecution has been initiated, has the following rights, in particular:
(d) to examine/have examined witnesses for the prosecution and to have witnesses for the defence summoned and examined in the same manner as would have been the case with witnesses for the prosecution.

74. The ratio of this provision is the guarantee for a fair trial. This includes, among others, that a Defendant is provided the opportunity to demonstrate the (un)reliability of the witness or the (in)correctness of his or her statements.

75. According to fixed case law of the European Court of Human Rights (hereafter referred to as: ECtHR) as well as the Supreme Court, the Defence may be expected to show considerable initiative in this matter. This is without prejudice to the fact that the implementation of the right of examination may not be made totally dependent on a request from the Defence. In case the disputed statements are of crucial importance to the evidence and the Prosecution has omitted to summon the witnesses to appear at the trial, the Court shall officially order the summons of the witness.

76. In addition, it is fixed case law at the ECtHR and the Supreme Court that, if the defendant or his counsel was not provided the opportunity to examine a witness, article 6 ECHR does not at all times precludes the statements rendered by that witness from being used as evidence. When assessing whether a fair trial has been conducted, the ECtHR takes the procedure in its entirety into consideration. In this respect, leading factors include: the presence of other - witness statement supporting – evidence, the possibility for the defendant to demonstrate the reliability of the witness and/or his or her statement, and the commitment of the judicial authorities in their efforts to have the witness examined by the defence.

77. Now that article 6 ECHR does not necessary prevent statements rendered by witnesses not having been heard by the defence to be used as evidence, in principle the Court sees no reason whatsoever to exclude these statements from the evidence.
As mentioned in the paragraph above, to answer the question whether a fair trial has been conducted in case statements of witnesses not having been heard by the defence are used as evidence, it is important whether those statements are supported by other evidence. In view of the nature of this assessment and the cohesion with the assessment of the reliability of other witness statements, the Court will discuss this subject extensively in paragraphs 240 – 246 below and will limit itself to the remark now that in principle the Court sees no reason to exclude the statements of these witnesses from the evidence.

Pleas with respect to confrontations and forensic research not having taken place
78. Concerning the pleas of the Counsel with regard to confrontations between witnesses and Defendant not taking place on the one side and the lack of forensic excavations on the other, the Court refers to the remarks in this respect in chapter 5 (The investigation) paragraphs 80-82.

79. The Court would like to emphasize that, although several witnesses indicated a location as being the place where the passengers of the ambulance supposedly were buried, a forensic excavation was not possible because those same witnesses also stated that, after the genocide, all victims were reburied in mass graves.(499)

Framework for the assessment of the evidence

80. As mentioned earlier in paragraph 46, the Court will now explicitly assess the statements of the witnesses [witness 1], [witness 2], [witness 15], [witness 7] and [witness 29] on their reliability. In this respect, the Court will apply the framework as mentioned in chapter 6 (Assessment of witness evidence) paragraph 46, but only when the statements give cause for that.

[Witness 1]

Re I: The witness as a person
81. On 31 July 2006, this witness was interviewed by the NCIS. Subsequently, on 13 November 2006 and on 15 January 2007, he gave his statement to the Examining Judge. During his interview by the NCIS he stated that he is not Tutsi(500); When asked during his second statement by the Examining Judge, he answered that he is Hutu.(501) Furthermore, this witness stated that, during the genocide in 1994 he lived and worked in Mugozi in Kibingo as a driver in the local medical centre.(502)

82. He also stated that he already knew the Defendant and his brother Obed Ruzindana prior to the genocide; he knew his house as well as his family. About the Defendant and his brother he stated that he knew they lived in Mugonero, near the market where he used to go shopping. The father had a shop there. They sold different products such as nails and food articles.(503) He stated to the Examining Judge that he had known the Defendant for a long time. He also stated that everybody would frequent the shop of the Defendant's family and the he also went there from time to time(504). Furthermore, he stated that the Defendant used to work in his father's shop.(505) About the family of Defendant and his brother Obed Ruzindana he further stated that he knows their father's name is Murakaza and that he passed away. He also stated that their mother's name is [F1] and that Defendant also has a number of sisters.(506)

83. During the trial on 17 October 2008, the Defendant stated that he does not know this witness.

84. Based on statements mentioned above, it can be established that this witness was the driver of the ambulance. Any involvement of this witness in the facts mentioned in the charges has not been proven other than his being the driver of the ambulance. Therefore, he is considered to be a victim.

85. Furthermore, it appears from the statements of this witness that he is very well capable of making a distinction between facts he saw for himself (507) and facts other people told him about.(508)

86. As mentioned above, during his first examination by the NCIS, this witness stated that one of the passengers of the ambulance, a young girl, had survived the incident. He said that the aunt of the girl was a nun who was called [witness 16]. However, the case file does not show him having had contact with this witness, let alone about this concrete event.

87. Before the NCIS, the witness also stated that had heard statements against Ruzindana and his group before the gacaca in Mugozi. These statements were rendered by people who stated that the passengers of the ambulance had been killed and that the people rendering these statements had witnessed these killings themselves.(509) He had heard this from [witness 7] from Mugonero and from [B7], who worked as a guard in Mugonero. When asked, this witness replied that he had no contact with these witnesses anymore.(510)

88. As represented in chapter 5 (The investigation) paragraph 35, the case file shows that this witness was approached by [witness 21] who told him, on behalf of Obed Ruzindana, to leave the country. The witness refused, after which Obed Ruzindana contacted [witness 28], a friend of the witness.(511) [witness 28] was also requested to convince the witness to change his statement and to point out Obed Ruzindana as the guilty person instead of the Defendant. [Witness 28] transmitted this request to [witness 1]. Subsequently, they discussed this matter and decided to consult the Rwandese authorities.(512)

89. The fact that the witness discussed this matter substantively with [witness 28] is no reason for the Court to deem his statements less reliable. After all, the witness only discussed this matter and/or the incident with [witness 28] after he had been approached, through the intermediary of the family of the Defendant, with the request to alter his statement.

90. The fact that, during his examination by the Examining Judge, this witness made notes (of which the Counsel suspects that they were transmitted to witness [witness 28]), does not make his statement less reliable. Even if these notes would have been passed on, this can only touch the reliability of the statement of [witness 28].
In this respect, the Court notes that, contrary to Counsel's argument, (513), it appears from the Examining Judge's official report of findings, that the witness [witness 1] requested permission to make notes. The Examining Judge granted this permission after the Public Prosecutor and the Counsel had indicated that they had no objection against it.(514)

91. It has not been demonstrated to the Court that the witness has any interest or motive to render, contrary to the

truth, an incriminating statement against the Defendant. Before the Examining Judge, the witness mentioned the pressure exercised on him to alter his statement and the fear this caused to him. He resisted this pressure and stood behind his statement. The Court took this into consideration when judging that there is absolutely no reason to doubt the reliability of the witness.

Re II: The formation of the statement
92. From the official reports of the examination it appears that at some moments, misunderstandings arose.(515) However, these misunderstandings were discussed during the examination and explained by the witness, who also mentioned that he would indicate if he could not understand certain questions. That the witness actually did this is demonstrated in the official reports of this examination and other examinations before the Examining Judge.(516) In addition, these official reports show that, when his statement was read to him, this witness regularly provided additions and explanations. In view of this, it is the opinion of the Court that the misunderstandings which arose during the examination between the interviewer and the witness, were not of a substantial nature. Furthermore, with respect to the formation of the statements, there are no indications that there were circumstances which may have been of influence to the reliability of the contents of the statements. Therefore, the Court sees no reason to discuss this any further.

Reliability of the statement in objective terms
93. With respect to the contents of the statements of this witness, the Court sees no reason to further discuss the points defined in the assessment framework under III and VII (respectively verifying against objective data obtained elsewhere and the plausibility of the contents of the rendered statement).

Re IV: The consistency of successive statements rendered by this witness
94. The Court considers the statements of this witness highly consistent. The most remarkable difference in the statements rendered by this witness is (in brief) the question whether a soldier had stepped into the ambulance or not, after the ambulance had been stopped in Birogo.

95. It is the opinion of the Court that in no way, this difference may or can be considered to be a fundamental inconsistency with regard to the essential aspects of the statements. Therefore, this difference, as well as other small differences in the statements of this witness, do not deserve further discussion. In this respect, the Court considers that these differences - whether in relation to each other or not - do not constitute a circumstance under which the statements of this witness should be considered to be unreliable.

96. Another point of attention in this respect is that when rendering more than one statement, there will be differences in those statements. In some statements certain elements are hardly mentioned, or not mentioned at all. These differences may very well be caused by the passage of time, the chaotic nature of the incident in which the witness seriously feared for his life and that of passengers he wanted to safe, the emotions caused by the recollection of the dramatic events for the witness, or by an error of the witness or another party to the proceedings. In addition, a comparison of differences cannot be allowed to lead to it that the statement is considered inadmissible. In view of the above, it is the Court’s opinion that the differences in the statements of this witness are not detrimental to the reliability of those statements.

Re V: The quality of the recognition of Defendant by [witness 1]
97. In view of the facts mentioned above with respect to the witness recognizing the Defendant, the fact that the incident took place during daylight and that the witness was not at a long distance from the Defendant, the Court sees no reason to further discuss the quality of the recognition of Defendant by the witness.

Re VI: The concurrence of the statement of this witness with statements rendered by other witnesses
98. In view of the nature of this assessment and the connection with the assessment of other witness statements, the Court will discuss this point below in paragraphs 202 - 239.

[Witness 2]

Re I: The witness as a person
99. On 10 November 2006, this witness was heard by the NCIS. Subsequently, she was heard on 24 January 2007 by the Examining Judge. Before the NCIS the witness stated that she is Tutsi.(517) At the time of the genocide, she was twelve years old and she lived with her parents, sisters and brother in the cellule Gabiro, secteur Kirimbi, municipality of Rwamatamu, prefecture Kibuye.(518) During the genocide, she fled to the hospital of Kibingo.

100. Prior to her fleeing to the hospital of Kibingo, the witness had never heard of the Defendant; she did not know he existed.(519) She got to know him during the genocide, because he carried out attacks on the hospital of

Kibingo and other people told her that these were attacks conducted by [Defendant]. During the first attack by [Defendant] she heard this from Dativa and Brigitte. She does not know whether Dativa and/or Brigitte knew Defendant personally.(520)

101. At the moment she was told during the first attack that the attack was carried out by [Defendant], the witness looked out of the window and saw a man standing in front of a group of attackers. At that moment she was told that this man was [Defendant]. She could see him very well.(521) During the first attack by [Defendant] she heard people in his group addressing him by his name. She could hear this very well.(522) During the war, this witness also heard that [Defendant's] name was Joseph. She also heard this from people with whom she was in the hospital.(523) Prior to the genocide, she did not know Obed Ruzindana either, but she did know the shop of his father. To the question from the Examining Judge whether Ruzindana and [Defendant] are of the same family, the witness answered in the negative. To the question from the Examining Judge whether [Defendant] was in any way involved with the shop of Murakaza, she answered in the negative as well.(524)

102. The witness saw Defendant three times, every time during attacks. Since he conducted his attacks during daytime, she always saw him during daytime,(525) but she was unable to describe him because she could not remember anymore. She did see him, but she did not pay attention to what he looked like, how tall he was; after all, this was war and she did not feel very well.(526) However, the witness will never forget the person who wanted to kill her: that was Joseph M.(527)

103. Since this witness stated not to have known Defendant prior to the genocide and to have heard who he was from other people, during the trial Defendant was not asked whether he knew this witness.

104. Based on statements represented above, it can be established that this witness was one of the passengers of the ambulance. Involvement of this witness in the facts as charged has not become manifest other than being a passenger of the ambulance and therefore, as a victim. Furthermore, the statements rendered by this witness show that she is very capable to make a distinction between matters she personally witnessed(528) and matters she was told about by others.(529)

105. It has neither become apparent that the witness knows one or more other witnesses who incriminate the Defendant and/or had contact with them about this case, nor that the witness has any interest and/or motive to render, in defiance of the truth, a statement that would incriminate the Defendant.

106. Therefore, it is the opinion of the Court that this witness gives no reason whatsoever to doubt her credibility.

Re II: The formation of the testimony
107. As far as the formation of the witness statements during the examinations is concerned, there are no indications that at the time of the examinations circumstances occurred that could have been of influence on the reliability of the contents of the statements. Therefore, the Court sees no reason to discuss this point any further.

Reliability of the statement in objective terms

108. With respect to the contents of the statements of this witness, the Court sees no reason to further discuss the points defined in the assessment framework under III and VII (respectively verifying against objective data obtained elsewhere and the plausibility of the contents of the rendered statement).

Re IV: The consistency of successive statements rendered by this witness
109. The Court considers the statements of this witness highly consistent. The most striking difference in the statements rendered by this witness is (in brief) the fact whether or not she saw the Defendant at the barrier in Birogo.

110. In her statement before the NCIS, the witness stated that she had not seen the Defendant and Obed Ruzindana at the barrier. About the stopping of the ambulance in Birogo, she stated that the people who had stopped the ambulance in Birogo, were happy to see the ambulance, because they were clapping their hands and waving their weapons in the air. Then she heard them yelling, shouting that they were happy they had found these women because they were going to kill these beautiful women out in the open. Furthermore, she heard the Interahamwe say that they had received orders from [Defendant] and Obed Ruzindana to search for these two mothers and their children in order to kill them. They also heard the Interahamwe say that they had received orders from [Defendant] and Ruzindana to take these women to Mugonero when they had found them.(531)

111. Before the Examining Judge the witness stated that when it became apparent that the ambulance had to stop

at the barrier in Birogo, she saw the leaders Ruzindana and [Defendant].(532) However, later she withdrew this statement and she stated that she only saw Ruzindana in Mugonero and not at the barricade in Birogo.(533) She had seen the Defendant at the barricade and when the ambulance had to turn around, he got into a pick-up which preceded the ambulance on its way to Mugonero.(534)

112. In itself, this discrepancy is remarkable. However, during her interview with the Examining Judge, she was not expressly informed about the fact that contrary to what she had stated before the NCIS, she had not seen the Defendant in Birogo. Therefore, the witness was not provided with the opportunity to clarify this discrepancy.

113. It is the opinion of the Court that this discrepancy can very well be caused by the passage of time, the chaotic nature of the incident in which the witness seriously feared for her life and the lives of the other passengers, the emotions caused by the recollection of the dramatic events for the witness, or by an error of the witness or another party to the proceedings. In addition, the Court as well as the Prosecution considers it quite likely that only during her interview with the Examining Judge, the witness remembered the fact that she had already seen the Defendant in Birogo.

114. As mentioned earlier, the witness was very consistent in her other statements. Therefore, the Court considers that this discrepancy cannot lead to exclusion of the statements from the evidence, nor can it cause the Court of deeming her statements unreliable.

Re V: The quality of the recognition of Defendant by [witness 2]

On-site visit of the health centre in Kibingo
115. As represented above in Chapter 5 (The investigation) paragraph 18, during the status hearing on 12 February 2007, the Court suspended the hearing because of the unexpected absence of the Defence Counsel. The Court proceeded to this because the Public Prosecutor fiercely resisted a so-called open referral back to the Examining Judge and the Court was not aware of specific requests of the Counsel as to the investigation.

116. On 20 February 2007, the Court informed the Counsel by letter that it had suspended the hearing until 5 March 2007, because of the unexpected absence of the Counsel and because the Court was not aware of specific requests of the Defence as to the investigation. In the letter, the Court expressly pointed out to the Counsel that status hearings are the moments at which the progress of the investigation is discussed and the Trial Chamber decides what investigative activities the Examining Judge should carry out.

117. Subsequently, on 1 March 2007, the Defence Counsel requested the Examining Judge (and not the Court) to include the Centre de Santé of Kibingo in the official on-site visit initiated by her. The Counsel substantiated this request by arguing that clarity should be obtained as to the locations where witnesses (of the ambulance incident) allegedly were at the time and where they made their observations.

118. On 1 March 2007, the Counsel, after he had sent his request to the Examining Judge, informed the Court by fax not to be present at the forthcoming status hearing on 5 March 2007. In this fax message the Counsel indicated that, next to the request granted by the Examining Judge to hear witnesses for the Defence, he had no other requests with respect to the investigation. However, he did request the Court to refer the case back to the Examining Judge by way of a so-called open instruction. His fax message did not include his request for the extension of the intended inspection.

119. On 2 March 2007, the Examining Judge informed the Counsel that she would not comply with his request for the extension of the intended on-site visit. In her opinion, the on-site visit of the Centre de Santé in Kibingo was not relevant since, according to the witnesses, the incident had not taken place there.

120. Together with the Defence Counsel, the Court is of the opinion that for the assessment of the quality of the recognition of Defendant by [witness 2], an on-site visit of the Centre de Santé in Kibingo could have delivered relevant information. After all, in that case it could have been established whether the witness could have seen the Defendant from the space where she was according to her statement, and if so, from what distance and under what circumstances.

121. However, the sole fact that this on-site visit did not take place, does not mean that an assessment of the quality of the recognition is impossible.

122. With respect to this request, the Court would like to emphasize that the Counsel never submitted his request, directed to the Examining Judge and rejected by her, to the Court for assessment. In view of the procedure

mentioned above and the fact that the Court had expressly pointed out to the Counsel that trial judges determine what investigative actions the Examining Judge needed to perform, this would have been obvious. In addition, the Counsel had motivated and substantiated his request to the Examining Judge very poorly. In view thereof, it is understandable that the Examining Judge did not recognize the relevancy of this request.

The recognition of Defendant by [witness 2]
123. As represented above in paragraphs 100 - 102, the witness did not know Defendant. Dativa and Brigitte, other people with whom she was hiding, once, shortly prior to an attack, pointed out a man to her and told her that was [Defendant].

124. A reliable recognition of Defendant by this witness would only have been possible if:
- Dativa and Brigitte knew Defendant and were able to recognize him in the hectic circumstances and tension prior to the attack;
- the witness had a fair and unhindered view at the man outside from the location where she was hiding at that moment.

125. It is not possible to verify whether these conditions were met. Dativa and Brigitte are not alive anymore and, as mentioned above, an on-site visit of the Centre de Santé in Kibingo did not take place.

126. In view of the fact that the only time the witness saw the Defendant, it was for a very short time and right before an attack, the Court – contrary to the Prosecution – considers that the witness was unable to see Defendant under fair conditions. After all, at that moment the witness was hiding and she must have been very frightened for the upcoming attack and must have been fearing for her life.

127. To the opinion of the Court, this is not considered to be a strong basis for recognition and identification of the Defendant. As mentioned before in Chapter 6 (Assessment of witness evidence) paragraph 42, visual identifications, pre-eminently are sensitive to error and therefore should always be treated with extreme caution. In view of the above, the Court notes that with respect to recognition of the Defendant by [witness 2], the utmost reticence should be observed.

Re VI: Conformity of the statements of this witness with statements rendered by other witnesses
128. In view of the nature of this verification and the concurrence with the assessment of other witness statements, the Court will discuss this point later in paragraphs 202 - 239.

[Witness 15]

Re I: The witness as a person
129. On 7 August 2006, this witness was interviewed by the NCIS. At the end of that interview, he indicated that he would be prepared to confirm his statement before a Dutch Judge. However, as mentioned above, shortly before he was to be heard by the Examining Judge, he disappeared.

130. During his examination by the NCIS he stated that he is Hutu.(535) He also stated that, during the genocide, he lived in Gituruka (Mugozi).(536) This was approximately one kilometre from the house of the Defendant and the witness would go to the centre of Mugonero about once or twice a day.(537)

131. Furthermore, the witness stated that his profession was to unload trucks and that he knew Defendant because he used to unload the trucks of the Murakaza family.(538)

132. Asked about the family members of Defendant, the witness stated that he knew the following persons: a sister called [F2], a sister called [F9], a sister called [F11], a sister called [F12], a sister called [F13], his brother Obed Ruzindana. He also knew Eli Murakaza, the father of the Defendant. Finally, he stated that the mother's name was [F1].(539)

133. About the Defendant the witness stated that he knew the Defendant lived in the centre of Mugonero, with his father Murakaza. He also stated that the Defendant went to primary school in Muramba in Mugonero. Later, the Defendant went to study in Italy. He returned in June 1993 and from then on he helped his family with their trade in beans, sorghum and corrugated iron sheets, among other matters. They sold this from their shop in the centre of Mugonero; the shop and their home are located in one building, on the side of the big market.(540)

134. During the court session on 17 October 2008, the Defendant stated that he does not know this witness. He also stated that it does not mean a thing to him that the witness claims he unloaded trucks for the family of

Defendant.

135. This witness stated that he knows [witness 1] and that he rendered a statement before the gacaca about the ambulance incident and he pointed out [witness 1] as the driver of this ambulance.(541) His statement also demonstrates that he knows [witness 7],(542) but not that this witness supposedly was in contact with other witnesses regarding this case.

136. Furthermore, the statements of this witness clearly show that he is quite capable of making a distinction between matters he has witnessed himself or matters other people told him about.(543)

137. The witness denies emphatically ever having assisted in the genocide and/or the attacks himself. According to his statements however, various people (including the Defendant) would come to him to tell him, under threats, he had to participate. He also states that sometimes people would pick him up to participate in the attacks, but that he was always able to hide from them.(544)

138. However, the contrary might be concluded from the statement of witness [witness 7]. In fact, [witness 7] stated that [witness 15] was a guard at the barrier which was set up by the Defendant and his brother Obed Ruzindana. The witness also stated that, at the time of the ambulance incident, he saw [witness 15] standing at the barrier.(545) [Witness 7] stated further that [witness 15], just like himself as a matter of fact, received a machete during the genocide, distributed by Obed Ruzindana or Defendant.(546) The wife of [witness 7], [witness 29], also stated that [witness 15] was forced to participate in the attacks.(547)

139. In view thereof, it cannot be excluded that this witness was involved in some way in the genocide in general. Therefore, according to the Court it cannot be excluded that this witness tried to minimize his role by shifting the responsibility to the Defendant.

140. All of the above considered, it is the opinion of the Court that the statement of this witness cannot be deemed to be outright incredible, although it should be regarded with caution.

Re II: The formation of the statement
141. As far as the formation of the witness statements during the examinations is concerned, there are no indications that at the time of the examinations circumstances occurred that could have been of influence on the reliability of the contents of the statements.

Reliability of the statement in objective terms

142. With respect to the contents of the statements of this witness, the Court sees no reason to further discuss the points defined in the assessment framework under III and VII (respectively verifying against objective data obtained elsewhere and the plausibility of the contents of the rendered statement).

Re IV: The consistency of successive statements rendered by this witness
143. Since this witness disappeared shortly before he was to be interviewed by the Examining Judge, he was only heard once by the NCIS. Therefore, the consistency of his successive statements cannot be assessed. As mentioned above in paragraph 77, the fact that this witness was not heard in presence of the Defence, is no reason for the Court to exclude his statement from the evidence.

Re V: The quality of the recognition of Defendant by [witness 15]
144. In view of the facts mentioned in the statements with respect to the witness recognizing Defendant or concerning the fact that the incident took place during daylight and the witness was not at a long distance from Defendant, the Court sees no reason to further discuss the quality of the recognition of Defendant by the witness.

Re VI: The concurrency of the statement of this witness with statements rendered by other witnesses
145. In view of the nature of this assessment and the connection with the assessment of other witness statements, the Court will discuss this point below in paragraphs 202 - 239.

[Witness 7]

Re I: The witness as a person

146. On 21 July and 9 August 2006, this witness was interviewed by the NCIS. At the end of both interviews, he indicated that he would be prepared to confirm his statement before a Dutch Judge. However, as mentioned above,

shortly before he was to be heard by the Examining Judge, he disappeared.

147. During his second examination by the NCIS he stated that he is Hutu.(548)

148. He also stated that, during the genocide in 1994, he lived in Mugonero, Gituruka cellule, municipality of Rwamatamu, where he was still living at the time of the interview. In Mugonero, he lived next to Obed Ruzindana, with whom he grew up together.(549) However, during his second interview it became apparent that the distance between his house and the house of Obed Ruzindana was approximately 200 metres. Besides, the houses are located on different sides of the bridge; the Kiboga River runs between the houses. However, from his house, the witness could see the house of Obed Ruzindana and therefore the house of the Defendant.(550)

149. About the family of Obed Ruzindana the witness stated that, at the time of the war, Obed lived in one house together with his father Eli Murakaza, mother [F1], brother Joseph and his sisters. He stated the following names as being sisters of Obed: [F9], [F2], [F11] and [F4]. The official record of the witness examination shows that the witness could have mentioned more names of sisters, but the reporting officers did not deem this necessary.(551)

150. The witness described the profession of the family of the Defendant as 'first class' traders, which means that the family had considerable power. The Defendant was his father's driver and besides that, he helped his father in the shop. In addition, the witness knows that the Defendant finished his studies in Italy.

151. From the official records of witness examination it appears that, during the war, this witness owned a pub. This pub was located near the bridge over Kiboga river, near the barrier of Defendant.(552)

152. When asked during the court session on 17 October 2008, Defendant stated that he thought he knew this witness. He stated that if he remembered well, the witness was living not too far from him: at approximately one kilometre distance. Defendant further stated that he did not know him very well and that, as children, they did not play with each other. Defendant also stated that there was no animosity between him and the witness.

153. Furthermore, the statements rendered by this witness show that he is very capable of making a distinction between facts that he experienced personally and facts that were told to him by others.(554)

154. It also appears from the statements of this witness that [witness 1] often accompanied him to the gacaca.(555) In view of this it cannot be excluded that, at the gacaca, this witness heard information with respect to the charge and therefore, one can speak about source amnesia. As a result of this, the Court shall treat the statements of this witness with caution.

155. The statements also demonstrate that the witness knows [witness 15] and that he lives nearby.(556) However, it was not demonstrated that the witness spoke substantively about this case with [witness 15].

156. The file does not show any proof of any involvement of this witness in the charged offences. The statements of the witness do make clear that he was convicted to imprisonment for the murder of a pastor during the genocide. In this respect, the witness stated that he confessed because there was nothing he could do for the victim.(557) He further stated that the Defendant and his brother Obed Ruzindana had ordered him to kill this pastor.(558)

157. The witness denied ever having participated in attacks on Tutsis.(559) According to him, the Defendant and Obed Ruzindana would not accept that he did not participate in the attacks, but he always took good care to be able to escape prior to the attacks. The witness stated that Defendant called him to account for this behaviour. As a penitence, Defendant took two goats and served them as food to the Interahamwe. Later, Defendant came back once more and on that occasion he took the commercial stock of cigarettes from the witness.(560)

158. As mentioned above, Defendant stated that he had no idea why the witness rendered an incriminating statement. According to Defendant there was no animosity between him and this witness. During the court session on 4 December 2008, Defendant explicitly denied having taken/stolen goats and cigarettes from this witness. The Defendant also repeatedly denied having been involved in any attack on Tutsi civilians, let alone that he would have incited other people to participate and/or would have called them to account for their refusal to do so. Finally, the Defendant denied having been involved in any murder whatsoever.

159. Notwithstanding this denial of Defendant and in view of the contents of paragraphs 156 and 157, the Court cannot exclude that the witness may have a possible motive to render an incriminating statement against Defendant. Nor can it be excluded that the witness has tried to minimize his own role/involvement by trying to shift the responsibility to the Defendant. In view of this, the Court shall regard the statements of this witness with

caution.

Re II: The formation of the statement
160. As far as the formation of the witness statements during the examinations is concerned, there are no indications that at the time of the examinations circumstances occurred that could have been of influence on the reliability of the contents of the statements. Therefore, the Court sees no reason to discuss this point any further.

Reliability of the statement in objective terms
161. With respect to the contents of the statements of this witness, the Court sees no reason to further discuss the points defined in the assessment framework under III and VII (respectively verifying against objective data obtained elsewhere and the plausibility of the contents of the rendered statement).

Re IV: The consistency of successive statements rendered by this witness
162. Since this witness disappeared shortly before he was to be interviewed by the Examining Judge, - apart from his examination before the Parquet Général in Rwanda - he was only heard twice by the NCIS. Therefore, the consistency of his successive statements cannot be assessed properly. As mentioned above in paragraph 77, the fact that this witness was not heard in the presence of the Defence, is no reason for the Court to exclude his statement from the evidence.

163. The most striking discrepancies in the statements rendered by this witness concern (briefly):
I what happened after the passengers stepped out of the ambulance;
II the moment at which the passengers were murdered and how long this had lasted.

Re I: What happened after the passengers stepped out of the ambulance
164. Before the Parquet Général in Rwanda, in June 2006, this witness stated that the people were forced to step out of the ambulance of [witness 1]. Among those people was the wife of Gerard. She was so scared that her cloth fell to the ground. When she wanted to pick it up, she gave her child to the witness, because she knew him. The witness carried the child until the moment [B11] forced him to put the child down. After the witness refused, this [B11] hit him and took the child from him and gave it back to the mother.(561)

165. During his interview by the NCIS, the witness did not mention this incident. To the question during his second interview before the NCIS whether he knew the victims who had been killed in the ambulance incident, he answered that he did not know their names.(562)

166. The second interview of this witness before the NCIS took place shortly (approximately two months) after he had rendered his statement before the Parquet Général in Rwanda. Therefore, the difference on this point is remarkable. Because of his disappearance, it was not possible to confront the witness with this inconsistency. However, this circumstance does not necessarily have to lead to exclusion from the evidence.

Ad II: The moment the passengers were killed and how long this had lasted
167. In June 2006, before the Parquet Général in Rwanda, this witness stated that after the passengers had stepped out of the ambulance, the Defendant asked the bystanders to leave because he wanted to be alone with the Interahamwe. Thereupon the witness and the other bystanders left. During two hours, the Defendant and his Interahamwe interrogated the women asking them where their husbands were hiding. Subsequently, the women were brutally murdered with clubs.(563)

168. During his first interview by the NCIS, the witness stated that the Defendant ordered the passengers to get out. Then he gave the order to the Interahamwe to kill these people, after which he parked the ambulance behind his house. When he returned, the passengers had not been killed yet, but the Interahamwe proceeded immediately with the killing. The victims asked for some time to pray, but the Defendant did not allow them this time. According to the witness, the massacre lasted approximately 20 minutes.(564)

169. During his second interview by the NCIS, the witness stated that the passengers were forced out of the ambulance and taken to the cattle market. Once at the cattle market, located right at the other side of the bridge over Kiboga River, as seen from the house of the Defendant, the passengers were massacred by the Interahamwe of the Defendant, who was standing there too.(565)

170. This difference can be considered remarkable too and once more, because of the disappearance of this witness, it has not been possible to confront the witness with this inconsistency. However, this circumstance does not automatically lead to exclusion of evidence, but since there is no reasonable explanation for this discrepancy, the Court will pass over the statement that the witness rendered with respect to the moment at which the

passengers were killed and the time it had taken.

171. As mentioned above, there is no reasonable explanation for this discrepancy. Nevertheless, these discrepancies in itself - and in relative sense - do not result in a circumstance in which the statements of this witness should be automatically excluded from the evidence, all the more since the witness has not had the opportunity to explain them. In addition, because of a number of discrepancies, a witness statement cannot be regarded as totally unreliable.

Re V: The quality of the recognition of Defendant by [witness 7]
172. In view of the facts mentioned in the statements with respect to the witness recognizing Defendant or concerning the fact that the incident took place during daylight and the witness was not at a long distance from Defendant, the Court sees no reason to further discuss the quality of the recognition of Defendant by the witness.

Re VI: The concurrency of the statement of this witness with statements rendered by other witnesses
173. In view of the nature of this assessment and the connection with the assessment of other witness statements, the Court will discuss this point below in paragraphs 202 - 239.

[Witness 29]

Re I: The witness as a person
174. On 21 and 22 March 2007, this witness was interviewed by the NCIS following the disappearance of her husband [witness 7], to whom, as a matter of fact, she is not officially married.(566)

175. During these examinations, the witness did not state anything about her ethnic background. She did state that she had lived with [witness 7](567) since she was seventeen – i.e. already during the genocide - near the market in Mugonero, which is very near to the road from the market towards Kibingo.(568)

176. This witness stated that she had known the Defendant for a long time, because he was born in the village.(569). He was a young man and his brother Ruzindana was married. However, the witness does not know the last name of the Defendant.(570)

177. With respect to the family of Defendant, this witness spoke about his brother Obed Ruzindana, his sister [variation on name F3] and the child of that sister: [F10].(571) As the grandfather and grandmother of [F10] (and therefore as the parents of the Defendant) the witness mentions Murakaza and [F1]. About Murakaza and [F1] the witness further stated that they had been in prison because they had been charged with participating in the genocide. In addition, this witness stated that [F1] went abroad and that Murakaza had died after he had been released from prison.(572)

178. When asked during the court session on 17 October 2008, Defendant testified that he did not know this witness.

179. This witness stated that she knows that her husband [witness 7] was picked up once or twice by a man from the Parquet Général. However, [witness 7] did not tell her before what authority he had rendered a statement.(573) Her statement also shows that she knows [witness 15](574) and that she knows everybody in the neighbourhood by face since they meet frequently at the market, but not by name.(575)

180. The file does not show that this witness had substantive conversations about this case with other witnesses. Furthermore, it has become apparent that this witness is very well capable of making a distinction between facts that she experienced personally and facts that were told to her by others.(576)

181. Any involvement of this witness in this charged offence has not been shown.

182. The Court recognizes that the disappearance of her husband [witness 7] could provide a possible motive to this witness to render a statement that would incriminate Defendant. In addition, this witness made the following statement before the NCIS:

“Joseph has done some bad things during the genocide, since he was always with his brother Obed, which means Joseph is guilty as well.”(577)

183. Therefore, it cannot be excluded that the witness has a possible motive to render, contrary to the truth, an incriminating statement against the Defendant. In addition, from the above quotation could be derived that the

witness considers the Defendant guilty just because of his family ties with Obed Ruzindana.

184. However, the statements of the witness show that she also said that she had never seen the Defendant do anything.(578) With respect to the ambulance incident, she stated about what she had seen and she clearly added that she had not seen the Defendant at the time of the massacres of the passengers.

185. Therefore, it is the opinion of the Court that the person of the witness does not give reason to doubt her credibility. The Court takes into consideration that the witness stated that she had not seen the Defendant at the time of the massacre of the passengers of the ambulance, despite a possible motive to render, contrary to the truth, a statement that would incriminate Defendant.

Re II: The formation of the statement
186. As far as the formation of the witness statements during the examinations is concerned, there are no indications that at the time of the examinations circumstances occurred that could have been of influence on the reliability of the contents of the statements.

Reliability of the statement in objective terms
187. With respect to the contents of the statements of this witness, the Court sees no reason to further discuss the points defined in the assessment framework under III and VII (respectively verifying against objective data obtained elsewhere and the plausibility of the contents of the rendered statement).

Re IV: The consistency of successive statements rendered by this witness
188. Since this witness was heard twice by the NCIS and the first interview was focussed on the disappearance of [witness 7], the consistency of her successive statements cannot be assessed. As mentioned above in paragraph 77, the fact that this witness was not heard in presence of the Defence, is no reason for the Court to exclude his statement from the evidence.

Re V: The quality of the recognition of Defendant by [witness 29]
189. Since this witness stated that she had not seen the Defendant at the time of the massacre on the passengers, there is no reason to discuss the assessment of the quality of the recognition of Defendant by this witness.

Re VI: The concurrency of the statement of this witness with statements rendered by other witnesses
190. In view of the nature of this assessment and the connection with the assessment of other witness statements, the Court will discuss this point below in paragraphs 202 - 239.

Other witness statements in the criminal case file
191. As mentioned earlier, [witness 17], [witness 28], [witness 16], [witness 21], [witness 26], [witness 9], [witness 20], [witness 31], [witness 32], [witness 35] and [witness 33] also rendered statements in relation to this charged offence. At this moment, the Court will briefly mention these statements.

[Witness 17]
192. In the statements of this witness, remarkable differences can be pointed out with respect to the consistency of his successive statements(579) as well as regarding the concurrence of these statements with statements by other witnesses.(580) In addition, at some points these statements are inconsistent and/or not very plausible(581). Moreover, these points are regularly related to aspects that could be crucial for the evidence. Therefore, these points raise considerable question marks for the Court with respect to the reliability of the statements of this witness.

[Witness 28]
193. With respect to the statements of this witness concerning this fact it must be noted that he only saw parts of the incident and heard about other parts from other people, while on other points his statements are difficult to follow.(582)

The ‘hearsay’ witnesses
194. The other witnesses for the Prosecution are [witness 16], [witness 21], [witness 26], [witness 9] and [witness 20]. These are all witnesses who have not personally witnessed this incident and have only testified about matters they had been told about by other people, which is the reason for the Court not to discuss these statements in detail right now.

Witnesses for the Defence

[Witness 31]
195. In brief, witness [witness 31] stated that he was in Birogo at the moment an ambulance was redirected by police officers. At the instruction of these police officers, the ambulance was escorted by a group of people including the witness.(583) At that moment, the witness had no idea about the ethnic background of the passengers. During the drive from Birogo to Mugonero, people who escorted the ambulance were singing "Alleluia, Alleluia".(584) Once arrived at the barrier in Mugonero, the witness saw that the passengers were taken out of the ambulance, after which he walked away. A couple of minutes later, he heard shots and he ran away. While he ran away he passed the house of the Defendant, whom he saw sitting there. The witness briefly told the Defendant what he had seen and went to his own house.(585)

[Witness 32]
196. This witness stated that he was aware of the incident on 13 April 1994, involving an ambulance. He told that on that day he was quenching his thirst in the company of the Defendant, when they heard shots. From people who ran away, they heard that police officers with rifles had shot at people who had been transported in an ambulance. The witness had not heard anything about the ethnic background of the passengers of the ambulance.(586)

[Witness 35]
197. This witness stated that he was employed as a gendarme. On the day of the incident, he was on duty in Birogo when his boss ordered him to redirect the ambulance to Mugonero in order to protect the shopping centre in Kibongo.(587) To the question whether the passengers were Hutus or Tutsis, the witness answered that he had not paid attention to that. To him it was not important; he just did his job.(588) According to this witness, the passengers of the ambulance were not killed. In addition, the witness stated that during all the time he was in Birogo, he had not seen the Defendant.(589)

198. Furthermore, this witness stated that a number of people escorted the ambulance. Those people were on foot because the driver of the ambulance had not allowed them to get in. Thereupon, those pedestrians went along to go shopping in Mugonero. They were singing while they walked along with the ambulance.(590)

[Witness 33]
199. This witness stated that he saw the ambulance at the barrier in Mugonero on market day. Because many people had gathered at the barrier and made a lot of noise, he went over there to have a look. Subsequently, he saw that the gendarmes made the passengers step out and stand in a line. The soldiers surrounded the passengers, took them into the bushes, after which the witness heard gunshots.(591)

200. About the Defendant this witness stated that he had seen him on that particular day. The first time was at the shop of the family of the Defendant, approximately 40 minutes before the ambulance arrived. After the witness had heard the gunshots, he went into the direction of the market where he saw the Defendant again. He had not seen the Defendant at the barrier.(592)

Assessment of the charges

201. Now that all possible evidence in the case file has been discussed (in some cases briefly), the Court shall verify the most important (eye)witness statements of [witness 1], [witness 2], [witness 15], [witness 7] and [witness 29] against the statements of other witnesses, with the aid of the item of consideration mentioned under VI in the assessment framework. When doing this, the Court will limit itself to the most noticeable differences. Later, in paragraphs 225 – 239, the Court will attach conclusions to these differences and, in paragraphs 256 – 260, indicate which facts are legally and convincingly proven, and which facts are not.

Re VI: Conformity of the statements of this witness with statements rendered by other witnesses

202. Briefly represented, the most important differences in the statements of the above mentioned witnesses are:
a) the date of the incident;
b) the number of passengers in the ambulance;
c) the barrier in Birogo;
d) other cars surrounding the ambulance;
e) whether or not Defendant was present at the barrier in Mugonero prior to the arrival of the ambulance;
f) whether or not Defendant was present at the time the passengers of the ambulance were massacred.

Re a: the date on which the incident allegedly took place
203. [Witness 1] stated that this incident took place on 13 April 1994.(593) [Witness 2] stated that she thinks it

must have been approximately one week after 6 April 1994.(594) During his examination, [Witness 7] mentioned the Monday after the Wednesday on which the plane of the president crashed, as the date.(595) The wife of [witness 7], [witness 29] did not mention any date during her examination.

204. As mentioned above in paragraph 34, witness [witness 15] does not recall the date of the incident anymore. He thinks it took place around May 1994, but he is not sure.(596)

Re b: the number of passengers in the ambulance
205. As mentioned above in paragraph 12, [witness 1] stated that the following persons were in the ambulance: the families of Gerard Muhutu and Anaclet Munyanziza:(597) Dativa and Brigitte with their children(598) and a seven to eight-year-old girl. The father of this girl was [B5](599) and the girl looked like the daughter of burgomaster Furere.(600) The police sergeant [B12] was also in the ambulance.(601)

206. [Witness 2] (whose father is [B5], as mentioned before) stated that the following persons were in the ambulance: Dativa with her children; Dativa's younger sister, called Pascasi whose nickname was Nyiraamwamira; Brigitte with her children. As the children of Dativa and Brigitte, she gave the following (nick) names: Jagwar, Kinuma, Thea and Claire. In addition, she and Caritas were in the ambulance. [Witness 1] was the driver (602) and police sergeant [B12] was with them. Already before the ambulance arrived in Birogo, Caritas and the police sergeant got out of the ambulance.(603)

207. Contrary to the above, [Witness 15] stated that in Mugonero, about 20 people were taken out of the ambulance, men, women and children.(604) About the passengers he stated that 'apart from the daughter of Abeli Furere'(605), he knew none of the passengers (606). He did know that [witness 1] was the driver of the ambulance.(607)

208. During his interview before the NCIS, [witness 7] did not explicitly mention the people in the ambulance, although he did state that the driver and a seven-year-old girl, 'the daughter of Abel Furere' had survived the incident.(608) Before the Parquet Général in Rwanda he stated that in any case the driver [witness 1] and the wife of Gerard and her child were in the ambulance.(609)

209. [Witness 29] stated that she had not seen the passengers of the ambulance. After they had been killed, she had seen their bodies. There were bodies of women and their children(610) and she thought she saw the bodies of Gerard Muhutu's children, but she was not sure anymore. In any case, she had heard that his wife and children were in the ambulance.(611)

Re c: the barrier in Birogo
210. As represented above, witness [witness 1] stated that he had been stopped in Birogo because the road was blocked by Ruzindana's car which was driven by the Defendant.

211. Contrary to this, [witness 2] stated that there was a roadblock in Birogo, a barricade. Before the Examining Judge she described this barricade as two vertical trees with a horizontal tree on top. She also stated that one was not allowed to cross the barricade without being checked first and that there were Interahamwe at the barricade. Everybody was checked and searched.(612)

212. Before the NCIS, she further stated that, before they arrived at the barricade, the passengers of the ambulance were afraid they would be stopped at the barricade in Birogo. The witness knew that barricade was there, she had been told by other people. Those other people had tried to flee, but they would not be allowed to pass this barricade, which is why they had returned to the hospital/church complex in Kibingo.(613)

213. None of the other witnesses mentioned a barricade in Birogo, although witness [witness 35] speaks about a post in Birogo where he was working as a gendarme.(614)

Re d: other cars surrounding the ambulance
214. As mentioned above, witness [witness 1] stated that the ambulance had been surrounded and kept surrounded on the road between Birogo and Mugonero, by a group of people escorting the ambulance.

215. Witness [witness 2] stated that the ambulance had been escorted by cars driving in front of it as well as behind it.

216. None of the other witnesses interviewed about this incident mentioned the ambulance being surrounded by cars. As represented above, the witnesses [witness 31] and [witness 35] did state that the ambulance had been

surrounded by pedestrians.

Re e: whether or not the Defendant was present at the barrier in Mugonero prior to the arrival of the ambulance
217. As represented above in paragraphs 16 and 17, witness [witness 1] stated that in Mugonero, he had been held for a short time at the barrier by soldiers and that the Defendant arrived there shortly after.(615)

218. Contrary to this, [Witness 2] stated, as mentioned in paragraph 23, that the Defendant had been driving ahead of the ambulance and that he had already arrived in Mugonero when the ambulance arrived.(616) She did not say who had stopped the ambulance there.

219. Witness [witness 15] did not state anything about this; he had come to the spot when the ambulance had already arrived in Mugonero.

220. As represented earlier in paragraph 36, witness [witness 7] stated about this that when the ambulance arrived at the barrier, he had seen the Defendant standing there already and he had seen Defendant stopping the ambulance.(617)

221. Finally, witness [witness 29] stated about this that at the moment the ambulance had turned around and gone back to Mugonero, she had seen that the Defendant, together with his brother, soldiers and other people followed the ambulance.(618)

Re f: whether or not the Defendant was present at the time the passengers of the ambulance were massacred
222. From the examination of [witness 29] it appears that she had not seen the Defendant at the moment the passengers of the ambulance were killed at the cattle market.(619) In this sense, the statement of this witness differs from the other evidence in the case file. It should be noted here that she indicated that she had not been able to see exactly how the people were killed because many people from the village surrounded the spot.(620)

General considerations with respect to differences in the statements of different witnesses
223. It is the opinion of the Court that the differences in the statements of witnesses deserve a close look. It is important to remember that differences between statements can be caused by the passage of time, the chaotic nature of the incident in which the witness seriously had to fear for his or her life and the lives of the other passengers, the emotions caused by the recollection of the dramatic events for the witness, or by an error of the witness or another party to the proceedings. In addition, the statements demonstrate that each witness had only been capable of seeing part of the events. A total image of the events arises only when the different statements are regarded in cohesion.

224. Therefore, it is the Court’s view that other differences than those discussed above (in statements rendered by one and the same witness as well as differences between statements of different witnesses) do not need any further discussion.

Considerations with respect to these differences
Re a: the date on which the incident allegedly took place
225. In view of the witness statements rendered by [witness 1] and [witness 2], which statements are supported by the statement of [witness 7], the Court judges that the massacre must have taken place on or around 13 April 1994.

226. Therefore, concerning this point, the Court puts aside the different statement of witness [witness 15]. During the interview, this witness already indicated that he could not remember anymore when the incident had taken place. This difference can very well be attributed to the considerable passage of time since the incident.

Re b: the number of passengers in the ambulance
227. As mentioned earlier in paragraphs 205 – 209, the statements of the witnesses differ with respect to the number of passengers of the ambulance. The statements of [witness 1] and [witness 2], who were in the ambulance themselves, are in concurrence regarding Dativa with her children, Brigitte with her children, the police sergeant and their own presence. Furthermore, these statements are consistent regarding the fact that when the ambulance had arrived in Mugonero, the police sergeant had already left the ambulance.

228. Also the statements of [witness 7] and [witness 29] show that, in any case, the wife of Gerard Muhutu and her child had been one of the passengers of the ambulance.

229. In view of these statements, it is the opinion of the Court that it can be established that [witness 1] was the driver of the ambulance and that when the ambulance arrived in Mugonero, at least the following persons were in

it: [witness 2], Dativa (the wife of Gerard Muhutu) and her children, Brigitte (the wife of Anaclet Munyanziza) and her children. [witness 2] stated that there were at least four children in the ambulance.

230. Therefore, the Court disregards the statement of [witness 15] stating about 20 passengers including men. However, this does not mean that because of this, the Court will put aside all other parts of his statements.

Re c: the barricade in Birogo
231. Only [witness 2] mentioned a barricade in Birogo. [Witness 1] stated that he had been forced into the kerb by a car driven by the Defendant. Now that [witness 1], being the driver, must have had a better view on the road ahead of him than one of the passengers, the Court accepts the statement of [witness 1] and disregards the statement of [witness 2] on this point.

232. The Court would like to emphasize that it does not consider the statements of this witness to be unreliable. Certainly since these differences can be explained very well by a failing memory caused by the passage of time, the chaotic nature of the attack, an error of the witness or another party to the proceedings and the emotions caused by the recollection of the dramatic events.

Re d: the ambulance being surrounded by other cars
233. In view of the witness statements above, the Court is of the opinion that, from Birogo, in any case, the car driven by the Defendant, either ahead or behind the ambulance, must have been driving. Therefore, on the point of cars or pedestrians surrounding the ambulance, the statements of [witness 2] and [witness 1] do not necessarily contradict each other. In addition, considering the statement of [witness 1] who, as the driver, must have had a good view on the road, the Court considers that the ambulance must have been surrounded by pedestrians as well.

Re e: whether or not the Defendant was present at the barrier in Mugonero prior to the arrival of the ambulance
234. As mentioned above in paragraphs 217 – 221, [witness 1] and [witness 29] stated that the Defendant drove behind the ambulance from Birogo. Contrary to this, the witnesses [witness 2] and [witness 7] stated that the Defendant was already standing at the barrier in Mugonero when the ambulance arrived. Finally, [Witness 15] stated nothing in this regard.

235. In view of these contradictions, it is the opinion of the Court that it cannot be proven beyond all reasonable doubt that the Defendant was already at the barrier prior to the arrival of the ambulance in Mugonero.

236. As considered above in Chapter 7 (The roadblock in Mugonero, paragraph 34), it has been established that the Defendant played a leading role at this barrier, set up by himself and his brother. Furthermore, the statement of [witness 2] shows that the Interahamwe said they had received instructions from the Defendant and his brother to look for the passengers of the ambulance and that, once they had found them, to take them to Mugonero.

237. In view thereof, it is the Court's opinion that, even if the Defendant was not yet present at the barrier, there was a conscious and close cooperation between the Defendant and the people at the barrier who actually stopped the ambulance. Therefore, in that sense, the question whether the Defendant himself had carried out the act of stopping the ambulance (not mentioned in the charges, as a matter of fact) is not relevant. Even if the Defendant would not have assisted in the stopping of the ambulance in Mugonero, this stopping can be closely related to the instructions given by him earlier and therefore, to the conscious and close cooperation.

Re f: whether or not the Defendant was present at the time the passengers of the ambulance were massacred
238. As mentioned above, [witness 29] stated that she had not seen the Defendant at the moment the passengers of the ambulance were murdered. In this respect she also noted that she was not able to have a good look since the spot was surrounded by many people from the village.

239. Therefore, the Court considers the statement of this witness not in contradiction with other evidence. After all, the statement of this witness only demonstrates that she had not seen the Defendant, which may not lead to the conclusion that the Defendant was not present at the barrier in Mugonero and during the massacre of the passengers.

General considerations with respect to witnesses not cross-examined by the Defence Counsel
240. As mentioned earlier in paragraphs 60, 63 and 72, the Counsel brought forward that the statements of [witness 7] and [witness 15] should be excluded form the evidence, while the statement of [witness 29] should not be used as evidence. In so far as the Counsel wanted to rely on the provisions of article 6 European Convention on Human Rights (ECHR), the Court considers the following.

241. In so far as the Defence Counsel wanted to rely on the provisions of article 6 (ECHR), the Court mentioned already in paragraphs 73 – 77, that in case the Defendant or his Counsel was not provided the opportunity to cross-examine a witness, article 6 ECHR does not at all times preclude the statements rendered by that witness from being used as evidence. Therefore, in principle the Court sees no reason whatsoever to exclude these statements from the evidence.

242. In this respect, the Court noted that although the European Court of Human Rights takes the procedure in its entirety into consideration, to answer the question whether a fair trial took place the following factors play an important role:
° the presence of other - witness statement supporting – evidence;
° the possibility for the Defendant to demonstrate the reliability of the witness and/or his or her statement;
° and the commitment of the judicial authorities in their efforts to have the witness cross-examined by the Defence.

Considerations with respect to witnesses [witness 15] and [witness 7]
243. Because of the disappearance of witnesses [witness 15] and [witness 7], the Prosecution and the Counsel did not have the opportunity to (give the instruction to) interview these witnesses. The allegation made by the Counsel that the Examining Judge as well as the Prosecution were negligent with regard to their efforts to trace witnesses, lacks any legal basis: these witnesses could not be traced.

244. Therefore, it is the opinion of the Court that the (judicial) authorities were not negligent with regard to their efforts to (give the instruction to) hear these witnesses. Furthermore, as demonstrated above, the statements of these witnesses are largely supported by other evidence. Consequently, article 6 ECHR does not preclude the statements rendered by that witness from being used as evidence. In this respect, the plea of the Defence Counsel to preclude the statements of [witness 15] and [witness 7] from the evidence is rejected.

Considerations with respect to witness [witness 29]:
245. As shown earlier in paragraph 75, the statement of a witness who was not cross-examined by Counsel, may be used as evidence without misapplication of article 6 ECHR, if Counsel did not request at any time to cross-examine that witness and if the statement of the witness is largely supported by other evidence.

246. The Court puts first that, at no moment during the proceedings, the Counsel requested to have this witness interviewed by the Examining Judge. Now that the statement of witness [witness 29] is largely supported by other evidence, there is no reason to preclude this statement from the evidence and therefore, the plea of the Counsel is rejected.

Consideration with respect to the other, remaining, witness statements
247. As mentioned above, it is the opinion of the Court that the differences in the statements of [witness 17] raise considerable question marks with regard to the reliability of the statements of this witness. Following the judgement of the Court of Appeal of The Hague in the [K.] case, it is the Court’s opinion that it is considered to be risky, at least, to consider parts of the statements of this witness to be reliable, while in other statements, he is demonstrable 'wrong'. Furthermore, the Court endorses the Appeal Court’s ruling in the said case, indicating that it is impossible to disregard parts of statements which are obviously contradictory, impossible or not very plausible and, on the other hand, use rather selectively chosen parts from those statements as (supporting) evidence. Therefore, the Court shall not use the statements of this witness as evidence with respect to the charges. However, the Court would like to emphasize that - notwithstanding the above – it explicitly distances itself from the assertion of the Defence Counsel that this witness should be regarded as a storyteller who, in a very transparent way, tries to incriminate the Defendant.

248. With respect to the statements of witness [witness 28], the Court stated earlier that remarkable differences in those statements can be pointed out and that this witness only saw parts of the acts mentioned in the charges personally and just heard about other parts. In view thereof, the Court has decided not to use the statements of this witness as evidence with regard to the charged facts.

249. As mentioned earlier with respect to the other witnesses for the Prosecution, these are all witnesses who have no personal knowledge of this fact and who only have stated about matters they had been told about by other people.

250. Although no legal rule bars these statements from being used as evidence, in imitation of the Prosecution when substantiating the charges, the Court shall not use these statements as evidence with regard to the charges.

251. In view of the remarks recorded earlier in Chapter 3 (Rwanda) with respect to the historical background of Rwanda and the course of the genocide, the Court believes that the statements of the witnesses for the Defence [witness 31] and [witness 35] deny the atrocious reality of the genocide in Rwanda. In fact, both witnesses stated that they did not know the ethnic background of the passengers of the ambulance, in which respect [witness 35] stated that he only did his work as a gendarme and that the ethnicity was of no importance to him. Therefore, the Court considers these statements to be totally incredible.

252. The Court also deems the statement of [witness 32] incredible. It this respect, the Court expressly points out the incredible statements about his dowry and about being unable to indicate the ethnic background of the passengers. Finally, in its judgement the Court also considered the circumstance that, on a very essential point (i.e. the shooting down of the passengers) the statement of this witness differs from statements rendered by other witnesses.

253. Also the statement of [witness 33] does not correspond with statements of other witnesses on the very essential point of shooting the passengers. Besides, this witness also stated that, although he lived in Mugonero at the time of the genocide, he does not know anything about the massacre in the Mugonero hospital on 16 April 1994. Therefore, the Court considers the statement of this witness to be incredible.

254. In view of the above, the Court disregards the statements of these witnesses for the Defence.

255. In addition, the above taken into account, the Court sees no reason to discuss the statements of these witnesses explicitly with the aid of the assessment framework.

Final considerations

256. Based on the statements of [witness 1] and [witness 2] which statements are partly supported by statements rendered by [witness 15], [witness 7] and [witness 29], the Court considers the following acts as defined in the indictment to be legally and convincingly proven. However, the principal and alternative charges are somewhat different in a linguistic meaning, although in essence, they are identical. In view of this difference and because of the fact that this difference is unrelated to the question to be answered later on with respect to which legal qualification should be applied to these facts, for now the Court shall just render briefly which acts it believes legally and convincingly proven. In view of the difference between the principal and alternative option, the Court proceeds from the most detailed description of the facts which, based on the earlier mentioned factual findings, are considered to be legally and convincingly proven, without anticipating the decision to be taken hereafter.

The Court deems legally and convincingly proven that the Defendant:

on or around 13 April 1994, in Birogo or Mugonero respectively, in Birogo, forced an ambulance to stop which contained the following passengers: [witness 1], [witness 2], Dativa (the wife of Gerard Muhutu) and her children, and Brigitte (the wife of Anaclet Munyanziza) and her children. Subsequently, the ambulance was forced to drive to Mugonero all the while being surrounded and being hit by the people surrounding it, who were yelling and shouting insults such as “Inkotanyi”. Once arrived in Mugonero, the passengers were forced to step out of the ambulance, during which threats were uttered such as “before the cockroaches are killed, the driver must be killed first' and 'we are happy to have found these women because we are going to kill these beautiful women out in the open”. Subsequently, the passengers of the ambulance were forced to stand in a line, whereupon Dativa (the wife of Gerard Muhutu) and her children and Brigitte (the wife of Anaclet Munyanziza) and her children were hit on the head, knocked down with machetes and/or clubs. As a consequence of these acts Dativa (the wife of Gerard Muhutu) and her children and Brigitte (the wife of Anaclet Munyanziza) and her children died.

257. In the final statement of judicial finding of fact, the Court shall correct the typing and writing errors now that it has become apparent that these corrections have not prejudiced the defence of Defendant.

258. Together with the Prosecution, the Court is of the opinion that the principally charged aggravating circumstance i.e. that, as a consequence of the acts, [witness 1] and [witness 2] would have suffered (serious) bodily harm, has not been legally and convincingly proven.

259. Furthermore, with the Prosecution the Court considers the principally as well as alternatively charged fact i.e. throwing one or more hit and slashed children into Kivu lake, not to be legally and convincingly proven. Finally, in this respect the Court notes that other charges (i.e. showing all kinds of weapons such as firearms, machetes and/or clubs, during the ride from Birogo to Mugonero) as principally charged after the second dash and alternatively charged after the third dash, have not been legally and convincingly proven.

260. Finally, the Court notes that there is no need to further motivate that the above defined acts in the principal charge are to be qualified as attacks on the life and/or killing and/or inflicting serious bodily harm or mutilation and/or cruel inhuman treatment and/or torture and/or threat. Nor is there any doubt about the fact that the above mentioned acts as defined in the alternative charge have lead to it that the passengers were forced in a situation in which they had to fear for their lives and/or the lives of their family and/or friends and/or acquaintances (as recorded after the second dash).

Chapter 10: The attack on the Seventh Day Adventists Complex

Origin of the suspicion
1. As mentioned in the above Chapter 5, the Minister of Foreign Affairs issued an individual official report about Defendant on 14 February 2006. This report contained the following statement: 'Almost all interrogated sources confirmed the fact that the person concerned participated in the massacre in Mugonero.'(621)

2. Partly as a result of this official report the National Office of the Public Prosecution Service consulted the Parquet Général in Rwanda. These consultations showed that the name of Defendant had already appeared in an investigation conducted by the Parquet Provinciale in Cyangugu (the so-called Cyangugu-file). Subsequently, the Public Prosecutor sent a request for legal assistance to Rwanda on 14 June 2006. At the receipt of this request for legal assistance, the Rwandese authorities, on their own accord, conducted further inquiries whereby they decided to examine once again the witnesses from the Cyangugu-file. These witness statements made after 14 June 2006 were made available to the NCIS. A number of these witnesses accused the Defendant of being involved in the attack on the Seventh Day Adventists Complex.(622) At a later date, these witnesses were also interviewed by the NCIS and they stated once again about the attack on the Seventh Day Adventists Complex and about the involvement of Defendant in this attack.(623) Furthermore the NCIS also interviewed other witnesses from the Cyangugu-file in relation to other offences allegedly committed by the Defendant. One of them also gave evidence about the aforesaid attack and the role of Defendant in the attack.(624)

Position of the Prosecution

3. The Prosecution requested the Court to declare legally and convincingly proven that the Defendant jointly and in conjunction with his co-perpetrators attacked the unarmed refugees who were present at the complex, seriously injured them, shot and killed them, beat or stabbed them to death by using fire arms, machetes, clubs and grenades, as charged to the Defendant. In this context the Prosecution made reference to the witness statements made by [witness 24], [witness 25], [witness 10], [witness 14], [witness 22], [witness 8] and [witness 9], which will be discussed below.(625)

Position of the Defence

4. The Defence submitted the motion that Defendant be acquitted of this charge and – as elaborated further in his oral pleadings – basically argued that the witness statements of [witness 8], [witness 10], [witness 14], [witness 25], [witness 24], [witness 9] and [witness 22] were unreliable and therefore could not be used as evidence. The witness statements contain large and very important discrepancies. Furthermore the witnesses did not give consistent evidence (over the years) regarding important elements. The Defence especially pointed out that the name of the Defendant did not come forward in prior testimonies rendered before other (international) courts.(626)

Court assessment

The attack on the Seventh Day Adventists Complex
5. In the judgements pronounced in the cases against Elizaphan and Gérard Ntakirutimana(627) and Mikaeli Muhimana(628), the ICTR concluded that large groups of Hutu seriously maltreated and killed many Tutsi on Saturday 16 April 1994 at the Seventh Day Adventists Complex in the vicinity of Ngoma, commune of Gishyta, prefecture Kibuye. On account of their involvement in this attack, among other offences, the above mentioned persons were sentenced to a term of (life) imprisonment by the ICTR.

6. These judgements of the ICTR and the books written by Dr. A.L. Des Forges and Ph. Gourevitch give the following description of this attack.(629)

7. In the days following the death or president Habayirima, on 6 April 1994, Tutsi in the vicinity of Ngoma (West-

Rwanda) were confronted with Hutu who set their houses on fire, stole their cattle and killed Tutsi. These Tutsi had gone on the run to find a safe haven. From days past, churches and hospitals were common safe havens for Tutsi at times of rising internal conflicts between the Hutu and the Tutsi. After 6 April 1994, many Tutsi sought refuge at the Seventh Day Adventists Complex near Ngoma (and Mugonero). On 9 April the first refugees arrived at the complex. Their numbers increased during the days that followed. On Thursday 14 April 1994, the Tutsi heard that preparations were made for a large scale attack on the complex. A group of seven Tutsi clergymen then sent a desperate letter to Elizaphan Ntakirutimana, director of the complex and pastor of the Seventh Day Adventist Church located on the compound, asking if he could do anything to help the Tutsi.(630) His answer to this plea arrived on Friday evening, stating that he would not be able help them. The attack started on Saturday morning, when Hutu, both civilians and Interahamwe, as well as gendarmes and soldiers attacked the Tutsi refugees at the complex. The attack lasted the entire day. Many Tutsi lost their lives and large numbers were injured.(631)

8. At the Seventh Day Adventists Complex there was a church, a secondary school with dormitories for boys and girls (named 'dortoirs'), a hospital with ancillary buildings, the office of the director of the complex, Elizaphan Ntakirutimana, a building named the 'Association' and also some houses.(632) In one of these houses lived doctor Gérard Ntakirutimana, the hospital director and son of aforesaid Elizaphan Ntakirutimana. The hospital consisted of two floors: a ground floor which included the office of Gérard Ntakirutimana and a basement that was constructed partly above ground level. This basement included a surgery ward which consisted of several rooms. These two floors were connected by means of a stairway. After the genocide in 1994, a memorial was built to commemorate the victims of the genocide. Furthermore, since 1994 several buildings were added to the school.

9. The Seventh Day Adventists Complex is situated in the vicinity of Ngoma commune. Mugonero, where Defendant lived in 1994, is located at a distance of less than 10 kilometres in a straight line from the complex.(633)

10. The Seventh Day Adventists Complex was referred to in different ways, but also by only mentioning the hospital or the church. Some witnesses spoke of the hospital in Mugonero (634) or of the Mugonero Seventh Day Adventists Church.(635) Witness [witness 9] referred to the location as the (Adventists) church of/in Ngoma and the church complex.(636) This witness stated that originally, the hospital was referred to by adding the name of Ngoma, because 'the church was located in Ngoma'. He also gave a description of how this apparently resulted in confusions with regard to postal deliveries, because the mail used to end up in Goma in Zaire. According to the witness Ngoma is situated in Mugonero and therefore they chose to refer to the hospital and the church by adding the name of Mugonero.(637)

11. Ngoma commune is situated near the Seventh Day Adventists Complex. At the court hearing on 24 October 2008, the Prosecution submitted a combination of three aerial photographs which clearly show the location of Ngoma in relation to the complex. The square in Ngoma, where they regularly organised markets, is also referred to by the name Kabahinyuza.(638)

12. The case file contains statements of eight witnesses who gave evidence about the attack both to the NCIS and the Examining Judge. Five of them – [witness 8], [witness 10], [witness 25], [witness 14], [witness 24] – gave evidence as to how they were attacked by the Hutu. All these witnesses had already made statements before ICTR investigators, and four of them also testified during the trial at the ICTR. Two of these five witnesses also made statements in legal proceedings in the United States or Canada. Witnesses [witness 9], [witness 22] and [witness 12] stated that they belonged to the attackers. All statements of these witnesses made before the NCIS, the Examining Judge and the gacaca are included in the case file. Moreover the witness statement of [witness 22] rendered to the ICTR investigators, is also included in the case file.(639)

13. The statements made by the witnesses who were victims of the attack essentially contain the following. Many Tutsi civilians ran away from the genocidal violence in the area. Many of them sought refuge at the Seventh Day Adventists Complex. However, they did not appear to be safe there either. On Saturday 16 April 1994, the Tutsi were attacked by large numbers of Hutu at the Seventh Day Adventists Complex. Witnesses not only saw Interahamwe(640), but also soldiers(641) and civilians who jointly carried out the attack on the Tutsi refugees. The attack started in the morning and lasted the entire day until it became dark. The witnesses mentioned the following weapons which according to them were used by the attackers: fire arms, machetes, clubs, hand grenades and tear gas.(642) The Tutsi were shot and killed by fire arms(643), stabbed down and sometimes cut to pieces by machetes(644), beaten with clubs(645), while hand grenades were thrown at and between them. Hence, many Tutsi were (seriously) injured and/or killed.(646) Tear gas was thrown into the hospital rooms where possibly Tutsi were hiding with the intention to let them reveal themselves.(647) The Tutsi tried to defend themselves with stones; they did not have any other weapons.(648) Victims who survived the attack on the Tutsi stated that they feared for their own life as well as that of their family members, friends and acquaintances during the entire day. In most of these cases their fear became reality. In some cases they themselves or their family members, friends or

acquaintances suffered (severe) bodily harm.(649)

14. The Defendant himself stated to the NCIS and testified in Court that fighting took place at the Mugonero complex 'at the start of the war'.(650) The Court concludes that when mentioning this moment in time, the Defendant referred to the period shortly after 6 April 1994.

Possible involvement of Defendant in the attack
15. Both when he was questioned by the NCIS and during the court hearing, the Defendant denied having been involved in any way in the attack.(651) He also denied ever having had a weapon in his possession.(652)

16. In their statements made to the NCIS and/or the Examining Judge, the five victim witnesses pointed out the Defendant as one of the leaders of the attack.(653) They all accused the Defendant of having killed people(654) and of shooting at Tutsi with fire arms.(655)

17. The attackers [witness 22] and [witness 9] stated to the NCIS that Defendant was one of the participants in the attack. [Witness 22] repeated this statement before the Examining Judge. [Witness 9] withdrew his statement before the Examining Judge. [Witness 12] also stated to the NCIS that the Defendant participated in the attack; but what he knew about it, he knew from hearsay.(656) However, before the Examining Judge he said that his statement, which was incriminating for the Defendant, did not apply to the Defendant's participation in this attack.(657)

Assessment of the credibility and reliability of the witnesses
18. Currently, the Court will study the reliability of the statements of these witnesses, with the exception of [witness 12], because he stated that he only knew about the involvement of the Defendant in the attack from hearsay. While doing so, the Court will use the assessment framework mentioned in Chapter 6 (Assessment of Witness Evidence).

19. There are no indications of any circumstances that might have occurred at the time of the formation of the testimonies that could have had an influence on the reliability of the contents of the statements (item of consideration II of the assessment framework).

20. The Court has tested the witness statements against objective information (item of consideration III of the assessment framework) as incorporated in the case file in the form of photographs, video footage of the inspection, maps and measurements. None of the statements contain elements that are contrary to the actual situation, for instance the location of the complex, the layout of the church and the hospital. For this reason the verification of the witness statements has not caused the Court to have any doubts about the reliability of these statements.

21. It is a matter of fact that the witnesses have given evidence of events that are difficult to imagine. But within the context of the genocide in Rwanda, there is no reason to doubt (which in itself is less 'difficult' to establish) the plausibility of the witness statements (item of consideration VII of the assessment framework).

22. The Court will now assess item of consideration I.

Re I: The witness as a person

[Witness 8]
23. Witness [witness 8] was born in 1966. He stated being Tutsi.(658)
At the time of the attack on the Seventh Day Adventists Complex he lived in
Ngoma.(659) He was assistant nurse ('auxiliaire de santé') at the hospital of the Seventh Day Adventists Complex.(660) Witness [witness 10] confirmed this.(661)

24. [Witness 8] was at the complex at the time of the attack, not because he was working there at that moment, but because he had sought refuge there, after he had seen that also others were fleeing to the hospital.(662) He is the only survivor of a family of 16 persons.(663) His brother was killed in the hospital.(664) He described how he had hidden himself at the surgery ward of the hospital between the victims who had been killed; only when it became dark he had been able to run away.(665) Witness [witness 25] confirmed that [witness 8] was hiding inside the hospital, because at one point in time they both found themselves in the same room.(666)

25. [Witness 8] stated that he had known the Defendant from the moment the Defendant attended secondary school. They used to play football with other boys.(667) They were not friends, but sometimes they participated in

the same group activities.(668) He stated that he had visited the shop of the Defendant and his family several times in the period before April 1994.(669)

26. During the trial, the Defendant stated that he did not know this witness. (670)

27. Witness [witness 8] stated that he had known the witness [witness 10] since they were young. In those days, they used to play football together and there was a lot of contact between them.(671) Also after 1994, he had had good contact on a regularly basis with [witness 10].(672) He also stated that he had known [witness 14] from the time when they were young. He also said that he still saw this witness from time to time and that they lived in the same 'cellule', in Ngoma.(673)

28. When asked about his profession during the interview, the witness said that he was a chauffeur, but that he did not have a job at that moment. (674)

29. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

[Witness 10]
30. Witness [witness 10] was born in 1973. He declared being Tutsi.(675) At the time of the attack at the Mugonero complex he had just finished his education at the Technical School in Kibingo and because of the war he could not find a job and was staying with his parents.(676) Together with his parents, sisters and younger brothers he had fled to the Seventh Day Adventists Complex.(677) His entire family was killed at the Mugonero complex, except for his father who was injured and later died in Bisesero.(678)

31. When the Tutsi were attacked in the morning by Hutu, the witness found himself together with [witness 8] and two other witnesses who appear in this case file: [witness 25] and [witness 24].(679) The witness decided to hide himself in a room at the hospital, together with his father. After he had fled to the hospital room he hid himself underneath the bodies of people who had been killed.(680) In the evening he ran away together with his father.(681)

32. The witness stated that he knew the Defendant, because he used to buy products from the shop of the Defendant's father.(682)

33. During the trial, the Defendant stated that he did not know this witness. (683)

34. The witness stated that he knew [witness 8]. He also stated that he had known this witness since his childhood and that they used to play football together with [witness 8].(684) At the time of the witness examination (2006) they still saw each other, because they lived in the cellule.(685)

35. [Witness 10] was working as an agricultural/cattle farmer in 2006.(686) Furthermore, he was coordinator of the Kigarama cellule (2008).(687)

36. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

[Witness 25]
37. Witness [witness 25] was born in 1959. He stated being Tutsi.(688)
He was (and still is) health worker at the hospital of the Seventh Day Adventists Complex.(689) During the genocide, he worked as gardener for doctor [B13].(690)

38. The witness had sought refuge with his family at the Seventh Day Adventists Complex, because in his village houses were being destroyed and set on fire and people were being killed.(691) He lost his pregnant wife, his two children and his whole family during the "war".(692) His brother was shot and killed in the hospital of the Seventh Day Adventists Complex.(693)

39. The witness stated that he had known the Defendant since he was in elementary school. Before the genocide in 1994, he used to see him often at Ngoma Hospital (Adventists Complex) and also in Mugonero.(694)

40. During the trial, the Defendant stated that he did not know this witness. (695)

41. The witness stated that he knew both [witness 8] and [witness 10] at the time of the attack on the Mugonero complex.(696) He also stated that he knew [witness 24], but it has not become clear if he already knew him when the attack occurred.(697)

42. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

[Witness 14]
43. Witness [witness 14] was born in 1961. He declared being Tutsi.(698) During the genocide, the witness lived in Ngoma.

44. Together with his wife and three children, the witness fled to the hospital in Mugonero.(699) His family was killed in the church.(700) By hiding himself under the corpses in one of the hospital rooms, he succeeded to escape the attackers.(701)

45. The witness stated that he knew the Defendant from buying goods at his father's shop. The Defendant used to help his father in the shop.(702) Each Wednesday, on market day, the witness went to the shop.(703)

46. During the trial, the Defendant stated that he did not know this witness. (704)

47. This witness was not asked whether he knew the other witnesses in the case file. However, [witness 8] stated that he knew [witness 14]. They had known each other since their childhood.(705)

48. The witness is a farmer.(706)

49. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

[Witness 24]
50. Witness [witness 24] was born in 1970. He stated being Tutsi. (707) The witness stated that he had become a farmer after his school years (8 years of elementary school), then tailor and again farmer later on.(708)

51. On 9 April 1994, the witness sought refuge at the Seventh Day Adventists Complex together with his father, mother, his younger brother, his cousins and another girl and boy, because the people in his 'secteur' had been killed and houses had been set on fire.(709) In the end, all his family members were murdered.(710) During the attack he managed to hide in the roof of one of the 'dortoirs' and at nightfall he had escaped.(711)

52. The witness stated that he did not see the Defendant very often in the period before the genocide. When asked about it, he stated that he did not speak with the Defendant right before the genocide, because "he drove the car and I was on foot." (712)

53. During the trial, the Defendant stated that he did not know this witness.
(713)

54. Among the refugees who had fled to the Seventh Day Adventists Complex, he knew [witness 8] and [witness 10].(714) On being asked, the witness told that
[witness 10] was now his 'neighbour' (meaning that he was also living in his neighbourhood).(715)

55. His present function is president of the gacaca at the second level in Ngoma, which implies that he exercises the office of judge at the gacaca.(716) He also works as a farmer.

56. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

[Witness 9]
57. Witness [witness 9] was born in 1963. This witness stated being Hutu.(717) In the period prior to the genocide he was still living with his parents, brothers and sisters.(718) There is no information about any work he performed at that time.

58. This witness stated inconsistently about his involvement in the attack on 16 April 1994. He did make consistent statements about his presence at the Seventh Day Adventists Complex on that date. The Court will discuss the inconsistencies in the statements of this witness later on in this judgement.

59. He stated that he was sentenced to a term of imprisonment for his part in the genocide.(719)

60. According to the witness he knew the Defendant because of the commercial activities performed by the Defendant's father. His job was to unload bags of coffee from the truck driven by the Defendant. He also used to

buy products from the Defendant's parents who were traders. The witness did not maintain a friendly relationship with the Defendant. He stated: "I saw that he was eating grilled meat with traders. But his parents were rich, so I could not sit with him at the same table."(720)

61. Both before the NCIS and during the trial, the Defendant stated that he did not know this witness.(721)

62. At the time of his interview, the witness stated that he worked in a bar.(722)

63. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

[Witness 22]
64. Witness [witness 22] was born in 1958. He stated being Hutu.(723)

65. The witness made statements about his involvement in the attack on the Seventh Day Adventists Complex on 16 April 1994.

66. The gacaca sentenced him for killing people during the genocide and since his conviction he has served his term of imprisonment.(724)

67. He stated that he knew the Defendant as well as his father and that he knew where the Defendant used to live. However, he never had personal contact with the Defendant.(725)

68. Both before the NCIS and during the trial, the Defendant stated that he did not know this witness (726)

69. The witness works as a farmer.(727)

70. Considering the witness as a person, the Court does not find any cause to doubt the credibility of this witness.

Reliability of the statements in objective terms (IV, V and VI)

71. First of all, the Court concludes that in broad outline, the five victims/ witnesses have made consistent statements about the attack before the Dutch and international authorities, as well as before the ICTR.

72. Nevertheless, the Court has also discovered that there are some remarkable discrepancies between their individual statements, which will be discussed below. The most remarkable fact is that before the start of the Dutch criminal investigation, none of these five victims/witnesses had mentioned the name of the Defendant as being one of the attackers in their statements made to the ICTR investigators, neither in their trial testimonies, nor during the judicial inquiries in the United States. This only became clear at a late stage of the investigation, at the moment when these prior statements made elsewhere were included into the case file of the Dutch proceedings in July and September 2008 respectively. Consequently, during the examination of these witnesses the Examining Judge had not been able to confront them with (possible) inconsistencies or contradictions. For that reason the Court deemed it necessary that these witnesses be examined again by the Examining Judge. These additional statements were made in December 2008 and January 2009.

73. The statements made by the witnesses who declared that they had participated in the attack ([witness 9], [witness 22]), are consistent regarding the circumstance that the attack had indeed taken place. However, the Court has observed that also in this respect there are differences that need to be discussed.

74. The Court has determined that there are differences concerning details in the statements of these witnesses. The most important are: the colours of the cars that were driven by the attackers, including the Defendant and his brother, (728) the answers to the question as to who owned one of the cars that the attackers had used to drive to the complex, and by whom this car had been taken away (729) as well as the clothes that the Defendant had been wearing.(730) These do not concern essential contradictions. In spite of those small differences, also when looked at in correlation, these witness statements do not create the circumstance that would cause them to be considered unreliable. These differences might have been the result of the way in which the witness was heard, the lapse of time, the chaotic nature of the events in which the witness had to fear for his or her life, the emotions which are caused by the memories of these traumatic events, or through a mistake on the part of the witness or one of the parties to the proceedings. Moreover it appears from these statements that each witness was only able to observe part of the events. One can only arrive at a general overview after having studied the correlation between the individual accounts.

Re IV: Consistency of the successive statements made by this witness

[Witness 8]
Statements made prior to December 2008
75. The Court concludes that the witness [witness 8] gave evidence about the events that occurred at the Seventh Day Adventists Complex before the NCIS (2006), before the Examining Judge (2006/2007/2008) and before the Canadian judicial authorities (2007). Both to the NCIS and the Examining Judge, this witness described the Defendant as a leader; he gave instructions to others. (731) Before the Canadian judicial authorities (2007) he stated that Ruzindana arrived at the complex together with his brother on 16 April 1994.(732)

76. This witness also gave evidence before the judicial authorities of the United States in the case against Enos Iragaba Kagaba(733) (2002/2003). (734) Regarding the attack on the Seventh Day Adventists Complex he named Obed Ruzindana, Kagaba, Elizaphan and Gérard Ntakirutimana, and Charles Sikubwabo as being the leaders. The Defendant's name does not appear in this statement.(735) In a gacaca statement, the witness did mention the Defendant as being involved in the genocide, but not in relation to the attack on the Seventh Day Adventists Complex.(736) This gacaca statement dates back to the end of May / beginning of June 2005.(737) In his statement before the Parquet Général this witness mentioned the Defendant as one of the attackers who shot at the Tutsi at the Seventh Day Adventists Complex.(738) In several statements made by this witness (1995-2002) the Defendant's name does not appear.(739) In three of these statements he did mention Obed Ruzindana.(740)

The statement of this witness before the Examining Judge in December 2008/ January 2009
77. The Examining Judge asked this witness why he only started mentioning the Defendant as one of the attackers from 2006. To this question the witness said that his answer depended on how the question was put to him and what was the purpose the questioner had in mind. "Sometimes he [the questioner] wanted to know a specific name. Then I would mention five people and he would say 'stop' when he heard the name he intended to hear. So you can find his name with one authority and not with the other." (741) Concerning the 'list of killers in Mugonero Hospital and Church' drawn up by the witness, which was included as an appendix to a witness statement and which include nine names of attackers (742), he observed that he did not remember what question was asked. He said that he thought that he had been asked to write down the names and again referred to the purpose the questioner had in mind.(743) In relation to his statements before the authorities in the United States he stated that he had been questioned with the purpose to 'investigate certain persons'.(744) He also observed that the longer he is questioned, the more he can remember.(745)

78. Subsequently, the Court arrives at another important issue from the witness' statement that needs attention. In one of his statements the witness mentioned a certain Adrien who, according to him, lived in Musenyi.(746) The Examining Judge asked the witness if he could remember this, to which he answered that he knew a person named Adrien Harorimana who lived in Musenyi; the Defendant allegedly shot this Adrien in his upper leg during the genocide. The witness did not see this incident himself, but this Adrien had told him about it. Next, the Examining Judge confronted him with his own statement where he had mentioned Mika Muhimana as the one who had shot Adrien. The witness answered that he had mentioned the name Mika to the ICTR investigator, but that he thought that this investigator might have made a mistake in writing this down. When the examination was continued the next day, this witness further explained that he knew two persons by the name of Adrien Harorimana who both lived in Musenyi. The one Adrien was hit by a bullet from Mika, which he saw with his own eyes, the other Adrien was hit by a bullet from the Defendant, which he did not see for himself but heard from this Adrien.(747)

Final conclusion with regard to this witness
79. The Court believes without a doubt that the witness was a victim of the attack on the Seventh Day Adventists Complex. Again and again he has made credible statements about this incident. The Court bases its conclusion on the consistency of his statements over the years (as of 1995). Moreover, his statements correspond with the statements of other witnesses who were also victims of this attack.

80. However, the Court has doubts about the reliability of his statement with regard to the Defendant's involvement in this attack. The explanation given by the witness about the fact that he did not mention the Defendant's name earlier is not considered to be altogether convincing by the Court. The ICTR investigators asked the witness to render an account of the attack. It is difficult to understand that a witness, when asked to give a description of the attack, referred to the main attackers and repeatedly mentioned – at different times – the name of Defendant's brother but not the Defendant himself, although in later statements he claimed that the Defendant did have an important role as one of the leaders together with his older brother. Also in his statements before the judicial authorities in the United States in the case against Enos Kagaba, the witness mentioned the brother of the Defendant (among other names) as being one of the leaders, but not the Defendant himself. His explanation that the investigation, and therefore the questions, were targeted at certain persons (in this case Enos

Kagaba), does not clarify why he did mention the brother of the Defendant but not the Defendant himself, given the fact – as stated before – that he saw both brothers as leaders of the attack.

81. In its assessment of the reliability of the statements of this witness concerning the possible role of the Defendant in the attack, the Court also takes into consideration the things he said in his last statement about the shooting of 'Adrien' (not included in the charges against the Defendant). On this point the witness changed his statement, after the Examining Judge had confronted him with his prior statement about this incident. The Court finds it inexplicable that, if he knew two victims with the same Christian name and family name who lived in the same secteur, this witness did not immediately make mention of this fact in order to avoid any confusion. This is detrimental to the reliability of the entire statement of this witness.

82. In this context, the Court recalls its considerations in Chapter 6 (especially in paragraph 8) regarding the limits of human perception and memory. Both by internal processes and external factors the memory flow of the original experience is changed or expanded. The problem is that the witness himself has no perception of these changes or additions, which in itself is a reason for caution. This is even more relevant because the witness has given evidence about a traumatic event which took place almost 15 years ago.

[Witness 10]

Statements made before December 2008
83. In his statements made before the Parquet Général (2006), the NCIS (2006) and the Examining Judge (2006/2007), this witness mentioned the name of the Defendant in relation to the attack.(748) Also before the gacaca (in any case before June 2006)(749) the witness gave evidence regarding the Defendant's involvement in the attack.

84. In the statement rendered before the judicial authorities in the United States in the case against Enos Kagabe (2003) with respect to the Seventh Day Adventists Complex, the witness did not mention that the Defendant was involved in the attack. In those statements he named the following persons as leaders of the attack: burgomaster Sikubwabo, Mika Muhimana, Obed Ruzindana, Gérard Ntakirutimana, Kanaybungo, Ndayissaba 'and many others'.(750) For the benefit of the ICTR this witness also gave evidence on several occasions, in witness statements as well as trial testimonies. In his witness statement dated 25 October 1999, the name of the Defendant does not appear. In his trial testimony dated 1 October 2001 and 2 October 2001, in the case against Elizaphan and Gérard Ntakirutimana and in the trial testimony dated 30 April 2004, in the Nyitegeka case, the witness did not mention the name of the Defendant. However, he did mention the brother of the Defendant, Obed Ruzindana, as one of the attackers.(751) The witness does know the Defendant, because he did refer to him in one of his trial testimonies before the ICTR in the Niyitegeka case, while he also mentioned the Defendant in the aforesaid statement made before the judicial authorities in the United States.(752) He did not mention the Defendant in these statements as participant in the attack on the Seventh Day Adventists Complex, but as someone who was present during the attack on 'Muyira Hill' on 13 May 1994.(753)

The statement rendered before the Examining Judge by this witness in December 2008/January 2009
85. The witness stated that the ICTR investigators – just like the Examining Judge had done during this examination – requested him to give a list of names of attackers on the Seventh Day Adventists Complex. He had complied with this request, but after mentioning a few names they had told him that it was enough and then he had stopped. So therefore he did not need to mention all names he knew.(754) With reference to his statements made to the judicial authorities in the United States, he said that he just mentioned the first names "that popped up in his head".(755) In his statement dated 17 December 2008, this witness clearly mentioned the Defendant as one of the leaders of the attack.(756)

86. Furthermore the witness was confronted with his trial testimony in the Gérard and Elizaphan Ntakirutimana case. On this occasion, the witness was asked to tell who was sitting in the cars at the time of the attack and he answered to the judges of the ICTR that the Interahamwe were inside the cars.(757) Before the Examining Judge he stated that the Defendant was also sitting in one of the cars; in Obed Ruzindana's car. Subsequently, the Examining Judge confronted him with the fact that this was a very specific question and asked him why he did not mention the Defendant's name on that occasion. The witness replied that he did give a specific answer; he said that there were Interahamwe in the car and that the Defendant also formed part of the Interahamwe.(758)

87. The Examining Judge also asked the witness more specific questions about his earlier statement concerning rapes committed during the attack on 16 April 1994. The witness had more or less stated that he had seen the rape of a teacher, the daughter of Karera, by one of the sons of Kanyabungo.(759) During this examination the witness told the Judge that he had not seen the rapes of women by the sons of Kanyabungo with his own eyes, but that others had told him about those rapes.

88. The Examining Judge also put questions to the witness about rapes that had taken place prior to 16 April 1994. In reply, he stated that he knew about two girls that had allegedly been picked up from the hospital premises and had been raped elsewhere by Mika Muhimana and Sikubwabo (Maria and Martha, the daughters of Gafurafura). Subsequently, the Examining Judge confronted the witness with his earlier testimony before the ICTR, where he had testified about this same incident, by stating that three girls, Josianne, Maria and Mariana had been picked up and raped elsewhere.(760) At that point the witness seemed to hesitate and referred back to the text of this prior testimony.(761) During his examination before the Examining Judge he further stated – and this is new with respect to his former statements – that there had been a car arriving behind the car of Mika and Sikubwabo when the women were picked up; this was the car that was used by the Defendant and his brother Obed Ruzindana.(762) He thought that one of the two people that were sitting in this last car had been the Defendant.(763)
89. Furthermore, the Examining Judge asked him questions about a certain Vianney Ntaganira, because apparently the witness had been inconsistent in his statements about this person's death. When he was interviewed by the NCIS, this witness had stated that the Defendant had shot this Vianney during the attack at Gitwe Hill; according to him Vianney had been shot in his stomach.(764) However, in a document written by 'African Rights', which was submitted by the Defence during the trial, it is reported that according to this witness, Vianney Ntaganira would have died in the church in Murambi.(765) In his trial testimony against Elizaphan and Gérard Ntakirutimana this witness also testified that a person named Vianney Ntaganira had died during the attack on the church in Murambi, after being hit by a bullet which had been fired by Elizaphan or Gérard Ntakirutimana.(766)

90. First of all, the Examining Judge asked the witness if he knew a person by the name of Vianney Ntaganira. The witness replied affirmatively and told the Judge that Vianney was still alive and also where he lived. Next, the Judge asked the witness if he knew or had known only one person by the name of Vianney Ntaganira, to which his answer was affirmative. Accordingly, the Examining Judge confronted the witness with his statement made to the NCIS regarding the person known as Vianney Ntaganira who had been shot during the genocide. Then, the witness stated that he knew two persons named Vianney Ntaganira: one who was still alive and the other had been injured during the genocide and later shot and killed by the Defendant. He stated that the deceased Vianney had been shot dead in Bisesero near Gitwe; according to him he was hit by a bullet in the back.(767) If the report says that Vianney died in the church of Murambi, then that is not correct, according to the witness.(768) Finally, the Examining Judge confronted him with the fact that his statement about the shot wound was different from the statement he had made earlier to the NCIS. To this, the witness replied that the bullet had hit the victim in the back and it had come out again from the stomach.(769)

91. Finally, it is remarkable what this witness stated about the death of Thomas Rukara. In his statement before the Examining Judge in November 2006, he said that the Defendant and others shot at people and that after the firing from that group, Thomas Rukare appeared to be one of the victims.(770) In his statement before the Examining Judge on 26 January 2009 however, the witness declared decisively that he had seen Thomas Rukara become the victim of a grenade that had been thrown by the Defendant.(771)

Final conclusion with regard to this witness
92. The Court believes without a doubt that the witness was a victim of the attack on the Seventh Day Adventists Complex. Again and again he has made credible statements about this incident. The Court bases its conclusion on the consistency of his statements over the years (as of 1999). Moreover, his statements correspond with the statements of other witnesses who were also victims of this attack.

93. However, the Court has doubts about the reliability of his statement with regard to the Defendant's involvement in this attack. The explanation given by the witness about the fact that he did not mention the Defendant's name earlier is not considered to be altogether convincing by the Court. The ICTR investigators asked the witness to render an account of the attack. It is difficult to understand that a witness, when asked to give a description of the attack, referred to the main attackers and repeatedly mentioned – at different times – the name of the Defendant's brother but not the Defendant himself, although in later statements he claimed that the Defendant did have an important role as one of the leaders together with his older brother. Also in his statements before the judicial authorities in the United States in the case against Enos Kagaba, the witness mentioned the brother of the Defendant, together with other names of attackers (Sikubwabo, Mika Muhimana, Gérard Ntakirutimana and Kanaybungo), but not the Defendant himself. Also in his above mentioned trial testimony – not rendered in the case against Ruzindana – the witness again mentioned the brother of the Defendant and not the Defendant himself. It is still hard to understand that in these statements the witness does name the brother of the Defendant, and some other leaders, but not the Defendant himself, especially considering the role which the Defendant had as leader of the attack according to him.

94. In its assessment of the reliability of the statements of this witness concerning the possible role of the

Defendant in the attack, the Court also takes into consideration the things he said in his last statement about the shooting of Vianney Ntaganira (not included in the charges against the Defendant). On this point the witness changed his statement after the Examining Judge had confronted him with his prior statement about this incident. The Court observes that the witness during the same examination first stated that he only knew one person named Vianney Ntaganira and subsequently withdrew this statement by saying that he also knew another Vianney Ntaganira. The witness also changed his account of where this victim had been hit by a bullet. All this is detrimental to the reliability of the entire statement of this witness.

95. Moreover, the statements made by the witness in relation to (i) the rapes of Maria, Martha (and Josianne) – especially the addition he made to his first statement that he has seen the Defendant's car and possibly also the Defendant himself when the girls were being picked up – and (ii) the way in which Thomas Rukara had been killed, give cause to the Court to have even more doubts.

96. In this context, the Court recalls its considerations in Chapter 6 (especially in paragraph 8) regarding the limits of human perception and memory. Both by internal processes and external factors the memory flow of the original experience is changed or expanded. The problem is that the witness himself has no perception of these changes or additions, which in itself is a reason for caution. This is even more relevant because the witness has given evidence about a traumatic event which took place almost 15 years ago.

[Witness 25]

The statements made prior to December 2008
97. In his statements made before the Parquet Général (2006)(772), the NCIS (2007)(773) and the Examining Judge (2007)(774), this witness declared about the involvement of the Defendant in relation to the attack on the Seventh Day Adventists Complex.

98. The statements (1996 and 1999) of this witness do not include the name of the Defendant, but he did mention his brother Obed Ruzindana and Gérard Ntakirutimana as persons who were very active during the attack.(775) According to the witness, the Defendant's brother, Obed Ruzindana, always used to run around with the late soldier named Kanyabongo and his sons. Nor did the witness mention the Defendant's name in his trial testimonies in the case against Kayishema and Ruzindana (1997).(776)

The statement rendered before the Examining Judge by this witness in December 2008/January 2009
99. In reply to a question from the Examining Judge regarding one of his earlier witness statements, he said that it was possible that he had not mentioned the Defendant's name at the time, because he had forgotten that name at that moment.(777) Sometimes "a name would pop up into his head" and then he would mention that name, as when he made his statement before the Parquet Général.(778) In his statement dated 18 December 2008, this witness explicitly named the Defendant as one of the leaders.(779)

100. Possibly, this witness made inconsistent statements about the person who injured him in the hip area by shooting at him with a gun during the attack in Bisesero. Before the ICTR, he testified in the case against Kayishema and Ruzindana that he was shot by an Interahamwe who was accompanied by Ruzindana.(780) In the Niyitegeka case, he testified before the ICTR that he knew the person who had shot him, but that he had decided not to mention his name for his own safety.(781) When interviewed by the NCIS, he said that in a statement made in the United States, he had mentioned Enos Kagabe as being the person who had shot him in the leg.(782) To the NCIS he stated that, in his capacity of witness before the ICTR both in the Obed Ruzindana and in the Niyitegeka case, he had mentioned Enos Kagabe as the one who had shot him in the buttocks.

101. For that reason the Examining Judge decided to question him more in detail about this matter. In reply, the witness said that initially he had not wanted to give the name because, as he stated, the person who had shot at him had not yet been on trial. Accordingly, the Examining Judge confronted him with the fact that he had mentioned the name of the shooter to the NCIS and that he had told them his name was Enos Kagabe. Thereupon, the witness confirmed this. Then, the witness stated that he had been afraid to mention his name, because he lived alone in his home town and was afraid of Enos Kagabe's family members.(783)

102. The Court observes that the circumstance that the witness has stated inconsistently about the person who injured him by shotgun during the attack in Bisesero does not impair the credibility of his statement, because this does not represent a real contradiction.

Final conclusion with regard to this witness

103. The Court believes without a doubt that the witness was a victim of the attack on the Seventh Day Adventists Complex. Again and again he has made credible statements about this incident. The Court bases its conclusion on the consistency of his statements over the years (as of 1996). Moreover his statements correspond with the statements of other witnesses who were also victims of this attack.

104. However, the Court has doubts about the reliability of his statement with regard to the Defendant's involvement in this attack. The explanation given by the witness about the fact that he did not mention the Defendant's name earlier is not considered to be altogether convincing by the Court. The ICTR investigators asked the witness to render an account of the attack. It is difficult to understand that a witness, when asked to give a description of the attack, referred to the main attackers and repeatedly mentioned – at different times – the name of the Defendant's brother but not the Defendant himself, although in later statements he claimed that the Defendant did have an important role as one of the leaders together with his older brother.

105. In this context, the Court recalls its considerations in Chapter 6 (especially in paragraph 8) regarding the limits of human perception and memory. Both by internal processes and external factors the memory flow of the original experience is changed or expanded. The problem is that the witness himself has no perception of these changes or additions, which in itself is a reason for caution. This is even more relevant because the witness has given evidence about a traumatic event which took place almost 15 years ago.

[Witness 14]

The statements made before December 2008
106. The witness has made statements about the Defendant and his involvement in the attack on the Seventh Day Adventists Complex to the NCIS (2006), to the Examining Judge (2007) and to the gacaca (2006).(784) In his statement rendered before the Parquet Général (2006), he said that he accused the Defendant of murdering people and of raping a girl. However, in this statements he did not mention the Defendant's name in relation to the attack on the Seventh Day Adventists Complex.(785)

107. Over the years (1996-2004), this witness has given evidence to the ICTR investigators, as well as to the judges of the ICTR. He did not mention the Defendant, neither in his trial testimonies, nor in his witness statements.

The statement rendered before the Examining Judge by this witness in December 2008/January 2009
108. The witness told the Examining Judge that the reason witnesses (the witness speaks in the plural tense) do not want to give evidence about this, was that they would only give evidence about persons who were in detention and not about persons who were still free.(786) The witness confirmed that the ICTR requested him to mention the names of attackers of the Seventh Day Adventists Complex. He would mention some names but not all of them.(787) He was never asked to give all the names. That is why he had never mentioned the name of the Defendant.(788) However, in his statement of 19 December 2008 he clearly mentioned the Defendant as one of the leaders of the attack.(789)

109. The Examining Judge also questioned the witness about the death of a certain Charles Ukobizaba. To the Examining Judge this witness had stated earlier that he did not know who had killed Charles Ukobizaba.(790) However, in his trial testimony in the case against Gérard and Elizaphan Ntakirutimana he had pointed out Gérard Ntakirutimana as the one who had shot and killed Charles Ukobizaba.(791) First the judge asked him if he knew the person known as Charles Ukobizaba. In reply, the witness said that he knew him well and that he was the 'comptable' of the Association. After repeating that he had never been told how this Charles had been killed, the Examining Judge read to him the paragraph of his trial testimony in the Elizaphan and Gérard Ntakirutimana case.(792) Subsequently, the witness stated that in his testimony to the ICTR he had told the truth and that he had apparently been mistaken when he made his statement to the Examining Judge. He explained himself by adding that he thought that the Judge had asked him about a certain Isacar Kajonge, who used to be the comptable of the Association;(793) Charles Ukobizaba was the comptable of the hospital.

110. The Examining Judge also confronted the witness with a possible inconsistency between his testimony during the trial at the ICTR in the proceedings against Kayishema and Ruzindana and the statement he made to the NCIS.

In his trial testimony the witness stated that on 11 May 1994, Mika Muhimana, Obed Ruzindana and Sikubwabo, under false pretences – claiming that peace had returned – had been calling up the wounded victims from the back of a white car to go to a church in Mubuga where food and blankets would be given to them. (794) To the NCIS the witness stated that the Defendant had been the driver of this car.(795) After the Examining Judge had told the witness what he had stated to the NCIS, he answered that this was not what he had told the NCIS. Like he said, he

had not seen the Defendant after the day of the attack on the Mugonero complex. The witness concluded that the NCIS had made a mistake in writing this down and he also claimed that they had not read this part of the statement to him afterwards.(796)

111. Moreover, during the examination of 19 December 2008, the Examining Judge questioned the witness in detail about the rapes about which he had testified in prior statements to the NCIS, the Examining Judge, the ICTR, the Parquet Général and the gacaca. These statements will be dealt with when discussing the rape and murder of Marie Mukagatare and Gertrude Mukamana (count 1b on Indictment II).(797)

112. The Court finds that it suffices to state that the witness has also made inconsistent statements concerning the rapes. On 19 December 2008 he told the Examining Judge that Ruzindana was the one who had raped a woman named Mukasine. He claimed that he had seen it. (798) After the Examining Judge had pointed out to him that he had stated during a trial testimony that Mika Muhimana was the one who had raped Mukasine, (799) the witness agreed with the Examining Judge that he did not remember this precisely.(800)

Conclusion regarding this witness
113. The Court does not have any doubts that this witness was a victim of the attack at the Seventh Day Adventists Complex. He has always made reliable statements about this event. This Court draws this conclusion on the basis of the consistency of his testimonies over the years (from 1996). Moreover, his testimony coincides with the testimonies of other witnesses who were also victims of this attack.

114. However, the Court has doubts about the reliability of his statement regarding the involvement of the Defendant in this attack. In the opinion of the Court, the explanation given by the witness that he did not mention the name of the Defendant before is not sufficiently convincing. The ICTR investigators asked the witness to render an account of the attack. Consequently, it is hard to understand that a witness who is asked to give a description of the attack, whereby he mentions the most important attackers, does mention repeatedly – at different times - the name of the brother of the Defendant but not the name of the Defendant himself while, according to the witness in later statements, the Defendant played an important role as leader together with his older brother. The above also applies to the trial testimonies made by the witness (not in the case against Ruzindana) in which he did mention the Defendant's brother but not the Defendant himself.

115. When giving its opinion on the reliability of the testimonies of this witness regarding the possible role of the Defendant in the attack, the Court also takes into account the things he stated during his last interview about the murder (which the Defendant was not charged with) of Charles Ukobizaba. The Examining Judge first of all asked the witness if he knew Charles Ukobizaba. The witness answered that he knew him well and also stated that this Charles Ukobizaba held the position of 'compatible' at the Association. After the Examining Judge had subsequently explained to him the discrepancy between what he had stated to the Examining Judge at an earlier occasion and what he had stated during a trial testimony, the witness said that he had believed that the Judge had asked him about a person with a totally different name, a name that had not been mentioned before during the examination. This seriously damages the credibility of the entire testimony of this witness.

116. The statements made by the witness about the false notice to the victims to seek refuge at a church in Mubuga – more specifically his additional remark to the NCIS that the Defendant had played a role in this – also contribute to the Court's doubts.

117. Finally, the reliability of the testimony of this witness is undermined by what he stated about the rape of Mukasine. The Court observes that the Public Prosecution Service has as yet demanded acquittal for the rape and murder of Marie Mukasine and Gertrude Mukamana which the Defendant had been charged with, because of the statements made by this witness about these facts (count 1b on Indictment II).

118. In this respect, the Court calls to mind the considerations brought forward in Chapter 6 (especially paragraph 8) concerning the limits of the capacity of human observation and memory. Both by internal procedures and external factors the memory traces of the original experience are changed or extended, and the problem is that the witness himself does not notice the source of these changes or additions. In itself this calls for caution, even more because the witness testified about a traumatic event which took place almost 15 years ago.

[Witness 24]

Statements prior to December 2008
119. The witness testified to the NCIS (2007) and to the Examining Judge (2008) about the Defendant's participation in the attack on the Seventh Day Adventists Complex. In his statement to the Parquet Général (2006),

he did mention the Defendant, but not in relation to the attack on the complex. (801) At the gagaca, two statements of this witness were found about the Defendant's involvement in the attack on the Seventh Day Adventists Complex.(802) In his witness statements to the ICTR investigators the name of the Defendant is not mentioned. The witness did not mention the Defendant's name in one of the trial testimonies, although he did mention the brother of the Defendant.(803)

The statements of this witness before the Examining Judge in December 2008/January 2009
120. The witness testified before the Examining Judge that on the occasion of his witness statement rendered on 2 April 1996 (804), he was not asked to mention all names. He was asked to give 'examples of names'. At that time he did not mention the most important names, but names that popped up in his head. (805) When questioned about his trial testimony of 25 September 2001, this witness stated that he did not mention the Defendant's name, because he was not asked to mention the names of all attackers. In relation to this, the Public Prosecutor pointed out to the Examining Judge that the ICTR Trial Chamber at the mainly questioned the witness about the cars. (806) In his statement dated 27 January 2009, the witness explicitly described the Defendant as one of the leaders of the attack.(807)

121.The Examining Judge also questioned this witness about the death of Charles Ukobizaba. In his trial testimony in the case against Elizaphan and Gérard Ntakirutimana, he accused this Gérard of having killed Charles Ukobizaba.(808) However, in March 2008, the witness had stated to the Examining Judge that he did not know who killed Charles Ukobizaba.(809) To an open question asked by the Examining Judge the witness answered that he saw that Gérard Ntakirutimana and Obed Ruzindana both pointed and fired their guns at Charles Ukobizaba. Based on this fact, he concluded that Charles Ukobizaba had been killed by one of them. Subsequently, when he was confronted with his prior trial testimony, he initially stated that he had also mentioned Obed Ruzindana's name. When it was put to him that at the Tribunal each word is recorded literally, his reaction was that this meant that he had forgotten to mention the name of Obed Ruzindana.(810)

Conclusion regarding this witness
122. The Court does not have any doubts that this witness was a victim of the attack at the Seventh Day Adventists Complex. He has always made reliable statements about this event. This Court draws this conclusion on the basis of the consistency of his testimonies over the years (from 1996). Moreover, his testimony coincides with the testimonies of other witnesses who were also victims of this attack.

123. However, the Court has doubts about the reliability of his statement regarding the involvement of the Defendant in this attack. The Court believes that the explanation given by the witness that he did not mention the name of the Defendant before is not sufficiently convincing. The ICTR investigators asked the witness to render an account of the attack. Consequently, it is hard to understand that a witness who is asked to give a description of the attack, whereby he mentions the most important attackers, does mention repeatedly – at different times - the name of the brother of the Defendant but not the name of the Defendant himself while, according to the witness in later statements, the Defendant played an important role as leader together with his older brother.

124. When giving its opinion on the reliability of the testimonies of this witness regarding the possible role of the Defendant in the attack, the Court also takes into account the things he stated during his last interview about the murder (which the Defendant was not charged with) of Charles Ukobizaba. In a trial testimony, the witness accused Gérard Ntakirutimana of having killed Charles Ukobizaba, but before the Examining Judge in March 2008 he claimed he did not know who killed Charles Ukobizaba and in January 2009, in connection to an open question from the Examining Judge, he accused Gérard Ntakirutimana and Obed Ruzindana of this murder. Subsequently, when confronted with his prior trial testimony, he stated that he had mentioned Obed Ruzindana's name and only after being told that this was actually impossible, he answered that he had apparently forgotten to mention the name of Obed Ruzindana. This seriously damages the credibility of the entire testimony of this witness.

125. In this respect, the Court calls to mind the considerations brought forward in Chapter 6 (especially paragraph 8) concerning the limits of the capacity of human observation and memory. Both by internal procedures and external factors the memory traces of the original experience are changed or extended, and the problem is that the witness himself does not notice the source of these changes or additions. In itself this calls for caution, even more because the witness testified about a traumatic event which took place almost 15 years ago.

[Witness 9]
126. This witness was examined both by the NCIS and the Examining Judge.

127. To the NCIS this witness stated firmly that the Defendant, just like Sikubwabo, Mika Muhimana and Ruzindana, was one of the persons who had given orders to go and kill Tutsi and that he had also participated in

attacks on Tutsi. He claimed he was forced to do so; otherwise he would be murdered himself. (811) However, his statement about the attack on the Seventh Day Adventists Complex was less clear. As the Court understands, he testified that he was present at 9.00 a.m., thereupon he was chased away and he came back in the afternoon, according to him, not to kill but to see if there was anything he could steal. (812) He stated that at that time, he saw the Defendant killing people in the church; when he was asked how many people the Defendant had killed, the witness answered that he could not say this, that there were thousands of dead bodies, that there were more persons doing the killing and that he did not actually see the Defendant doing anything because he was inside the church. (813)

128. When he was heard by the Examining Judge, he changed his statement on several points. Subsequently, he testified that he had never been forced by the Defendant to participate in the attacks on Tutsi.(814) Furthermore, he stated that he had not seen the Defendant at the Seventh Day Adventists Complex. (815) When he arrived at the Complex, the refugees had already been murdered.(816) The witness admitted that he had mentioned the name of the Defendant to the NCIS. He mentioned the name of the Defendant, together with his older brother and the authorities 'just like that'. He said he 'was not feeling all that well' at that time.(817) Then the witness stated spontaneously that from the moment he was questioned by the NCIS up to the moment he was interviewed by the Examining Judge, he had not seen any persons belonging to the family of the Defendant.(818)

129. Similar to the Prosecution, the radical change of the witness statement, especially his spontaneous remark saying that he had not had any contact with the family members of the Defendant, causes the Court to believe that this witness was placed under pressure in order to change his statement.

130. However, the Court will not use this incriminating witness statement to the NCIS as evidence. Apart from the fact that the witness withdrew this statement, - as said, possibly under pressure from the Defendant's family members – the statement is not clear enough, to say the least confusing.

[Witness 22]
131. This witness only made one statement to the ICTR investigators,(819) in which he denied his involvement in the genocide. He testified that he was at home all day on 16 April 1994. He did not speak about the Defendant. There are two gacaca-statements of this witness in the case file that are related to the attack on the Seventh Day Adventists Complex,(820) in which he confessed his own share in this attack and said that the leaders were Sikubwabo, Gérard, Ruzindana, Mika Muhimana and Vincent Ntaganire. He did not mention the name of the Defendant.(821)

132. Both to the NCIS and to the Examining Judge the witness made incriminating statements concerning the Defendant.(822)
In his statement to the NCIS he described that he saw the Defendant, together with others who were armed as soldiers, enter the hospital and kill people inside.(823) But when answering a question asked by the NCIS as to where he had seen the Defendant enter the building, he said that he had seen the Defendant enter the living quarters of the Adventists complex. In that same statement he also said that he had only seen the Defendant outside the hospital shooting at people. Subsequently, he stated that he had seen the Defendant and his people go inside the complex to kill people.(824) In his statement to the Examining Judge the witness claimed that he had seen the Defendant enter the hospital together with soldiers. (825) To the NCIS there seemed to be a confusion at some point about the names of Joseph (Defendant) and a certain Yousuf, but that was settled quickly according to the statement.(826)

133. The Court finds that this witness has testified consistently about the presence of the Defendant during the attack. He has also stated consistently that the Defendant fired his gun at people. However, in his statements it remains unclear where he saw the Defendant doing this. The Public Prosecution Service also recognised that it was not possible to get this clarified. (827) The Court will not use the statements of this witness as evidence, because of the lack of clarity as to where exactly the Defendant committed his crimes.

Conclusion
134. The Court concludes that none of the witness statements, used by the Public Prosecution Service as conclusive evidence to prove the charges, is sufficiently reliable in order to serve as evidence for the Defendant's involvement in the attack on the Seventh Day Adventists Complex. There is no other evidence available than these witness statements. The conclusion has to be that the Defendant should be acquitted of this charge.

135. For that reason the Court does not need to discuss any further the remaining points of interest of the framework for assessment (V and VI), and there is no need either to go over the witnesses for the defence. Finally the acquittal has as a result that there is no need to examine or direct the examination of investigators and

interpreters as was requested by the defence. 828)

Chapter 11 Rape of Kayitesi

Origin of the suspicion

1. As described in Chapter 5, as a result of the Public Prosecutor's request for legal assistance, the Parquet Général decided to hear witnesses from the afore mentioned 'Cyangugu-file' on its own initiative. One of the witnesses who was examined by the Parquet Général was [witness 8]. On that occasion this witness testified about the rape of a woman named Kayitesi by the Defendant.(830) Subsequently, the NCIS also heard this witness.(831)

Position of the Prosecution

2. The Public Prosecutor deems this charge legally and convincingly proven and he bases his position primarily on the statements of [witness 8], which the Prosecutor believes to be consistent. The Prosecution finds supporting evidence in other witness statements about the presence of the victim, the presence of the Defendant, the presence of the other two nurses who came to help Kayitesi after she had been raped, the occurrence of other rapes before 16 April 1994 by persons with whom the Defendant committed attacks around that time and sexually aggressive behaviour of the Defendant in that period.(832)

Position of the Defence

3. The Defendant pleaded that he was not guilty of committing this offence.(833)

4. The Defence Counsel moved that the Defendant be acquitted of this charge. According to the Defence Counsel there is insufficient legal proof in the case file. There is only one witness who testified about the rape of Kayitesi by the Defendant. Furthermore, the Defence disputed the existence of Kayitesi. No inquiries were conducted at administrations of churches, schools or municipalities.(834) Finally, the Defence pleaded that it was impossible that the Defendant had been at the Seventh Day Adventists Complex in the period before 16 April 1994, because [witness 18] stated to the Examining Judge that he saw the Defendant (and Obed Ruzindana) in the period from 11 April until the end of April 1994 during the attack that took place at Kizenga Hill.

Conclusion of the Court

5. The case file includes the statements of the above mentioned witness [witness 8]. To both the NCIS and the Examining Judge he rendered account of how the Defendant raped Kayitesi, a secondary school pupil, on 14 April 1994. He stated that he had not been an eyewitness to the rape, but that shortly afterwards Kayitesi had told him that she had been raped. He explained how he helped and treated her together with [B14] (835) and Mrs. [B15].(836) Next, he stated that Kayitesi died during the attack on the Seventh Day Adventists Complex.(837) The testimony given by this witness to the gacaca (2005) also covers the Defendant's involvement in violently taking away women and girls, including 'Kayidesi', which also took place before 16 April 1994.(838) However, the statement does not mention what allegedly happened to Kayidesi. According to the Court it has not been clarified whether this was the same person.

6. The case file also includes a number of statements of witnesses who testified that they saw the Defendant at the Seventh Day Adventists Complex in the days before the attack on 16 April 1994. [Witness 17] stated to the Examining Judge that he had seen the Defendant driving together with his brother, Obed Ruzindana and other people in the direction of the hospital in Mugonero. [Witness 25] stated that he was working at the hospital in that period. He knew Kayitesi and her father. He said that he did not know anything about the rape of Kayitesi. (839) [Witness 12] stated that he had seen the Defendant at the Seventh Day Adventists Complex in the days before the attack.(840)

7. The case file also includes photographs of tapestries hanging from the walls in the Memorial Building at the Seventh Day Adventists Complex. These contain the names of the victims who died during the attack on the complex in April 1994. Among them are the names Ezechiel Ruhigisha and Clementine Kayitesi. [Witness 8] stated that Kayitesi's father was named Ezechiel Ruhigisha(841) and that he was working at the hospital at the Seventh Day Adventists Complex. (842) [Witness 25] stated likewise.(843) From the way in which the names were written on these tapestries it can be concluded that Clementine Kayitesi was married to Jean Nkuranga.(844) In the Official Record that refers to the said photographs, the reporting officer draws the cautious conclusion that, on account of

the statement made by [witness 8], that the woman Kayitesi (daughter of Ruhigisha), allegedly raped by the Defendant, could have been the aforesaid Clementine Kayitesi.(845) However, there is no certainty about this fact.

8. The case file also includes a hand written list (undated) of persons who died at the Seventh Day Adventists Complex, signed by [witness 24]. Among others this list includes the names of Ezechiel Ruhigisha, Clémentine Kayitesi and Tabita Mukamgarambe.(846)

9. In fact – contrary to the arguments made by the Defence Counsel - the Prosecution has indeed made several efforts in order to obtain more information about the existence and the identity of the victim.(847)

10. The Court concludes that the witness [witness 18] explicitly stated that he could not say whether he had seen the Defendant at Kizenga Hill every day in the period from 11 April 1994 until the end of April 1994. Therefore, the argument of the Defence based on the statement of this witness is not successful.

11. The only proper proof which shows the involvement of Defendant in the rape of Kayitesi, are the statements made by the witness [witness 8] to the NCIS and the Examining Judge. However, the statements made by other witnesses regarding the presence of the Defendant at the Seventh Day Adventists Complex in the period before the attack on 16 April 1994 are not specific enough to support the statement of [witness 8]. Hence the situation arises, pursuant to Article 342 paragraph 2 of the Code of Criminal Procedure, that the evidence to prove that a Defendant committed the offence that he was charged with cannot be based exclusively on the statement of one sole witness. For that reason the Defendant is acquitted of this charge.

Chapter 12 Rape and murder of Marie Mukagatare and Gertrude Mukamana

Origin of the suspicion

1. As described in Chapter 5, as a result of the Public Prosecutor’s request for legal assistance, the Parquet Général decided to hear witnesses from the afore mentioned 'Cyangugu-file' on its own initiative. One of the witnesses who was examined again by the Parquet Général was [witness 4]. (849) Afterwards this witness was also heard by the NCIS (850) and on that occasion he stated - for the first time - that the Defendant raped and killed two women, Marie Mukagatare and Gertrude Mukamana, during the attack at the Seventh Day Adventists Complex on 16 April 1994.(851)

Position of the Prosecution

2. Initially, in the closing speech the Public Prosecutor demanded the Court to declare the charge, that the Defendant committed this offence (Indictment II count 1 under b), to be legally and convincingly proven. In his “third reply” however, the Prosecution requested the Court to acquit the Defendant of this charge. The Prosecution explained its amendment by referring to the last statement made by [witness 14] to the Examining Judge. During this statement “his memory failed him” on the subject of who was the perpetrator of another rape that same day, about which he had made a very distinctive statement at an earlier date (Mika Muhimana or Obed Ruzindana). Since the statement of this witness constitutes the most important evidence for the rapes that the Defendant has been accused of, it would not be “safe” to convict the defendant on the basis of the statement of [witness 14].(852)

Position of the Defence

3. The Defendant pleaded that he was not guilty of committing this offence.(853)

4. The Defence Counsel moved that the Defendant be acquitted of this charge and basically argued that there is insufficient legal evidence. There is only one witness statement that points towards the Defendant as the perpetrator of the rape and murder of the victims mentioned in the charges. Furthermore, the Defence argued that it has never been established that Marie Mukagatare and Gertrude Mukamana have really existed and even that these persons had been “made up”. (854) Moreover, the Defence submitted that the statements of this particular witness about the offence charged against the Defendant are contradictory to his prior statements, where he did not once mention these rapes in the hospital at the Seventh Day Adventists Complex.

Assessment of the charges

5. Both to the NCIS and to the Examining Judge, [witness 14] stated that the Defendant raped and killed two young

women, Marie Mukagatare and Gertrude Mukamana, during the attack launched at the Seventh Day Adventists Complex on 16 April 1994.(855) In his statement to the Parquet Général nothing was recorded about the rapes and killings of these two victims. (856) During the trial at the ICTR against Muhimana, the witness testified to investigators as well as to the Trial Chamber about rapes that took place on 16 April 1994 at the Seventh Day Adventists Complex. These testimonies refer to the rape of other women than the afore mentioned Marie and Gertrude, and to other perpetrators than the Defendant, rapes which took place in the close vicinity of the room(s) where Marie and Gertrude had allegedly been raped and murdered.(857)

6. The Court already considered that no legal and convincing evidence was submitted to prove that the Defendant participated in the attack at the Seventh Day Adventists Complex on 16 April 1994. In this respect it also took into account that the credibility of the witness statement of [witness 14] is insufficient. Therefore, the statements of this witness concerning the rape and murder of Marie Mukagatare and Gertrude Mukamana at the time of his attack do not have probative value. There is no evidence other than this statement, so therefore the Defendant must be acquitted of this charge for lack of evidence.

7. At this time the Court wishes to emphasize that the Prosecution – different from the arguments submitted by the Defence Counsel – did make efforts to obtain more information about the existence and the identity of the victims. Among other things, the Prosecution requested the school Ezapani in Ngoma, where Gertrude Mukamana used to attend classes at the time, to send a copy of a list of pupils from 1994, and furthermore it requested copies of lists of the persons who lost their lives during the war in 1994 at the Seventh Day Adventists Complex in Mugonero.(858)

Chapter 13 Rape and murder of Consolata Mukamurenzi

Origin of the suspicion

1. As described in Chapter 5, as a result of the Public Prosecutor’s request for legal assistance (859), the Parquet Général decided to hear witnesses from the afore mentioned 'Cyangugu-file' on its own initiative. One of the witnesses who was examined by the Parquet Général was Adrien Harorimana. On that occasion this witness testified about the involvement of Defendant in the rape and murder of his cousin Consolata Mukamurenzi.(861)

Factual findings

2. Witness Adrien Harorimana was heard by the NCIS, as well as by the Examining Judge. Each time these examinations lasted several days. The witness stated that on 13 May 1994, at Muyira Hill (in the Bisesero region) he had been a witness to the rape of his second-cousin Consolata Mukamurenzi by three Interahamwe on the instructions of the Defendant and also to the shooting and killing of his second-cousin (862) by the Defendant, after he had first stabbed a bayonet into her vagina.(863) This witness gave the same evidence about the rape of Consolata Mukamurenzi (in broad outline) to the Parquet Général (2006).(864) The same applies to the statement he made to the gacaca (2006).(865)

3. Adrien Harorimana is Tutsi. He stated that he had known the Defendant since he was eight years old. The Defendant was already attending secondary school at that time. Together with his family the witness used to go to the store of Murakaza to sell coffee. The Defendant would be the person who weighed the coffee and paid for the merchandise.(866)

4. The case file contains photographs of the surroundings and the place where
Consolata Mukamurenzi was raped and killed according to witness Adrien Harorimana. To the NCIS Adrien Harorimana pointed out the spot where this allegedly took place.(867)

5. The ICTR has concluded in several judgements that on 13 (and 14) May 1994 a large scale attack took place at Muyira Hill. Many Tutsi refugees at this place were killed.(868) Witnesses [witness 8] and [witness 13] gave evidence to the NCIS and to the Examining Judge that they had seen the Defendant at Muyira Hill on 13 May 1994.(869) [Witness 10] gave evidence about the participation of the Defendant in this attack to the NCIS (870), to the ICTR in the case against Niyitegeka (2003)(871) and to the U.S. judicial authorities.(872)

6. [Witness 9] and [witness 12] stated that the Defendant had a bayonet attached to his fire arm. [Witness 9] added that when the Defendant would see that someone “was not properly dead”, he would stab that person with that knife, until that person had died.(873) [Witness 12] stated that the Defendant shot people in Bisesero and

afterwards went up to them and stabbed them with the “iron thing” that could be unfolded from the fire arm.

Position of the Prosecution

7. The Prosecution finds that it has been legally and convincingly proven that the Defendant committed this offence. The Prosecution bases its conclusion on the statement of witness Adrien Harorimana which is considered to be reliable. Furthermore, the Prosecution has pointed out the other above mentioned factual findings, which largely support this statement. In particular, these are the conclusions that the attack did take place on 13 May 1994, confirmation of the presence of the Defendant and his participation in the attack on 13 May 1994, the Defendant’s possession and use of a fire arm with a bayonet, his leading role during the genocide, the large scale sexual abuse which took place against Tutsi women during the attacks such as the one on 13 May 1994, and the Defendant’s way of referring to Tutsi refugees as ‘Inyenzi’. In this context, the Prosecution has observed that the rape and murder did not take place at Muyira Hill, but in the vicinity of that hill. (874)

Position of the Defence

8. The Defendant pleaded that he was not guilty of committing this offence.

9. The Defence Counsel submitted that on this point the indictment should be declared null and void for lack of being specific about the date and place mentioned in the charges in relation to the allegations against the Defendant.

10. Furthermore, the Defence pleaded that the Defendant should be acquitted of this charge and – as elaborated further in his oral pleadings – argued that there is only one witness statement in the file as evidence for the rape, mutilation and killing of Consolata Mukamurenzi.(875) Furthermore it was asserted by the Defence that the existence of Consolata Mukamurenzi had never been established. No forensic excavations were conducted at the places which had been indicated by the witness to see if with the help of forensic techniques anything could have been examined further. No inquiries were made into schools, churches or municipal administrations. (876)
Regarding the place where the alleged offences took place, the Counsel observed that the Official Records including photographs of the crime scene have no value, because these photographs do not tell us anything about the situation as it was in 1994.(877)
Moreover, there is no information about the size and extent of the hills.(878)

Assessment of the charges

Invalidity of the indictment
11. Concerning the Defence’s plea for invalidity of the indictment, the Court considers that first of all the Defendant has to know against which accusations he needs to defend himself. Hence the charges should provide the necessary clarity as to the factual description of place and time. The question whether these indications of place and time have been presented sufficiently clear in the charges, depends on the nature and context of the offence.

12. The Defendant is accused of having committed the offences put forward in the charges on 13 May 1994, at least in May 1994, at least in the period between 6 April and 1 July 1994. The specification of time is sufficient, since it concentrates the alleged punishable acts of Defendant on 13 May 1994. The (sole) eyewitness also gives the same specification. In this manner, by adding these time specifications, the drafter of the charges can take into account any eventualities regarding the date. The doubts expressed by the Defence Counsel concerning the correctness of the date specifications, do not result in the invalidity of the charges. These specifications offer sufficient clarity to the Defendant in order for him to know against which allegation he needs to defend himself.

13. Defendant is accused of having committed the offences, as set out in the charges, at or in the vicinity of Muyira Hill in the Bisesero region. Because this concerns a location situated at or near one of the hills that belonged to Bisesero, which was named Muyira, a further specification of location is not possible. In addition, a large number of judgements rendered by the ICTR referred to a large scale attack that took place at or near Muyira Hill. This indication of place offers sufficient clarity to the Defendant in order for him to know against which allegation he needs to defend himself.

14. Based on the above, the Court rejects the Defence’s plea to declare the indictment invalid concerning the specifications of place and time. The indictment meets with the provisions of Article 261 Code of Criminal Procedure. For that matter, during trial the Defence Counsel and the Defendant did not appear to lack knowledge about the allegations that needed to be defended.

Evidence Assessment

15. The Court concludes that the evidence that the Defendant, together with three Interahamwe, allegedly raped, mutilated, shot and killed Consolata Mukamurenzi, is mainly based on the statement made by witness Adrien Harorimana.

16. In the opinion of the Court, the witness's statement is certainly reliable. The witness made consistent statements to the Parquet Général, the gacaca, the NCIS and the Examining Judge. Furthermore the Court wishes to point out the way in which this witness made corrections when something had not been recorded correctly. He also was reticent regarding factual information which he did not know very well (e.g. estimations or names of perpetrators) (879) and he indicated clearly if he actually knew a person or not. (880) During the interviews he was also able to make clear distinctions between things he had seen and things he had heard. (881)

17. The Defence disputed the existence of Consolata Mukamurenzi. It was suggested that excavations could have been carried out at the sites indicated by
Adrien Harorimana and that forensic techniques could have been helpful in this context. The Court refers to the observation made by Adrien Harorimana that Consolata Mukamurenzi had apparently been extracted from her grave by dogs and was never found again.(882) Hence, the suggestion that investigations at or near the scene of the crime could have any result lack all sense of reality.

18. In this respect, the Court wishes to emphasize that the Prosecution – different from the arguments submitted by the Defence Counsel – did make efforts to obtain more information about the existence and the identity of the victim. Among other things, the Prosecution requested the Rwandese judicial authorities to trace individuals who are familiar with or know anything about a woman named
Consolata Mukamurenzi.(883)

19. The only evidence that the Defendant was involved in the rape, mutilation and murder of Consolata Mukamurenzi, results from the statements made by witness Adrien Harorimana to the NCIS and the Examining Judge. The statements of three other witnesses, that only gave evidence about the Defendant's involvement in the large scale attack at Muyira Hill on 13 May 1994 – part of a large complex area consisting of adjacent hills – is not specific enough to support the statement of Adrien Harorimana, stating that the Defendant committed this offence then and there (at or near this hill). The statements of other witnesses about the way in which, at other times during the genocide, the Defendant made use of his bayonet are even less specific and can therefore not support Adrien Harorimana's statement either. The other facts brought forward by the Prosecution as supporting evidence only are generalities. Therefore, the situation arises, pursuant to Article 342 paragraph 2 of the Code of Criminal Procedure, that the evidence to prove that a Defendant committed the offence he was charged with cannot be based exclusively on the statement of one sole witness.

20. For that reason the Court decides that the Defendant must be acquitted of this charge.

Chapter 14: The crimes against the grandchildren of [witness 5]

Origin of the suspicion

1. In his statement to the NCIS [Witness 14], also a witness who gave evidence in the said 'Cyangugu-file' (Chapter 5), declared that he knew a man, [witness 5], who had told him that [Defendant] had killed a Tutsi family. (884) In connection with this statement the NCIS interviewed [witness 5].(885) Consequently [witness 5] told the NCIS that his grandchildren had been collected at his house and taken away by the Defendant.

Position of the Prosecution

2. The Prosecution considers this charge legally and convincingly proven on grounds of the statements of [witness 5] and [witness 36] (the brother of the children that disappeared), which it finds to be consistent. When assessing his statement, it should be taken into account that [witness 36] was a young person at that time, but this is no impediment to the credibility of his statement. (886) The Prosecution leaves aside the statements of [witness 6] (the grandmother) considering her advanced age (76) and – in that respect – her apparent forgetfulness.

Position of the Defence

3. The Defendant pleaded that he was not guilty of committing this offence.

4. The Defence Counsel moved that the Defendant be acquitted of this charge, because he considered the witnesses' evidence to be insufficiently reliable. (887) He held the position that the alleged eyewitnesses could not have been able to see and/or recognise the perpetrators. Moreover, one of the co-perpetrators to this offence, the brother of the Defendant, Obed Ruzindana, has an alibi for 14 May 1994, the assumed date of the alleged crime, according to the Defence Counsel.

Factual findings

5. Based on the contents of the case file and the court hearings, the Court proceeds from the following facts and circumstance:
During the period of time mentioned in the charges, a car with a group of men drove to the house of [witness 5] and [witness 6]. One or two men stayed near the car; at least three men went to the house of [witness 5]. The men who walked towards the house carried machetes and clubs. The men took three children, being [B16] (approximately eight years old), [B17] (approximately six years old) and [B18] (approximately four years old) away from the home of their grandparents and took them along in the car. These three children were taken away because they were Tutsi. Afterwards nothing was heard anymore from the three grandchildren.

6. The case file includes statements of three eyewitnesses: [witness 5] (the grandfather), [witness 36] (the fourth grandchild) and [witness 6] (the grandmother) as well as statements made by three de auditu-witnesses: [witness 37], [witness 22] and [witness 14].

7. [Witness 5] is the only eyewitness who consequently identified the Defendant as one of the persons who stayed near the car at the moment that the other men entered his house. He also stated that the second person who stayed near the car was the Defendant's brother, Obed Ruzindana.(888)

8. [Witness 36] gave evidence of seeing two men standing by the car. He did not know these men and said that his grandfather had told him that these two men were Obed Ruzindana and his little brother, [Defendant].(889)

9. [Witness 6] told the NCIS that she recognised the Defendant as the driver of his brother Obed Ruzindana and the group of attackers.(890) However, when interviewed by the Examining Judge she stated explicitly that she did not see the Defendant (but she did see his brother) on the day that her grandchildren were taken away.(891)

10. [Witness 37] is a daughter of [witness 5] and [witness 6]. She is an aunt of
[B16], [B17], and [B18] (the children who disappeared) and [witness 36]. At the time of the alleged offence she was not in (the vicinity of) the house of her parents. She stated to the NCIS that her father had told her that Obed Ruzindana took away her nieces and nephew. Her father did not mention the name of the Defendant at that moment.(892) When interviewed by the Examining Judge she confirmed all of this and in addition she told the Judge that it was commonly known that the Defendant transported his brother during attacks.(893)

11. During his stay in prison [witness 22] was told by a fellow inmate, [B 8], that the grandchildren of [witness 5] had been taken away in the car of Obed Ruzindana, whom he said was the one who drove the car himself that day. [B 8] did not mention to the witness that the Defendant was allegedly involved in the abduction of the grandchildren.(894)

12. [Witness 14] told the Examining Judge that [witness 5] had told him that the Defendant was involved in the abduction of his grandchildren.(895)

Assessment of the charges

13. The court concludes that there are two eyewitnesses, the grandparents, who (initially) recognised the Defendant as one of the men who took the children away. There is no reason to doubt the credibility of the grandfather's [witness 5] statement. However, the grandmother [witness 6] changed her statement. During the witness examination she explicitly told the Examining Judge that she did not see the Defendant on that particular day. Hence the Court will not admit her prior statement to the NCIS as evidence. This means that the incriminating statement of [witness 5] is only supported by the statements of [witness 36] and [witness 14], whereby the identity of the perpetrators can be completely traced back to this [witness 5].

14. For that reason, the Court considers this supporting evidence insufficiently reliable to conclude that the Defendant was indeed one of the perpetrators. This means that the Defendant must be acquitted of this charge.

Chapter 15: War crimes

1. In this Chapter the Court will verify if the crimes allegedly committed by Defendant qualify as war crimes.

Legal framework and sources of international law

2. At the time of the indictable offences put forward in the charges, war crimes were liable to punishment pursuant to art. 8 (old) of the Criminal Law in Wartime Act (Criminal Law in Wartime Act), which read as follows:

1. Anyone who commits a violation of the laws and customs of war shall be liable to a term of imprisonment not exceeding ten years or a fine of the fifth category.
2. A term of imprisonment not exceeding fifteen years or a fine of the fifth category will be imposed if:
1°. the violation results in the death or severe bodily harm of the other person;
2°. the violation includes inhuman treatment;
3°. the violation includes forcing the other person to do, to refrain from doing or to endure certain acts;
4°. the violation includes plundering.
3. A term of life imprisonment or a term of imprisonment not exceeding twenty years or a fine of the fifth category will be imposed if:
1°. the violation results in the death or severe bodily harm of the other person and/or includes rape;
2°. the violation includes violence together with others against one or more persons and/or violence against the dead, the sick or the wounded;
3°. the violation includes destroying, damaging, rendering unusable or removing any goods, alone or together with others, that belong in whole or in part, to another person;
4°. the violations as meant in Article 2 under 3° or 4° are committed together with others;
5°. the violation is an act of systematic terror or unlawful behaviour against the entire population or a certain group thereof;
6°. the violation includes the breach of certain promises or the breach of agreements that existed between the parties;
7°. the violation includes the abuse of a flag and/or military insignia and/or military uniform of the other party, which are protected by the laws and customs of war.

Art. 8 (old) of the Criminal Law in Wartime Act was substituted by the Articles 5, 6 and 7 of the International Crimes Act as of October 2003.

4. Consequently, there has been a change in legislation. Pursuant to Article 1 paragraph 2 Criminal Code, the Court needs to examine if this is a matter of change of interpretation on the part of the legislator regarding the degree of punishability of the relevant criminal conduct. If this is the case, the Court needs to establish which penal provision is more favourable for the Defendant.

5. In the International Crimes Act the legislator has opted for a recodification of the penalisation of war crimes. In stead of an extensive and open phrasing of the penal provision, whereby art. 8 (old) of the Criminal Law in Wartime Act referred directly to international humanitarian law which include both written and unwritten sources (896), the drafter of the International Crimes Act chose to give a detailed description of the different war crimes. Art. 5 stipulates the penal provisions for war crimes committed in an international armed conflict, art. 6 of the International Crimes Act stipulates the penal provisions for war crimes in a non-international armed conflict. In imitation of the Criminal Law in Wartime Act, art. 7 acts as a ‘safety net provision’, by providing the penalisations of other violations of international humanitarian law (IHL). (897) In art. 7 of the International Crimes Act, the terminology of art. 8 of the Criminal Law in Wartime Act ‘laws and customs of war’ was copied.(898)

6. Consequently this recodification does not result from a change of interpretation by the legislator regarding the degree of punishability of the relevant criminal conduct. Nor can this change of interpretation be deducted from the legal maximum punishment, where the International Crimes Act does not essentially differ from the Criminal Law in Wartime Act in relation to war crimes and seeks harmonisation with the grounds for an aggravating circumstance which are provided for by the Criminal Law in Wartime Act.(899) Moreover, a number of judgements of this District Court and the Court of Appeal of The Hague have already ruled that art. 1 paragraph 2 Criminal Code is not applicable. (900)

7. The direct cause for penalisation of war crimes in the Criminal Law in Wartime Act at the beginning of the fifties were the four Geneva Conventions of 1949. These Conventions focus on the different categories of protected

persons, which are, respectively: the injured and sick in armed forces in the field (GC I), the injured, sick and shipwrecked members of armed forces at sea (CG II), prisoners of war (GC III) and civilians in time of war (GC IV). (901)

8. The legislator concluded that the obligations (incorporated in these Conventions) of penalisation and prosecution of serious violations of those Conventions 'gave urgent cause to arrive at definite legal regulations'.(902)
As mentioned above, they opted for a reference to the 'laws and customs of war'. The Explanatory Memorandum explains that this phrase has the following meaning:
"The offence described in the first paragraph of Article 8 is: being guilty of committing a violation of the laws and customs of war. This provision therefore points directly at laws governing war crimes, not only written laws of war, which have been laid down in international agreements, but also international customary law, in so far as it refers to wars."(903)

9. The phrasing of art. 8 paragraph 1 (old) of the Criminal Law in Wartime Act directs the court towards multiple applicable sources, without further specifications. For the interpretation of war crimes described in art. 8 (old) of the Criminal Law in Wartime Act, the court is expected to explore international law and international case law.(904)

10. The concept 'laws and customs of war' refers, like stated before, not only to the four Geneva Conventions, but also to the corresponding Additional Protocols I and II (hereafter: API and APII) which were concluded on 8 June 1977. (905)

11. The Geneva Conventions, which are fully applicable to international armed conflicts and partly to non-international armed conflicts, include Article 3, which is similar in all four Conventions. This is called Common Article 3 (hereafter: CA 3). This CA 3 contains minimum standards of conduct that must be observed by the parties in a non-international armed conflict. (906)

12. CA 3 reads as follows:

[1.] 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;
(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 recognised as indispensable by civilized peoples.

13. Additional Protocols I and II fill in a number of gaps in the Geneva Conventions; API in relation to international armed conflicts and APII for non-international armed conflicts. The objective of APII is (to further) the protection of civilians and other persons who do not take part or who have ceased to take part in the armed conflict.

14. Art. 1 APII outlines the scope of this Protocol. It reads as follows:
1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

15. Art. 4 AP II reads as follows:

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 I are and shall remain prohibited at any time and in any place whatsoever:
(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 or indecent assault;
(f) slavery and the slave trade in all their forms;
(g) pillage;
(h) threats to commit any or the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:
(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;
(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Individual liability under criminal law

16. Not every violation of the laws and customs of war constitutes a war crime. Only grave breaches of IHL are threatened with individual criminal responsibility under criminal law.(907) Dutch courts need to explore international law to find the boundaries to individual criminal responsibility, therefore the District Court will need to study if the offences allegedly committed by the Defendant constitute grave breaches of IHL. This means (i) an infringement on a rule of IHL, (ii) this infringed rule has legal force under a treaty or as a part of customary law at the time when the offence was committed and in relation to the place where the offence was committed, (iii) it is a gross violation, being the violation of a standard which protects important values and has large consequences for the victim, (iv) the violation results in individual criminal responsibility under criminal law.

17. Based on international law, violations of the prohibitions contained in CA 3 meet the conditions for individual criminal responsibility. The Court has drawn the following conclusions. CA 3 forms part of the Geneva Conventions of 1949 which have been ratified almost universally, among others by the Netherlands and by Rwanda. The Statute of the ICTR holds the provision in art. 4 that gross violations of CA 3 are liable to punishment. Furthermore, art. 6 of this Statute stipulates that anyone who is guilty of a violation of the provisions of art. 4 shall incur individual criminal responsibility. In addition, art. 3 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) refers to the 'laws and customs of war'. From case law of the ICTY it appears (among other matters) that these include violations of CA 3.(908) In the same way art. 3 of the Statute of the Special Court for Sierra Leone refers to CA 3. Finally the Supreme Court in the Netherlands (SC) ruled that violations of art. 3 of the Convention [relative to the protection of civilian persons in time of war, being one of the Geneva Conventions] constitute the offences described in art. 8 (old) of the Criminal Law in Wartime Act. (909)

18. Gross violations of the prohibitions contained in APII, according to international law meet the conditions to incur individual criminal responsibility. In this respect the Court already concluded that many States ratified APII. Furthermore, art. 4 of the ICTR Statute stipulates that a violation of APII is punishable. Like stated above, art. 6 of this Statute stipulates that anyone who is guilty of a violation of the provisions of art. 4 shall incur individual criminal responsibility. In the same manner art. 3 of the Statute of the Special Court for Sierra Leone refers to APII. The Court admits that gross violations of APII in the legal practice of international criminal tribunals have almost never resulted in independent convictions. However, the Court is of the opinion that, according to international law, this is no impediment to individual criminal responsibility. In this context it is decisive that both the Netherlands and Rwanda ratified this Convention a long time before the period mentioned in the charges and that both the ICTR Statute and the Statute of the Special Court for Sierra Leone include independent penalisation.

19. The standards included in CA 3 and in a large part of APII have developed into international customary or unwritten law. Gross violations of international customary law could be considered to be war crimes. The Court bases this assessment on the results of recent (2005) and extensive inquiries into the existence and contents of international customary law carried out by the International Red Cross, that presented the same conclusions.(910) This inquiry shows furthermore that rules of customary law, whereby gross violations of these rules are considered to be war crimes – in the case of a non-international conflict – can be established on the basis of the contents of CA 3 and APII. According to the International Red Cross study, these Conventions – in case of war crimes - have developed themselves for a large part into customary law.(911) Furthermore violations of international humanitarian law, which the Rome Statute of the International Criminal Court (ICC) codifies as war crimes in a non-international conflict, are considered to be the basis for customary law standards. (912)

20. The Defendant has committed very serious violent crimes against the passengers of an ambulance. The Defendant treated the passengers, as well as Mrs. [witness 3] and Mr. [witness 4], cruelly and inhumanly and inflicted serious mental suffering upon them. It is evident that these acts constitute violations of international humanitarian law, as laid down in all legal sources mentioned in the indictment, being CA 3, APII and international customary law.

21. The Defendant violated the personal dignity of Mrs. [witness 3] and Mr. [witness 4]. CA 3 paragraph 1 under c and art. 4 paragraph 2 under e AP II prohibit violations of personal dignity, especially humiliating and degrading treatment. The said study of the International Red Cross shows that this prohibition also forms part of customary or unwritten law.(913) So the above serious offences are also considered to be gross violations of international humanitarian law, as laid down in all legal sources mentioned in the indictment.

22. Defendant threatened the passengers of the ambulance with an attack on their lives, physical violence, death, mutilation, cruel (inhumane) treatment and torture. He threatened Mrs. [witness 3] and Mr. [witness 4] with violence against their lives and with murder. The act of 'threaten to use violence' – other than the gross violations discussed in the above paragraphs – has not been mentioned as prohibited conduct in CA 3 and does not count as a violation of the customary law standard of international humanitarian law. (914) Nevertheless, based on art. 4 paragraph 2 under h AP II, this conduct is prohibited at all times. In APII this prohibition was classified in Part II (humane treatment) under the article that refers to fundamental guarantees. This prohibited conduct is penalised independently in art. 4 under h of the ICTR Statute and moreover – like it was considered in the above – art. 4 ICTR Statute also refers to APII. Similar to the Prosecution, the Court is of the opinion that the threat to use violence constitutes a violation of AP II which is sufficiently serious to be regarded as a war crime.(915) After all this is a violation of a rule of humanitarian law, laid down in a treaty which was applicable to the Netherlands and Rwanda long before the proven facts took place. The infringed standard protects important values and a violation thereof has had enormous consequences for the victims as was shown during the trial. For that reason this is a serious violation. Together with the penalisation provided by the Statute of the ICTR, similar violations also result in (individual) criminal responsibility under international law.

23. Consequently the conclusion should be that the violent offences committed by the Defendant, both the ones against the passengers of the ambulance and against Mrs. [witness 3] and Mr. [witness 4], constitute gross violations of international humanitarian law, which result in individual criminal responsibility of the Defendant.

The protected interest of penalisation of war crimes

24. The underlying line of reasoning for penalisation of war crimes in a non-international armed conflict is that the (horrible) consequences of an armed conflict need to be restricted to the persons who are directly participating in the hostilities and that, along the same lines, effective protection should be offered to those who do not take part or have ceased to take part in the conflict. The intended interest of this penalisation is to offer protection to people who (threaten to) become victim of crimes committed in relation to the internal conflict. In the Semanza case, the Trial Chamber of the ICTR phrased this concept as follows: 'The purpose of the said provisions CA 3 and the APII; [addition made by the Court] is the protection of people as victims of internal armed conflicts, not the protection of people against crimes unrelated to the conflict, however reprehensible such crimes may be.'(916)

Requirements for war crimes

25. Based on CA 3 and APII, and the interpretation given to these treaties by (international) case law it is concluded that an offence can only be classified as a war crime on the following conditions.

(1) Existence of a non-international armed conflict on the territory of one of the Contracting Parties.

(2) The perpetrator must be aware of the existence of this armed conflict.(917)

(3) The victims must belong to one of the categories of protected persons as referred to in CA 3; this means that they must be persons who do not take a direct part in the hostilities.

(4) There must be a close correlation between the indictable offence and the armed conflict, a concept named 'nexus' in (international) literature and case law. After all the intended object of penalisation of war crimes is to offer protection against crimes which are (closely) related to the war.

Existence and nature of the armed conflict

26. With reference to established case law of the ICTR, the Court concludes that during the period described in the charges (from 6 April up to and including 17 July 1994) a non-international armed conflict took place in Rwanda between the FAR and the RPF. The FAR was the government army. The RPF was a structured and disciplined army under responsible command, which had partial control over Rwandese territory and which was able to execute military operations in a coordinated manner(918) and to meet the obligations of humanitarian laws of war.(919).

Awareness of the armed conflict

27. Based on the Defendant’s own statement the Court concludes that he was aware of the armed conflict.(920)

A victim as defined in CA 3

28. The passengers of the ambulance and the couple [witnesses 3 and 4] were all civilians who were running away from the genocide, or who offered assistance to those who were fleeing from it. In no way they were taking part in the hostilities between the FAR and the RPF, and therefore they did belong to the group of persons to whom CA 3 and AP II intended to offer protection.

Nexus

29. In the following the Court will explain its interpretation of prevailing law related to the nexus requirement. Along the same lines it will explore whether it can be established if this requirement has been met in relation to the crimes committed by the Defendant. This includes an examination in concreto of the available evidence submitted during the trial.

The (outlines of the) case law at international tribunals regarding the nexus requirement

30. The concept of nexus has been a subject of discussion in the case law of the ICTR, the ICTY, the ICC and the SCSL. The Court considers this case law to set the guidelines for its own judgement. These (international) courts are responsible for bringing to trial Defendants who allegedly committed international crimes like war crimes, crimes against humanity or genocide. Moreover the ICTR is specifically in charge of the trials of Defendants who (allegedly) committed international crimes in the period from April until July 1994 in Rwanda. Finally the Court wishes to refer to the legal history of the International Crimes Act, which encourages the national courts to use international case law as a legal guideline.(921)

31. In its deliberations the Court included all judgements rendered by international courts in cases where decisions were taken on the nexus requirement.(922) In a number of these judgements the decisions on this point were not or hardly justified, or concluded that insufficient evidence was available to prove that a defendant had actually committed the alleged offence.(923) Clearly these judgements can not be used to analyse the substantiation of the nexus concept.

32. In this Chapter the Court will cover all decisions taken by the ICTR in cases where the defendants have been convicted for war crimes. Primarily the Court wants to observe that the ICTR Prosecutor only charged the defendants with war crimes in a limited number of cases. A possible explanation could be found in the evaluation of the events that took place in the period from April until July 1994 in Rwanda, which first of all have been qualified as genocide, and especially within the Resolution which resulted in the creation of the ICTR.(924) The jurisdiction conferred to this tribunal, pursuant to art. 4 of the ICTR Statute, which also enables this tribunal to try war crimes, is therefore considered to be a ‘safety net provision’.(925) In this context the number of cases in which the ICTR took decisions on the nexus requirement are rather limited.

33. First the Court will bring forward the supporting considerations from the judgements of both tribunals that are considered to set important guidelines for the development of the law regarding the nexus requirement in case law as well as in literature. These are the judgements rendered in the cases against Tadi?, Akayesu, Kunarac and Rutaganda.

34. In the Decision on Interlocutory Appeal on Jurisdiction in the case against Tadi? (1995), the Appeals Chamber brought forward the following considerations:

"70 It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict."(926)

The ICTY Trial Chamber referred to this Decision on Interlocutory Appeal when rendering its final judgement (1997) in this case and made the following additional comment:

"573 For an offence to be a violation of international humanitarian law, therefore, this Trial Chamber needs to be satisfied that each of the alleged acts was in fact closely related to the hostilities. It would be sufficient to prove that the crime was committed in the course of or as part of the hostilities in, or occupation of, an area controlled by one of the parties.
It is not, however, necessary to show that armed conflict was occurring at the exact time and place of the proscribed acts alleged to have occurred, as the Appeals Chamber has indicated, nor is it necessary that the crime alleged takes place during combat, that it be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war or in the actual interest of a party to the conflict; the obligations of individuals under international humanitarian law are independent and apply without prejudice to any questions of the responsibility of States under international law.
The only question, to be determined in the circumstances of each individual case, is whether the offences were closely related to the armed conflict as a whole."(927)

35. In the case against Akayesu (2001), after a different judgement taken by the ICTR Trial Chamber, the Appeals Chamber ruled that in order to establish a violation of CA 3, the Defendant is not required to have a special relationship with one of the parties to the conflict.

"443. The Appeals Chamber is of the view that the minimum protection provided for victims under common Article 3 implies necessarily effective punishment on persons who violate it. Now, such punishment must be applicable to everyone without discrimination, as required by the principles governing individual criminal responsibility as laid down by the Nuremberg Tribunal in particular. The Appeals Chamber is therefore of the opinion that international humanitarian law would be lessened and called into question if it were to be admitted that certain persons be exonerated from individual criminal responsibility for a violation of common Article 3 under the pretext that they

did not belong to a specific category.

444. In paragraph 630 of the Judgement, the Trial Chamber found that the four Conventions "were adopted primarily to protect the victims as well as potential victims of armed conflicts". It went on to hold that "[t]he category of persons to be held accountable in this respect then, would in most cases be limited to commanders, combatants and other members of the armed forces". Such a finding is prima facie not without reason. In actuality authors of violations of common Article 3 will likely fall into one of these categories. This stems from the fact that common Article 3 requires a close nexus between violations and the armed conflict. This nexus between violations and the armed conflict implies that, in most cases, the perpetrator of the crime will probably have a special relationship with one party to the conflict. However, such a special relationship is not a condition precedent to the application of common Article 3 and, hence of Article 4 of the Statute. In the opinion of the Appeals Chamber, the Trial Chamber erred in requiring that a special relationship should be a separate condition for triggering criminal responsibility for a violation of Article 4 of the Statute."(928)

36. In the case against Kunarac et al. (2002), the Appeals Chambers considered the following:

"57. There is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war. The laws of war apply in the whole territory of the warring states or, in the case of internal armed conflicts, the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply until a general conclusion of peace or, in the case of internal armed conflicts, until a peaceful settlement is achieved. (...) A violation of the laws or customs of war may therefore occur at a time when and in a place where no fighting is actually taking place. As indicated by the Trial Chamber, the requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting. (...)
It would be sufficient, for instance, for the purpose of this requirement, that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict. (...)

58. What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment - the armed conflict - in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict. The Trial Chamber's finding on that point is unimpeachable.

59. In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties."(929)

37. In the case against Rutaganda (2003), it was the first time that the ICTR found an accused person guilty on a count of war crimes. The Trial Chamber had acquitted the accused of this charge. The Appeals Chamber convicted the accused for war crimes and brought forward the following considerations regarding the nexus requirement.

"570. This Chamber agrees with the criteria highlighted and with the explanation of the nexus requirement given by the ICTY Appeals Chamber in the Kunarac Appeal Judgement. It is only necessary to explain two matters. First, the expression "under the guise of the armed conflict" does not mean simply "at the same time as an armed conflict" and/or "in any circumstances created in part by the armed conflict". For example, if a non-combatant takes advantage of the lessened effectiveness of the police in conditions of disorder created by an armed conflict to murder a neighbour he has hated for years, that would not, without more, constitute a war crime under Article 4 of the Statute. By contrast, the accused in Kunarac, for example, were combatants who took advantage of their positions of military authority to rape individuals whose displacement was an express goal of the military campaign in which they took part. Second, as paragraph 59 of the Kunarac Appeal Judgement indicates, the determination of a close relationship between particular offences and an armed conflict will usually require consideration of several factors, not just one. Particular care is needed when the accused is a non-combatant."(930)

Position of the Prosecution

38. At different times during the proceedings – on its own initiative and at the request of the Court – the

Prosecution gave its interpretation of the nexus concept. The case file contains a report on the relationship between war crimes and the armed conflict in the Maton investigation, dated 9 August 2006.(931) Furthermore, at the request of the Court, the Prosecution presented a memorandum on this subject, titled “The Position of the Public Prosecution Service concerning the nexus requirement” – MATON dated 30 September 2008 (hereafter: Position paper). In the closing speech and in the reply, the Prosecutor elaborated on the content of the nexus requirement in the present criminal case.(932) The reply given by the Prosecution also included the answers to questions asked by the Court during the hearing of the trial (Reply Public Prosecution Service, legal aspects international crimes (inter alia in response to questions asked by the Court, dated 4 December 2008)).

39. The view of the Prosecution concerning the framework for assessing the nexus requirement and the actual substantiation thereof based on the factual findings can be outlined as follows.
(i) In the judgement in the case against Kunarac et al. (2002), the Appeals Chamber created a mandatory framework for the assessment of the nexus, consisting of four criteria. In case the armed conflict had a substantial influence on either the opportunity for the perpetrator to commit his offence, or his decision to commit the offence, or the way in which it was committed, or the purpose for which he committed the offence, then it should be addressed as a nexus. If at least one of these criteria has been met, it is considered to be a nexus.(933) This mandatory framework has become established case law of both tribunals concerning the assessment of the nexus.
(ii) In the Appeals case against Rutaganda, the Appeals Chamber subsequently formulated and illustrated a clear, abstract bottom line of the nexus.(934)
(iii) In a number of judgements of the ICTR (Kayishema and Ruzindana, Musema, Ntakirutimana and Kamuhanda) the criteria laid down in Kunarac have not been applied correctly. Consequently the assessment of the nexus by the ICTR in these cases is a misjudgement of the requirements of international law at this point and should considered to be a mistake.(935) Moreover in these judgements the ICTR has not been able to take into account the knowledge regarding the conflict, the role of the army, the gendarmerie and reservists which knowledge has become larger over the years and is still increasing due to investigations and publications of NGO’s and by the case law of the ICTR and national courts.(936)
(iv) When answering the four Kunarac questions several factors could play a role. On the one hand the Prosecution points out the general developments and the situation in Rwanda as of 1 October 1990 until 17 July 1994 (see paragraph 40 below) and on the other hand case related factors (see paragraph 41 below).(937) In its closing speech the Prosecution asserted that these general factors and the case related factors all played a role in the alleged crimes committed by the Defendant.

40. With respect to the general developments and the situation in Rwanda as of 1 October 1990 until 17 July 1994, the Prosecution clearly drew the attention to (a) the equation of the Tutsi population with the RPF and, in relation to this,
(b) the civilian self defence program, (c) the road blocks, (d) the involvement of members of the military and (e) the use of the war as a cover for endless violence against the Tutsi.
re (a) The Prosecution highlights the ideas, proclaimed through years of government propaganda, which equated Tutsi to the RPF. The result of this propaganda was that all Tutsi were considered to be accomplices of the RPF, the fifth column of the RPF, in short as ‘the enemy’. The Prosecution refers to expert Des Forges who wrote: ‘That fear [Court: for Tutsi] was based on the widespread and incorrect assumption that obviously all Tutsi would be supporters of the RPF and would be prepared to support the RPF in their military advance.’ The Prosecution points out that the Tutsi were systematically addressed as "Inyenzi" ("cockroach", also member of the RPF), "Inkotanyi" (a member of the RPF) and "Ibyitso" (accomplice).(938) In the opinion of the Prosecution this anti-Tutsi propaganda, where all Tutsi were considered to be accomplices to the RPF – the Prosecution speaks of war propaganda (939) – had substantial influence on the opportunity to commit crimes against the Tutsi, the decision to actually commit these crimes, as well as the purpose of these crimes, also in and near Mugonero after 6 April 1994.
re (b) Secondly the Prosecution argues that the civilian self defence program, which offered a large scale distribution of weapons throughout the country and military training, established a clear structure for the cooperation between civilians, local authorities, military and reserves, so the enemy could be repelled decisively and efficiently in case of a new outbreak of hostilities. This also shows that the armed conflict had a substantial influence on the possibility to commit crimes. Moreover it shows that the armed conflict had a substantial influence on the way in which the crimes were committed. (940)
re (c) The construction of road blocks was largely motivated and/or publicly justified with reference to the armed conflict. In fact, these road blocks were created on the instructions of and/or with clear permission from the authorities because of the war.(941) This had substantial influence on the possibility to commit crimes at these barriers, on the decision to commit those crimes and on the way in which those crimes were committed.(942)
re (d) The Prosecution continues with underlining the systematic involvement of the military in the violence against Tutsi, whereby the military were closely collaborating with the Interahamwe for example. The army played this role, because the army commanders considered the killing of ‘accomplices’ to be a part of the combat against

the RPF.(943) The involvement of members of the militaryad a substantial influence on the possibility of committing the crimes and how they were committed.
re (e) Finally the Prosecution draws the attention to the fact that the armed conflict was used as a cover for the violence against the Tutsi. (944) Also in this sense the armed conflict had substantial influence on the commission of these crimes.

41. The Prosecution mentions the following case related factors which can lead to the conclusion that there is a nexus:
- the existence of relationships between the Defendant and the armed forces;
- the involvement of members of the military, gendarmes, reserves and Interahamwes in the crimes;
- the reference made by the Defendant or his accomplices to the armed conflict in relation to the crime;
- the specification of the victims of these crimes as RPF people, as accomplice, as Inyenzi or Inkotanyi;
- the protection of the victims under CA 3;
- the start of the violence in the vicinity of the location where the indictable offences took place shortly after the resumption of the hostilities between the Rwandese armed forces and the RPF.

42. The Prosecution requested the Court to make a clear distinction between the applicable abstract framework for assessment, as it was laid down in the four Kunarac-criteria, and the facts in individual criminal cases where the crimes are ‘exposed’ to the framework for assessment. Here the Prosecution suggests a so-called casuistic approach: not to make an assessment according to the applicable (abstract) framework, but to make a comparison with the facts of other criminal cases in which the existence of the nexus has been or has not been assumed.

43. Based on the above the Prosecution concludes that all alleged crimes were related to the armed conflict and consequently should be regarded as war crimes.

Position of the Defence

44. The Counsel for the Defence argued that the Geneva Conventions are not applicable to the crimes allegedly committed by the Defendant. Without giving a reaction to the Prosecution’s detailed explanation of the nexus requirement, the Defence only wants to bring forward the following arguments:(945)
(i) The Defendant was a civilian, did not have a military background, he was not a member of a political party and he did not belong to any party that was involved in the armed conflict.
(ii) The fighting parties were situated in the North of the country. Hence the area where the Defendant found himself could not be considered as ‘battle zone’ where parties were actually fighting.
(iii) The ICTR ruled in almost all cases that the Geneva Conventions were not applicable to the situations in which the Accused found themselves. In fact the ICTR acquitted Rutaganira of the charge of violation of the Geneva Conventions, although he had admitted being guilty thereof. Rutaganira was conseiller of Mubuga, which is located in the vicinity of the Seventh Day Adventists Complex.

Assessment by the Court
45. In the opinion of the Court – contrary to the Prosecution – the judgements pronounced by the international courts do not offer a framework for assessment based upon which the present case can be assessed in a simple way – following the rules of deduction, as in mathematics – to be able to say whether or not there is a nexus. A fortiori, the Court does not believe that these decisions draw a specific abstract bottom line above which, in a concrete case, there obviously is a nexus if one of the four Kunarac-questions can be answered positively. In this context the Court brings forward the following considerations.

46. (1) It is remarkable that in these judgements the tribunals mostly explain that certain circumstances, which (could) provide (serious) indications to assume that there is a nexus, are not necessarily required. In fact, in the judgement rendered in the Tadi? case, the Trial Chamber distances itself from the requirements that the crime should have taken place during the conflict or at the time of or in the vicinity of the battle zone, that it formed part of a policy or a common practice accepted by one of the fighting parties or that it promoted the conduct of war or that it was in the interest of one of the fighting parties. And in the judgement in the Akayesu case, the Trial Chamber explained that it was required that the Defendant was a military or had a special relationship with one of the parties to the conflict. These considerations do not phrase in a positive way which requirements must be met in order to assume the existence of a nexus. Consequently they do not offer enough basis to be able to determine the nexus in a concrete case.

(2) In the legal grounds for the decision in Kunarac (para. 58), the decisive factor to make a distinction between a war crime and a domestic offence ('what ultimately distinguishes') is the fact that the war crime is constituted by or is dependent on the surroundings – the armed conflict – in which it was committed, a criterion that gives little hold.

After having established that it is not required that the crime was caused by the armed conflict, further indications are submitted for the application of this criterion. According to this ground, the existence of an armed conflict must at least (i) have played a substantial part in the decision taken by the perpetrator to commit the crime, (ii) the opportunity he had to commit the crime, (iii) the way in which he committed the crime or (iv) the purpose of the crime. Although this formulation provides more hold, the phrasing does not offer ‘hard’ criteria ('must, at a minimum, have played a substantial part'). Moreover the Court is of the opinion that the wordings ('hence, if it can be established, as in the present case, (...) it would be sufficient') do not imperatively lead to the conclusion that a serious offence must be regarded as a war crime, if one of these four criteria has been met. However, the Court does encounter important reference points that give directions for answering the question whether there is a nexus in a certain case. The Kunarac judgement (paragraph 59) gives examples of facts and circumstances that can be of relevance in cases where the nexus needs to be established.

(3) The Court finds confirmation for this observation in the Rutaganda judgement rendered by the Appeals Chamber (para. 570), which offers indications of assent to the Kunarac-criteria. Furthermore, it is explained what the expression "under the guise of the armed conflict" does not imply; here again it is explained what not to understand and no description it given of what that expression actually does imply. The Appeals Chamber subsequently gives as an example a fictitious case where the offences are not considered to be war crimes, although without any doubt one of the Kunarac-criteria has been fulfilled. After all, the armed conflict offered the opportunity to the civilian presented in this fictitious case to kill his neighbour, but this fact alone does not turn this domestic crime into a war crime, according to the Appeals Chamber.

(4) The Appeals Chamber then contrasts this example to the Kunarac case, where the criminal offences were considered to be war crimes. In that case the accused persons were a) combatants, who b) abused their military position and powers against c) individuals who had been relocated for a military purpose in d) a military operation in which the accused were participants. The Court can only understand that by making this comparison, the Chamber wants to advocate an approach whereby all relevant facts and circumstances, like the capacity of the accused (civilian or military) and the (military) context of the committed crimes should be taken into consideration when answering the question if there is a nexus.

(5) The Rutaganda judgement further indicates that as a rule different factors, not only one, should be taken into account to be able to conclude in concrete terms if the nexus requirement has been satisfied. This consideration is ended with an admonition for caution if the Defendant is a non-combatant. The Court understands – along the same lines as the Chamber’s observations on the example of the civilian who killed his neighbour, as opposed to the example of the military who were on trial in the Kunarac case - that this is a warning not to assume too quickly, at least less quickly than in the case of members of the military, that there was a close link between the crimes they committed during the war and the war itself. This warning seems to fit in with the consideration (para. 444) in the judgement rendered by the Appeals Chamber in the Akayesu case, that it would be logical to assume that especially members of the military and persons who have a special relationship with one of the fighting parties, are the ones to commit war crimes. After all, non-combatants, except in some unusual cases, will not participate in the hostilities between the fighting army forces or have any influence on these hostilities. Moreover, the warning illustrates that the Kunarac-criteria are less harsh and coercive than asserted by the Prosecution.

47. Based on the above, the Court concludes that the afore mentioned case law of the tribunals does not offer a framework for assessment which would make it easy to decide whether the nexus requirement has been fulfilled and that it does not draw a clear, abstract bottom line for this assessment. On the contrary, the tribunals choose a casuistic approach, whereby the answer to the question whether the nexus requirement has been satisfied really depends on the evaluation of all relevant facts and circumstances.

48. The Court finds confirmation for this conclusion in the literature on this subject. In fact Michael Cottier writes: 'The issue of the necessary link has not yet received much attention by academia and judicial institutions, possibly also since the nexus was rather evident in traditional inter-state conflicts predominant up to the beginning of the 20th century with relatively clear cut front lines and parties to the conflict. In contemporary non-international or mixed armed conflicts, with often have a wider array of different actors and less clear-cut front lines, the existence of a nexus frequently is less obvious.' (946) And in his memorandum on the concept of nexus 'Nexus with Armed Conflict', Guénaël Mettraux writes: 'Instead of drawing a strict (and probably unworkable) dividing line between the two categories [war crime versus domestic crime], international and national tribunals have considered a number of factors which they may take into account to determine the nature of the relationship between the acts of the accused and the armed conflict so as to determine that the linkage of the two be sufficient, for instance: (i) the status of the perpetrator (as soldier or combatant); (ii) the status of the victim or victims (as combatants or civilians); (iii) the circumstances in which the crimes were committed; (iv) the fact that the crimes are committed in the context of an ongoing campaign to achieve particular military goals; (v) the fact that his crime coincided with

the ultimate purpose of the military campaign; (vi) the fact that the crimes were committed with the assistance or connivance of the parties to the conflict; (vii) the fact that the crime is committed as part of, or in the context of, the perpetrator's official duties; (viii) the fact that the victim is a member of the forces of the opposing party. None of the above when taken individually may be conclusive. Courts must therefore take into account all relevant indications that the acts of the accused are, or are not, sufficiently connected to the conflict before concluding that the conduct in question may be regarded as a war crime.'(947)

49. As mentioned before, in the Rutaganda case the Trial Chamber gave a fictitious example of a case where the conduct in question is not regarded as a war crime, although one of the Kunarac-criteria had been fulfilled. The Court considers it useful to give yet another example of a fictitious case (948): the army of country A invades country B and, as soon as he hears this, a civilian in country B decides to kill his neighbour because he is a national of country A and exclusively on this ground he regards him as a possible accomplice of the armed forces of country A. Without any doubt this example satisfies the Kunarac- requirement that the armed conflict had substantial influence on – even more: was the only reason for – the civilian's decision to commit this crime. The Court finds that the Prosecution's explanation given with regard to the Kunarac judgement imperatively leads to the conclusion that this civilian committed a war crime. However, as may be concluded from the above, the Court does not go along with that explanation. In view of the ratio of the (international) penalisation of war crimes, it is difficult to assume the existence of a close link between the crime and the armed conflict.

50. The Court has established that in all cases in which the ICTR decided the nexus requirement had been fulfilled, the accused was either a (high ranking) military or an individual who held a high position in a political movement that was closely related to both the army and the government officials.
Semanza was President of the MRND in Kigali.(949) Rutaganda was Vice-President of the Interahamwe za MRND.(950) Imanishimwe was lieutenant with the RAF and was commander of a military camp, also referred to as Cyangugu-camp.(951) In the Military I-case, the accused that were convicted by the Trial Chamber were high ranking officers in the government army. Bagosora and Nsengiyumva held the rank of colonel, Ntabakuze was a major.(952) Hence, the case law of the ICTR regarding the nexus is based on cases that distinguish themselves in one important aspect from the case that is on trial in this Court, since the present case concerns a person who was not a military, did not hold an (high) political position and did not fulfil an important task within the government body. This is a reason to be cautious when transposing case law which was composed by the criminal tribunals to the present case, this in addition to the Appeals Chambers's explicit warning in the Rutaganda case not to be too quick in assuming the required close relationship regarding non-combatants.

51. In cases where the ICTR assumed the existence of a nexus, the following circumstances were considered:
- an armed conflict existed between the RAF and the RPF, the last being identified with the Tutsi minority in Rwanda;(953)
- the violence against the Tutsi started shortly after the death of President Habyiarimana after the return of the hostilities between the RAF and the RPF;(954)
- the collaboration between the perpetrator, the government army RAF and the Interahamwe in the killing of Tutsi and the commission of crimes;(955)
- the relationship of authority between the perpetrator and the Interahamwe, who collaborated with the RAF when killing Tutsi and the way in which the perpetrator assisted the RAF and the Interahamwe in these killings;(956)
- the involvement of armed (high ranking) military in the killing of Tutsi civilians;(957)
- soldiers were the most important perpetrators of the crimes and the participation of the military substantially influenced the way in which the crimes were carried out;(958)
- the alleged crimes were committed within the territory where the armed conflict took place;(959)
- the fleeing of Tutsi as a consequence of the armed conflict to public places, like churches, mosques, hills, where they were killed;(960)
- the participation of the Defendant in a military operation targeted at fleeing Tutsi civilians, in particular aimed at obtaining information from a civilian about the march forward of the RPF in the region, by using serious forms of violence;(961)
- the taking of prisoners among the refugees on grounds of their alleged links with the RPF and the subsequent torture of these refugees during their interrogation to find out if they belonged to the RPF and accusing them of having relationships with the RPF;(962)
- the victim belonged to the opposing party;(963)
- the qualification of attacks on prominent persons and members of the political opposition as 'military operations'.(964)

52. In its assessment concerning the fulfilment of the nexus requirement, the Court puts first the intended interest of the penalisation of war crimes, being the protection of non-combatants who, at the time of a (internal) war, are in danger of becoming a victim of crimes committed in close relationship to that war. In this context, war crimes

explicitly distinguish themselves not only from common crimes but also from other international crimes like genocide and crimes against humanity.(965) Common to the penalisation of international crimes is the protection offered against the most horrible crimes. However, the penalisation of war crimes only aims at offering this protection, if and in so far as they are committed in close relationship to an armed conflict between fighting parties who are capable of fulfilling their obligations according to international humanitarian law.

53. According to the above considerations, the explanation provided by the international courts forms the guideline for the assessment of the nexus requirement. Hence, the Court agrees with the idea that in order to establish a nexus, the following requirements do not apply:
- the accused is a military or has a special relationship with one of the fighting parties (Akayesu case);
- the crime takes places at the same time and/or in the vicinity of the hostilities between the fighting parties (Tadi? case);
- the crime follows the general policy or an accepted practice of one of the fighting parties (Tadi? case);
- the crime stimulates warfare or is in favour of one of the fighting parties
(Tadi? case);
- the crime was caused by the armed conflict (Kunarac case).
Of course these facts and circumstances – either on their own or in conjunction with others – could form a strong indication of the existence of a nexus. Furthermore the Court regards the above mentioned four Kunarac-criteria to be the main reference points for the assessment of the nexus in concrete terms, in order to judge whether a nexus can be established in relation to the crimes allegedly committed by the Defendant.

54. So, exsmining this case in concreto, the Court finds the following:
- (a) in the Préfecture where the Defendant lived in the period mentioned in the charges, no hostilities took place between the RAF and the RPF;
- (b) the Defendant did not have a military position;
- (c) the Defendant did not have an influence on the progress of the hostilities, nor did he have a special relationship with the RAF.

55. Subsequently, as argued by the Prosecution, the question that needs to be answered is whether the nexus requirement has been fulfilled because of the general developments and the situation in Rwanda as of 1 October 1990 until July 1994, more specifically because of the equation of the Tutsi population with the RPF and in relation to this the civilian self defence program, the road blocks, the military involvement and the use of the war as a cover for committing crimes.

56. The Court endorses the analysis drawn up by the Prosecution about the years of systematic propaganda, which not only demonised the Tutsi, but also were equated with the RPF, the military enemy. In this context the Court makes reference to the above explanation about the (political) historical background of the tragedy which took place in Rwanda (Chapter 3, paragraph 16-19, 26 and 29). The Court also agrees with the Prosecution’s conclusion that these ideas promoted by the years of propaganda resulted in the situation that many Hutu started from the (incorrect) supposition that all Tutsi were accomplices of the RPF and would therefore be prepared to support the RPF in its military march, and that this fear may have been their most important motive to participate in the attacks on their Tutsi fellow men. In this respect the Court also wants to refer to its prior statement, more in particular the reproduction of the opinion of expert Des Forges on this point (Chapter 3, paragraph 31):
'Persons who commit genocide have given many and different reasons for their participation, but based on my investigations I draw the conclusion that fear was the most important motive that incited common Rwandese civilians to participate in the attack on the Tutsi. That fear was based on the widespread and incorrect assumption that obviously all Tutsi would be supporters of the RPF and would therefore be prepared to support the RPF in their military advance.’(966)

57. It is beyond any doubt that the Defendant also supported this idea and because he had become inspired by this idea he committed his crimes. The Court makes reference to its conclusions in the Chapters on the crimes committed against the passengers of the ambulance and the crimes against the couple [witnesses 3 and 4].

58. The Court acknowledges the fact that the genocide and the armed conflict between the RAF and the RPF were closely related. In the above (Chapter 3, paragraph 33), reference is made to the first ICTR judgement (Akayesu case) which included the consideration that the armed conflict facilitated the genocide, in the sense that the fights against RPF army were used as an excuse to incite Hutu to commit genocide on the Tutsi by labelling them as RPF combatants. (967) This was repeated in later judgements, recently in the judgement rendered on 18 December 2008 in the case of Bagosora et al., which included the conclusion that the armed conflict also created the circumstances for the murder of the Tutsi population.(968)

59. However, the Akayesu judgement also emphasizes the fundamental difference between the armed conflict and the genocide ('although the genocide against the Tutsi occurred concomitantly with the above mentioned conflict, it was, evidently, fundamentally different from the conflict' (para. 128)). The judgement in the cases against Kayishema and Ruzindana also brings forward that a distinction should be made between the genocide on the one hand and the armed conflict on the other. In that case, according to the Trial Chamber, the proven crimes were committed by the civilian authorities of Rwanda against their own Tutsi civilians as a part of a genocide policy that could clearly be separated from the armed conflict ('However, they were committed as a part of a distinct policy of genocide; they were committed parallel to and not as a result of the armed conflict.').(969) Different from the arguments presented by the Prosecution (970), the Court believes that in spite of the knowledge about the Rwandese tragedy that has undoubtedly increased since the pronouncement of these judgements, this has not been cause for a change of understanding regarding the relationship between the genocide and the armed conflict. The genocide's purpose was the extermination of all Tutsi because of their ethnicity, and not because they were RPF combatants (971), as was considered in the Akayesu case (para. 125). The RPF's purpose of the armed conflict, which occurred simultaneously, was to defeat the RAF and to gain (political) control in Rwanda. The RAF's objective was to defend the territory in order to prevent the RPF from taking over the power.(972) Furthermore, paragraph 128 of the Akayesu judgement clearly puts forward that in this case the acts of violence against the Tutsi civilians (in that case performed by the Interahamwe) were of no use to the conflict between the RAF against the RPF.

60. Also in this case it has not been made plausible in any way that the crimes committed by the accused served a special military goal or contributed, not even in the least, to the accomplishment of the final purpose of the RAF in its conflict with the RPF. Moreover it is a fact that the passengers of the ambulance and the couple [witnesses 3 and 4] were not fleeing from the hostilities of the RAF or the RPF, but from the genocidal violence in the Kibuye Préfecture. The Court does not consider circumstances like these to be requirements for the assumption of a nexus, but it does conclude that also regarding this aspect there is a lack of grounds for the assumption of a nexus.

61. According to the above considerations (Chapter 3, paragraph 27-28) the army, the civilian authorities and the militia worked closely together in the execution of the genocide. The civilian self defence program also offered a substantial contribution. As in the wordings of the ICTR in the Kayishema and Ruzindana case, it formed an integral part of the 'machinery carrying out the genocidal plan'.(973) Also in the Kibuye Préfecture the civilian self defence program was carried out and resulted in large scale violence against the Tutsi, as was reported by expert Des Forges.(974) It is also easily assumed that the civilian self defence program substantially facilitated the commission of large scale crimes against the Tutsi population of Kibuye. However, it has not become apparent that the civilian self defence program in this Préfecture has made any contribution to the conflict with the RPF, for which it had been originally created, at least on paper.

62. In all of Rwanda the military were systematically involved in the violence against the Tutsi, the same counts for Mugonero. It has been established that the barrier in Mugonero was manned by soldiers. In Birogo the Defendant was accompanied by soldiers when he forced the ambulance to drive to Mugonero. At his instructions a soldier sat on the passenger seat. Soldiers were standing at the Mugonero barrier when the ambulance arrived there. In this context the Court refers to the proven facts in Chapter 9. Nevertheless, the participation of these soldiers does not change the crimes committed by the Defendant into military operations. Their actions did not serve any military purpose. At that moment they were the executors of the genocidal plan, and not combatants against the army of the enemy.

63. While hunting down the Tutsi population, the road blocks that had been built in the entire country played an important part. This is where the identity documents were checked and fleeing Tutsi were stopped and murdered.(975) In some cases the road blocks were also intended to prevent the movements of RPF combatants. Des Forges comments on this that '(i)n and near war areas (...) the road blocks [might] have served that purpose.'(976) However, this purpose has not become evident in the case of the Mugonero road block.(977) Obviously this road block was only intended to serve the genocidal purpose.

64. Hence, the Court concludes that the relationship between the armed conflict and the crimes committed by the Defendant existed exclusively because of the equation of all Tutsi with the RPF. For the Hutu regime this equation represented an important pretext to justify the genocide and to incite the population to murder the Tutsi. This propaganda provided the Defendant with a licence to commit his crimes. In this respect he does not differ much from his numerous Hutu countrymen who were also guilty of similar crimes against (fleeing) Tutsi in the period from April 1994 until July 1994. If only this equation would be enough to assume a nexus, this would mean that almost all crimes committed against the Tutsi in that period – and according to the Prosecution this would also apply to crimes committed in the period from 1 October 1990, the start of the civil war – should be regarded as war crimes.

65. The Court rejects this interpretation of the nexus requirement. It recalls the consideration brought forward in the above, being that the intention of the penalisation of war crimes is to offer protection against the consequences of a war in a conflict between armed forces who are capable of fulfilling their obligations under international humanitarian law. It agrees that the explanation on this penalisation which was provided for by case law of the international tribunals has undoubtedly enlarged the scope of this penalisation, however without forgetting the intended interest of protection. Furthermore the Court is of the opinion that this case law, especially of the ICTR, has been formed in cases against accused who had a different status than the Defendant who is presently on trial and that the ICTR advocates to observe restraint regarding non-combatants, like the Defendant. In the opinion of the Court the sole circumstance that the armed conflict against the RPF provided the regime with an excuse for ethnic violence and the Defendant with a motive and a licence to commit his crimes, do not turn these criminal offences into war crimes. The connection between these crimes and the armed conflict, that was carried out at the same time by the RAF and the RPF, is too remote; in other words the required close relationship (the nexus) has not been established.

66. Consequently the Court acquits the Defendant of the criminal offences that he was charged with under the primary counts 1 and 3 of the indictment with case number 09/750009-06.

Chapter 16: Torture

1. In this Chapter the Court will examine whether the crimes committed by the Defendant may be qualified as acts of torture.

Legal framework and sources of international law

2. The international basis for penalisation of torture and the establishment of universal jurisdiction for this crime, is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter: Torture Convention).(978) The relevant provisions of this Convention read as follows:

Article 1
1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This Article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 4
1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

3. These provisions were implemented in the legal system of the Netherlands by the Torture Convention Implementation Act (Uitvoeringswet Folteringverdrag), This act entered into force on 20 January 1989. The relevant Articles read as follows:

Article 1

1. Severe pain or suffering, intentionally inflicted on a person who has been deprived of his freedom, for such purposes as obtaining from him or a third person information or a confession, punishing him for an act, or intimidating him or coercing him or a third person into enduring or submitting to certain acts, or for any reason based on discrimination of any kind or out of contempt for a person’s right to human dignity, when such pain or suffering is inflicted by a public official or other person acting in an official capacity and when these acts were of such nature that they could further these purposes, these acts will be regarded as torture and will be punished with a term of imprisonment not exceeding 15 years, or a fine of the fifth category.
2. Torture will be equated with intentionally inducing a situation of intense fear or another form of psychological

desperation.
3. If the offence causes the death of the victim, the person who commits the act of torture shall be punished with life imprisonment or with a term of imprisonment not exceeding twenty years or a fine of the fifth category.

Article 2

The same punishments with respect to the offences as described in the afore mentioned Article, will be imposed on:
a. a public official or other person acting in an official capacity who instigates or intentionally encourages another person to commit acts of torture as meant in Article 1, using means as described in Article 47, first paragraph, under 2°, of the Criminal Code, or who intentionally allows another person to commit these acts of torture;
b. a person who commits the acts of torture as meant in Article 1, using the means as described in Article 47, first paragraph, under 2°, of the Criminal Code, if these acts of torture were incited or intentionally allowed by a public official or other person acting in an official capacity in the course of his duties.

Article 5

Dutch criminal law is applicable to anyone who is guilty of committing the offences as described in Articles 1 and 2 of this Act.

Article 6

1. In this Act the expression ‘public official’ has the same meaning as the one defined in the Dutch Criminal Code.
2. For the application of Dutch criminal law, a ‘public official’ also refers to anyone who holds a public office at the service of a foreign state.

4. When the International Crimes Act entered into force on 1 October 2003, the Torture Convention Implementation Act was rescinded.(979) At present torture is liable to punishment under Article 8 of the International Crimes Act. In the International Crimes Act the definition of torture no longer corresponds to the term ‘maltreatment’, as defined in Article 1 of the Torture Convention Implementation Act, but it corresponds to the description of torture given in Article 1, paragraph 1, under d of the International Crimes Act. In Article 1, paragraph 1, under e of the International Crimes Act, torture is described as torture with a specific intent. Moreover the maximum sentence for torture, also if the aggravated circumstance that this offence causes the death of the victim does not apply, is increased up to a prison sentence of 20 years or life imprisonment instead of a maximum sentence of 15 years imprisonment as provided for by the Torture Convention Implementation Act.

5. Hence, pursuant to Article 1, paragraph 2, Criminal Code (CC), the Court needs to examine if this is a matter of a changed interpretation on the part of the legislator regarding the degree of punishability of the crime of torture. If this is the case, the Court needs to establish which penal provision is more favourable for the Defendant.

6. According to the Explanatory Memorandum to the bill that resulted in the International Crimes Act, the different formulation of the criminal offence should not be regarded as a change of interpretation regarding the degree of punishability of torture, which would oblige the application of Article 1, paragraph 2, CC. (980) The Court agrees with the legislator’s explanation that the change of penalisation regarding torture in the International Crimes Act does not show a changed understanding regarding the punishability degree of liability to punishment of the relevant criminal conduct. However, this is not the case in relation to the threat of punishment. The threat of punishment has been increased, meaning that in all cases of torture – regardless of the existence of aggravated circumstances – the maximum sentence to be imposed has been increased to a term of 20 years or life imprisonment. This substantial increase of the maximum threat of punishment however does show a changed understanding regarding the punishability of torture without the aforesaid aggravated circumstance. In view of the fact that the International Crimes Act is less favourable for the Defendant than the Torture Convention Implementation Act, the applicable legal framework is exclusively represented by the Torture Convention Implementation Act, supplemented by the provisions of the Criminal Code that were applicable at the time.

7. At that time the penalisation of torture had been included in a separate act and was not included in the Criminal Code, for the following reasons mentioned in the Explanatory Memorandum to the Torture Convention Implementation Act. ‘This is preferred because some obligations that result from the Convention prevail over the provisions of the general part, especially in relation to the extent of the binding effect of criminal law and the introduction of the corresponding interpretation of the so-called ‘transposition rule’ in relation to the concept of ‘public official’ (981), and also in relation to the possibility to invoke the grounds for exemption from criminal liability.’(982)

In the Torture Convention Implementation Act the legislator did seek alignment with concepts like ‘maltreatment’ and ‘public officials’ from the Criminal Code.(983)

8. Pursuant to the provisions of Article 91 CC, in so far as the Torture Convention Implementation Act does not deviate from these provisions, Titles I-VII IA of Book I of the Criminal Code are applicable to the Torture Convention Implementation Act. This implies that the concept of ‘incitement’ has the same meaning in the Torture Convention Implementation Act as in the Criminal Code.

9. For the interpretation of the component parts of the crime of torture in the Torture Convention Implementation Act, the Court focuses on the Torture Convention, the Sanctioning Act of the Torture Convention, the legal history that resulted in the introduction of the Torture Convention Implementation Act and relevant case law of the Netherlands. Furthermore the Court seeks alignment with the conclusions drawn by the Committee Against Torture (CAT - the Committee that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and the Committee’s evaluations of the regular reports submitted by the States parties to the Convention. From the point of view of the Torture Convention Implementation Act this is justified, after all its purpose is to assure a correct implementation of the obligations of the Netherlands in accordance with the Torture Convention. Case law from other international bodies, like the UN Human Rights Committee, is also used as a guideline, in so far as it contains relevant considerations on torture.

10. Below the Court shall go into the separate components of the crime of torture (Article 1 Torture Convention Implementation Act). For each component part the Court will first give a definition and subsequently it will explore the existence of evidence to prove that the requirement for this component part has been fulfilled.

These components are:

(1) maltreatment as defined in the Torture Convention Implementation Act;
(2) the qualification of the perpetrator as a public official or a person otherwise employed by the government;
(3) deprivation of liberty of the victim;
(4) the existence of a special intent.

11. Accordingly the forms of participation, being ‘incitement’ and ‘deliberately permitting’ (art. 2 Torture Convention Implementation Act) will be discussed.(5) Here too the Court will first explain the legal framework and subsequently it will make an assessment of the crimes committed by Defendant on the basis of that framework.

(1) Maltreatment as defined in the Torture Convention Implementation Act

Legal framework

12. The Explanatory Memorandum to the Torture Convention Implementation Act emphasises that only very serious forms of maltreatment shall be regarded as torture, but that it is not sufficient to find alignment with the concept of ‘gross maltreatment’. According to this Explanatory Memorandum, torture can take on forms that can cause severe pain or mental suffering, without leaving traces of physical or psychological injury.(984) Pursuant to Article 1, paragraph 2 of the Torture Convention Implementation Act maltreatment is considered equivalent to deliberately causing a situation of strong fear or another form of serious mental desperation. Furthermore, the act of torture must be of such a nature that it results in the furtherance of the intended purpose.(985)

13. The description of torture as defined in art. 1 Torture Convention Implementation Act corresponds with the definition of torture in art. 1 of the Torture Convention. It must concern actions that inflict severe pain or suffering of physical or mental nature ('severe pain or suffering, whether physical of mental'). The conclusions drawn by the Committee Against Torture (CAT) show that in order to regard criminal conduct as torture, it should involve acts or omissions that cause pain or suffering of a certain degree. The suffering can also be of mental nature, as the CAT has repeatedly established.(986) In general terms it can not be concluded what the degree of intensity of the pain or mental suffering should be. The Committee’s conclusions are characterised on this point by a casuistic approach, whereby some situations are and some situations are not regarded as torture, without any further explanation. Furthermore, in the conclusions drawn by the UN Human Rights Committee serious forms of threat with torture and/or death are also considered to be mental torture.(987)

14. Killing a person does not necessarily constitute a crime of torture in all circumstances. In its judgement on the Bouterse case, the Supreme Court ruled that the text of art. 1 Torture Convention Implementation Act does not offer room for the opinion that the killing of a person, if not preceded by or in combination with maltreatment as

defined in art. 1, should be regarded as torture.(988)

15. The intention of the perpetrator of maltreatment as defined in the Torture Convention Implementation Act must be directed towards the result of the act.

Examination of the facts

16. The Court concludes that the crimes committed by the Defendant caused severe mental suffering to the victims. The victims were on the run for the violence against the Tutsi population, or were offering assistance to this attempt to flee, at a time when genocide occurred in Rwanda, and for that reason they found themselves in a vulnerable situation. In that situation of great tension and mortal fear, the acts of the Defendant and his accomplices inflicted metal suffering of an extreme intensity, which without any doubt caused the victims to reach a state of great fear and severe mental distress.

17. It is true that Mr. [witness 4] did not have to fear for his own life, but the threat of killing his partner and his son undoubtedly caused him to experience great fear and severe mental distress.

18. Moreover, severe bodily harm was inflicted on the passengers of the ambulance, except for [witness 1] and [witness 2]. These victims were killed in a horrible way by using clubs and machetes. It is beyond doubt that their death was preceded by severe pain and mutilation.

19. Finally the Court concludes that the Defendant’s intention was aimed at inflicting severe bodily harm as well as mental suffering on the victims.

(2) The perpetrator in the capacity of public official or otherwise employed by the government

Legal framework

20. A fundamental characteristic of torture is the abuse of government powers.(989) Based on art. 2 under a of the Torture Convention Implementation Act the perpetrator must be a public official or another person employed by the government during the exercise of his duties (‘public official’).(990) Based on Article 2 under b of the Torture Convention Implementation Act, a person who was incited by a public official (or otherwise employed by the government) to commit torture is also liable to punishment if the crime was committed by a means as defined in Article 47, paragraph 1 CC, or if the latter deliberately consented to the act of torture. In relation to this last provision, a person who is not an official is also liable to punishment if the public official enabled him to commit torture.(991)

21. Art. 1 of the Torture Convention does not restrict itself to the ‘public official’, but provides for an expansion to those persons who commit torture 'at the instigation of or with the consent or acquiescence of a public official'.

22. In combination with the required intent, the capacity of being a public official distinguishes these cases from those in which mental suffering and pain were inflicted at random or in a private setting. It concerns practices for which persons who have public authority carry responsibility in some way or other.(992)

23. The accusations in the charges do not imply that the Defendant himself inflicted pain or suffering in the capacity of public official or otherwise employed by the government, but that he committed torture, while this criminal conduct was incited and/or deliberately allowed by public officials.

24. For that reason the Court needs to investigate if the persons mentioned in the charges, who allegedly incited and/or allowed the acts of torture, were public officials or persons who were otherwise employed by the government. Regarding foreign officials it will hardly be possible to check this based on Appointment Decrees or other formal documents, but this will have to be concluded from the functions they held within the official authority structure of the government, as can be factually assessed.

Examination of the facts

25. The following names appear in the charges:

- One of more members of the government, among them Jean Kambanda as Prime Minister and Eliézer Niyitegeka as Minister of Information;
- Clément Kayishema as Prefect of Kibuye;

- Charles Sikubwabo as Burgomaster of Gishyita;
- Mikaeli Muhimana as Conseiller of Gishyita.

At the time of the commission of the crimes mentioned in the proven charges, all of the above were employed as public officials or were persons otherwise employed by the government in Rwanda. This conclusion is based on the judgements rendered by the ICTR in the cases against Jean Kambanda, Eliézer Niyitegeka, Clément Kayishema and Mikaeli Muhimana.(993) With regard to Charles Sikubwabo, the Court makes reference to its conclusions in relation to the crimes committed by the Defendant against Mrs. [witness 3] and Mr. [witness 4] (see Chapter 8), which includes the information that Sikubwabo was burgomaster of Gishyita in that period.

26. In the charges the incitement of and the consent to commit torture is also contributed to (members of) the armed forces of Rwanda, burgomasters, prefects and other government representatives whose names have not been mentioned. Of course these persons were by definition public officials or persons otherwise employed by the government.

(3) Deprivation of liberty of the victim

Legal framework

27. Article 1, paragraph 1, Torture Convention Implementation Act, holds the requirement that the victim be deprived of his liberty. According to the Explanatory Memorandum, it must concern persons who find themselves holding physical control over the perpetrator, at least have authority in the government service to which the perpetrator belongs.(994) It is not relevant whether the deprivation of liberty was carried out lawfully or unlawfully.(995)

28. Article 1 of the Torture Convention does not demand the condition that the victim be deprived of his liberty. In its recommendations concerning the Torture Convention Implementation Act, the Council of State pointed out that the requirement of deprivation of liberty in the bill contained a limitation which had not been prescribed by the Torture Convention and in its opinion this condition should not be included in the Act. In an additional report, the Minister of Justice acknowledged that the Torture Convention does not expressively mention this element, but he also argued that this requirement might be concluded from Articles 10 and 11 of the Torture Convention. Moreover, he added that it would not be possible to fulfil the description of the circumstances of the crime of torture, without the victim being deprived of his liberty.(996)

29. With regard to the requirement phrased in the Explanatory Memorandum, that it should concern a deprivation of liberty whereby the victim finds himself under physical control of the government, the Court considers that the Minister of Justice apparently had in mind the provision as defined in Article 1, paragraph 1 Torture Convention Implementation Act, namely when a public official participates directly in the act of torture. It can not be the intention, that the person who himself is not a public official, but who has been incited to deprive a victim of his liberty and to inflict severe pain or mental suffering upon this victim, and therefore acts on the authority of the government, could not be liable for punishment on account of torture if he – and not a public official – is the one who deprives the victim of his liberty.

Examination of the facts

30. The Court concludes that the passengers of the ambulance and the couple [witnesses 3 and 4] found themselves under physical control of the perpetrators. These people were stopped on the public road and were not able to continue their way, because the Defendant and his accomplices made it impossible for them. This obstruction did not only consist of direct and concrete threats with violence, but was also caused by the entire context of genocide in Rwanda.

31. Nevertheless, Mr. [witness 4] received permission to continue his journey with his son. In the given circumstance that the life of his (Tutsi) wife, and also the mother of his son, was directly in danger, there can be no other conclusion than that the entire family [witnesses 3 and 4] was deprived of its liberty and found itself under the control of the Defendant and his accomplices.

(4) The existence of a special intention

Legal framework

32. Article 1, paragraph 1, Torture Convention Implementation Act holds the condition that the ‘maltreatment’ be carried out with the intention to obtain information or a confession, to punish the victim, to cause fear to the victim

or to another person or coercing him into enduring or submitting to certain acts, or out of contempt for a person's right to human dignity.

33. In this manner, the requirement of the existence of a special intention in relation to torture as defined in art. 1, paragraph 1, Torture Convention has been implemented in the Torture Convention Implementation Act. The Dutch legislator finally opted for a comprehensive codification of the criminal intention, contrary to the text of Article 1, paragraph 1 of the Torture Convention, for the benefit of legal certainty.(997)

34. The Explanatory Memorandum to the Torture Convention Implementation Act mentions two internal 'motives' of the perpetrator, of which at least one should be fulfilled. The first motive is aimed at the abuse of the physical and mental integrity of the victim, in order to obtain information from him or a third person or to make him or a third person suffer because of a specific conduct (forcing him to a confession or statement, punishment, intimidation) and the other motive is targeted at discrimination of the fellow man.(998)

35. The required intent of torture has the purpose of distinguishing this crime from maltreatment as a pure arbitrary act.(999) The intent implies a direct link with the interests or the policy of the State and his bodies/public officials, as two authoritative comments to the Torture Convention have indicated.(1000)

Factual examination

36. The Court makes reference to Chapter 3 of this judgement concerning the course, nature and extent of the genocide in Rwanda. Without a shadow of a doubt the Rwandese government, at all levels of its administrative and military body, had control over the planning and execution of the genocide on the Tutsi, the ultimate form of contempt of human dignity.

(5) Incitement and deliberate consent or acquiescence

Legal framework

37. Pain or suffering 'either inflicted by or at the instigation of or with the consent or acquiescence of a public official' is liable to punishment in accordance with Article 1, paragraph 1 of the Torture Convention. The qualifications 'consent' or 'acquiescence' refer to torture inflicted by a person who is not employed by the government or acting in the capacity of public official.

38. The Dutch legislator has implemented 'incitement, consent and acquiescence' as defined in art. 1, paragraph of the Torture Convention in art. 2 of the Torture Convention Implementation Act, with 'incitement' by using one of the means as defined in art. 47, paragraph 1 CC, and with 'deliberate consent'. Based on art. 2, paragraph 2, Torture Convention Implementation Act under a and under b respectively, a person who directly commits torture, in the same way as a public official, is liable to punishment if he is (a) the public official who incites or intentionally allows a person to commit torture and (b) a person who inflicts severe pain and suffering, while a public official has incited him to do so or has intentionally allowed that person to commit torture. These two forms of participation will be discussed below.

39. Incitement is committed, if the following requirements are fulfilled:

(1) The intention of the inciter must be aimed at (a) incitement and (b) all component parts of the incited crime.
(2) The inciter has induced another (the incited person) to commit the criminal offence. One of the requirements is that the inciter has caused the offender to take the 'wilful' decision to commit the alleged crimes.
(3) One or more means of incitement have been used.
(4) The incited crime has been carried out.
(5) The incited person must be liable to punishment.

40. Dutch criminal law does not include another provision that penalises 'intentional consent' as a form of participation in an offence. By defining this form of criminal participation, the Explanatory Memorandum to the Torture Convention Implementation Act is implementing the 'consent or acquiescence of a public official' as defined in art. 1, paragraph 1 of the Torture Convention.(1001) This form of participation requires the knowledge of some public official that torture is being committed and that this public official deliberately decides not to intervene to stop this criminal conduct.

Factual examination of incitement

41. (re 1) The Court has established that the Rwandese government over the years systematically instigated the Hutu population to hatred against their Tutsi compatriots. The Court has also concluded that the genocide was not a spontaneous outburst of ethnic violence, but a massacre of one part of their own population organised by the government.

42. The charges include the names of persons who – as stated above – were 'public officials' at the time of the crimes committed by the Defendant. They need to be regarded as inciters, considering the (leading) role they had in their capacity of public official at central, regional or local level in that period and that they were the ones who devised, organised and/or executed the genocide.

43. Former Prime Minister Kambanda played a key role in the genocide. Minister of Information Niyitegeka was one of the main persons responsible for the organisation and execution of the genocide in the Kibuye préfecture.(1002) In the Mugonero area the main authorities were: Prefect Kayishema, Conseiller Muhimana and Burgomaster Sikubwabo. Muhimana and Kayishema's important and leading role in the genocide in that area is confirmed by the judgements of the ICTR.(1003) As to Sikubwabo, the Court refers to the conclusions concerning his involvement in the Defendant's criminal offences committed against the family [witnesses 3 and 4].

44. In view of the above the Court holds the opinion that the inciters had the intention to induce others, among them the Defendant, to commit torture. Furthermore this consideration leads to the conclusion that the inciters had the intention to induce the torture committed against the passengers of the ambulance, Mrs. [witness 3] and Mr. [witness 4]. By doing so the inciters acted in contempt of the Tutsi's right to human dignity. This discriminatory intention is an established fact that is directly related to the genocide organised and executed by the Rwandese government in the period from April until July 1994.

45. (re 2) The Court has already established (Chapter 3) that the Rwandese government carried out systematic poisonous anti Tutsi propaganda. This propaganda supported the idea that the Tutsi were the enemy of the Hutu. The government promoted the use of brute violence against the Tutsi which would lead to their death. For the necessary execution of its genocidal policy, the government mobilised the Hutu population.(1004) Without a doubt the Defendant also supported these ideas and, as he had become inspired by them, they had provoked him to torture the victims that sat in the ambulance, Mrs. [witness 3] and Mr. [witness 4].

46. (re 3) The inciters used the following means of incitement.
(i) The Rwandese authorities induced the Hutu, and also the Defendant, to commit acts of torture against the Tutsi population by means of deliberate deception.
The above mentioned years of systematic propaganda that demonised the Tutsi and equated them with the RPF, the military enemy, created an incorrect but tenacious image of the entire Tutsi population, which aroused great fear in the Hutu population regarding the Tutsi. This formed the basis for ethnic violence against the Tutsi, among them the passengers of the ambulance, Mrs. [witness 3] and Mr. [witness 4].

(ii) By abusing their powers, the Rwandese authorities incited the Hutu and the Defendant to commit torture. Public officials at national, regional and local level abused the power and influence instituted upon them on account of their public office (1005) in order to instigate the Hutu to hunt the Tutsi down and to exterminate them, to mobilise and organise civilians for this purpose and finally, in some cases, to participate themselves in the attacks on the Tutsi population.

(iii) The Rwandese authorities incited the Hutu, and also the Defendant, to commit acts of torture against the Tutsi population by providing the means. They supplied the Hutu population with weapons that could be used to maltreat, mutilate and kill their Tutsi fellow men. Expert Des Forges wrote that a large part of the population directly received arms from government officials or soldiers as part of the civilian self defence program (shortly before/after 6 April 1994). The distribution of weapons had been well organised by the authorities.(1006)

(iv) The Rwandese authorities incited the Hutu and the Defendant by providing them with the opportunity to commit torture against the Tutsi. They promoted the hunt of their Tutsi fellow citizens. At the same time there was no punishment for the attacks on the Tutsi (1007) and in that way they contributed to the normalisation of violence against the Tutsi. Finally the Hutu who refused to participate in these attacks would be receive punishment.(1008)

47. The Court acquits the Defendant of the other means of incitement mentioned in the charges, because the factual findings contained in the case file do not provide the necessary support.(1009)

48. (re 4). The crimes committed by the Defendant prove that the incited criminal offences have indeed been carried out.

49. (re 5) Defendant is liable to punishment for the crimes he committed after having been incited to commit them. All components of the description of the crime – as mentioned in the above - have been fulfilled and moreover no ground for exculpation is applicable to the Defendant.

Factual examination deliberate consent

50. The Rwandese authorities themselves promoted massive violence against a part of their own civilian population and persisted in that provocation. Under these circumstances this conduct can per definition be regarded as deliberate consent to commit torture. In this context it is not required that the government was informed about each individual act of violence.

Torture that ensues the death of the victim

51. At present the Court has concluded that the Defendant is guilty of torture committed against both the passengers of the ambulance and the family [witnesses 3 and 4]. In the following it will continue to examine whether it has been proven that the torture of the passengers of the ambulance, with the exception of [witness 1] and [witness 2], resulted in the death of these victims. Here again the Court will start by defining the legal framework.

Legal framework

52. The Torture Convention does not include specific provisions regarding the (nature and the extent of) threat of punishment or any aggravating circumstances that would result in an increase of the sentence.

53. The additional aggravated circumstance ‘death ensuing as a result of the act’ was included in Article 1, paragraph 3 of the Torture Convention Implementation Act at the discretion of the Dutch legislator. The question arises under which circumstances the person who committed torture can be held responsible for the death that results from the act of torture. The Court is of the opinion that torture is a specific form of maltreatment and will therefore seek alignment with the explanation given by case law on the requirement of causality regarding the aggravating circumstance, ‘death ensuing as a result of the act’, as defined in Articles 300, paragraph, 301, paragraph 3, 302, paragraph 2 and 303, paragraph 2 of the Criminal Code.

54. By doing so the Court deviates from the Prosecutor’s point of view, who argued that alignment needed to be found with case law concerning the offence of hostage-taking which results in the death of the victim (art. 282a, paragraph 1, in conjunction with paragraph 2, CC), in which case it is not decisive if the act that resulted in death should be considered as an independent act of hostage-taking.(1010) For that matter, the taking of hostages is completely different from the crime of maltreatment.

55. Similar to cases of death ensuing as a result of maltreatment, the provision of death ensuing as a result of torture has a second causality. The first one refers to the causal relationship between the Defendant’s alleged crimes and the victim’s pain or suffering. The second regards the causal link between the act of torture and death.

56. In the opinion of the Court – just like in cases of maltreatment – it must be the act of torture that results in the death of the victim and that a distinction needs to be made between different forms of torture, and that it must be established whether the imputation of that death is reasonable or not. Liability under criminal law for the death inflicted upon a victim is only applicable, if the acts of torture may reasonably have been the cause of death. It is not sufficient, as suggested by the Prosecution, that it should be regarded as ‘one uninterrupted combination of (threatening and) violent acts which not only constitute torture, but also entail death.(1011) This would contribute insufficient independent significance to the second causality requirement, in the meaning of reasonable attribution to the perpetrator.

57. In cases of death ensuing as a result of maltreatment, in order to prove the causal relationship it is sufficient that the perpetrator may reasonably be held accountable for the result of his criminal conduct, being the death of the victim. In cases of acts of torture which bring about severe physical pain and mental suffering and whereby the violence that was used consists of stabbing and kicking the victims with machetes, the death ensuing as a result of these acts is – without any reservation – a consequence for which the criminal liability can be attributed to the offender.

Factual examination

58. The Court has already concluded that Dativa and her children and Brigitte and her children were beaten up with clubs and stabbed down with machetes, which caused the death of these victims. Furthermore it has concluded that the Defendant gave the instructions to commit these acts. Without any doubt, the Defendant should be held responsible for the death of these victims.

59. The Court has established the facts that Defendant, in conjunction with others, also committed the following acts, being that he:

- 'forced the passengers of an ambulance, at least a car, including
[witness 1] and [witness 2] and/or Dativa (the wife of Gerard Muhutu) and/or one (or more) of her children and or Brigitte (the wife of Anaclet Munyanziza) and/or one (or more) of her children, at Birogo to stop and/or
- forced them or gave orders to them to go to Mugonero and/or
- during this drive from Birogo to Mugonero surrounded this ambulance/car or gave orders to keep it surrounded and/or (on that occasion) showed weapons (fire arms) and/or (a) machete(s) and/or (a) club(s) and/or slammed (in a threatening manner) on the outside of the ambulance/car and/or shouted (in a threatening manner) and/or used abusive terms (in a threatening manner) (like Inkotanyi/cockroaches) and/or
- (subsequently) forced the passengers of this ambulance/car to step outside in Mugonero, at least gave the instructions to them to step outside and/or
- said (audibly to) [witness 1] (in a threatening manner): “before the cockroaches are killed, the driver should be killed first” and/or “We are glad that we found these women; we are going to murder these beautiful women in open air”, at least words of similar nature and/or meaning, and/or
- (subsequently) forced them, at least gave the order, to stand in line (while they were (kept) surrounded and/or
- (by doing so) placed them in a prolonged situation in which they had to fear for their lives and/or the life of their family members and/or friends and/or acquaintances.’

60. These circumstances jointly – and in some cases also individually – could be regarded as acts of mental torture committed by the Defendant. However, the state of great fear and severe mental suffering that resulted from the torture did not cause the death of the victims. Therefore it can not be proven that their death was the result of these criminal acts committed by the Defendant.

Conclusion

61. The Court draws the conclusion that the Defendant, together with others, tortured [witness 1] and [witness 2]. Jointly with others he also tortured [witness 3] and [witness 4]. Together with others he tortured Dativa, the wife of Gerard Muhutu, and Brigitte, the wife of Anaclet Munyanziza, and at least four of their children which resulted in the death of these victims.(1012)

Chapter 17: Punishability and legal provisions

1. No facts and circumstances have become apparent that would exclude the punishability of the acts. This constitutes the criminal offences mentioned in the decision.

2. The Defendant is liable to punishment, because no circumstances have become manifest that might exclude him from punishment.

3. The sentence to be imposed is based on Articles 47 and 57 of the Dutch Criminal Code, as well as Articles 1 and 2 of the Torture Convention Implementation Act, as they were in force at the time of the proven charges.

Chapter 18: The claims of the plaintiffs

1. [Witness 4/plaintiff 1], [witness 3/plaintiff 2] and A. Harorimana have all (individually) joined as plaintiffs in the proceedings to claim damages, each for an amount of € 680,67. All of them were represented by Mrs. L. Zegveld, lawyer in Amsterdam.

Jurisdiction of the District Court to adjudicate upon these claims for damages

2. In connection with the submitted claims the following legal Articles are applicable (as far as relevant at present):
- Article 332 up to and including 337, Article 361 of the Code of Criminal Procedure, as they read before the new

legislation supplementary to the Criminal Code and Code of Criminal Procedure entered into force on 23 December 1992, the Temporary Regulation concerning the Criminal Injuries Compensation Fund Act and others laws containing provisions for the benefit of victims of criminal offences, Bulletin of Acts and Decrees (hereafter: Stb.) 1993, 29 (hereafter: Terwee Act),
- Article 56 (old) of the Judiciary System Act (hereafter: JSA).

3. In this context the Court has established that for the Hague district, the Terwee Act entered into force on 1 April 1995. From the transitory provisions of this Act (1013) it appears that a number of Articles, including Article III, which adds the Articles 51a, 51b, 51c, 51d, 51e, 51f and (among others) Article 332 ff., and which amends Article 361 Code of Criminal Procedure, are not applicable to criminal offences that were committed before this Act became effective.

4. The old law, which is applicable in this case, limited the possibility for joinder of civil claims of a rather small amount. These amounts, laid down in Article 56 JSA, were ultimately increased by the Law of 10 October 1978 (Stb. 1978, 528). This relevant Article 56 (old) JSA, included the following provisions:

1. The District Courts(...):
(...)
6. (They) also take notice of the claims for compensation of costs and damages for the benefit of the plaintiff, if these claims do not exceed fl. 1500. If those claims do exceed fl 1500, they shall institute individual civil proceedings against a defendant in order to claim damages.

5. Seen the fact that the claims of the plaintiffs are limited to an amount of
€ 680,67, the Court has the competence to adjudicate upon these claims.

Admissibility of the plaintiff

Simple nature of the claims

6. At the hearing of 20 October 2008 regarding the claims of [witness 4/ plaintiff 1] and [witness 3/plaintiff 2] and during the hearing of 23 October 2008 regarding the claim of A. Harorimana – different from the judgement of the Appeals Court in the Van A. case (1014) – the plaintiff's Counsel pleaded that simplicity of the claim was not a legal requirement before the introduction of the Terwee Act. In order to support her point of view, counsel sent a letter to the Court to draw its attention to the conclusion in this case drawn by Advocate General Machielse at the Supreme Court of the Netherlands, on 18 December 2008.

7. In the above mentioned conclusion, the Advocate General stated that he tended to the conclusion that a quantitative criterion had been replaced by a qualitative criterion. According to the latter, before the effective date of the Terwee Act, the legislator seemed to start from the point of view that setting a maximum for the claim of a plaintiff would prevent the criminal judge from having to deal with all kinds of complicated civil matters. For that reason he concluded that the Appeals Court had assumed a competence, that it had not been assigned with based on the old law and therefore it had wrongly dismissed the claims of the plaintiffs.

8. In relation to the question whether the claim needs to be of simple nature in order to be allowed in criminal proceedings, the Court observes that the Terwee Act does require this qualitative criterion. The old law, applicable in the present case, did not (explicitly) set this requirement. However, as mentioned before, the possibility for joinder of civil claims was limited to claims of a rather small quantity. In the Explanatory Memorandum to the bill which resulted in the Terwee Act, the Minister makes the following observations regarding the addition of this qualitative criterion:

'The limited amount as laid down by the present law concerning the plaintiff's claim is usually defended by making reference to the accessory character of this claim. (...) As appears from the above justification of the joining procedure, I still subscribe the accessory character of the plaintiff's claim. (...) Setting a limit to the amount of the claim for me is not the ideal way to avoid the danger of letting the proceedings of the plaintiff's claim overshadow the criminal proceedings. As a matter of fact such a limit gives reason to believe that there is a correlation between the height of the claim and the complexity of the disputed case, which is not always true. The complexity of the case often depends on many different factors than the height of the claim. (...)
Nevertheless, I do subscribe the purpose of this limitation, which is to guarantee the accessory character of the claim. However, this purpose can be obtained even better by subjecting the claim to a qualitative criterion instead of a quantitative criterion.'
(Parliamentary Documents II, 1989-1990, 21 345, nr. 3, p. 9-11)

9. Based on the above, in the opinion of the Court when answering the question whether the plaintiffs' claims are sustainable in these proceedings, the question whether these claims are of simple nature is not at all relevant.

Applicable law

10. In relation to applicable material law, the Defendant and the plaintiffs announced at the court hearing of 23 October 2008, that they had not been able to reach agreement on the possibility of selecting the applicable law as offered by Article 6 of the Conflict of Laws Act in cases relating to unlawful acts. As defined in Article 3 of the Conflict of Laws Act in cases relating to unlawful acts (1015), the law of the State where the unlawful acts were committed is applicable, in this case: Rwanda.

For the assessment of the claim, based on Article 7 of the Conflict of Laws Act in cases relating to unlawful acts (1016) Rwandese law is applicable to the following elements: the grounds for and the extent of the accountability; the existence and the nature of the damages that qualify for compensation; the extent of the damage and the way in which it shall be compensated; and the prescription of the claims.

11. The Counsel for the plaintiffs has submitted documents of the International Judicial Institute (hereafter: IJI) in order to sustain the claims and the determination of applicable law.

Prescription of the claims

12. At the court hearing of 18 November 2008, the Counsel for the Defendant submitted (without further substantiation) that the claims had become void by prescription pursuant to Articles 613-621 of the Code des Contrats ou des Obligations Conventionelles dated 30 July 1888 (hereafter: Codes des Contrats).

13. At the hearing of 19 November 2008, the plaintiffs'Counsel argued that the claims had not become prescribed and made reference to an IJI document. She submitted that not Articles 613-621, but Articles 645 unto 648 of the Codes des Contrats are applicable and that these provide a time-limit for civil claims of 30 years.

14. The Court concludes that from the IJI documents submitted by the plaintiffs' Counsel it appears among other matters that, pursuant to Article 116 of the Criminal Code of Rwanda dated 18 August 1977 (1017), civil claims related to criminal offences become prescribed based on civil law regulations. As results from the IJI report, relevant regulations of civil law are provided for in Articles 645 up to 647 of the Code des Contrats. Article 647(1018) of this law states that civil claims become prescribed after a period of 30 years.

15. In view of the above the Court deems that based on Rwandese law the claim for damages has not become prescribed.

Regarding the claims of A. Harorimana

16. Seen the fact that the Defendant was acquitted of the charges under count 1a of indictment II, the Court disallows the plaintiff's claim.

Regarding the claims of [witness 4/plaintiff 1] and [witness 3/plaintiff 2]
17. Seen the fact that the Defendant is convicted on the charges under count 3 of indictment I, the damage claims of these plaintiffs are all allowable. Next the Court needs to determine if these claims shall be awarded.

Validity of the claim

18. As stated above, Rwandese legal provisions are applicable to the grounds for and the extent of the accountability; the existence and the nature of the damages that qualify for compensation; the extent of the damage and the way in which it shall be compensated.

19. The IJI report shows that the accountability for an unlawful act has been laid down in Article 258 ff. of the Code des Contrats. These Articles in so far as relevant include the following provisions:

Article 258:
A person who causes damage to a third person as a result from an act, is liable to pay damages.

Article 259:

Any person is liable for the damage that he caused, either as a result of an act, or as a result of an act of omission or negligence.

20. As results from the IJI report, the Code des Contrats does not provide any details regarding the nature of the damage that is applicable for compensation and that for that reason the general provisions need to be observed. One of these general provisions has been laid down in Article 43:

Article 43
In case of a prohibition, the offender is liable to pay damages as a result of a violation of that prohibition.

21. Moreover, a special course of justice is applicable to the perpetrator of the crime of genocide in Rwanda. In this context the 'Organic Law No. 08/96 on August 30, 1996 on the Organisation of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990' entered into force on 30 August 1996. This law was repealed on 19 June 2004 and substituted by the 'Organic Law No. 16/2004 Establishing the Organisation, Competence and Functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994'.

22. The Court takes due account of the fact that the Defendant is not held accountable for genocide before this Court, since this falls outside the jurisdiction of the Netherlands. However, since Rwandese law is applicable and the plaintiffs are included in the definition of victim as defined in that law, (1019) in the opinion of the Court this is without prejudice to the fact that these laws are also applicable to the assessment of the claims.

23. The IJI report also shows that Article 96 of the Organic Law No 16/2004 includes the following provision:

Other forms of compensation the victims receive shall be determined by a particular law.

24. As results from this Article, the intention of the Rwandese legislator was to incorporate other forms of compensation in a separate law.
Although the Court is not able to determine whether a separate law is in force, which regulates other forms of compensation, the IJI report shows that judges at the ICTR awarded immaterial damage claims to victims of genocide. In this respect the IJI report made reference to a judgement of the Appeals Court in Kigali dated 13 April 1999 in the case against Namahirwe. This judgement included the ruling that the Defendant was convicted to pay 800.000 FRW on account of 'dommages moreaux'.

25. Based on the above, the Court concludes that the Defendant committed an unlawful act in accordance with Rwandese law and that he can be held accountable. The circumstance that Rwanda is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment does not imply that the Defendant, through his conduct (which in the Netherlands is qualified as torture) would not have committed an unlawful act.

26. The Counsel for the Defendant argued that the charged criminal offence is not founded on the plaintiffs' damage claims; the damage was suffered as a result of other traumatic experiences for which the Defendant cannot be held accountable. Based on the medical reports submitted by the plaintiffs' Counsel concerning both [witness 4/plaintiff 1] and [witness 3/plaintiff 2], the comments on the claims and the contents of the case file, the Court believes that the damages claimed by the plaintiffs were directly caused by the proven charges. The argument submitted by the Counsel for the Defendant that it was a matter of the [witness 3/plaintiff 2]'s own fault because she herself was responsible for losing her travel documents, does not have any sense of reality, is unnecessarily hurtful and does not deserve any further comment.

27. Since it has been established that the damages are liable to payment also under Rwandese law and that the Defendant is also liable for payment on the basis of this legislation, the Court concludes that the claims of the plaintiffs are founded and should be allowed.

Adjudication of the costs incurred by plaintiffs [plaintiff 1] and [plaintiff 2] and the Defendant
28. The Counsel for the Defendant pleaded that the costs of the proceedings should be adjudicated according to Rwandese law. As stated in the above, Article 7 of the Conflict of Laws Act in cases relating to unlawful acts determines a number of aspects to which the relevant (foreign) law is especially applicable. In this enumeration, as indicated before, the costs of the proceedings are not mentioned. In the opinion of the Court these costs do not fit in with the systematics of the enumeration. Moreover, it does not become evident that these costs should be adjudicated based on the applicable foreign law. After all, the costs incurred by the plaintiffs are closely related to

the Dutch criminal proceedings. For that reason the Court rejects this plea.

29. Since the claims of the plaintiffs [plaintiff 1] and [plaintiff 2] are awarded, an order for the costs of the plaintiffs should be given against the Defendant. At present these costs are estimated at € 9.378,93 (jointly for both plaintiffs) as costs for legal assistance and for further execution.

Chapter 19: Grounds for the punishment

1. The Defendant is found guilty of committing serious crimes at the time of the genocide in Rwanda in 1994. The Defendant gave instructions to kill with clubs and machetes two Tutsi mothers and their young children, who tried to find a safe place by fleeing in an ambulance. Furthermore in his place of residence Mugonero, during several hours the Defendant held a fleeing family including a few months old baby in a prolonged state of mortal fear. He humiliated them and threatened to kill (to direct the killing) of the wife in front of her husband and child. In the above Chapters the actual facts of the incident were discussed in detail. The proven charges all refer to international crimes and can be qualified as acts of torture.

2. The Court agrees with the Prosecution in stating that the crimes committed by the Defendant are among the most serious crimes ever tried in a Dutch courtroom. The way in which Defendant committed these crimes shows a deep rooted hatred against the Tutsi population in Rwanda and a total denial of and depreciation for human values.

3. The Defendant deprived two women and at least four children of their most precious property: life. And due to the Defendant four persons suffered mortal fear (for hours). As results from the statements in the case file made by the survivors – the couple [witnesses 3 and 4], [witness 2] and [witness 1] –
and from trial testimonies [as victims] rendered by the couple [witnesses 3 and 4] before the Court, it was extremely difficult for them to be reminded of these facts and to have to talk about them, within the framework of this investigation. This shows the extent of the trauma they suffered as a result of the genocide in general and the conduct of the Defendant in particular and the extent in which all of this still has an impact on their daily lives still now, after 15 years.

4. To illustrate this the Court quotes from the statement of [witness 1] made before the NCIS: “I am not capable of going on telling you what happened. It was really horrible. If I tell you what happened, it all comes back to me again. This is very difficult for me. Those people [the passengers of the ambulance] asked me to help them. There was nothing I could do to help them. They were people I knew from the village. (...) Almost 12 years have gone by since the genocide took place. Life went on, but since the genocide I have never been happy anymore. I think about it every day. Whenever I go to places where I used to know people, nobody is alive anymore. I feel like a prisoner. My friends are no longer there. My colleagues have disappeared, my neighbours, people of my own age. They are no longer there. We used to be happy together. But now everybody is dead.”

5. [Witness 2] told the NCIS and the Examining Judge about her fear of dying either inside or outside the ambulance: “I was not only afraid of dying but also of being stabbed to death with the machetes I had seen. Everybody in the ambulance was afraid. I saw that everyone was crying and begging for mercy from the Interahamwe. I also begged for mercy but nobody outside heard us because they were also yelling at us. I cried and shouted because I was so afraid of dying.” Her statement also shows the humiliation at the moment that she and the other passengers had stepped out of the ambulance: “There were many curious people standing there. They wanted to see how we would get killed. We were standing in line. First they searched our bodies and started stealing our francs and clothes from us. I was standing at the end of the row, I was the last one.”

6. Mr. [witness 4] testified in court that he and his wife had already had to suffer the atrocities of the genocide for several weeks before the day that the Defendant held them at the road block in Mugonero – which was on 27 April 1994 – but that for him and his wife that 27th of April had been a turning point in their lives, the start of a second life. The mortal fear, humiliation and impotence that they had been confronted with on that day, severely damaged them for the rest of their lives. Ever since that date he and his wife suffer from posttraumatic complaints, including all kinds of “fears concerning life which might be difficult to understand for outsiders”. Mr. [witness 4] testified that he is deeply moved by the fact that the Defendant has not shown any acknowledgement regarding the facts, has not offered his regrets and did not even try to make an effort to offer his apologies.

7. In her victim statement Mrs. [witness 3] explained how she was hurt within the deepest parts of her soul by the conduct of the Defendant at the barrier. She stated: “I was not released as a human being, a person who deserves to live, but only thanks to my husband, a German national and development aid worker. I was released because

they did not want to damage the relations between Germany and Rwanda."

8. The Defendant is found guilty of crimes committed in Rwanda and in the first place these crimes constitute a serious violation of Rwandese legal order. The proven facts constitute international crimes which at the time caused serious indignation, disgust and disturbance to the international legal order, as they still do today. Hence this also is a serious violation of international legal order. Since the Netherlands also belong to this international legal order, the violation of the international legal order also constitutes a violation of the Dutch legal order.

9. In addition the Defendant came to the Netherlands to apply for asylum, and by doing so he indicated that he wanted to be(come) a part of Dutch society. People who originate from Rwanda and who were confronted with the atrocities of genocide in that country, today also form part of that society, a society that does not want to admit perpetrators of horrible crimes like the present ones. Partly because of those reasons, the present crimes have (also) turned into a case that involves the Dutch legal order and as well as Dutch law.

10. The penal provisions are always determined by the seriousness of the crimes and the circumstances in which they were committed, the personal circumstances of the Defendant and the intended purposes of the sentence to be imposed. In this case this leads to the following considerations.

Gravity of the crimes and the circumstances in which they were committed

11. The proven facts have been legally qualified as crimes of torture, committed several times, while these criminal offences resulted in the death of at least six persons. Torture, especially with death ensuing as a result of the act of torture, belongs to the category of the most serious crimes, just like genocide, crimes against humanity and war crimes. The Court wondered if any principle of gradation is applicable to these crimes, which might help determine the sentence.

The Court concluded that in general and also in this particular case the answer to that question is negative. The legal history of the Torture Convention Implementation Act does not provide any point of reference for the establishment of a certain gradation. Pursuant to the Criminal Law in Wartime Act and the Genocide Convention Implementation Act, the threat of punishment for crimes of torture that result in the death of the victim, is similar to that for war crimes and genocide, which crimes were liable to punishment at the time that they were committed. Furthermore, international case law shows that regarding the determination of an appropriate sentence for international crimes, the attention is focussed on the gravity of the criminal conduct and the form and level of participation, irrespective of the legal qualification of international crimes. Indeed the international tribunals do not have jurisdiction on torture as an independent crime, but it cannot be concluded why this should be different in cases of torture. The Defendant's conduct that has been qualified as torture, committed several times, with death as a result, does not render his conduct less serious than in the case when he could have been tried on charges of genocide or if the crimes had been qualified as war crimes. Guided by the internal conviction that the Tutsi population had to be exterminated, which conviction had been drummed into him over the years by poisonous government propaganda, on two occasions the Defendant took decisions on the life and death of other persons. The Defendant followed and promoted this government policy and gave instructions to others to kill at least six Tutsis. Although it has been declared proven that the Defendant acted as a person who had been 'incited' by others and not as someone who was an 'inciter' himself, and although in order to fulfil the qualification of torture it is not necessary to prove that the perpetrator had the intention to kill the victim, it can be concluded that from a material point of view the Defendant did act as inciter and that he did have the intention to kill the passengers of the ambulance.

12. The Court does take into account that the Defendant committed his crimes at a time when Rwanda as a whole was the scene of violence and that his violence had been incited and promoted through years of government propaganda, which systematically dehumanised the Tutsi. The Court is also aware that numerous Hutu, at all levels of society, supported this racist ideology and participated in the genocide. The violence was also aimed at moderate Hutu who allegedly resisted or did not adequately support this policy. The Defendant committed his crimes under circumstances that can hardly be imagined in a Dutch context.

13. Nevertheless, in view of his position, the Defendant should have resisted this hate propaganda, more than most of his fellow countrymen. At the age of 26, the Defendant could be regarded as a developed man at the time of the genocide. He had been raised in a rich and prominent family and had gone to study in Italy. Therefore he was not, as could be said of most of his fellow countrymen, illiterate and economically dependent. He had had the possibility to educate himself. The Defendant should have known better and could have made other choices, like some other Hutu did. In this connection and to set an example, the Court wants to draw the attention to [witness 1], a driver, who did show his civic courage. However, the Defendant did not resist this hate propaganda. On the

contrary. He was more than willing to execute the genocidal policy of the government, and he also induced people of a weaker social position to participate in the genocide.

The personality of the Defendant

14. As to the personality of the Defendant at the time of the proven facts it is important to observe that, in the absence of indications that show the contrary, the Defendant is fully responsible for these proven facts. The Public Prosecutor has not applied for a report regarding his mental capacities and the Counsel for the Defendant did not apply for such a report either. One could wonder if an expert in the year 2008 or 2009 would be able to comment anything on the mental capacities of Defendant during the period mentioned in the charges. The Defendant has been living in the Netherlands since 1998. Until his arrest in connection with the present case, apart from a decision not to prosecute on account of vandalising in 2003, the Defendant had not been in trouble with the law in the Netherlands before.

15. During his trial the Defendant not only denied the proven facts, but even denied the existence of an ethnic conflict in his country in 1994. The Court recalls the things that have already been observed in this respect in prior Chapters of this judgement, being that, among other things, he stated that he had not noticed anything in his village about a distinction made between Hutu and Tutsi, that he did not even know who was Hutu and who was Tutsi and that after he returned from Italy he did not notice any increased ethnic tensions. The Defendant's statement which implied that Mugonero was a quiet place at the time of the genocide, where Hutu and Tutsi lived peacefully together without being aware of each other's ethnicity, can only be regarded as a pertinent lie and a cynical denial and contempt of reality.

16. On one of the occasions when he was questioned by the NCIS, at the question whether he knew why Mrs. [witness 3] had made an incriminating statement against him, Defendant answered that it was "logical" that she, "being a Tutsi woman" would do anything to get him into trouble. During the court hearing the Defendant casually remarked that the Court should not only ask itself whether the Hutu killed Tutsi, but also "what the Tutsi had done to deserve to die". When later on he was asked to explain this statement, he kept invoking his right to remain silent. It is difficult to understand the above statements quoted from the Defendant in an other way than that he still is a supporter of the anti-Tutsi ideology. This impression is sustained by the indications in the case file that the Defendant over the past years kept contact and still keeps contact with fanatical 'génocidaires'. During the trial the Defendant did not show any signs of understanding, remorse or regret. The passionate cry for acknowledgement, regret or apologies from the couple [witnesses 3 and 4] during the trial was not answered by the Defendant. With his denial, the Defendant withholds the survivors the possibility to make a step forward in their mourning process. The Court strongly blames him for not taking responsibility for the crimes he committed and the suffering he inflicted upon other persons.

Purposes of sentencing

17. The sentence to be imposed in this case should first of all be in reprisal for the extreme seriousness of the crimes, the fact that he took the lives of at least six victims – two mothers with young children – and the suffering inflicted upon their next of kin. Considering the universal character of the crimes, the sentencing should also serve the purpose of compensating the damage inflicted upon international legal order and should also focus on the interest of the humanitarian standards at stake. Finally the sentence to be imposed should be aimed at frightening others who might have the intention to commit such serious crimes.

The balance halfway

18. It goes without saying that the present crimes, considering their extreme gravity and the high number of victims, can only be punished in the Netherlands by means of a (very) lengthy term of imprisonment. When determining the appropriate sentence in this case the Court needs to concentrate on the question whether (at the time of the proven fact and also today) the maximum term of 20 years imprisonment or a life sentence should be imposed upon the Defendant, while keeping in mind the purpose of the sentencing and the personality of the Defendant.

19. The Public Prosecutor demanded life imprisonment from the point of view of reprisal and general prevention.

The Public Prosecutor requested the Court to declare the charges proven on all counts (except for one), although the Prosecution explicitly held the view that even if the Court would decide on acquittal regarding one or more of the charges, a term of life imprisonment would still be appropriate. The Prosecution put forward the – apparently rhetorical – question: "if these types of crimes do not put you into prison for life, which ones would?"

20. A person who has been found guilty of committing the proven facts is liable to a sentence of life imprisonment. In its decision about the sentence to be imposed in this case, the Court also took into account the sentences imposed by international tribunals (especially the ICTR) as well as the judgements pronounced by international courts in Switzerland and Belgium, which tried cases against accused who committed crimes during the genocide in Rwanda. Moreover the Court focussed on Dutch practices in relation to sentencing and enforcing life sentences.

21. For the determination of the sentence in this case, at first sight, the Dutch sentencing practice and that of the international tribunals offer hardly any reference points. This is the first time in the Netherlands that an accused person is on trial for crimes committed during the genocide in Rwanda in 1994. Except for some cases that were tried under special criminal jurisdiction after the Second World War, no other case is known in the Netherlands that involved crimes that are in anyway comparable to the facts which have been declared proven in the present criminal proceedings. Once before a Congolese man was convicted for complicity in torture (District Court Rotterdam 7 April 2004, LJN AO7178), but that was a case which cannot be compared to the present one and it did not involve any fatal casualties. In case law from the international tribunals, especially the ICTR, criminal offences like the ones in the present case were brought to trial, but in those cases – in general - the accused were always either high ranked military officers or other public officials, as well as persons with a high position in society.

Sentencing at the ICTR

22. The Prosecution holds the view that an orientation on sentences imposed by international tribunals for the crimes in Rwanda can only be of limited value. The Prosecution argued that international criminal law practice offers only a few possibilities for harmonisation of sentences, because it is always difficult to make a comparison between the facts of different criminal cases, and it is hard to establish the extent of the executions of the sentences (seen the various legal systems of early release in different countries). Moreover, the circumstances in which the imposed sentence is enforced can be very different as well. Hence, according to the Prosecution, when determining the appropriate sentence in this case, it is less obvious than it might seem to first look at the sentences that were imposed, for example, on the brother of the Defendant (by the ICTR) and the sister of the Defendant (in Rwanda itself).

23. The Court concludes that the ICTR, just like the other international criminal tribunals, is focussed on the prosecution of the "most senior leaders suspected of being most responsible" for the crimes over which it has jurisdiction (see Resolution 1534 (2004) of the UN Security Council). The Tribunal is an international authoritative institute that has gathered a lot of expertise over the past years concerning the conflict in Rwanda in 1994. This Tribunal must be considered more capable than any other judicial authority to weigh and assess the position of the authors of the genocide and the local circumstances. In order to determine the sentence in this case, the Court finds it important to give consideration to case law established by the ICTR. However, the Court acknowledges that this case law is not always uniform and consistent regarding the sentences imposed, as the Court has also taken due notice of the criticism expressed in literature on this subject.

24. From the sentencing practice of the ICTR, at least the following facts may be concluded: in order to determine the height of the penalty, the gravity of the crime and the level of participation should be the main items to focus on. Apart from those items, the social position and responsibility of the offender should be taken into account. When the ICTR imposed the sentence of life imprisonment (for instance) in the Cyangugu case, on 25 February 2004, the Trial Chamber brought forward the following considerations: "The Chamber considers that life imprisonment, which is the highest penalty permissible under the ICTR Statute, should be reserved for the most serious offenders, such as individuals who planned, led, or ordered a particular criminal act, or individuals who committed crimes with particular cruelty, and underscores the significance of the principle of gradation in sentencing, which allows the Chamber to distinguish among crimes, based on their gravity" (para. 815).

25. In view of the case law established by the ICTR it should be doubted whether the Defendant, considering his social position would qualify for trial by this tribunal and likewise, if he would be brought to trial, the question remains whether he would be sentenced to life imprisonment based on the proven facts and his capacity of civilian who did not have an important social position. The Court will include this point of view in its statement of reasons for the judgement.

Judgements in Switzerland and Belgium

26. The 'Cour d'Assises de l'Arrondissement Administratif de Bruxelles-Capitale' brought the "four of Butare" to trial on 8 June 2001 and convicted them for war crimes committed during the genocide in Rwanda in 1994. In 1994,

Belgian law provided for universal jurisdiction over war crimes and crimes against humanity, not (yet) over genocide. The convicted persons were a former minister and factory director (Alphonse Higaniro), a former professor at the University of Butare (Vincent Ntezimana) and two Benedictine nuns (Consolata Mukangango and Julyenne Mukabutera). They stood trial on account of involvement in large scale violence against Tutsi. The Public Prosecutor had demanded a sentence of life imprisonment with regard to all four accused persons. The Cour d'Assises sentenced them to terms of imprisonment of 20, 15, 12 and 12 years respectively.

27. The Military Appeals Court in Geneva convicted Niyonteze, a burgomaster of a large municipality, for war crimes on 26 May 2000. He was involved in the killing of at least three Tutsis. The maximum penalty to be imposed for this crime was a term of 20 years imprisonment. He was sentenced to a term of 14 years.

Life imprisonment in the Netherlands

28. The administration of criminal justice in the Netherlands of old contains the basic principle, based on humanitarian grounds, that even in the case of very serious criminal offences the perpetrator should basically have the prospect of being able to return back to society. This principle is also sustained by the European Court of Human Rights (hereafter: ECtHR) (see e.g. Kafkaris v. Cyprus judgement of 12.2.2008, appl. no. 21906/04). Precisely for this reason judges in our country observe reticence when they are considering a sentence of life imprisonment, also in cases that involve crimes against the lives of other persons. In the opinion of the Court this reticence is also applicable to the sentencing in the present criminal case; in fact, the Defendant is on trial in a court in the Netherlands and his case is tried on the basis of Dutch criminal (procedural) law. However, neither the law nor case law in this country opposes the imposition of a sentence of life imprisonment exclusively based on the gravity of the offences (see District Court (DC) The Hague 31-3-2006, LJN AV7820). Nevertheless in the most recent trials involving crimes against the lives of others that resulted in the imposition of life imprisonment sentences, the most important and decisive argument for this highest penalty was the evident danger of repetition of similar crimes (see DC Haarlem 20 January 2009, LJN: BH0323; DC Utrecht 13 February 2009, LJN: BH2918; Appeals Court (AC) Arnhem 28 June 2006, AX9524; AC The Hague 15 August 2008, LJN: BD7249, DC Rotterdam 3 October 2008, LJN: BG2009).

29. It cannot be excluded that Defendant is capable of committing similar crimes in the future, if he finds himself again in a situation as in Rwanda in 1994. However there is no reason to assume that the Defendant would commit crimes against the lives of others or other very serious (international) crimes outside such a situation. The question whether in the future a comparable situation of genocide as in Rwanda in 1994 will arise again, can only be answered by means of speculations. The contents of the case file and the proceedings do not offer sufficient reference points to assume an evident and concrete danger of repetition of similar criminal offences in the future. For that matter, in its considerations the Prosecution did not explicitly state or make reference to the existence of such danger. Hence it cannot be concluded that for reasons of specific prevention it is not sufficient to impose a term of imprisonment.

30. In the above mentioned judgement of Kafkaris v. Cyprus of the ECtHR of 12 February 2008, the central issue to be discussed was if the sentence imposed upon the complainant was contrary to article 3 European Convention of Human Rights (hereafter: ECHR) (including the prohibition of inhuman punishment). In brief, the ECtHR ruled that the imposition of life imprisonment, without the possibility of any adjustment of this sentence, might constitute an infringement of Article 3 ECHR. It is essential for a person sentenced to life imprisonment to have any "prospect of release". If national legislation holds the provision of verification or modification of the imposed sentence of life imprisonment, this sentencing will not be contrary to 3 ECHR.

31. In the Netherlands "law and practice" regarding the application of life imprisonment sentences has been a topic of discussion over the past years. Among other publications the Court has taken notice of the recommendations “Life imprisonment. Prospects of change” written by the Council for the Application of Criminal Law and Juvenile Protection (hereafter: RSJ) dated 1 December 2006, as well as the supplement to these recommendations dated 20 April 2008. From (the summary of) these recommendations of 1 December 2006, the following paragraph is important:
“In the present way of enforcing imprisonment for life sentences, whereby ‘for life’ is literally regarded as a detention ‘until death follows’, the Netherlands holds an exceptional position within Europe. In most European countries the national laws and regulations provide that after approximately fifteen to twenty years a judge will verify whether a continuation of the lifelong detention is still necessary and lawful. In the Netherlands, where such a legal provision for judicial verification has never existed, the person sentenced to life imprisonment may request a remission of sentence, also called a request for pardon. Until the eighties this pardon policy was supported by the general prevailing political idea that also offenders of very serious crimes basically deserved a chance to return back to society. As a result from political developments this pardon policy is hardly being applied. Nowadays a

person who is sentenced to life imprisonment in the Netherlands knows that there are no regulations which enable him to request a verification of the purpose and necessity of the continuation of his detention after a certain period."

32. The RSJ recommended an amendment of the laws and regulations in relation to the execution of life imprisonment by the introduction of a periodical verification of the danger of reoffending after fifteen years. Dependent on the result of this verification it can be decided to transfer the detainee to a less secured prison regime or to convert the sentence into 'a term of imprisonment for a specific number of years', which allows for conditional release.

33. The Court has also taken notice of the conclusion drawn by Advocate General Knigge at the Supreme Court of the Netherlands, , of 30 September 2008 (LJN: BF3741). This conclusion, in connection with the ruling by the AC Arnhem of 18 April 2007 (LJN: BA3178), regards the question if life imprisonment is contrary Article 3 and/or Article 5, paragraph 4 of the ECHR. Knigge draws the conclusion that in the Netherlands a large gap is arising between the "law" and "practice" of enforcement of life imprisonment sentences, or "more specifically, between the law and the political will to put that law into practice." In particular the uncertainty that exists at the moment about the question whether a person sentenced to life imprisonment in the Netherlands has a prospect of release, which would almost constitute a violation of the convention, according to the Advocate General. In individual cases this uncertainty might also lead to the conclusion that there has been a violation of Article 3 ECHR. This "cautious conclusion" drawn by the Advocate General – which is underscored by the Court – is that the way in which the Netherlands enforces life imprisonment sentences at present seems to be on bad terms with the ECHR.

34. These findings and conclusions constitute reasons for the Court to assume, in accordance with present policies, that the imposition of a life sentence holds a very small chance of remission of the sentence. Therefore the person sentenced to life imprisonment will undergo his punishment with very little prospect of being able to return back to society. This circumstance calls for an even more reticent attitude towards the imposition of life sentences.

Final conclusion

35. The above considerations lead to the following final conclusion. The Court is faced with a dilemma: the choice between the maximum term of imprisonment of 20 years (de facto 13 years and 4 months) or a sentence of imprisonment for life, whereby "for life" in practice is basically "for the rest of his life". There is a large gap between these two options. The Court finds that the imposition of a term of 20 years imprisonment does not sufficiently do justice to the gravity of the crimes committed by the Defendant. On the other hand, especially now that according to present policies there is no real prospect of release, in the opinion of the Court this life sentence must only be imposed out of imperative necessity. The present case has not shown this imperative necessity as it has been established that there is no real chance of reoffending – which often is the decisive requirement for the imposition of life imprisonment – and because a life sentence is on bad terms with the sentencing of the ICTR.

36. The Court imposes on Defendant a term of 20 years imprisonment.

Chapter 20: The decision

The Court,

deems not legally and convincingly proven that the Defendant is guilty of committing the offences as charged in indictment I under count 1 principally, count 2 principally, count 2 alternatively, count 3 principally, as well as the charges presented in indictment II under count 1 principally (a, b and c), count 1 alternatively (a, b and c), count 2 principally and count 2 alternatively so that the Defendant must be acquitted of these charges;

deems legally and convincingly proven that the Defendant is guilty of committing the offences as charged in indictment I, under count 1 alternatively and count 3 alternatively and that the proven facts consist of:

in relation to count 1 alternatively of indictment I:

complicity in torture, while a public official or a person otherwise employed by the government in the exercise of his duties incited him to commit this offence and has intentionally allowed this offence, committed several times; and
complicity in torture, while a public official or a person otherwise employed by the government in the exercise of his duties incited him to commit this offence and has intentionally allowed this offence, while death ensued as a

result of this offence, committed several times;

in relation to count 3 alternatively of indictment I:

complicity in torture, while a public official or a person otherwise employed by the government in the exercise of his duties incited him to commit this offence and has intentionally allowed this offence, committed several times;

declares the facts proven and therefore the Defendant is liable to punishment;

declares not proven the other or additional offences as charged, other than the facts proven in the above, and acquits the Defendant of those charges;

sentences the Defendant to:

a TERM OF IMPRISONMENT for the duration of 20 YEARS;

orders the time spent by the convicted person in police custody and pre-trial detention before the execution of this judgement to be totally deducted from this sentence;

placed in police custody on: 8 August 2006;
placed in pre-trial detention on: 10 August 2006;

declares that the claim for damages submitted by plaintiff A. Harorimana is not allowed;

awards the claims for damages submitted by plaintiffs [plaintiff 1] and [plaintiff 2] and sentences the Defendant to pay upon due receipt to:
- [plaintiff 1] an amount of € 680,67 and to
- [plaintiff 2] an amount of € 680,67;

ordering the Defendant to pay the costs incurred by the plaintiffs up to the date of this judgement for legal assistance for all plaintiffs together estimated at € 9.378,93, and costs that will still be incurred for the benefit of the execution of the sentence.

This judgement was passed by
Judge Elkerbout, acting president,
Judge Veldt-Foglia and Judge Sluiter,
in the presence of Mr. Otten and Mr. Van der Steen, Clerks of the court,
and was pronounced in open court on 23 March 2009.

Judge Sluiter and Clerk Van der Steen are not capable of co-signing this judgement.

Appendix I

NATIONAL OFFICE OF THE PUBLIC PROSECUTION SERVICE

Request for the amendment to the indictment

(Article 313 Code of Criminal Procedure)
Case number: 09/750009-06

The Public Prosecutor of the National Office of the Public Prosecution Service;

with regard to the indictment in the criminal proceedings against

Joseph M.,
born in [place of birth] on [date of birth] 1968,
residing at [address]

presently detained at PI Haaglanden, Penitentiary Complex Scheveningen, Unit 1, The Hague;

considers that the indictment in this case needs to be specified in further detail, meaning that the indictment should read as follows:

The Defendant is indicted with the following charges:

Count 1

That he, on or around 13 April 1994, at least at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in Birogo and/or Mugonero, at least in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s):

(each time) committed an unlawful act that constituted a violation of the laws and customs of war,

- while from that act/those acts (each time) death or severe bodily harm of another person could be feared and/or
- while that act/those acts (each) time forced (an) other(s) to perform or to submit to certain acts and/or
- while that act/those acts (each time) resulted in the death of (an) other(s) and/or
- while that act/those acts (each time) caused severe bodily harm of (an) other(s) and/or
- while that act/those acts (each time) included acts of violence jointly committed against one (or more) person(s) and/or
- while that act/those acts was/were the expression of a policy of systematic terror and/or unlawful conduct against the Tutsi population,

which implied that he, the Defendant, then and there (each time), in violation of:

- international customary law and/or
- the provisions of "common" Article 3 of the Geneva Conventions of 12 August 1949 and/or
- the provisions of (Article 4 of) Additional Protocol II to the Geneva Conventions of 12 August 1949, regarding the protection of victims of non-international armed conflicts

in his capacity of participant in and/or forming part of one of the fighting parties and/or as civilian in a non-international armed conflict (between the armed forces of the Rwandese State and the Rwandese Patriotic Front (RPF) at different places of the Rwandese territory (intentionally) jointly and in conjunction with (an) other(s)

(several times) committed an attack on the life and/or committed acts of violence against (and/or) (in particular) killed and/or mutilated and/or treated cruelly (inhumanly) and/or tortured and/or threatened to commit one or more of the above mentioned acts against one (or more) person(s) who did not take a direct part or who had ceased to take part in hostilities, (being (a) civilian(s)),

which attack(s) on the life and/or killing and/or acts of violence and/or mutilation and/or cruel (inhuman) treatment and/or torture and/or threatening to commit these acts, implied that he, the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

- forced the passengers of an ambulance, at least a car, including
[witness 1] and/or [witness 2] and/or Dativa (the wife of Gerard Muhutu) and/or one (or more) of her children and/or Brigitte (the wife of Anaclet Munyanziza) and/or one (or more) of her children, at Birogo to stop and/or forced them or gave orders to them to go to Mugonero and/or
- during this drive from Birogo to Mugonero surrounded this ambulance/car or gave orders to keep it surrounded and/or (on that occasion) showed weapons (fire arms) and/or (a) machete(s) and/or (a) club(s) and/or
- slammed (in a threatening manner) on the outside of the ambulance/car and/or shouted at them (in a threatening manner) and/or used abusive terms (in a threatening manner) (using words like Inkotanyi/cockroaches) and/or
- (subsequently) (in Mugonero) forced the passengers of this ambulance/car to step outside, at least gave the instructions to them to step outside and/or
- said (audibly to) [witness 1] (in a threatening manner): "before the cockroaches are killed, the driver should be killed first" and/or "We are glad that we found these women; we are going to murder these beautiful women in open air", at least words of similar nature and/or meaning, and/or
- (subsequently) hit Dativa and/or aforesaid Brigitte and/or aforesaid child(ren) and/or (stabbed them (down) with (a) machete(s) and/or club(s) and/or (an) other weapon(s) and/or
- (subsequently) (after hitting them and/or stabbing them down) threw (one or more of the above mentioned children) into Kivu Lake,

as result of which this Dativa (the wife of Gerard Muhutu) and/or one (or more) of her children and/or Brigitte (the wife of Anaclet Munyanziza) and/or one (or more) of her children, died and/or this [witness 1] and/or [witness 2] and/or one (or more) of these children suffered (severe) bodily harm.

Article 8 Criminal Law in Wartime Act (old)

Alternatively, in so far as the above does not or could not lead to a conviction, that he:

he, on or around 13 April 1994, at least at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in Birogo and/or Mugonero, at least in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone

(several times), at least one time, (each time) (intentionally) inflicted (severe) bodily harm and or (intentionally) caused a state of strong fear and/or another form of serious mental suffering, upon (a) person(s) who had been deprived of his/their liberty,
being [witness 1] and/or [witness 2] and/or Dativa (the wife of Gerard Muhutu) and/or one (or more) of her children and/or Brigitte (the wife of Anaclet Munyanziza) and/or one (or more) of her children,

with the intention to cause fear unto this/these person(s) and/or out of contempt for his/their right to human dignity,

while that act/those acts (each time) resulted in the death of (an) other(s)

while he, the Defendant, then and there

- forced the passengers of an ambulance, at least a car, including
[witness 1] and/or [witness 2] and/or Dativa (the wife of Gerard Muhutu) and/or one (or more) of her children and/or Brigitte (the wife of Anaclet Munyanziza) and/or one (or more) of her children, at Birogo to stop and/or
- forced them or gave orders to them to go to Mugonero and/or
- during this drive from Birogo to Mugonero surrounded this ambulance/car or gave orders to keep it surrounded and/or (on that occasion) showed weapons (fire arms) and/or (a) machete(s) and/or (a) club(s) and/or slammed (in a threatening manner) on the outside of the ambulance/car and/or shouted at them (in a threatening manner) and/or used abusive terms (in a threatening manner) (using words like Inkotanyi/cockroaches) and/or
- (subsequently) (in Mugonero) forced the passengers of this ambulance/car to step outside, at least gave the instructions to them to step outside and/or
- said (audibly to) [witness 1] (in a threatening manner): “before the cockroaches are killed, the driver should be killed first” and/or “We are glad that we found these women; we are going to murder these beautiful women in open air”, at least words of similar nature and/or meaning, and/or
- (subsequently) forced them, at least gave the order, to stand in line (while they were (kept) surrounded and/or
- (by doing so) placed them in a prolonged situation in which they had to fear for their lives and/or the life of their family members and/or friends and/or acquaintances and/or
- (subsequently) hit Dativa and/or aforesaid Brigitte and/or aforesaid child(ren) and/or (stabbed them (down) with (a) machete(s) and/or club(s) and/or (an) other weapon(s) and/or
- (subsequently) (after hitting them and/or stabbing them down) threw (one or more of the above mentioned children) into Kivu Lake,

as result of which this Dativa (the wife of Gerard Muhutu) and/or one (or more) of her children and/or Brigitte (the wife of Anaclet Munyanziza) and/or one (or more) of her children died

while these acts were of such nature that they could further the intended objective and
(during or in the weeks and/or months preceding the indicted period in Rwanda)
had been incited by

- gifts and/or
- promises and/or
- abuse of power and/or
- violence and/or
- threat and/or
- seduction and/or

- by providing the opportunity, means or information
- (in any case by using one of the means as defined in Article 47, first paragraph, under 2 of the Criminal Code) and/or

were intentionally allowed by

(one or more) public official(s) or (a) person(s) otherwise employed by the Rwandese government in the course of his/their duties, being:

- One or more members of the government, including Jean Kambanda as prime minister and/or Eliézer Niyitegeka as minister of Information and/or - (One or more members of) the armed forces of the Rwandese State and/or
- Clément Kayishema as prefect of Kibuye and/or
- Charles Sikubwabo as burgomaster of Gishyita and/or
- Mikaeli Muhimana as conseiller of Gishyita and/or
- other burgomasters and/or
- prefects and/or
- (other) government representatives

(being (a) public official(s) and/or (an) other person(s) employed by the (Rwandese) government)

whereby these acts of inciting and/or allowing implied that:

a) these persons (jointly and in conjunction with others) (publicly)
- promoted and/or gave instructions and/or supplied weapons and/or means of transport to commit violence against the Tutsi and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished (one or more) Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;

- (and by doing so abused their position (in the government) in order to incite Hutu in Rwanda (as a whole), at least in the prefecture of Kibuye, to hatred and/or violence against the Tutsi population)

and/or

b) (one or more) members of the armed forces in the Rwandese State who were present during the commission of the afore mentioned unlawful acts against the passengers of the ambulance/car and who did not prevent these acts;

Article 2 introduction under b in conjunction with Article 1 of the Torture Convention Implementation Act.

Count 2

That he, on or around 15 and/or 16 and/or 17 April 1994, at least at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in Mugonero, at least in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s)

(each time) committed an unlawful act that constituted a violation of the laws and customs of war,

- while from that act/those acts (each time) death or severe bodily harm of another person could be feared and/or
- while that act/those acts (each) time forced (an) other(s) to perform or to submit to certain acts and/or
- while that act/those acts (each time) resulted in the death of (an) other(s) and/or
- while that act/those acts (each time) caused severe bodily harm of (an) other(s) and/or
- while that act/those acts (each time) included acts of violence jointly committed against one (or more) person(s) and/or
- while that act/those acts was/were the expression of a policy of systematic terror and/or unlawful conduct against the Tutsi population,

which implied that he, the Defendant, then and there (each time), in violation of:

- international customary law and/or
- the provisions of “common” Article 3 of the Geneva Conventions of 12 August 1949 and/or
- the provisions of (Article 4 of) Additional Protocol II to the Geneva Conventions of 12 August 1949, regarding the protection of victims of non-international armed conflicts

in his capacity of participant in and/or forming part of one of the fighting parties and/or as civilian in a non-international armed conflict (between the armed forces of the Rwandese State and the Rwandese Patriotic Front (RPF)) at different places of the Rwandese territory (intentionally) jointly and in conjunction with (an) other(s)

(several times) committed an attack on the life and/or committed acts of violence against (and/or) (in particular) killed and/or mutilated and/or treated cruelly (inhumanly) and/or tortured and/or threatened to commit one or more of the above mentioned acts against one (or more) person(s) who did not take a direct part or who had ceased to take part in hostilities, (being (a) civilian(s)),

which attack(s) on the life and/or killing and/or acts of violence and/or mutilation and/or cruel (inhuman) treatment and/or torture implied that he, the Defendant, jointly and in conjunction with his co-perpetrator(s),

- by making use of (a) firearm(s) and/or (a) machete(s) and/or (a) club(s) and/or (a) hand grenade(s) and/or (an) other weapon(s), attacked the Seventh Day Adventists Complex (where many persons were present (including women and children) (of (especially) the Tutsi population)) and/or
- by use of (a) firearm(s) shot at one (or more) of these persons and/or
- threw (a) hand grenade(s) (that subsequently exploded) at one (or more) of these persons and/or
- by use of (a) machete(s) and/or (a) club(s) and/or (an) other weapon(s) hit one (or more) of these persons and/or stabbed (down) and/or
- threw teargas in one or more of the buildings where one (or more) of these persons had hidden themselves, at least were present and/or
- (by doing so) brought one (or more) of these persons in a prolonged situation of fear for their lives and/or the life of their family members and/or friends and/or acquaintances.

while that act/those acts (each time) resulted in the death of a large number, at least one (or more) of the afore said persons and/or inflicted (severe) bodily harm upon one (or more) of these persons

Article 8 Criminal Law in Wartime Act (old)

Alternatively, in so far as the above does not or could not lead to a conviction,

that he, on or around 15 and/or 16 and/or 17 April 1994, at least at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in Mugonero, at least in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s)
(several times), at least one time, (each time) (intentionally) inflicted (severe) bodily harm and or (intentionally) caused a state of strong fear and/or another form of serious mental suffering, upon (a) person(s) who had been deprived of his/their liberty,

Being (one or more) of (many) persons who were present at the Seventh Day Adventists Complex in Mugonero (including [witness 8] and/or [witness 10] and/or [witness 14] and/or [witness 24] and/or [witness 25])

with the intention to cause fear unto this/these person(s) and/or out of contempt for his/their right to human dignity,

while that act/those acts (each time) resulted in the death and/or severe bodily harm of (an) other(s)

while he, the Defendant, then and there, several times, at least one time, (each time) intentionally

- drove to the Seventh Day Adventists Complex (where many persons were present (including women and children) (of (especially) the Tutsi population)) and/or (while these people had fled to this complex in order to flee form large scale violence committed at the Tutsi population and while they were unable to flee this complex without (their lives) being in danger and (therefore) were not free to go where they pleased) and/or
- by making use of (a) firearm(s) and/or (a) machete(s) and/or (a) club(s) and/or (a) hand grenade(s) and/or (an)

other weapon(s), surrounded and/or attacked the Seventh Day Adventists Complex and/or
- by use of (a) firearm(s) shot at one (or more) of these persons and/or
threw (a) hand grenade(s) and/or (subsequently) by use of (a) machete(s) and/or (a) club(s) and/or (an) other weapon(s) hit and/or stabbed (down) one (or more) of these persons at the Seventh Day Adventists Complex and/or
- threw teargas in one or more of the buildings where one (or more) of these persons had hidden themselves, at least were present and/or
- (by doing so) brought one (or more) of these persons in a prolonged situation of fear for their lives and/or the life of their family members and/or friends and/or acquaintances

while that act/those acts (each time) resulted in the death of a large number, at least one (or more) of the afore said persons and/or inflicted (severe) bodily harm upon one (or more) of these persons

while these acts were of such nature that they could further the intended objective and
(during or in the weeks and/or months preceding the indicted period in Rwanda)
had been incited by

- gifts and/or
- promises and/or
- abuse of power and/or
- violence and/or
- threat and/or
- seduction and/or
- by providing the opportunity, means or information
- (in any case by using one of the means as defined in Article 47, first paragraph, under 2 of the Criminal Code) and/or

were intentionally allowed by

(one or more) public official(s) or (a) person(s) otherwise employed by the Rwandese government in the course of his/their duties, being:
- One or more members of the government, including Jean Kambanda as prime minister and/or Eliézer Niyitegeka as minister of Information and/or - (One or more members of) the armed forces of the Rwandese State and/or
- Clément Kayishema as prefect of Kibuye and/or
- Charles Sikubwabo as burgomaster of Gishyita and/or
- Mikaeli Muhimana as conseiller of Gishyita and/or
- other burgomasters and/or
- prefects and/or
- (other) government representatives

(being (a) public official(s) and/or (an) other person(s) employed by the (Rwandese) government)

whereby these acts of inciting and/or allowing implied that:

a) these persons (jointly and in conjunction with others) (publicly)
- promoted and/or gave instructions and/or supplied weapons and/or means of transport to commit violence against the Tutsi and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished (one or more) Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;
- (and by doing so abused their position (in the government) in order to incite Hutu in Rwanda (as a whole), at least in the prefecture of Kibuye, to hatred and/or violence against the Tutsi population)

and/or

b) Clément Kayishema and/or Charles Sikubwabo and/or Mikaeli Muhimana and/or (one or more) members of the armed forces in the Rwandese State who were present during the commission of the afore mentioned unlawful acts against the persons at the Seventh Day Adventists Complex, being officials who did not prevent these acts (but participated in those acts of violence themselves)

Article 2 introduction under b in conjunction with Article 1 of the Torture Convention Implementation Act.

Count 3

That he, on or around 27 April 1994, at least at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in Mugonero, at least in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone,

(each time) committed an unlawful act that constituted a violation of the laws and customs of war,

- while from that act/those acts (each time) death or severe bodily harm of another person could be feared and/or
- while that act/those acts (each time) involved inhuman treatment and/or
- while that act/those acts was/were the expression of a policy of systematic terror and/or unlawful conduct against the Tutsi population,

which implied that he, the Defendant, then and there (each time), in violation of:
- international customary law and/or
- the provisions of "common" Article 3 of the Geneva Conventions of 12 August 1949 and/or
- the provisions of (Article 4 of) Additional Protocol II to the Geneva Conventions of 12 August 1949, regarding the protection of victims of non-international armed conflicts

in his capacity of participant in and/or forming part of one of the fighting parties and/or as civilian in a non-international armed conflict (between the armed forces of the Rwandese State and the Rwandese Patriotic Front (RPF)) at different places of the Rwandese territory (intentionally) jointly and in conjunction with (an) other(s)

a) treated in a cruel (inhuman) way and/or committed torture and/or violated the human dignity of (and/or) (in particular) humiliated and/or treated degradingly [witness 3] and/or (her husband/partner) [witness 4],

being (a) person(s) who did not take a direct part or who had ceased to take part in hostilities, (being (a) civilian(s)),

which unlawful acts of torture and/or violation of the personal human dignity and/or cruel and/or inhuman and/or humiliating and/or degrading treatment implied that the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

- refused the passage to [witness 3] and/or [witness 4] and/or their (only a few months old) son [B1] (during several hours) at a road block/barrier and/or
- (seriously) insulted and/or humiliated [witness 3] and/or [witness 4] (in the presence of their son [B1] and/or (different) other persons) by showing them (among other items) weapons (machetes and/or clubs and/or hand grenades and/or firearms) and/or the use of terms like: 'cockroach(es)' and/or 'Take a good look at that Tutsi woman, those are the kind of people that killed the president' and/or 'would you like to be treated as a Tutsi?' and/or 'you can choose if you want to be killed in Kibingo, in Mugonero or in Gyishita' and/or 'look how bad those Tutsi are, they even laugh when we are about to kill them' and/or 'Hutu power',
at least words of similar nature and/or meaning, (while [witness 3] and/or her son [B1] belonged to the Tutsi population and/or were considered to belong to the Tutsi population by others who were present and/or
- (by doing so) brought this [witness 3] in a prolonged situation (lasting several hours) in which she had to fear for her life and/or the life of her son [B1] and/or was seriously humiliated in public and/or
- (by doing so) brought this [witness 4] in a prolonged situation (lasting several hours) in which he had to fear for the life of his wife and/or the life of his son [B1] and/or was seriously humiliated in public

and/or

b) while he, the Defendant, threatened [witness 3] and/or [witness 4], being (a) person(s) who did not take a direct part or who had ceased to take part in hostilities, being (a) civilian(s)), to commit violence against the life of (and/or) (in particular) murder of [witness 3] and/or her son [B1]

which threat of violence against the life and/or murder implied that he, the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

- refused the passage to [witness 3] and/or [witness 4] and/or their (only a few months old) son [B1] (during several hours) at a road block/barrier and/or
- showed weapons (machetes and/or clubs and/or hand grenades and/or firearms) to [witness 3] and/or [witness 4] (in the presence of their son [B1] and/or (different) other persons), at least had these in his possession as was clearly visible to them and/or
- (seriously) insulted and/or humiliated [witness 3] and/or [witness 4] (in the presence of their son [B1] and/or (different) other persons) by using of terms like: 'cockroach(es)' and/or 'Take a good look at that Tutsi woman, those are the kind of people that killed the president' and/or 'would you like to be treated as a Tutsi?' and/or 'you can choose if you want to be killed in Kibingo, in Mugonero or in Gyishita' and/or 'look how bad those Tutsi are, they even laugh when we are about to kill them' and/or 'Hutu power', at least words of similar nature and/or meaning, (while [witness 3] and/or her son [B1] belonged to the Tutsi population and/or were considered to belong to the Tutsi population by others who were present and/or
- (by doing so) brought this [witness 3] in a prolonged situation (lasting several hours) in which she had to fear for her life and/or the life of her son [B1] and/or
- (by doing so) brought this [witness 4] in a prolonged situation (lasting several hours) in which he had to fear for the life of his wife/partner and/or the life of his son [B1]

Article 8 Criminal Law in Wartime Act (old)

Alternatively, in so far as the above does not or could not lead to a conviction:

that he, on or around 27 April 1994, at least at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in Mugonero, at least in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone,

(several times) at least one time, (each time)(intentionally) inflicted (severe) bodily harm and/or strong fear and/or another form of serious mental suffering upon [witness 3] and/or [witness 4], (being) (a) person(s) who had been deprived of her/his/their liberty,

with the intention to cause fear unto this/these person(s) and/or out of contempt for her/his/their right to human dignity,

which unlawful acts implied that he, the Defendant, several times, at least one time, (each time) intentionally

- refused the passage to [witness 3] and/or [witness 4] and/or their (only a few months old) son [B1] (during several hours) at a road block/barrier and/or
- (seriously) insulted and/or humiliated [witness 3] and/or [witness 4] (in the presence of their son [B1] and/or (different) other persons) by showing them (among other items) weapons (machetes and/or clubs and/or hand grenades and/or firearms) and/or
- used of terms like: 'cockroach(es)' and/or 'Take a good look at that Tutsi woman, those are the kind of people that killed the president' and/or 'would you like to be treated as a Tutsi?' and/or 'you can choose if you want to be killed in Kibingo, in Mugonero or in Gyishita' and/or 'look how bad those Tutsi are, they even laugh when we are about to kill them' and/or 'Hutu power',
at least words of similar nature and/or meaning, (while [witness 3] and/or her son [B1] belonged to the Tutsi population and/or were considered to belong to the Tutsi population by others who were present and/or
- (by doing so) brought this [witness 3] in a prolonged situation (lasting several hours) in which she had to fear for her life and/or the life of her son [B1] and/or was seriously humiliated in public and/or
- (by doing so) brought this [witness 4] in a prolonged situation (lasting several hours) in which he had to fear for the life of his wife/partner and/or the life of his son [B1] and/or was seriously humiliated in public
while these acts were of such nature that they could further the intended objective and
(during or in the weeks and/or months preceding the indicted period in Rwanda)
had been incited by

- gifts and/or
- promises and/or
- abuse of power and/or
- violence and/or
- threat and/or
- seduction and/or
- by providing the opportunity, means or information

- (in any case by using one of the means as defined in Article 47, first paragraph, under 2 of the Criminal Code) and/or

were intentionally allowed by

(one or more) public official(s) or (a) person(s) otherwise employed by the Rwandese government in the course of his/their duties, being:
- One or more members of the government, including Jean Kambanda as prime minister and/or Eliézer Niyitegeka as minister of Information and/or - (One or more members of) the armed forces of the Rwandese State and/or
- Clément Kayishema as prefect of Kibuye and/or
- Charles Sikubwabo as burgomaster of Gishyita and/or
- Mikaeli Muhimana as conseiller of Gishyita and/or
- other burgomasters and/or
- prefects and/or
- (other) government representatives

(being (a) public official(s) and/or (an) other person(s) employed by the (Rwandese) government)

whereby these acts of inciting and/or allowing implied that:

a) these persons (jointly and in conjunction with others) (publicly)
- promoted and/or gave instructions and/or supplied weapons and/or means of transport to commit violence against the Tutsi and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished (one or more) Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;
- (and by doing so abused their position (in the government) in order to incite Hutu in Rwanda (as a whole), at least in the prefecture of Kibuye, to hatred and/or violence against the Tutsi population)

and/or

b) (one or more) members of the armed forces in the Rwandese State who were present during the commission of the afore mentioned unlawful acts against [witness 3] and/or [witness 4], being officials who did not prevent these acts from taking place;

Article 2 introduction under b in conjunction with Article 1 of the Torture Convention Implementation Act.

The Hague, 5 September 2008

Public Prosecutor: Clerk of the Court:

Appendix II

NATIONAL OFFICE OF THE PUBLIC PROSECUTION SERVICE

Demand for the amendment to the indictment

(Article 313 Code of Criminal Procedure)

Case number: 09/750007-07

The Public Prosecutor of the National Office of the Public Prosecution Service;

with regard to the indictment in the criminal proceedings against

Joseph M.,
born in [place of birth] on [date of birth] 1968,
residing at [address]
presently detained at PI Haaglanden, Penitentiary Complex Scheveningen, Unit 1, The Hague;

considers that the indictment in this case needs to be specified in further detail, meaning that the indictment should read as follows:

The Defendant is indicted with the charges:

Count 1

That he, at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone,

(each time) committed an unlawful act that constituted a violation of the laws and customs of war,

- while that act/those acts (each time) implied inhuman treatment of another person and/or
- while that act/those acts (each) time involved rape and/or
- while that act/those acts (each time) resulted in the death of (an) other(s) and/or
- while that act/those acts (each time) caused severe bodily harm of (an) other(s) and/or
- while that act/those acts (each time) included acts of violence jointly committed against one (or more) person(s) and/or
- while that act/those acts was/were the expression of a policy of systematic terror and/or unlawful conduct against the Tutsi population,

which implied that he, the Defendant, then and there (each time), in violation of:

- international customary law and/or
- the provisions of “common” Article 3 of the Geneva Conventions of 12 August 1949 and/or
- the provisions of (Article 4 of) Additional Protocol II to the Geneva Conventions of 12 August 1949, regarding the protection of victims of non-international armed conflicts

in his capacity of participant in and/or forming part of one of the fighting parties and/or as civilian in a non-international armed conflict (between the armed forces of the Rwandese State and the Rwandese Patriotic Front (RPF)) at different places of the Rwandese territory (intentionally) jointly and in conjunction with (an) other(s)

(several times) committed an attack on the life and/or committed acts of violence against (and/or) (in particular) killed and/or mutilated and/or treated cruelly (inhumanly) and/or tortured

against one (or more) person(s) who did not take a direct part or who had ceased to take part in hostilities, (being (a) civilian(s)),

which attack(s) on the life and/or killing and/or acts of physical violence and/or mutilation and/or cruel inhuman treatment and/or torture and/or threatening to commit these acts, implied that he, the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

a) (on or around 13 May 1994, at least in May 1994, at least in the period between 6 April until 1 July 1994) (at or in the vicinity of Muyira Hill in Bisesero region)
- took hold of Consolata Mukamurenzi (while he and/or his (three) co-perpetrators carried firearms) and/or pushed/brought her to the ground and/or (subsequently) said the following words to her: ‘If you do not tell us where they are, then we will kill you. If you do tell us, we will leave you alone’, at least words of similar nature and/or meaning and/or
- the Defendant (subsequently) said to her ‘You may rape her; I will guarantee your safety’, at least words of similar nature and/or meaning and/or
- one or more of the (three) co-perpetrators of the Defendant (subsequently) raped her (several times) by penetrating her vagina with their penis(es) and/or
- the Defendant (subsequently) stabbed a bayonet, at least a (metal) object into her vagina and/or (subsequently) shot bullets in her back and/or body and/or head (several times) by using a firearm

which resulted in the death of Consolata Mukamurenzi

and/or

that the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

b) (on or around 16 April 1994) (at the hospital of the Seventh Day Adventists Complex in Mugonero)
- threatened Marie Mukagatare and/or Gertrude Mukamana (who were fleeing from large scale violence against the Tutsi population and who had sought refuge in a hospital room at the Adventists complex in Mugonero) by pointing a firearm at them, at least by showing that firearm to them and/or
- (subsequently) said to them "We have asked you for a long time to have sex with us. Then you refused. Now you can no longer refuse", at least words of similar nature and/or meaning and/or
- (subsequently) raped her/them by penetrating her/their vagina(s) with his penis and/or
- (subsequently) cut her/their throat(s) with a knife

which resulted in the death of Marie Mukagatare and/or Gertrude Mukamana

and/or

that the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

c) (on or around 14 April 1994) (at the hospital of the Seventh Day Adventists Complex in Mugonero)
- hit a woman named Kayitesi (from Ngoma) (several times) and/or
- took hold of this Kayitesi and/or
- raped this Kayitesi by penetrating her vagina with his penis

Article 8 Criminal Law in Wartime Act (old)

Alternatively, in so far as the above does not or could not lead to a conviction:

that he, at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone,

(several times) at least one time, (each time)(intentionally) inflicted (severe) bodily harm and/or (intentionally) inflicted strong fear and/or another form of serious mental suffering upon (a) person(s) who had been deprived of her/their liberty,

being Consolata Mukamurenzi and/or Marie Mukagatare and/or Gertrude Mukamana and/or a woman named Kayitesi (from Ngoma)

with the intention to cause fear unto this/these person(s) and/or out of contempt for her/their right to human dignity,

- while that act/those acts (each time) resulted in the death of (an) other(s) and/or

which unlawful acts implied that he, the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

a) (on or around 13 May 1994, at least in May 1994, at least in the period between 6 April until 1 July 1994) (at or in the vicinity of Muyira Hill in Bisesero region)
- took hold of Consolata Mukamurenzi (while he and/or his (three) co-perpetrators carried firearms) and/or pushed/brought her to the ground and/or (subsequently) said the following words to her: 'If you do not tell us where they are, then we will kill you. If you do tell us, we will leave you alone', at least words of similar nature and/or meaning and/or
- the Defendant (subsequently) said to her 'You may rape her; I will guarantee your safety', at least words of similar nature and/or meaning and/or
- one or more of the (three) co-perpetrators of the Defendant (subsequently) raped her (several times) by penetrating her vagina with their penis(es) and/or

- the Defendant (subsequently) stabbed a bayonet, at least a (metal) object into her vagina and/or (subsequently) shot bullets in her back and/or body and/or head (several times) by using a firearm

which resulted in the death of Consolata Mukamurenzi

and/or

that the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

b) (on or around 16 April 1994) (at the hospital of the Seventh Day Adventists Complex in Mugonero)
- threatened Marie Mukagatare and/or Gertrude Mukamana (who were fleeing from large scale violence against the Tutsi population and who had sought refuge in a hospital room at the Adventists complex in Mugonero) by pointing a firearm at them, at least by showing that firearm to them and/or
- (subsequently) said to them "We have asked you for a long time to have sex with us. Then you refused. Now you can no longer refuse", at least words of similar nature and/or meaning and/or
- (subsequently) raped her/them by penetrating her/their vagina(s) with his penis and/or
- (subsequently) cut her/their throat(s) with a knife

which resulted in the death of Marie Mukagatare and/or Gertrude Mukamana

and/or

that the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

c) (on or around 14 April 1994) (at the hospital of the Seventh Day Adventists Complex in Mugonero)
- hit a woman named Kayitesi (from Ngoma) (several times) and/or
- took hold of this Kayitesi and/or
- raped this Kayitesi by penetrating her vagina with his penis

while these acts (a, b and c) were of such nature that they could result in the furtherance of the intended objective and
(during or in the weeks and/or months preceding the indicted period in Rwanda)
had been incited by

- gifts and/or
- promises and/or
- abuse of power and/or
- violence and/or
- threat and/or
- seduction and/or
- by providing the opportunity, means or information
- (in any case by using one of the means as defined in Article 47, first paragraph, under 2 of the Criminal Code)
and/or

were intentionally allowed by

(one or more) public official(s) or (a) person(s) otherwise employed by the Rwandese government in the course of his/their duties, being:

- One or more members of the government, including Jean Kambanda as prime minister and/or Eliézer Niyitegeka as minister of Information and/or
- (One or more members of) the armed forces of the Rwandese State and/or
- Clément Kayishema as prefect of Kibuye and/or
- Charles Sikubwabo as burgomaster of Gishyita and/or
- Mikaeli Muhimana as conseiller of Gishyita and/or
- other burgomasters and/or
- prefects and/or
- (other) government representatives

(being (a) public official(s) and/or (an) other person(s) employed by the (Rwandese) government)
whereby these acts of inciting and/or allowing implied that:

a) these persons (jointly and in conjunction with others) (publicly)
- promoted and/or gave instructions and/or supplied weapons and/or means of transport to commit violence against the Tutsi and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished (one or more) Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;

- (and by doing so abused their position (in the government) in order to incite Hutu in Rwanda (as a whole), at least in the prefecture of Kibuye, to hatred and/or violence against the Tutsi population) and/or

b) (one or more) members of the armed forces in the Rwandese State and/or Clément Kayishema and/or Charles Sikubwabo and/or Mikaeli Muhimana and/or Eliezer Niyitegeka, who were present during (the preparation of) the attack which included the above mentioned unlawful acts committed against Consolata Mukamurenzi and who did not prevent these acts from taking place

and/or

c) (one or more) members of the armed forces in the Rwandese State and/or Clément Kayishema and/or Charles Sikubwabo and/or Mikaeli Muhimana, who were present during (the preparation of) the attack which included the above mentioned unlawful acts committed against Marie Mukagatare and/or Gertrude Mukamana and who did not prevent these acts from taking place.

Article 2 introduction under b in conjunction with Article 1 of the Torture Convention Implementation Act.

Count 2

That he, at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone,

(each time) committed an unlawful act that constituted a violation of the laws and customs of war,

- while from that act/those acts (each time) death or severe bodily harm of another person could be feared and/or
- while that act/those acts (each time) involved inhuman treatment and/or
- while that act/those acts (each time) resulted in the death of (an) other(s) and/or
- while that act/those acts was/were the expression of a policy of systematic terror and/or unlawful conduct against the Tutsi population,

which implied that he, the Defendant, then and there (each time), in violation of:

- international customary law and/or
- the provisions of “common” Article 3 of the Geneva Conventions of 12 August 1949 and/or
- the provisions of (Article 4 of) Additional Protocol II to the Geneva Conventions of 12 August 1949, regarding the protection of victims of non-international armed conflicts

in his capacity of participant in and/or forming part of one of the fighting parties and/or as civilian in a non-international armed conflict (between the armed forces of the Rwandese State and the Rwandese Patriotic Front (RPF))) at different places of the Rwandese territory (intentionally) jointly and in conjunction with (an) other(s)

(several times) committed a violation of the personal human dignity and/or an act of cruel and/or inhuman and/or humiliating and/or degrading treatment

against [witness 5] and/or (his wife) [witness 6] and/or (his daughter) [B9] and/or (his grandchildren) [witness 36] (approximately 9 years old) and/or [B16](approximately 8 years old) and/or [B17] (approximately 6 years old) and/or [B18] (approximately 4 years old), being one (or more) person(s) who did not take a direct part or who had ceased to take part in hostilities, (being (a) civilian(s)),

which violation of the personal human dignity and/or cruel and/or inhuman and/or humiliating and/or degrading treatment implied that he, the Defendant, jointly and in conjunction with his co-perpetrator(s), at least alone,

- drove to the house of [witness 5] carrying (a) weapon(s) (one or more firearms and/or machetes and/or grenades and/or clubs), while this [witness 5] kept his grandchildren hidden in and/or around that house to protect them from (large scale) violence against the Tutsi population) and/or (subsequently)
- entered that house and/or
- forced or at least gave orders to others to force [B16](approximately 8 years old) and/or [B17] (approximately 6 years old) and/or [B18] (approximately 4 years old) to leave the house and/or their hiding places around the house (while [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] were present) and/or
- said to them 'You are not complete' and/or 'you have to show me the other cockroaches now' and/or 'we will surely find the ones who are hidden', at least words of similar nature and/or meaning and/or
- took those children [B16] and/or [B17] and/or [B18] (who belonged to the Tutsi population and/or were considered to belong to the Tutsi population by others who were present) (to the market in Mugonero (while this market was frequented by persons who committed violence against persons belonging to the Tutsi population)), (after which [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] were not ever, at least not until 28 March 2007, reunited with them and/or were never able to determine what had (finally) happened to them) and/or
- (by doing so) separated these children [B16] and/or [B17] and/or [B18] at a (very) young age (permanently) from their family and/or
- brought that [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] in a prolonged and/or constant state of uncertainty about the fate of (their family members) [B16] and/or [B17] and/or [B18]

Article 8 Criminal Law in Wartime Act (old)

Alternatively, in so far as the above does not or could not lead to a conviction:
that he, at one (or more) point(s) in time in the period from 6 April 1994 until 1 July 1994, in the province (préfecture) of Kibuye, at least in Rwanda,

jointly and in conjunction with (an) other(s), at least alone,

(several times) at least one time, (each time)(intentionally) inflicted (severe) bodily harm and/or (intentionally) inflicted strong fear and/or another form of serious mental suffering upon (a) person(s) who had been deprived of his/their liberty,

being [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] and/or [B16] and/or [B17] and/or [B18]
with the intention to cause fear unto these persons and/or others and/or to force them to perform or to endure an act and/or out of contempt for their right to human dignity,

which unlawful acts implied that he, then and there, several times, at least one time, (each time)
- drove to the house of [witness 5] carrying (a) weapon(s) (one or more firearms and/or machetes and/or grenades and/or clubs), while this [witness 5] kept his grandchildren hidden in and/or around that house to protect them from (large scale) violence against the Tutsi population) and/or these grandchildren were not able to leave (the immediate vicinity of) that house without being put in jeopardy and therefore were not free to go where they pleased) and/or (subsequently)
- entered that house and/or
- forced, or at least gave orders, to [B16](approximately 8 years old) and/or [B17] (approximately 6 years old) and/or [B18] (approximately 4 years old) to leave the house and/or their hiding places around the house (while [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] were present) and/or
- said to them 'You are not complete' and/or 'you have to show me the other cockroaches now' and/or 'we will surely find the ones who are hidden', at least words of similar nature and/or meaning and/or
- took those children [B16] and/or [B17] and/or [B18] (who belonged to the Tutsi population and/or were considered to belong to the Tutsi population by others who were present) (to the market in Mugonero (while this market was frequented by persons who committed violence against persons belonging to the Tutsi population)), (after which [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] were not ever, at least not until 28 March 2007, reunited with them and/or were never able, at least not until 28 March 2007, to determine what had (finally) happened to them) and/or
- (by doing so) separated these children [B16] and/or [B17] and/or [B18] at a (very) young age (permanently) from their family and/or
- brought that [witness 5] and/or [witness 6] and/or [B9] and/or [witness 36] in a prolonged and/or constant state of uncertainty about the fate of (their family members) [B16] and/or [B17] and/or [B18]

while these acts (a, b and c) were of such nature that they could result in the furtherance of the intended objective and which (during or in the weeks and/or months preceding the indicted period in Rwanda) had been incited by
- gifts and/or
- promises and/or
- abuse of power and/or
- violence and/or
- threat and/or
- seduction and/or
- by providing the opportunity, means or information
- (in any case by using one of the means as defined in Article 47, first paragraph, under 2 of the Criminal Code) and/or

were intentionally allowed by

(one or more) public official(s) or (a) person(s) otherwise employed by the Rwandese government in the course of his/their duties, being:

- One or more members of the government, including Jean Kambanda as prime minister and/or Eliézer Niyitegeka as minister of Information and/or
- (One or more members of) the armed forces of the Rwandese State and/or
- Clément Kayishema as prefect of Kibuye and/or
- Charles Sikubwabo as burgomaster of Gishyita and/or
- Mikaeli Muhimana as conseiller of Gishyita and/or
- other burgomasters and/or
- prefects and/or
- (other) government representatives

(being (a) public official(s) and/or (an) other person(s) employed by the (Rwandese) government)
whereby these acts of inciting and/or allowing implied that these persons, (jointly and in conjunction) (publicly)
- promoted and/or gave instructions and/or supplied weapons and/or means of transport to commit violence against the Tutsi and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished (one or more) Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;

- (and by doing so abused their position (in the government) in order to incite Hutu in Rwanda (as a whole), at least in the prefecture of Kibuye, to hatred and/or violence against the Tutsi population).

Article 2 introduction under b in conjunction with Article 1 Torture Convention Implementation Act

The Hague, 5 September 2008

Public Prosecutor: Clerk of the Court:

Appendix III

Proven charges

With regard to the indictment with case number 09/750009-06 the District Court concludes that the following charges against the Defendant have been proven:

Count 1

That he, on or around 13 April 1994, in Birogo and Mugonero, jointly and in conjunction with others, several times, each time intentionally inflicted severe bodily harm and/or intentionally caused a state of strong fear and serious mental suffering upon persons who had been deprived of their freedom, being [witness 1] and [witness 2] and Dativa (the wife of Gerard Muhutu) and her child(ren) and Brigitte (the wife of Anaclet Munyanziza) and her child(ren), with the intention to inflict fear upon these people and out of contempt for their right to human dignity,

while these acts resulted in the death of Dativa and Brigitte and their child(ren), which unlawful acts implied that he, then and there,
- forced the passengers of an ambulance, including [witness 1] and [witness 2] and Dativa (the wife of Gerard Muhutu) and her child(ren) and Brigitte (the wife of Anaclet Munyanziza) and her child(ren), at Birogo to stop and
- forced them to go to Mugonero and
- during this drive from Birogo to Mugonero surrounded this ambulance or kept it surrounded and slammed in a threatening manner on the outside of the ambulance and shouted at them in a threatening manner and used abusive terms (using words like Inkotanyi/cockroaches) and
- subsequently in Mugonero forced the passengers of this ambulance to step outside and
- said (audibly to) [witness 1] in a threatening manner: “before the cockroaches are killed, the driver should be killed first” and said (audibly to) [witness 2] “We are glad that we found these women; we are going to murder these beautiful women in open air”, at least words of similar nature and meaning, and
- (subsequently) forced them, except for [witness 1], to stand in line, and
- by doing so placed them in a prolonged situation in which they had to fear for their lives and the life of their family members and/or friends and/or acquaintances and
- subsequently hit Dativa (the wife of Gerard Muhutu) and her child(ren) and Brigitte (the wife of Anaclet Munyanziza) and her child(ren) and stabbed them (down) with machetes and/or clubs and

as result of which (only as a consequence of this hitting and stabbing down) this Dativa (the wife of Gerard Muhutu) and her child(ren) and Brigitte (the wife of Anaclet Munyanziza) and her child(ren) died,

while these acts were of such nature that they could result in the furtherance of the intended objective

and which (during and in the weeks and months preceding the indicted period in Rwanda) had been incited by

- abuse of power and/or
- seduction and/or
- by providing the opportunity, means or information and were intentionally allowed by

public officials or person otherwise employed by the Rwandese government in the course of their duties, being:

- members of the government, including Jean Kambanda as prime minister and Eliézer Niyitegeka as minister of Information and
- members of the armed forces of the Rwandese State and
- Clément Kayishema as prefect of Kibuye and
- Charles Sikubwabo as burgomaster of Gishyita and
- Mikaeli Muhimana as conseiller of Gishyita and
- other burgomasters and/or
- prefects and/or
- (other) government representatives
(being public officials and/or other persons employed by the (Rwandese) government)

whereby these acts of inciting and/or allowing implied that:

a) these persons (either or not jointly and in conjunction with others) publicly
- promoted and/or gave instructions and/or supplied weapons to commit violence against the Tutsi population and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;
- and by doing so abused their position (in the government) in order to incite Hutu in Rwanda to hatred and violence against the Tutsi population

and which acts of allowing also implied that:
b) members of the armed forces in the Rwandese State were present during the commission of the afore mentioned unlawful acts against the passengers of the ambulance and did not prevent these acts from taking place.

Count 3

That he, on 27 April 1994, in Mugonero, jointly and in conjunction with others, several times (intentionally) inflicted great fear and serious mental suffering upon [witness 3] and [witness 4], (being) persons who had been deprived of their liberty, with the intention to inflict upon them a state of fear and (regarding [witness 3]) out of contempt for her right to human dignity, which unlawful acts implied that he, the Defendant, then and there, several times and each time intentionally,
- refused the passage to [witness 3] and [witness 4] and their only a few months old son [B1] at a road block/barrier and
- clearly noticeable for [witness 3] and [witness 4] (in the presence of their son [B1] and other persons) had weapons in their possession (machetes and clubs) and
- clearly audible for [witness 3] and [witness 4] (in the presence of their son [B1] and other persons) used terms like: 'cockroach(es)' and 'Take a good look at that Tutsi woman, those are the kind of people that killed the president' and 'would you like to be treated as a Tutsi?' and 'you can choose if you want to be killed in Kibingo, in Mugonero or in Gyishita' and 'look how bad those Tutsi are, they even laugh when we are about to kill them' and 'Hutu power',
at least words of similar nature and/or meaning, (while [witness 3] and her son [B1] belonged to the Tutsi population and were considered to belong to the Tutsi population by others who were present and
- by doing so brought this [witness 3] in a prolonged situation (lasting several hours) in which she had to fear for her life and the life of her son [B1] and
- by doing so brought this [witness 4] in a prolonged situation (lasting several hours) in which he had to fear for the life of his partner and the life of his son [B1]

while these acts were of such nature that they could result in the furtherance of the intended objective

and which (during and in the weeks and months preceding the indicted period in Rwanda) had been incited by

- abuse of power and/or
- seduction and/or
- by providing the opportunity and means

and were intentionally allowed by

public officials or person otherwise employed by the Rwandese government in the course of their duties, being:
- members of the government, including Jean Kambanda as prime minister and Eliézer Niyitegeka as minister of Information and
- members of the armed forces of the Rwandese State and
- Clément Kayishema as prefect of Kibuye and
- Charles Sikubwabo as burgomaster of Gishyita and
- Mikaeli Muhimana as conseiller of Gishyita and
- other burgomasters and/or
- prefects and/or
- (other) government representatives

(being public officials and/or other persons employed by the (Rwandese) government) whereby these acts of inciting and/or allowing implied that:
a) these persons (either or not jointly and in conjunction with others) publicly
- promoted and/or gave instructions and/or supplied weapons to commit violence against the Tutsi population and/or
- publicly transmitted the message that Tutsi were accomplices of the RPF, at least enemies, and/or
- themselves participated in that violence and/or
- systematically left unpunished the attackers of the Tutsi and/or
- punished Hutu who refused to take part in the violence against the Tutsi and/or ordered these Hutu to be punished and/or threatened to punish them;
- and by doing so abused their position (in the government) in order to incite Hutu in Rwanda to hatred and violence against the Tutsi population.

NOTES

1 The amended indictment forms part of this judgement as Appendix I.

2 The amended indictment forms part of this judgement as Appendix II.
3 Act of 10 July 1952, on the adoption of the Criminal Law in Wartime Act, as well as any amendments related to this Act in the Criminal Code, Code of Military Criminal Law and the Military Criminal Law and Disciplinary Rules Implementation Act, Bulletin of Acts and Decrees (hereafter: Stb.) 1952, 408, and subsequent amendments made on 2 July 1964, Stb. 243, effective date 24 October 1970, Stb. 1970, 481.
4 Act of 29 September 1988, to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Stb. 1988, 478.
5 District Court (hereafter: DC) The Hague 24 July 2007, LJN BB0494.
6 Appeals Court (hereafter: AC) The Hague 17 December 2007, LJN BB0494.
7 Supreme Court (hereafter: SC) 21 October 2008, LJN BD 6568.
8 SC 8 July 2008, LJN BC 7418, l.gr. 6.2 (addition District Court: when reference is made to the Conventions this is related to the Fourth Geneva Convention regarding the protection of civilians in war time, Bulletin of Treaties (hereafter Trb.) 1951, 75).
9 SC 18 September 2001, NJ 2002, 559 (Bouterse case).
10 Act of 19 June 2003, containing regulations for serious violations of international humanitarian law, Stb. 2003, 270. Effective date 1 October 2003 (Stb. 2003, 340).
11 Parliamentary Documents II, 2001-2002, 28 337, nr. 3, p. 18.
12 Rwanda: the preventable genocide: the report of international panel of eminent personalities to investigate the 1994 genocide in Rwanda and the surrounding events, Organisation of African Unity, 2000, para. 14.2. This report (hereafter: OAU-report) is available at:
http://www.africaunion.org/Official_documents/reports/Report_rowanda_genocide.pdf
13 The International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law, committed in the Territory of Rwanda or in neighbouring countries of Rwanda at points in time situated between 1 January 1994 and 31 December 1994 (hereafter: ICTR).
14 Prosecutor v. E. Karemera et al., Case No. ICTR-98-44-AR73 (C), "Decision on prosecutor's interlocutory Appeal of decision on judicial notice", 16 June 2006.
15 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, judgement, 2 September 1998, para. 174.
16 G. Prunier, The Rwanda crisis: history of a genocide, C. Hurst & Co. (Publishers) Ltd, London, 2008; P. Gourevitch, We wish to inform you that tomorrow we will be killed with our families, stories from Rwanda, Picador, New York, 1998; A. Des Forges, 'Leave none to tell the story': genocide in Rwanda, Human Rights Watch, United States of America, 1999; Rwanda: the preventable genocide: the report of international panel of eminent personalities to investigate the 1994 genocide in Rwanda and the surrounding events, Organisation of African Unity, 2000; The Rwandan Genocide: How it was prepared, A Human Rights Watch Briefing Paper, April 2006; Prosecutor v. C. Kayishema and O. Ruzindana, Case No. ICTR-95-1-T, "Judgement", 21 May 1999; Prosecutor v. C. Kayishema and O. Ruzindana, Case No. ICTR-95-1-A, "Judgement (Reasons)", 1 June 2001; Prosecutor v. E. and G. Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, "Judgement and Sentence", 21 February 2003; Prosecutor v. E. and G. Ntakirutimana, Case No. ICTR-96-10-A & ICTR-96-17-A, "Judgement", 13 December 2004; Prosecutor v. M. Muhimana, Case No. ICTR-95-1B-T, "Judgement and Sentence", 28 April 2005; Prosecutor v. M. Muhimana, Case No. ICTR-95-1B-A, "Judgement", 21 May 2007; Prosecutor v. E. Niyitegeka, Case No. ICTR-96-14-T, "Judgement and Sentence", 16 May 2003; Prosecutor v. E. Niyitegeka, Case No. ICTR-96-14-A, "Judgement", 9 July 2004; Prosecutor v. E. Karemera et al., Case No. ICTR-98-44-AR73 (C), "Decision on prosecutor's interlocutory Appeal of decision on judicial notice", 16 June 2006; Prosecutor v. J. Kambanda, Case No. ICTR-97-23-S, "Judgement and Sentence", 4 September 1998; Prosecutor v. J. Kambanda, Case No. ICTR-97-23-A, "Judgement", 19 October 2000; Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-T, "Judgement and Sentence", 3 December 2003; Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-A, "Judgement", 28 November 2007; Tribunal Militaire d'Appel 1A (Geneva; Switzerland), concerning N., 26 May 2000; Cour d'Assises de l'arrondissement Administratif de Bruxelles-Capitale, V. Ntezimana, A. Higaniro, C. Mukangango, J. Mukabutera, 8 June 2001; Cour d'Assises de l'arrondissement Administratif de Bruxelles-Capitale, E. Nzabonimana, S. Ndashyikirwa (alias S. Manzi), 29 June 2005; Cour d'Assises de l'arrondissement Administratif de Bruxelles-Capitale, B. Ntuyahaga, 5 July 2007.
17 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 358-429); Report written by expert A. Des Forges in reply to the questions submitted by the Examining Judge (EJ) dated 20 November 2006 (EJ file, p. 4-39); by the District Court, the Public Prosecution Service and the Defence Counsel dated 20 December 2007 (EJ file, p. 635-675).
18 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998; In some later judgements this explanation was repeated extensively, for example in the case of The Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-T, "Judgement and Sentence", 3 December 2003, Chapter 2, paras. 105-109.
19 OAU-report, paras. 3.14 and 3.15.
20 OAU-report, para. 3.13.
21 OAU-report, para. 3.14.
22 OAU-report, para. 3.19.

23 OAU-report, para. 3.21.
24 OAU-report, para. 3.22.
25 OAU-report, para. 3.25.
26 OAU-report, para.3.26.
27 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, para. 92.
28 A. Des Forges, ‘Leave none to tell the story’: genocide in Rwanda , Human Rights Watch, United States of America, 1999, p. 48 (hereafter also: A. Des Forges, 'Leave none to tell the story').
29 OAU-report, para. 6.1.
30 OAU-report, para. 6.20.
31 OAU-report, paras. 6.21 and 6.22.
32 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 379); A. Des Forges, 'Leave none to tell the story' p. 44.
33 OAU-report, para. 6.22.
34 OAU-report, para. 7.15.
35 A. Des Forges, 'Leave none to tell the story', p. 52-53; The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, para. 98.
36 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 372); Written report of expert A. Des Forges in reply to the questions submitted by the Examining Judge dated 20 November 2006 (EJ file, p. 26 in reply to question 4).
37 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, para. 101.
38 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 374).
39 OAU-report, paras. 7.19 ff.; A. Des Forges, 'Leave none to tell the story', Chapter 'Propaganda and Practice' p. 65-95; Written report of expert A. Des Forges in reply to the questions submitted by the Examining Judge dated 20 November 2006 (EJ file, answer to question 25, p. 37); The Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-A, "Judgement", 28 November 2007, para. 159.
40 OAU-report, para. 7.20.
41 The Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-T, "Judgement and Sentence", 3 December 2003, para. 138.
42 The Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-T, "Judgement and Sentence", 3 December 2003, para. 138, 139, 152 and further.
43 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 374).
44 Written report of expert A. Des Forges in reply to the questions submitted by the Examining Judge dated 20 November 2006 (EJ file, answer to question 25, p. 37)
45 G. Prunier, The Rwanda crisis: history of a genocide, C. Hurst & Co. (Publishers) Ltd, London, 2008, p. 171-172, as translated by the Prosecution
in the Public Prosecutor's closing speech p. 74. Part of this quote is also included in the OAU-report, para. 9.9.
46 OAU-report, paras. 16.2 and 16.3.
47 OAU-report, para. 7.29; Written report of expert A. Des Forges in reply to the questions submitted by the Examining Judge dated 20 November 2006 (EJ file, answer to question 13, p. 33-34).
48 Written report of expert A. Des Forges in reply to the questions submitted by the District Court, the Public Prosecution Service and the Defence Counsel dated 20 December 2007 (EJ file, answer to questions 12 and 13 submitted by the Defence Counsel, (p. 653-655).
49 A. Des Forges, 'Leave none to tell the story', p. 127.
50 Written report of expert A. Des Forges in reply to the questions submitted by the District Court, the Public Prosecution Service and the Defence Counsel dated 20 December 2007 (EJ file, answer to questions 16 and 17 submitted by the Defence Counsel, (p. 655).
51 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 393).
52 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 393).
53 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 395).
54 OAU-report, para. 2.20.
55 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, para. 106.
56 OAU-report, paras. 14.1 and 14.3.
57 The Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003, para. 114.
58 OAU-report, para. 9.7.
59 OAU-report, para. 14.2.

60 Written report of expert A. Des Forges in reply to the questions submitted by the District Court, the Public Prosecution Service and the Defence Counsel dated 20 December 2007 (EJ file, answer to questions 11-12 submitted by the Defence Counsel, (p. 654).
61 OAU-report, para. 14.60.
62 OAU-report, para. 14.59.
63 OAU-report, para. 14.58
64 OAU-report, para. 14.53.
65 The Prosecutor v. F. Nahimana et al. ('Media Trial'), Case No. ICTR-99-52-T, Judgement and Sentence, 3 December 2003, para. 114.
66 Written report of expert A. Des Forges in reply to the questions submitted by the Examining Judge dated 20 November 2006 (EJ file, p. 38 answer to question 27).
67 Prosecutor v. T. Bagosora et al., ('Military I), case No. ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008, para. 1907.
68 Prosecutor v. T. Bagosora et al., ('Military I), case No. ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008, para. 1919; P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 399).
69 Report of Expert Alison L. des Forges, answer to question 2 under a, dated 21 January 2008, EJ-File, p. 658 (Dutch translation).
70 Written report of expert A. Des Forges in reply to the questions submitted by the Examining Judge dated 20 November 2006 (EJ file, answer to questions 7 and 8, p. 30).
71 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, para. 112.
72 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, para. 125, which holds the following conclusion: "Clearly, therefore, the massacres which occurred in Rwanda in 1994 had a specific objective, namely the extermination of the Tutsi, who were targeted especially because of their Tutsi origin and not because they were RPF fighters. In any case, the Tutsi children and pregnant women would, naturally, not have been among the fighters.".
73 The Prosecutor v. J.-P. Akayesu, Case No. ICTR-96-4-T, judgement, 2 September 1998, paras. 127 and 128.
74 OAU-report, para. 14.29.
75 Written report of expert A. Des Forges in reply to the questions submitted by the District Court, the Public Prosecution Service and the Defence Counsel dated 20 December 2007 (EJ file, answer to question 8 submitted by the Prosecution, (p. 660).
76 P. Douma and L. Specker, Context Analysis Rwanda 1990-1994, Netherlands Institute of International Relations 'Clingendael', Conflict Research Unit, July 2006 (File 6, p. 394).
77 OAU-report, para. 17.12.
78 The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1999.
79 The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001.
80 Application Form Asylum Seeker (File 4, p. 163); First hearing conducted by the Immigration and Naturalisation Service (hereafter: IND) on 11 November 1998 (File 4, p. 133-151).
81 Report follow-up hearing by the IND, Regional Direction North-East dated 1 July 1999 (File 4, p. 119-126); Letter from A.B.G.T. von Bóné to the IND dated 22 July 1999 regarding corrections/additions made to the follow-up hearing dated 1 July 1999 (File 4, p. 104-118).
82 Order from the Secretary of State for Justice in relation to the refusal of the request to enter the Netherlands or to obtain a residence permit dated 12 August 1999 (File 4, p. 96-103).
83 Letter from the authorised representative, L.E.J. Vleesenbeek to the IND dated 20 September 1999 concerning the request to attend to the notice of objection (File 4, p. 93-94); Letter from the authorised representative, L.E.J. Vleesenbeek to the IND dated 5 October 1999 concerning the additional reasons for submitting the notice of objection (File 4, p. 88-91);
84 Geneva, 28 July 1951, Bulletin of Treaties Trb. 1954, 88. Article 1F reads as follows: “The provisions of the Convention do not apply to a person against whom there are serious reasons to suspect that:
(a) he committed a crime against peace, a war crime or a crime against humanity, as defined in the international conventions which were drawn up to create provisions concerning such crimes;
(b) he committed a serious, non political crime outside the country of refuge, before he was admitted to this country as refugee;
(c) he committed acts which are in violation of the objectives and principles of the United Nations.”
85 Letter from the Minister for Immigration and Integration to the authorised representative L.E.J. Vleesenbeek dated 8 February 2005 regarding the transfer of the case file of [Defendant] (File 4, p. 43).
86 Letter from the Minister of Foreign Affairs to the Minister for Immigration and Integration dated 14 February 2006, concerning an individual official notification in relation to the (File 4, p. 34-36).
87 Letter from the Minister for Immigration and Integration to the Public Prosecution Service, National Office in Rotterdam, dated 18 May 2006, concerning the transfer of the case file of the Defendant (File 4, p. 22).

88 Websites that could be of interest: the websites of the Netherlands Institute for Human Rights (University of Utrecht), Wikipedia, Trial Watch and Menapress.
The book written by A. des Forges: 'Leave None To Tell the Story', which was published in 1999, was used as general background information in relation to the conflict.
89 File 2 General File Special Investigation Powers.
90 International request for legal assistance to the competent judicial authorities in Rwanda, dated 14 June 2006 (File 1, p. 1-9).
91 Official Record of the National Police Agency (KLPD) (hereafter: NPA) dated 14 May 2007, concerning Rwandese documents of interviews (File 1, p. 537-540); Official NPA Report dated 27 August 2007, concerning the fulfilment of a request
for legal assistance (File 1, p. 676-679).
92 Letter from the Procurator General of the Rwanda Republic to the Procurator of the Kingdom of the Netherlands dated 10 July 2006, concerning the permission to execute the Letters Rogatory, on the understanding that these would be financed from its [Netherlands] own resources (File 1, p. 15-16). It concerned the witnesses: A. Harorimana, [witness 7], [witness 8], [witness 9], [witness 10], [witness 1], [witness 12], [witness 13], [witness 14], [witness 15], [witness 5] and [witness 16] (File 1, p. 11-14).
93 Public Prosecutor's Closing Speech, p. 6.
94 Official NPA Report dated 26 July 2006, regarding first witness interview [witness 7] (File 12, p. 38-43).
95 Official NPA Report dated 8 August 2006, regarding the arrest of the Defendant (File 4, p. 181-183).
96 Official Court Report dated 11 May 2007, appendix 'Notes from the Prosecution in the Maton proceedings for the (pro forma) hearing on 11 May 2007', p. 2 and 3. Letter of presentation from the Prosecutor's Office of the ICTR in Arusha (Tanzania) to the Ambassador of the Netherlands in Dar es Salaam (Tanzania) dated 3 October 2006, including the request from the Prosecutor of the ICTR to the Dutch Minister of Justice, asking the judicial authorities in the Netherlands to take over the prosecution of the Defendant,
dated 29 September 2006.
97 International request for legal assistance to the competent judicial authorities in Finland dated 29 August 2006, concerning the request to examine three witnesses, being [F7], [F8] and [F3] (File 1, p. 124-133).
98 Official NPA Report dated 19 October 2006, concerning the reply sent by the Finnish authorities (File 1, p. 135-171).
99 International request for legal assistance to the competent judicial authorities in France dated 29 August 2006, regarding three witness examinations, being [F6], [F4] and [F1] (File 1, p. 173-182).
100 Official NPA Report dated 23 December 2006, regarding the witness examination in Tanzania (File 1, p. 406-411).
101 Public Prosecutor's Closing Speech, p. 8.
102 Official NPA Report dated 16 January 2007, concerning the witness interview Obed Ruzindana (File 1, p. 451-453).
103 International request for legal assistance to the competent judicial authorities in France dated 23 May 2007, in relation to the request to hear [witness 17] (File 1, p. 607 -616).
104 International request for legal assistance to the competent judicial authorities in Switzerland dated 15 June 2007, in relation to the request to hear [witness 18] (File 1, p. 646-654).
105 A written document, being the Dutch translation of the witness statement of [F10], made to the National Criminal Investigation Service in Turku (Finland) dated 11 January 2007; a written document, being the Dutch translation of the witness statement of [F3], made to the National Criminal Investigation Service in Turku (Finland) dated 11 January 2007.
106 Decision of the Examining Judge in charge of criminal matters at the District Court in The Hague, in reply to the demand of the Public Prosecutor dated 23 August 2006, requesting a preliminary judicial investigation against the Defendant dated 12 October 2006 (File 4, p. 197-198).
107 Appointment of expert in conformity with Article 227 ff. of the Code of Criminal Procedure dated 7 November 2006 (EJ file, p. 2-3).
108 Decision of the Examining Judge in charge of criminal matters at the District Court in The Hague, in reply to the demand of the Public Prosecutor dated 5 January 2007, requesting a preliminary judicial investigation against the Defendant dated 11 January 2007 (EJ file, p. 119-122)
109 EJ file, p. 376-411.
110 Official Record of Findings of the Examining Judge dated 9 May 2007 (EJ file, p. 412-413). During the pro forma hearing on 16 May 2007, the Defence Counsel informed the District Court that he did not dismiss the four witnesses who had not appeared in Cameroon, but he indicated as well "that he did not expect to submit another request the District Court to direct the examination of these witnesses".
111 Official Record of Findings of the Examining Judge dated 7 June 2007 (EJ file, p. 414-498).
112 After consultation with his client the Defence Counsel dismissed these witnesses, resulting in the premature termination of the Examining Judge's Rogatory journey.
113 [witness 18], EJ file p. 725-764.
114 [witness 17], EJ file, p. 961-922.

115 [witness 4] (EJ file, p. 279-290), [witness 3] (EJ file, p. 258-278) and [witness 17] (EJ file, p. 612-629).
116 EJ file, p. 647-675.
117 Public Prosecutor's Closing Speech, p. 7.
118 Public Prosecutor's Closing Speech. p. 7.
119 Official NPA Report, concerning the execution of the request for legal assistance in Rwanda dated 16 August 2006 (File 1, p. 11-14).
120 Official NPA Report of Findings dated 17 May 2008, concerning the payment of compensation per hour to witnesses (File 1, p. 985-986).
121 Official Record of Findings dated 5 January 2009 (EJ file p. 1141-1149) and Official Record of Findings dated 29 January 2009 (EJ file, p. 1216-1219).
122 Public Prosecutor's Closing Speech, p. 9.
123 Order by the Examining Judge to investigating officers ex Article 177 Code of Criminal Procedure dated 11 October 2006.
124 Official NPA Report dated 16 October 2006, with regard to the Examining Judge's order.
125 Official NPA Report dated 24 November 2006, regarding the witness examination by telephone of [witness 1] dated 24 November 2006 (File 12, p. 585-587).
126 From the testimonies of [witness 28] rendered to the Parquet Général dated 28 January 2007 (File 1, p. 506-511) it can be concluded that [witness 1] actually means [witness 28] when he mentions [name].
127 Official NPA Report dated 17 January 2007, regarding the interview of [witness 28] dated 17 November 2007 (File 12, p. 591-593 answers to questions 13, 25-27 and 31).
128 Official Record of Findings dated 30 January 2007, concerning the receipt of documents (File 1, p. 391). Official NPA Report of Findings dated 10 January 2007, regarding the conversation recorded on audio cassette between witness [witness 1] and a legal assistant of the Parquet Général dated 6 January 2007 (File 1, p. 413-415).
129 Official NPA Report dated 17 November 2006, regarding the interview of [witness 21] dated 17 November 2006 (File 12, p. 578-579, answer to question 3).
130 Official NPA Report dated 17 November 2006, regarding the interview of [witness 21] dated 17 November 2006 (File 12, p. 579, answer to question 3).
131 Official NPA Report dated 3 January 2007, regarding the receipt of historical GSM data of witness Muhimana (File 1, p. 373-389). Official NPA Report dated 11 August 2006, regarding the police inquiry into the Defendant's GSM (File 11, p. 135).
132 Official NPA Report dated 22 March 2007, regarding the interview of [witness 30] dated 22 March 2007 (File 12, p. 631, answers to questions 8 and 13); Official NPA Report dated 21 March 2007, regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 618, answer to question 14).
133 Official NPA Report dated 21 March 2007, regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 618, answer to question 10).
134 Official NPA Report dated 16 April 2007, concerning the report of case ZD 07: influencing/losing witnesses (File 13, p. 260).
135 Official NPA Report dated 27 October 2008, concerning the translation of wire tapped telephone conversations and email messages, appendix 6, p. 5-6.
136 Official NPA Report dated 27 October 2008, concerning the translation of wire tapped telephone conversations and email messages, appendix 7, p. 3.
137 Official Court Report dated 14 October 2008.
138 Official Record of Witness Examination [witness 8] by the Examining Judge dated 16 January 2007 (EJ file, p. 161, paras. 50 and 51).
139 Official NPA Report dated 26 March 2007, regarding the interview of [witness 23] (File 12, p. 653, answer to question 62).
140 Official NPA Report dated 7 October 2008, concerning the threatened witness in France (File 15, p. 2).
141 Prosecution "Ex Parte Motion to Unseal and Disclose to the Dutch Authorities the Closed Session Transcripts of Witnesses BI and AT in the Muhimana case, GGO in the Niyitegeka case and GG in the Ntakirutimana case".
142 The Prosecutor v. Mika Muhimana, Case No. ICTR-95-IB-R75, Éliézer Niyitegeka, Case No. ICTR-95-14-R75, Élizaphan and Gérard Ntakirutimana, Case Nos. 96-10-R75 and 96-17-R75, Decision on Prosecution Motion to Unseal and Disclose Closed Session Testimony of Witnesses BI, AT, GGO and GG.
143 Article 75(F)(i) of the Rules of Procedures and Evidence of the ICTR: Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the "first proceedings"), such protective measures: (i) shall continue to have effect mutatis mutandis in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule.
144 "Prosecution's Urgent Ex Parte Motion to Rescind Protective Measures for Certain Witnesses".
145 The Prosecutor v. Muhimana, Case No. ICTR-95-IB, Ruzindana and Kayishema, Case No. ICTR-95-I, Niyitegeka, Case No. ICTR-95-14, Ntakirutimana et al., Case Nos. 96-10/17, Musema, Case No. ICTR-96-13, Decision on Prosecution's Urgent Ex Parte Motion to Unseal and Disclose Personal Information Sheets and

Rescind Protective Measures for Certain Witnesses, Rule 75(F)(i) of the Rules of Procedure and Evidence.
146 Letter from the Defence Counsel to the District Court dated 29 September 2008, with as appendix nr. 1 the English witness statement of witness [witness 8] dated 11 April 1996, as he gave evidence to the investigators of the ICTR.
147 The English and French translation of the witness statement dated 2 April 1996, the French version of the witness statement dated 25 January 2002 and the English and French translations of the witness statement dated 27 August 2002 of [witness 24], as he gave evidence to the investigators of the ICTR.
148 Although the witness [witness 25] declared that he had also made statements to the US authorities, these statements were never included into the case file.
149 Official Court Report dated 3 November 2008.
150 The statements of [witness 10] dated 16 January 2003 and the statement of [witness 8] dated 14 and 15 January 2003, as rendered in the United States.
151 Organic Law No. 08/96 of 30 August 1996, titled 'Organic Law on the Organisation of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity'.
152 Enforcing International Humanitarian Law at the National Level: The Gacaca Jurisdictions of Rwanda, C. Mibenge, in Yearbook of International Humanitarian Law, volume 7 (2004); The Gacaca Courts in Rwanda, Bert Ingelaere, in Traditional justice and reconciliation after violent conflict: learning from African experiences (2008).
153 The motion for the creation of a modern Gacaca was passed by the Transitional National Assembly on 12 October 2000. The bill in relation to the Gacaca was carried by the Rwandese Constitutional Court on 18 January 2001, after which date this law was amended in June 2004. The full description of this law is: 'Organic Law No. 16/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994', dated 19 June 2004. The last amendment to this law entered into force on 19 May 2008.
154 Request for legal assistance to the competent judicial authorities in Rwanda of 9 July 2007 (File 1, p. 656-663).
155 Official Record of the receipt of the Gacaca statements dated 31 August 2007 (File 1, p. 681-684).
156 File 1, p. 701-705.
157 File 1, p. 729-731.
158 File 1, p. 725-728.
159 Official Record dated 25 June 2008 (File 1, p. 1141-1142).
160 Official Record of Findings Gacaca inquiry Mugozi dated 26 May 2008 (File 1, p. 999-1000).
161 Official NPA Report dated 30 October 2008, regarding the inquiry into the dates of the Gacaca witness examinations.
162 LJN BB0494.
163 Official Court Report dated 11 July 2008, p. 4-5.
164 Official Record of court hearing dated 13 October 2008.
165 Official Record of court hearing dated 14 October 2008.
166 Official Record of court hearing dated 13 October 2008.
167 Official Record of court hearing dated 13 October 2008.
168 Official Record of court hearing dated 14 October 2008.
169 Official Record of court hearing dated 14 October 2008.
170 Official Record of court hearing dated 14 October 2008.
171 Official Record of court hearing dated 14 October 2008
172 Official Record of court hearing dated 13 and 14 October 2008.
173 Official Record of Findings of the Examining Judge dated 6 April 2007, regarding the examination of witnesses in Rwanda (EJ file, p. 301).
174 Official Record of court hearing dated 21 October 2008.
175 Official Record of the examination of Adrien Harorimana before the Examining Judge dated 22 March 2007 (EJ file, p. 324, para. 39).
176 Official NPA Report dated 8 August 2006, containing the 2nd statement of Adrien Harorimana (File 12, p. 23 and 27, answers to questions 69, 71 and 112).
177 Counsel's Plea Ambulance Incident p. 27- 30.
178 See for instance Counsel's Plea Ambulance Incident, p. 29.
179 See for instance Counsel's Plea Ambulance p. 28, Consolata Mukamurenzi Incident p. 4 and 5, Kayitesi Incident p. 6 and 7, Hospital Incident p. 24.
180 Official NPA Report, concerning the interview of witness A. Harorimana dated 8 August 2006 (File 12, p. 27, answer to question 105).
181 See for instance the Official NPA Report, regarding the interview of witness [witness 7] dated 9 August 2006 (File 12, p. 54 and 58 answer to the questions 94, 134 and 135 respectively), as well as the Official NPA Report, regarding the interview of witness [witness 15] dated 7 August 2006 (File 12, p. 305, answer to the questions 74 up to and including 77).

182 See for instance the request for legal assistance dated 15 February 2007, File 1, p. 455-459. In this respect also see Reply, p. 20.
183 With the exception of [witness 4].
184 In this respect also see H.F.M. Crombag, P.J. van Koppen and W.A. Wagenaar, Questionable cases, the Psychology of Criminal Evidence (1992), p. 198; and P.J. van Koppen and W.A. Wagenaar, Recognition of Faces, P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law (2002), p. 553.
185 P.J. van Koppen and W.A. Wagenaar, Recognition of Faces, P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law (2002), p. 568.
186 Counsel's Plea, Ambulance Incident, p. 1, 10 and 33, Counsel's Plea, Grandchildren [witness 5], p. 7; Counsel's Plea, Hospital Incident, p. 13.
187 See for instance the Official Record of Witness Examination [witness 1] before the Examining Judge dated 15 January 2007, after the questions 9, 15 and 22 (EJ file, p. 137, 138 and 141) and the Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007, after the questions 5, 7, 26, 30 and 37 (EJ file p. 148, 149, 155, 156 and 157).
188 See for instance the Official Record of Witness Examination [witness 14] before the Examining Judge dated 30 March 2007 (EJ file, p. 211-212, after para. 65) and the Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007 (EJ file, p. 156, after question 30).
189 Official Record of Witness Examination [witness 14] before the Examining Judge, dated 30 March 2007 (EJ file, p. 307, para. 85).
190 See for instance the Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007 (EJ file, p. 148, after question 5) and the Official Record of Witness Examination [witness 1] before the Examining Judge dated 15 January 2007 (EJ file, p. 141, after question 22).
191 Official Court Reports dated 20 December 2007 and 18 February 2008.
192 Letter from the District Court to the National Office of the Public Prosecution Service dated 4 March 2008 and letter from the National Office of the Public Prosecution Service to the District Court dated 18 March 2008.
193 Prosecutor v. S. Bikindi, Case No. ICTR-01-72-T, "Judgement", 2 December 2008, para. 33.
Prosecutor v. F. Karera, Case No. ICTR-01-74-A, "Judgement", 2 February 2009, para. 45.
194 For example Prosecutor v. E. Niyitegeka, Case No. ICTR-96-14-T, "Judgement and Sentence", 16 May 2003, para. 43; Prosecutor v. J. de D, Kamuhanda, Case No. ICTR-99-54A-T, "Judgement and Sentence", 22 January 2003, para. 42.
195 G. Wolters, Recollections of witnesses, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law (2002), p. 415.
196 Id., p. 413.
197 District Court The Hague, 25 June 2007, LJN: BA7877.
198 Appeals Court The Hague, 10 March 2008, LJN: BC6068.
199 Public Prosecutor's Closing Speech p. 26.
200 Compare witness [witness 26] Alias [alias] who stated "that he could not declare the Defendant not guilty, because nobody of the Murakaza family was innocent" (see the statement made by this witness 30 June 2006 before the legal assistants of the Parquet Général in Rwanda (File 1, p. 546).
201 For example witness [witness 25] when examined by the Examining Judge stated that he is not able to draw, because this is something he has never learned and therefore he uses gestures (Official Record of Witness Examination [witness 25] before the Examining Judge, dated 18 December 2008 (File EJ Examinations, p. 1112, para. 63).
202 I. Candel, H. Merckelbach and I. Wessel, Traumatic Memories, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law(2002), p. 420.
203 Id., p. 421 and 422.
204 E. Rassin and P.J. van Koppen, Questioning Children in Sexual Abuse Cases, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law (2002), p. 509.
205 Appeals Court The Hague, 10 March 2008, LJN: BC6068, l.gr. 9.11. Also see in a similar sense District Court Amsterdam, 17 March 2005, LJN: AT0873 (summary) and NS 2005, 506.
206 Prosecutor v. J-P. Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, paras. 130-156.
207 Prosecutor v. L. Semanza, Case No. ICTR-97-20-T, "Judgement and Sentence", 15 May 2003, paras. 35 and 36; 107-111.
208 Prosecutor v. S. Nchamihigo, Case No. ICTR-01-63-T, "Judgement and Sentence", 12 November 2008, para. 15.
209 Prosecutor v. S. Bikindi, Case No. ICTR-01-72-T, "Judgement", 2 December 2008, para. 31.
210 Counsel's Plea Hospital Incident p. 3 and 4 and Rejoinder p. 3 unto 6.
211 See Prosecutor v. P. Zigiranyirazo, Case No. ICTR-01-73-T, "Judgement", para. 304: 'The Chamber also notes that Witness AKP did not mention the Accused in his 2003 Pro Justicia Statement to Rwandan judicial authorities with regard to alleged crimes committed by Jaribu in 1994. Witness AKP explained that the Rwandan Court officers asked questions only about Jaribu and not about the Accused. He stated, "I couldn't speak about him if I hadn't

been asked a question about him." Under the circumstances, the Chamber is satisfied by Witness AKP's explanation, and considers that the lack of reference to the Accused in his Pro Justicia statement is understandable, insofar as it was intended as evidence against Jaribu and not against the Accused.'
212 See for instance: Prosecutor v. T. Bagosora et al., Case No. ICTR-98-41-T, "Decision on admissibility of evidence of witness DBQ", 18 November 2003, para. 29: 'The Chamber accepts and understands that witness statements from witnesses who saw and experienced events over many months which may be of interest to this Tribunal, may not be complete. Some witnesses only answered questions put to them by investigators whose focus may have been on persons other than the accused rather than volunteering all the information of which they are aware.'; Prosecutor v. E. Karemera et al., Case No. ICTR-98-44-T, "Decision on defence motions to prohibit witness proofing, Rule 73 of the Rules of Procedure and Evidence", 15 December 2006, which in para. 11 quotes from the above conclusion from Bagosora et al.; Prosecutor v. A. Musema, Case No. ICTR-96-13-T, "Judgement and Sentence", 27 January 2000 para. 706 (paragraph represented in Note 29); Prosecutor v. E. and G. Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, "Judgement and Sentence", 21 February 2003, para. 516 (paragraph represented in Note 29).
213 See for instance Prosecutor v. F. Karera, Case No. ICTR-01-74-A, "Judgement", 2 February 2009, para. 113: 'In the 1998 Statement, Witness BMU recounted in general terms the events in Rwanda and in his sector from the beginning of the war in October 1990 to the end in 1994. The focus was not on specific situations arising in the area of Nyamirambo but rather on broader events. (...) In addition, the Appeals Chamber notes that, as with the 2002 Statement, the 1998 Statement focussed on the role of Tharcisse Renzaho in the genocide. In these circumstances, it is understandable that Witness BMU did not mention the presence of three particular policemen at a roadblock and the crimes they committed under the Appellant's alleged authority. (...) The Appeals Chamber therefore considers that Witness BMU's explanations were not at odds with the content of the 1998 Statement. Turning to the 2002 Statement, it is clear that the focus again was Renzaho's role during the genocide. While in this statement, the witness recounted the existence and functioning of roadblocks in general, he did not describe specific events at roadblocks.' and Prosecutor v. E. and G. Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, "Judgement and Sentence", 21 February 2003, para. 574 (paragraph represented in Note 29).
214 Public Prosecutor’s Closing Speech p. 40-43.
215 Public Prosecutor’s Closing Speech p. 44 and 45.
216 Rejoinder p. 3 and 4.
217 Prosecutor v. Z. Kupreškic et al., Case No. IT-95-16-A, "Appeal Judgement", 23 October 2001, para. 31.
218 Prosecutor v. M. Fofana and A. Kondewa, Case No. SCSL-04-14-T, "Judgement", 2 August 2007, paras. 256 and 262.
219 Prosecutor v. A. Furundžija, Case No. IT-95-17/1-T, "Judgement", 10 December 1998, para. 113.
220 See for instance Prosecutor v. C. Kayishema and O. Ruzindana, Case No. ICTR-95-1-T, "Judgement", 21 May 1999 para. 76.
221 See for instance:
- Prosecutor v. A. Musema, Case No. ICTR-96-13-T, "Judgement and Sentence", 27 January 2000 para. 706: 'The Chamber notes that in cross-examination, the witness was questioned by the Defence as to his previous statements and the lack of mention therein of Musema in relation to the above attack. Witness T explained that at the time he had not been asked specific questions about Musema save whether he knew him and could identify him, and whether he had seen him after the arrival of the French. The Chamber is satisfied with this explanation.' ; and
- Prosecutor v. E. and G. Ntakirutimana, Case No. ICTR-96-10 & ICTR-96-17-T, "Judgement and Sentence", 21 February 2003, para. 111: 'As part of its arguments against Witness FF's credibility, the Defence submits that the witness did not claim in any of her previous statements to have seen Elizaphan or Gérard Ntakirutimana at the Complex on 16 April. The Chamber does not consider this significant in the present context but notes that this follows also from her testimony' ;
Para. 516: 'Turning to Witness KK's sighting of Gérard Ntakirutimana at Kabatwa Hill, the Chamber observes that the witness did not mention him in connection with this event in his prior statement. The Chamber accepts his explanation that he was only answering questions about given individuals which did not include the Accused.' ;
Para. 574: ' With respect to the present event, the Chamber accepts the witness's explanation that she had not mentioned this incident before because she was not asked about it. Her testimony in Court was clear and consistent and was not shaken under cross-examination. The Chamber accordingly finds that Witness FF is credible also in the present context'.
222 See for instance:
- Prosecutor v. A. Musema, Case No. ICTR-96-13-T, "Judgement and Sentence", 27 January 2000, para. 697: '(...) The Chamber notes that in his prior statement dated 13 May 1995, Witness Z made no mention of the presence of Musema at the 13 May 1994 attack. His explanation for this omission in the main was that unlike in statements, before the Court he could speak of everything he knew. The Chamber is not convinced by this explanation. Similarly, when questions were put to him relating to his testimony in the Kayishema and Ruzindana case and the discrepancies with his testimony in this case, he was resistant and evasive. Consequently, the Chamber does not

find the testimony of Witness Z to be reliable.' ;
- Prosecutor v. A. Rwamakuba, Case No. ICTR-98-44C-T, "Judgement", 20 September 2006, para. 114: '(...) Witness GAC gave a statement in 1999 to the Prosecution and testified in the Kamuhanda case in 2002 about the activities of Kamuhanda and Kamanzi in the distribution of weapons in Kayanga between 8 and 12 April 1994. (...) It was not until he gave his statement in 2004 that he mentioned Rwamakuba for the first time. He explained the prior omission by the fact that he was not questioned about Rwamakuba at the time. Even if that were the case, the Chamber does not find this to be a satisfactory explanation, as the absence of certain questions would not preclude a witness, who wanted to give a credible picture of an event, from volunteering information.' ;
Para. 150: 'This explanation is not persuasive, especially since the witness only mentioned André Rwamakuba's name for the first time in November 2004 after making a statement to the Prosecution in 1999 and testifying in the Kamuhanda case in 2001. He explained his failure to mention Rwamakuba's name at an earlier time by stating he was not previously questioned about the Accused. Although this is a fairly common explanation provided by both Prosecution and Defence Witnesses, this is not a satisfactory explanation (...). The witness' obvious reluctance to answer questions from the Defence, particularly in relation to his testimony in the Kamuhanda case, further contributes to challenge his overall credibility.' .
223 In fact, the Appeals Chamber of the ICTR made reference to this judgement in Prosecutor v Z. Kupreškic et al., Case No. IT-95-16-A, "Appeal Judgement", 23 October 2001 in paras. 34-40. The ICTR almost set the same criteria for the assessment of the reliability of identifications.
For example in the Trial Chamber's judgement in Prosecutor v C. Kayishema and O. Ruzindana, Case No. ICTR-95-1-T, "Judgement", 21 May 1999, para. 71 explicitly refers to the above mentioned points under a, b, c and d (also with reference to case law of different countries). The Special Court for Sierra Leone in its judgement in Prosecutor v. M. Fofana and A. Kondewa, Case No. SCSL-04-14-T, "Judgement", 2 August 2007, in para. 457 also referred to the criteria mentioned in the Turnbull Judgement.
224 P.J. van Koppen and W.A. Wagenaar, Recognition of Faces, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law(2002), p. 547 up to and including 549.
225 See in this respect the Turnbull Judgement which states: 'Recognition may be more reliable than identification of a stranger.' The Special Court for Sierra Leone also pronounced a similar judgement in Prosecutor v. M. Fofana and A. Kondewa, Case No. SCSL-04-14-T, "Judgement", 2 August 2007. In para. 261 of that judgement this has been phrased as follows: 'The Chamber considers identification by a witness of someone previously known to be more reliable than identification of someone previously unknown.' The ICTR also considered that the fact that the witness knows the accused adds to the reliability of his identification, as it ruled in the afore mentioned judgement rendered in the case Prosecutor v C. Kayishema and O. Ruzindana, Case No. ICTR-95-1-T, "Judgement", 21 May 1999, in para. 457, which read as follows: 'Other witnesses, knew Ruzindana by sight due to his reputation as a prominent businessman in their community and because of his father's standing in the community. (...) This prior familiarity with the identity of Ruzindana enhanced the reliability of the identification evidence heard by the Trial Chamber.'
226 With the exception of dr. [witness 4], of course.
227 See in this respect H.F.M. Crombag, P.J. van Koppen and W.A. Wagenaar, Questionable cases, the Psychology of Criminal Evidence (1992), p. 198; and P.J. van Koppen and W.A. Wagenaar, Recognition of Faces, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law (2002), p. 553.
228 P.J. van Koppen and W.A. Wagenaar, Recognition of Faces, in P.J. van Koppen, D.J. Hessing, H.L.G.J. Merckelbach and H.F.M. Crombag (editor), Justice Inside, Psychology of the Law (2002), p. 568.
229 See for instance the statements of [witness 7], [witness 9], [witness 10], [witness 1], [witness 12], [witness 4], [witness 3], [witness 14], [witness 15], [witness 20], [F6], [witness 28], [witness 29], [witness 30], [witness 17], [witness 24], [witness 26], [witness 31], [witness 32], [witness 33] and [witness 18].
230 In the French "Déclaration de Témoin" the typed text says: (File ICTR documents, Statements - part I, p. K0033864): "Arrivé à barrière de Mugonero, des militaires et des gendarmes (...)". The word "militaires" was crossed out by hand and replaced with a written word which the District Court is unable to read. The English translation (Witness Statement) includes the following text:
"When we reached the Mugonero roadblock, militiamen and gendarmes (...)". The footnote following "militiamen" includes the sentence: "French text was changed from soldiers tot militiamen and signed" (File ICTR documents, Statements – part I, p. K0033870).
231 Witness statement of [witness 3], dated 18 October 1996 (File ICTR documents, Statements - part I, p. K0033870).
232 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 269, para. 50).
233 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 262, para. 21).
234 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ

Examinations, p. 262 and 263, paras. 21 and 22).
235 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 260, paras. 6, 7, 8, 12 and 13).
236 Official Record of Witness Examination [witness 4] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 282, para. 8).
237 Official Record of Witness Examination [witness 4] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 283, para. 13).
238 Official Record of Witness Examination [witness 4] before the Examining Judge, dated 7 February 2007 (File EJ Examinations, p. 287, para. 25).
239 Official Record of Witness Examination [witness 4] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 284, para. 16).
240 Official Record of Witness Examination [witness 12] before the Examining Judge, dated 25 January 2007 (File EJ Examinations, p. 232, paras. 16, 17 and 18).
241 Official Record of Witness Examination [witness 12] before the Examining Judge, dated 26 January 2007 (File EJ Examinations, p. 251, para. 85).
242 Official Record of Witness Examination [witness 28] before the Examining Judge, dated 18 October 2007 (File EJ Examinations, p. 541, paras. 13 and 14).
243 Official NPA Report regarding the witness interview [F6] dated 21 November 2006 (File 12, p. 484).
244 Official NPA Report regarding the second interrogation of the Defendant, dated 8 August 2006 (File 5, p. 15).
245 Official NPA Report regarding the third interrogation of the Defendant, dated 9 August 2006 (File 5, p. 48 and 49).
246 Official NPA Report regarding the fourth interrogation of the Defendant, dated 9 August 2006 (File 5, p. 49).
247 Official NPA Report regarding the second interrogation of the Defendant, dated 8 August 2006 (File 5, p. 15).
248 Official NPA Report regarding the third interrogation of the Defendant, dated 8 August 2006 (File 5, p. 28).
249 Official NPA Report regarding the sixth interrogation of the Defendant, dated 9 August 2006 (File 5, p. 62).
250 See for instance the Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 46 and p. 53 answer to question 5 respectively 74); the Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 307, answer to question 100); Official Record of Witness Examination [witness 28] before the Examining Judge, dated 18 October 2007 (File EJ Examinations, p. 541, para. 13).
251 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 40).
252 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261, para. 19).
253 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261, para. 18).
254 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261 and 262, para. 19).
255 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261 and 262, para. 19).
256 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 262, para. 21).
257 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 271, para. 56).
258 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 256).
259 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 271, para. 56).
260 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 262 and 263, paras. 21 and 22).
261 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 272, para. 59).
262 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 257).
263 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 263, para. 22).
264 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 263, para. 23).
265 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 263 and p. 269, paras. 23 and 49) and the Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 269, para. 49).
266 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 263, para. 24).

267 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 263, para. 25).
268 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 266, para. 37).
269 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 273, para. 64).
270 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 265, para. 31).
271 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 265, para. 31).
272 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 265 and 266, para. 32).
273 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 266, para. 33).
274 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 266, para. 34) and the Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 275, para. 75).
275 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 271 and 272, para. 57).
276 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 263, para. 25).
277 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 258).
278 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 264 and 267, paras 26, 27 and 38).
279 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 266, para. 36).
280 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 267, para. 38).
281 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 259).
282 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 274 and 275, paras. 69, 70 and 71).
283 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 259).
284 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 259).
285 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 205).
286 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 200).
287 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 281, para. 6).
288 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 282, para. 7); Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 288, para. 28).
289 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 282, paras. 7 and 8).
290 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 207).
291 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 282, para. 8).
292 Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 287, para. 25).
293 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 282 and 283, paras. 9).
294 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 284, para. 16).
295 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 283, paras. 10 and 11).
296 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p.

208).
297 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 209).
298 Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 288, para. 27).
299 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 283, para. 13).
300 Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 287, para. 23).
301 Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 287, para. 25).
302 Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 288, para. 27).
303 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 283 and 284, para. 14).
304 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 284, para. 15).
305 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 283, para. 13
306 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 284, para. 14).
307 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 284, para. 15).
308 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 209).
309 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 284, para. 15).
310 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 209).
311 Official NPA Report concerning the translation of the letter submitted by [witness 4], dated 31 January 2007 (File 6, p. 452-456).
312 Official NPA Report concerning the translation of the letter submitted by [witness 4], dated 31 January 2007 (File 6, p. 452-456).
313 Official NPA Report concerning the writing test, dated 19 November 2006 (File 6, p. 347 and 348 including appendices).
314 Official NPA Report concerning the witness statement made by telephone by [witness 4], dated 18 December 2006 (File 12, p. 574 and 575).
315 Official NPA Report regarding the receipt of a letter from [witness 4], dated 8 January 2007 (File 1, p. 248 and 249).
316 A document, being the expert's report from the Netherlands Forensic Institute, case number 2007.02.02.110, reference PL2671/07-010201 case: Maton, dated 29 January 2007 (File 6, p. 512 - 516 including appendices).
317 A document, being the expert's report from the Netherlands Forensic Institute, case number 2007.02.02.110, dated 10 May 2007 (File 6, p. 497 - 501).
318 A document, being the expert's report from the Netherlands Forensic Institute, case number 2007.02.02.110, dated 23 May 2007 (File 6, p. 503 and 504 including appendices).
319 Two Official NPA Reports concerning dactyloscopic tests , dated 14 June 2007 (File 6, p. 509 and 510).
320 A letter from the Netherlands Forensic Institute, reference 2007.02.02.110, case Maton, dated 29 August 2007 (not numbered).
321 Official NPA Report regarding DNA-tests, Official Record number PL2671/07-010201, project Maton, dated 28 April 2008 (File 6, p. 534 and 535 including appendices).
322 Official NPA Report concerning the investigation at the immigration service in Kigali, dated 26 May 2008 (File 1, p. 994 and 995 including appendices).
323 A letter from the Netherlands Forensic Institute, reference 2007.02.02.110, Maton investigation, dated 12 June 2008 (File 6, p. 549 up to and including 551).
324 A letter from the Netherlands Forensic Institute, reference 2007.02.02.110, 26Z3513, investigation Maton, dated 30 September 2008 (not numbered).
325 A letter from the Netherlands Forensic Institute, reference 2007.02.02.110, PL2671/07-010201 case Maton, dated 8 December 2008 (not numbered).
326 Official NPA Report regarding the second interrogation of the Defendant, dated 8 August 2006 (File 5, p. 15 and 16).
327 Official NPA Report regarding the third interrogation of the Defendant, dated 8 August 2006 (File 5, p. 23).

328 Official NPA Report regarding the third interrogation of the Defendant, dated 8 August 2006 (File 5, p. 28).
329 Official NPA Report regarding the third interrogation of the Defendant, dated 8 August 2006 (File 5, p. 32).
330 Official NPA Report regarding the sixth interrogation of the Defendant, dated 9 August 2006 (File 5, p. 62).
331 Official NPA Report regarding the thirteenth interrogation of the Defendant, dated 13 September 2006 (File 5, p. 161, answer to question 96).
332 Public Prosecutor's Closing Speech p. 132.
333 Public Prosecutor's Closing Speech p. 129.
334 Public Prosecutor's Closing Speech p. 128.
335 Public Prosecutor's Closing Speech p. 132.
336 Public Prosecutor's Closing Speech p. 132.
337 Public Prosecutor's Closing Speech p. 133.
338 Public Prosecutor's Closing Speech p. 133.
339 Public Prosecutor's Closing Speech p. 131.
340 Public Prosecutor's Closing Speech p. 132.
341 Counsel's Plea Incident [witnesses 3 and 4] p. 3, 4 and 5.
342 Counsel's Plea Incident [witnesses 3 and 4] p. 7, 8 and 9.
343 Counsel's Plea Incident [witnesses 3 and 4] p. 9.
344 Counsel's Plea Incident [witnesses 3 and 4] p. 10.
345 Counsel's Plea Incident [witnesses 3 and 4] p. 14.
346 Counsel's Plea Incident [witnesses 3 and 4] p. 11.
347 Rejoinder dated 4 December 2008, p. 12.
348 Counsel's Plea Incident [witnesses 3 and 4] p. 12 and 13.
349 Counsel's Plea Incident [witnesses 3 and 4] p. 10 and 11.
350 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 274, para. 66).
351 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261, para. 18).
352 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 260, paras. 6 and 7).
353 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261, para. 14).
354 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 259, para. 1).
355 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 260, para. 8).
356 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 260, paras. 6 and 8).
357 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 260 and 261, paras. 12 and 13).
358 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 276, para. 78).
359 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 259, para. 3).
360 See for instance Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261, para. 14) and the Official Record of Witness Examination [witness 3] before the Examining Judge, dated 6 February 2007 (File EJ Examinations, p. 275, para. 72).
361 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 259, para. 1 and 11).
362 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 253).
363 A document, being the Dutch translation of the examination of [witness 3] dated 2 August 2006 (File 12, p. 256).
364 Official Record of Witness Examination [witness 3] before the Examining Judge, dated 5 February 2007 (File EJ Examinations, p. 261, para. 16).
365 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 197).
366 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 200).
367 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 197).
368 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file,

p. 281, para. 5).
369 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 283, para. 13).
370 Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 288, para. 23).
371 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 208).
372 A document, being the Dutch translation of the examination of [witness 4] dated 1 August 2006 (File 12, p. 209).
373 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 281, para. 4).
374 See for instance Official Record of Witness Examination [witness 4] before the Examining Judge dated 7 February 2007 (EJ file, p. 287, para. 25) and Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 285, para. 18).
375 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 280, 282, 285 paras. 2 and 3, after para. 7 and para. 20).
376 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 282 and 285, after para. 7 and para. 20 and 21).
377 See for instance Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 287, para. 25).
378 See for instance Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 288, para. 27).
379 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 284, para. 16).
380 Official Record of Witness Examination [witness 4] before the Examining Judge dated 6 February 2007 (EJ file, p. 281, para. 4).
381 Official NPA Report concerning the interview of [witness 7] dated 26 July 2006 (File 12, p. 40); Official NPA Report concerning the interview of [witness 7] dated 9 August 2006 (File 12, p. 58); Official NPA Report concerning the interview of [witness 28] dated 17 January 2007 (File 12, p. 597 and 598, answer to the questions 97 - 108) and Official Record of Witness Examination [witness 28] before the Examining Judge dated 18 October 2007 (EJ file, p. 542 and 543, paras. 16 - 19; 32 - 47; 52; and 54).
382 A document, being the statement made by [witness 7] in June 2006 before the legal assistants of the Parquet Général in Rwanda (File 1, p. 40).
383 Official Record of Witness Examination [witness 28] before the Examining Judge dated 18 October 2007 (EJ file, p. 542 and 543, para. 17).
384 Official NPA Report, regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 309, answer to question 128).
385 Official NPA Report, regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 309 and 310, answer to the questions 128 - 138).
386 [Witness 3] stated for example that the luggage stayed in the car all the time (See the Dutch translation of the statement made by [witness 3] dated 2 August 2006 (File 12, p. 257)). However, her husband [witness 4] stated that the luggage had to be unloaded and that they were ordered to show every detail (see the Official Record of Witness Examination [witness 4] before the Examining Judge, dated 6 and 7 February 2007 (File EJ Examinations, p. 282, para. 8) and the Dutch translation of the statement made [witness 4] dated 1 August 2006 (File 12, p. 208)).
387 Official NPA Report, regarding the third interrogation of the Defendant, dated 8 August 2006 (File 5, p. 32).
388 Official NPA Report, regarding the sixth interrogation of the Defendant, dated 9 August 2006 (File 5, p. 62).
389 The case file contains the following names of this witness: [name 1 witness 34] (File 1 p. 943); [name 2 witness 34] (File 1, p. 944) and [name 3 witness 34] (File 1, p. 945)
390 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 138, para. 15).
391 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 55, para. 45).
392 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 139, para. 18).
393 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 138, para. 15).
394 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 143, para. 33).
395 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 54, para. 40).
396 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ

Examinations, p. 140, para. 19 and 20).
397 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 140, para. 20).
398 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 141, para. 21).
399 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 119).
400 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 141, para. 21).
401 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 141, paras. 22 and 23).
402 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 142, para. 26).
403 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 141, para. 24).
404 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 142, para. 26).
405 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 413, personal data).
406 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 414, answer to the questions 5 and 6).
407 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 221, para. 26).
408 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 216, para. 10).
409 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 217, para. 11).
410 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 217 and 218, paras. 11 and 13).
411 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 218, para. 13).
412 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 419 and 420, answer to question 56).
413 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 218, paras. 14 and 15).
414 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 420, answer to the questions 59 and 61).
415 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 20).
416 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 227, para. 56).
417 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219 and 220, para. 20).
418 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 218, para. 15).
419 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 16).
420 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 421, answer to the questions 67, 68 and 69).
421 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 421, answer to the questions 70 and 72).
422 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 20).
423 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 17).
424 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 224, para. 41).
425 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 18).
426 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 19).
427 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ

Examinations, p. 224, para. 42).
428 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300 and 301, answer to the questions 21 and 23).
429 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, answer to question 16).
430 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301, answer to question 23).
431 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 303, answer to question 51).
432 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 307, answer to question 97).
433 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 302, answer to question 38).
434 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, answer to question 16).
435 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301 and 302, answer to the questions 24 and 38).
436 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, 301 and 303, answer to the questions 16, 23 and 57).
437 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 302, answer to question 40).
438 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 303, answer to question 52).
439 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 302, answer to question 39).
440 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 303, answer to question 46).
441 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 304, answer to question 65).
442 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301, answer to question 25).
443 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 304, answer to question 66).
444 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301 and 303, answer to the questions 28 and 56).
445 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 304, answer to question 60).
446 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 304, answer to the questions 61 and 62).
447 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 303, answer to question 57).
448 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 304, answer to question 63).
449 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301, answer to question 33).
450 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301, answer to question 31).
451 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, answer to the questions 17 and 18).
452 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 299, answer to question 5).
453 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 39).
454 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 41).
455 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 42).
456 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57 answer to question 122).
457 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57 answer to question 124).
458 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57 answer to question 125).
459 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 42).

460 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57 answer to the questions 125, 127 and 128).
461 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57 answer to question 125).
462 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57 answer to question 130).
463 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 58 answer to the questions 131 and 132).
464 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 624 answer to question 9).
465 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 627 answer to question 32).
466 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 624 answer to question 9).
467 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625 answer to question 10).
468 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 624 answer to question 9).
469 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625 answer to the questions 13 and 14).
470 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625 answer to question 18).
471 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625 and 626 answer to the questions 21 and 22).
472 Official NPA Report concerning the third interrogation of the Defendant, dated 8 August 2006 (File 5, p. 23 and 24).
473 Public Prosecutor's Closing Speech p. 149.
474 Public Prosecutor's Closing Speech p. 147.
475 Reply (Legal aspects of international crimes (in answer to the questions from the District Court) dated 4 December 2008, p. 6.
476 Public Prosecutor's Closing Speech p. 139.
477 Public Prosecutor's Closing Speech p. 136.
478 Public Prosecutor's Closing Speech p. 149.
479 Public Prosecutor's Closing Speech p. 136 and 137.
480 Counsel's Plea Ambulance Incident p. 5 - 8 and 26.
481 Counsel's Plea Ambulance Incident p. 27 - 30.
482 Counsel's Plea Ambulance Incident p. 30.
483 Counsel's Plea Ambulance Incident p. 12 and 13.
484 Counsel's Plea Ambulance Incident p. 3.
485 Counsel's Plea Ambulance Incident p. 8.
486 Counsel's Plea Ambulance Incident p. 12.
487 Counsel's Plea Ambulance Incident p. 10.
488 Counsel's Plea Ambulance Incident p. 9.
489 Counsel's Plea Ambulance Incident p. 12.
490 Counsel's Plea Ambulance Incident p. 15 and 17.
491 Counsel's Plea Ambulance Incident p. 14 and 15.
492 Counsel's Plea Ambulance Incident p. 17.
493 Counsel's Plea Ambulance Incident p. 18 and 19.
494 Counsel's Plea Ambulance Incident p. 19, 20 and 21.
495 Counsel's Plea Ambulance Incident p. 22, 23 and 24.
496 Counsel's Plea Ambulance Incident p. 23.
497 Counsel's Plea Ambulance Incident p. 24.
498 Counsel's Plea Ambulance Incident p. 26.
499 See for instance Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 54 and 58 answer to the questions 94, respectively 134 and 135) and Official NPA Report regarding the interview of [witness 15] dated 31 July 2006 (File 12, p. 305, answer to the questions 74 - 77).
500 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 117).
501 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007(File EJ Examinations, p. 136, para. 3).
502 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 110).
503 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 121).

504 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 56, para. 50).
505 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 138, para. 19).
506 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 115).
507 See for instance Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 58, para. 61).
508 See for instance Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 127).
509 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 123 and 124).
510 Official NPA Report regarding the interview of [witness 1] dated 31 July 2006 (File 12, p. 124 and 126).
511 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 144, para. 36) and Official NPA Report regarding the interview of [witness 28] dated 17 January 2007 (File 12, p. 593, answer to question 35).
512 Official NPA Report regarding the interview of [witness 28] dated 17 January 2007 (File 12, p. 591-592, answer to the questions 13, 16, 19 and 25).
513 Counsel's Plea Ambulance Incident p. 8.
514 Official Record of Findings of the Examining Judge, dated 31 January 2007 (File EJ Examinations, p. 257).
515 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 51, paras. 18 and 19).
516 See for instance Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 58, para. 62).
517 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 414, answer to question 10).
518 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 414, answer to the questions 5 and 6).
519 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 214, para. 5).
520 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 225 and 226, paras. 48 and 49).
521 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 215, para. 7).
522 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 224 and 225, para. 43).
523 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 223, para. 34).
524 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 217, para. 12).
525 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 223, para. 34).
526 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 222, para. 33).
527 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 225 and 226, para. 48).
528 See for instance Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 222, para. 33).
529 See for instance Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 220, para. 24).
530 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 419, answer to question 55).
531 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 419 and 420, answer to question 56).
532 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 217, para. 11).
533 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 218, para. 13).
534 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 224, para. 40).
535 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 310, answer to question 139).
536 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 299, answer to question 7).

537 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 307, answer to the questions 104 and 105).
538 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 299 and 300, answer to the questions 10 and 15).
539 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 299 and 300, answer to question 11).
540 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, answer to question 13).
541 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 299, answer to question 3).
542 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 304 and 305, answer to question 72).
543 See for instance Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 309, answer to the questions 124 and 126).
544 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 310, answer to question 139).
545 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 41).
546 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 48, answer to the questions 20, 23, 24 and 25).
547 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007(File 12, p. 626, answer to question 28).
548 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 46, answer to question 6).
549 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 39).
550 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 46, answer to question 2).
551 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 39).
552 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 47, answer to question 12).
553 See for instance Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 50, answer to question 46).
554 See for instance Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57, answer to question 119).
555 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 41).
556 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 56, answer to question 115).
557 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 47, answer to question 7).
558 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 47 and 48, answer to the questions 10 and 15).
559 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 48, answer to question 19).
560 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 52 and 53, answer to the questions 69 and 70).
561 A document, being the statement made by [witness 7] in June 2006 before legal assistants of the Parquet Général in Rwanda (File 1, p. 40 and 41).
562 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57, answer to question 129).
563 A document, being the statement made by [witness 7] in June 2006 before legal assistants of the Parquet Général in Rwanda (File 1, p. 41).
564 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 42).
565 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 57, answer to questions 125, 126 and 128).
566 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 617, answer to question 2).
567 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 617, answer to the questions 3 and 4).
568 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 620, answer to question 31).
569 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 627, answer to question 34).

570 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 626, answer to the questions 23, 24 and 25).
571 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 618, answer to question 15).
572 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 618 and 619, answer to the questions 16, 17 and 18).
573 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 618, answer to question 14).
574 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 626, answer to question 28).
575 Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 617, answer to question 8).
576 See for instance Official NPA Report regarding the interview of [witness 29] dated 21 March 2007 (File 12, p. 625, answer to question 17).
577 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 626, answer to question 26).
578 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 626, answer to question 27).
579 As a matter of fact, in his statement ("Examinations") to the police in Rouen and at the beginning of his statement to the Examining Judge, the witness stated that the ambulance was driving behind him (Dutch translation of the Official Record of Witness Examination [witness 17] dated 3 July 2007 (File 12, p. 713), Dutch translation of Official Record of Witness Examination [witness 17] dated 3 July 2007 (File 12, p. 718) and Official Record of Witness Examination [witness 17] before the Examining Judge, dated 24 and 25 January 2008 (File EJ Examinations, p. 617, paras. 13 and 14). At the end of his first statement to the Examining Judge and in his second statement to the Examining Judge the witness stated that he had spent the night before the incident took place at the house of the Defendant and that he had seen the ambulance arrive the next morning (Official Record of Witness Examination [witness 17] before the Examining Judge, dated 24 and 25 January 2008 (File EJ Examinations, p. 624, para. 29) and the Dutch translation of the statement of [witness 17] dated 18 April 2008 (File EJ Examinations, p. 962)).
580 As a matter of fact this witness stated that 6 women were sitting in the ambulance who worked at the 'Centre de santé' in Kibingo and that there were no children in the ambulance (Official Record of Witness Examination [witness 17] before the Examining Judge, dated 24 and 25 January 2008 (File EJ Examinations, p. 621 and 623, para. 22 respectively 25). Moreover the witness stated for instance that Joseph asked the driver when standing at the barrier, where he was taking the passengers in the ambulance. Joseph also slapped the driver and after the murder of the passengers Joseph and/or the Interahamwe gave instructions to the driver to turn the ambulance around (Official Record of Witness Examination [witness 17] before the Examining Judge, dated 24 and 25 January 2008 (File EJ Examinations, p. 623 para. 24).
581 In fact, the witness stated that he saw the incident take place at a distance of about 200 meters (Dutch translation of the statement of [witness 17] dated 18 April 2008 (File EJ Examinations, p. 973)) and that he heard the answers given by the driver to Joseph's questions (Dutch translation of the statement of [witness 17] dated 18 April 2008 (File EJ Examinations, p. 963)).
582 See for instance Official NPA Report regarding the interview of [witness 28] dated 17 January 2007 (File 12, p. 595, answer to the questions 54, 55 and 56, in which the witness answers that among other persons Joseph and Ruzindana are the murderers of the passengers of the ambulance, because he had not seen them kill anyone that day).
583 Dutch translation of the statement of [witness 31] dated 2 May 2007 (File EJ Examinations, p. 379).
584 Dutch translation of the statement of [witness 31] dated 2 May 2007 (File EJ Examinations, p. 380).
585 Dutch translation of the statement of [witness 31] dated 2 May 2007 (File EJ Examinations, p. 379).
586 Dutch translation of the statement of [witness 32] dated 4 May 2007 (File EJ Examinations, p. 391).
587 Dutch translation of the statement of [witness 35] dated 29 May 2007 (File EJ Examinations, p. 448).
588 Dutch translation of the statement of [witness 35] dated 29 May 2007 (File EJ Examinations, p. 450).
589 Dutch translation of the statement of [witness 35] dated 29 May 2007 (File EJ Examinations, p. 449).
590 Dutch translation of the statement of [witness 35] dated 29 May 2007 (File EJ Examinations, p. 449).
591 Dutch translation of the statement of [witness 33] dated 1 June 2007 (File EJ Examinations, p. 467).
592 Dutch translation of the statement of [witness 33] dated 1 June 2007 (File EJ Examinations, p. 467 and 468).
593 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 138, para. 15).
594 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 216, para. 10).
595 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 41).
596 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, answer to the

questions 17 and 18).
597 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 55, para. 45).
598 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 139, para. 18).
599 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 138, para. 15).
600 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 143, para. 33).
601 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 13 November 2006 (File EJ Examinations, p. 54, para. 40).
602 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 216, para. 10).
603 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 217, para. 11).
604 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301 and 302, answer to the questions 25 and 41).
605 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 301, answer to question 25).
606 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 303, answer to question 47).
607 Official NPA Report regarding the interview of [witness 15] dated 7 August 2006 (File 12, p. 300, answer to question 16).
608 Official NPA Report regarding the interview of [witness 7] dated 9 August 2006 (File 12, p. 58 answer to question 131).
609 A document, being the statement made by [witness 7] to the Parquet Général in Rwanda dated June 2006 (File 1, p. 40).
610 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625 answer to question 18).
611 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625 and 626 answer to the questions 21 and 22).
612 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 226, paras. 51 and 52).
613 Official NPA Report regarding the interview of [witness 2] dated 10 November 2006 (File 12, p. 418, answer to the questions 45 and 48).
614 Dutch translation of the statement of [witness 35] dated 29 May 2007 (File EJ Examinations, p. 448).
615 Official Record of Witness Examination [witness 1] before the Examining Judge, dated 15 January 2007 (File EJ Examinations, p. 141 and 142, paras. 21 and 26).
616 Official Record of Witness Examination [witness 2] before the Examining Judge, dated 24 January 2007 (File EJ Examinations, p. 219, para. 20).
617 Official NPA Report regarding the interview of [witness 7] dated 26 July 2006 (File 12, p. 42).
618 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007(File 12, p. 625, answer to question 13).
619 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 624 and 625, answer to the questions 9 and 13).
620 Official NPA Report regarding the interview of [witness 29] dated 22 March 2007 (File 12, p. 625, answer to question 10).
621 Letter from the Minister of Foreign Affairs to the Minister for Immigration and Integration dated 14 February 2006 regarding an individual official notification in relation to the Defendant under reference number DPV/AM-U050401.0073/882981 (File 4, p. 36).
622 Statement made by [witness 8] to the Parquet Général dated 29 June 2006 (File 1, p. 47); Statement made by [witness 9] to the Parquet Général dated 28 June 2006 (File 1, p. 60); Statement made by [witness 10] to the Parquet Général dated 28 June 2006 (File 1, p. 64);
623 Official NPA Report dated 16 August 2006, concerning the execution of a request for legal assistance in Rwanda (File 1, p. 11-14). See also: Official NPA Report dated 27 July 2006, regarding the interview of [witness 8] (File 12, p. 62 ff.); Official NPA Report dated 27 July 2006, regarding the interview of [witness 9] (File 12, p. 81 ff.); Official NPA Report dated 27 July 2006, regarding the interview of [witness 10] (File 12, p. 97 ff.).
624 Official NPA Report dated 4 August 2006, regarding the interview of [witness 14] (File 12, p. 282).
625 Public Prosecutor's Closing Speech, p. 200.
626 Counsel's Plea, Chapter Hospital Incident.
627 The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case Nos. ICTR-96-10 & ICTR-96-17-T, Judgement and

Sentence, 21 February 2003; The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004.
628 The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, Judgement and Sentence, 28 April 2005; The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-A, Judgement, 21 May 2007.
629 A. Des Forges, 'Leave none to tell the story': genocide in Rwanda, Human Rights Watch, United States of America, 1999, p. 230 and 247; the book is available at http://www.hrw.org/legacy/reports/1999/rwanda; Philip Gourevitch, 'We wish to inform you that tomorrow we will be killed with our families', Picador, 1998.
630 Philip Gourevitch derived the title for his book from this letter.
631 In The Prosecutor v. Elizaphan and Gérard Ntakirutimana, Case Nos. ICTR-96-10 & ICTR-96-17-T, Judgement and Sentence, 21 February 2003, para. 33, the Trial Chamber concluded that hundreds of people died and that many were injured.
See also: The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, Judgement and Sentence, 28 April 2005, para. 257, which also mentions 'a large scale attack occurred at Mugonero Complex in which many Tutsi civilians were injured or killed.' At least 4 mass graves were discovered on the premises. See: the report titled 'Files, sketches, still photographs, video coverage & documents relating to Mugonero hospital complex & Murambi church located in Gishyita commune of Kibuye prefecture', United Nations, ICTR, Office of The Prosecutor, ref. ICTR-96-10/17-I (File 1, p. 263-365 and 271).
632 See: map of complex, Appendix to the report 'Files, sketches, still photographs, video coverage & documents relating to Mugonero hospital complex & Murambi church located in Gishyita commune of Kibuye prefecture', United Nations, ICTR, Office of The Prosecutor, ref. ICTR-96-10/17-I (File 1, p. 273); Official Record from the Examining Judge dated 17 March 2007, with regard to the inspection of the premises with attached unnumbered aerial photographs (File EJ Examinations, p. 294-299); Official NPA Report dated 18 December 2006, regarding the investigation at the Seventh Day Adventists Complex (including photographs and maps of the area) (File 1, p. 207-235); Official NPA Report dated 1 May 2007, including a record of the activities that were carried out for the benefit of the inspection in Mugonero (Rwanda) at the request (File 1, p. 594-602c) (during the court hearing on 11 July 2008 a copy of the photograph on p. 602c was submitted, including a correction of the arrow which pointed in the direction of Kibuye). It was attached as appendix III to the Official Record of court hearing. Official Record of Findings of the National Police Agency dated 30 November 2006, regarding the receipt of documents with appendix titled 'Files, sketches, still photographs, video coverage & documents relating to Mugonero hospital complex & Murambi church located in Gishyita commune of Kibuye prefecture', United Nations, ICTR, Office of The Prosecutor, ref. ICTR-96-10/17-I (File 1, p. 263-365); Official Record of Findings dated 7 August 2008, with regard to measurements taken at the Hospital complex in Mugonero (File 1, p. 1281-1282).
633 File 1, p. 192, forming part of the Official Record of the investigations conducted in Mugonero Centre dated 18 December 2006. Also see the map on p. 213. At the Court hearing dated 11 July 2008, the Public Prosecution Service submitted a copy of this map, including a correction of the indication for Mugonero Centre (where the Defendant used to live at the time), because Mugonero had been marked at the wrong spot before. See appendix II attached to the Official Record of court hearing.
634 Official Record of Statement [witness 14], File 12, p. 283 (dated 4 August 2006).
635 Official Record of Statement [witness 8], File EJ, p. 69, nr. 35 (dated 14 and 15 November 2006).
636 File 12, p. 93 (dated 27 July 2007). File EJ, p. 169, nr. 28 and 29 (dated 17 and 18 January 2007).
637 File EJ, p. 171, nr. 36 and nr. 37 (dated 17 and 18 January 2007).
638 Official Record of Statement Gérard Ntakirutimana, File 12, p. 559 (dated 30 November 2006); Official Record of Statement [witness 12], File EJ, p. 233, nr. 21 (dated 25 and 26 January 2007); Official Record of Statement [witness 25], File EJ, p. 529, nr. 29 (dated 17 October 2007); Official Record of Statement [witness 14], File 12, p. 284, answer to question 8 (dated 4 August 2006); Official Record of Statement [witness 24], File EJ, p. 843, nr. 36, nr. 43, nr. 154, nr. 158 (dated 28 March 2008); Official Record of Statement [witness 22], File EJ, p. 517, nr. 43, p. 519, nr. 51 and p. 520, nr. 57 (dated 15 October 2007).
639 Witness Statement dated 12 February 2002.
640 Official Record of Statement [witness 8], File EJ, p. 83-84, nr. 63 (dated 14 and 15 November 2007).
641 Official Record of Statement [witness 8], File EJ, p. 84, nr. 68 (dated 14 and 15 November 2007). Official Record of Statement [witness 8], File EJ, p. 1083), nr. 50 (dated 16 December 2008).
642 Official Record of Statement [witness 8], File 12, p. 69 (dated 27 July 2006); Official Record of Statement [witness 8], File EJ, p. 84, nr. 68 and p. 93, nr. 133 and 134 (dated 14 and 15 November 2007); Official Record of Statement [witness 8], File EJ, p. 152, nr. 19 and p. 156, nr. 35 (dated 16 January 2007); Official Record of Statement [witness 14], File EJ, p. 196, nr. 17 (dated 22 and 23 January 2007).
643 Official Record of Statement [witness 24], File EJ, p. 851, nr. 87 (dated 28 March 2008); Official Record of Statement [witness 10], File EJ, p. 113, nr. 114 (dated 16 and 17 November 2007).
644 Official Record of Statement [witness 24], File EJ, p. 1206, nr. 49 (dated 27 January 2009).
645 Official Record of Statement [witness 14], File EJ, p. 195-196, nr. 16-17 (dated 22 and 23 January 2007).
646 Official Record of Statement [witness 14], File 12, p. 284, answer to question 8 (dated 4 August 2006); Official Record of Statement [witness 24], File EJ, p. 854, nr. 116 (dated 28 March 2008).

647 Official Record of Statement [witness 8], File EJ, p. 93, nr. 134 and p. 126, nr. 92; Official Record of Statement [witness 10], File 12, p. 139 Official Record of Statement [witness 10], File EJ, p. 112, nr. 109 (dated 16 and 17 November 2006) ; Official Record of Statement [witness 25], File 12, p. 667 (dated 28 March 2007); Official Record of Statement [witness 25], File EJ, p. 529, nr. 26 (dated 17 October 2007).
648 Official Record of Statement [witness 8], File EJ, p. 92, nr. 127 (dated 14 and 15 November 2007).
649 See the paragraphs in which the individual witnesses are discussed separately.
650 Official Record of Court hearings dated 13 and 24 October 2008.
651 Official Record of Court hearing dated 13 October 2008; Official Record of Court hearing dated 24 October 2008 PM; File 5, p. 24 (dated 8 August 2006).
652 Official Record of Court hearing dated 13 October 2008.
653 Official Record of Statement [witness 8], File 12, p. 69 (dated 27 July 2006); Official Record of Statement [witness 8], File EJ, p. 84, nr. 65 and 73 (dated 14 and 15 November 2007); Official Record of Statement [witness 8], File EJ, p. 148, nr. 5 (dated 16 January 2007); Official Record of Statement [witness 8], p. 1079, nos. 21-24; Official Record of Statement [witness 24], File 12, p. 778; Official Record of Statement [witness 10], File EJ, p. 188, nr. 42 (dated 18 January 2007); Official Record of Statement [witness 25], File EJ, p. 1106, nr. 24 and nr. 37 (dated 18 December 2008); Official Record of Statement [witness 14], File EJ, p. 196, nr. 16 and p. 204, nr. 38 (dated 22 and 23 January 2007); Official Record of Statement [witness 9], File 12, p. 82 (dated 27 July 2006). This witness withdraws his statement before the Examining Judge: File EJ, p. 175, nr. 52. See furthermore the statement of [witness 22] who told the NCIS that he did not remember whether the Defendant gave instructions (File 12, p. 463, dated 16 November 2006). To the NCIS he stated that Obed Ruzindana and burgomaster Sikubwabo were the ones who explained how to act during an attack. In this context he does not mention Defendant (File EJ, p. 520, nr. 56, dated 15 October 2007).
654 Official Record of Statement [witness 25], File EJ, p. 525, nr. 8 (dated 17 October 2007).
655 Official Record of Statement [witness 8], File 12, p. 69 (dated 27 July 2006); Official Record of Statement [witness 8], File EJ, p. 85, nr. 75 (dated 14 and 15 November 2007). Official Record of Statement [witness 8], File EJ, p. 157, nr. 37 (dated 16 January 2007). Official Record of Statement [witness 10], File 12, p. 106, p. 114, p. 135 (dated 27 July 2006); Official Record of Statement [witness 10], File EJ, p. 110, nr. 87 (dated 16 and 17 November 2007); Official Record of Statement [witness 10], File EJ, p. 186, nr. 35 (dated 19 January 2007); Official Record of Statement [witness 25], File 12, p. 667, answer to question 83 (dated 28 March 2007); Official Record of Statement [witness 25], File EJ, p. 1115, nos. 18 and 19 (dated 18 December 2008); Official Record of Statement [witness 14] File 12, p. 283 (dated 4 August 2006); [witness 14], File EJ, p. 197, nr. 19 (dated 22 and 23 January 2007); Official Record of Statement [witness 24], File EJ, p. 870, nr. 214 (dated 28 and 29 March 2008); Official Record of Statement [witness 22], File 12, p. 462, answer to question 90 (dated 16 November 2006); Official Record of Statement [witness 22], File EJ, p. 521, nr. 66 (dated 15 October 2007).
656 File 12, p. 161, answer to question 78 (dated 2 August 2006).
657 File EJ, p. 235, nr. 28 (dated 25 January 2007).
658 File EJ, p. 152, nr. 19 (dated 16 January 2007).
659 File EJ, p. 69, nr. 35 (dated 14 and 15 November 2006).
660 File EJ, p. 71, nr. 45 (dated 14 and 15 November 2006).
661 Official Record of Statement [witness 10], File EJ, p. 102, nr. 38 (dated 16 and 17 November 2007).
662 File EJ, p. 71, nr. 49 and 53 (dated 14 and 15 November 2006).
663 File EJ, p. 153, nr. 22 (dated 16 January 2007).
664 File EJ, p. 1084, nr. 60 (dated 16 December 2008).
665 File EJ, p. 85, nr. 70 and 75 (dated 14 and 15 November 2007). File EJ, p. 1084, nr. 59 (dated 16 December 2008).
666 File EJ, p. 520, nr. 24 (dated 17 October 2007).
667 File EJ, p. 87, nr. 81 and 84 (dated 14 and 15 November 2007).
668 File 12, p. 66 (dated 27 July 2006).
669 File EJ, p. 90, nr. 107 (dated 14 and 15 November 2007).
670 Official Record of Court hearing dated 23 October 2008.
671 See hereafter nr. 34 in which the witness [witness 10] confirms this fact.
672 File EJ, p. 88, nr. 92 (dated 14 and 15 November 2007); File EJ, nr. 11 (dated 16 December 2008).
673 File EJ, p. 88, nr. 93 (dated 14 and 15 November 2006).
674 File EJ, p. 1078, nr. 12 (dated 16 and 17 December 2008). File EJ, p. 67, nr. 22 (dated 14 and 15 November 2006).
675 File 12, p. 98 (dated 27 July 2006). File EJ, p. 187, nr. 39 (dated 19 January 2007).
676 File EJ, p. 100, nr. 23 (dated 16 and 17 November 2006).
677 File 12, p. 98 (dated 27 July 2006); File EJ, p. 103, nr. 52 (dated 16 and 17 November 2007).
678 File 12, p. 134, answer to question 5 (dated 1 August 2006), p. 139, answer to the questions 54 and 57; File EJ, p. 115, nr. 123 (dated 16 and 17 November 2008).
679 File EJ, p. 1186, nr. 105-106 (dated 26 January 2009). File EJ, p. 187, nr. 35 (dated 19 January 2007).
680 File EJ, p. 1185, nos. 98-99 (dated 26 January 2009).
681 File 12, p. 139, answer to question 54 (dated 1 August 2006); File EJ, p. 112, nr. 105 (dated 16 and 17 November

2006).
682 File 12, p. 100 (dated 27 July 2006).
683 Official Record of Court hearing dated 23 October 2008.
684 See also paragraph 27, in which [witness 8] makes the same statement.
685 File EJ, p. 101, nr. 38 (dated 16 November 2006).
686 File EJ, p. 100, nr. 22 (dated 16 and 17 November 2006).
687 File EJ, p. 1097, nr. 13 (dated 17 December 2008).
688 File EJ, p. 525, nr. 6 (dated 17 October 2007).
689 File EJ, p. 525, 4 (dated 17 October 2007)
690 File 12, p. 660, answer to question 7 (dated 28 March 2007).
691 File 12, p. 661, answer to question 14 (dated 28 March 2007). File EJ, p. 532, nr. 55-56 (dated 17 October 2007).
692 File 12, p. 670, answer to question 127 (dated 28 March 2007).
693 File EJ, p. 1112, nr. 60 (dated 18 December 2008).
694 File 12, p. 667, answer to question 79 and question 80 (dated 28 March 2007).
695 Official Record of Court hearing, dated 27 October 2008.
696 Regarding [witness 8]: File EJ, p. 529, nrs. 24 and 26 (dated 17 October 2007); File EJ, p. 1112-1113, nr. 67 (dated 18 December 2008). Regarding [witness 10]: File EJ, p. 1113, nr. 70 (dated 18 December 2008).
697 File EJ, p. 1113, nr. 71 (dated 18 December 2008).
698 This question was not directly put to the witness, but this immediately results from his account. For example: File EJ, p. 194, nr. 15 (dated 22 and 23 January 2007).
699 File 12, p. 283 (dated 4 August 2006); File EJ, p. 194, nr. 15 and p. 210, nr. 211 (dated 22-23 January 2007)
700 File 12, p. 283, answer to question 6 and p. 288, answer to question 53 (dated 4 August 2006); File EJ, p. 306, nr. 81 (dated 20 March 2008).
701 File EJ, p. 305, nr. 78, p. 306, nr. 79 (dated 20 March 2007).
702 File 12, p. 285, answer to question 17 (dated 4 August 2006).
703 File EJ, p. 191-192, nr. 8 (dated 22-23 January 2007).
704 Official Record of Court hearing dated 24 October 2008. Also to the NCIS he denied that he knew this witness, File 5, p. 188, answer to question 90 (dated 20 September 2006).
705 Official Record of Statement [witness 8], File EJ, p. 88, nr. 93 (dated 14 and 15 November 2007).
706 File EJ, p. 190 at the beginning concerning the personal data of the witness (dated 22 and 23 January 2007).
707 File EJ, p. 841, nr. 26 (dated 28 March 2008).
708 File EJ, p. 841, nr. 23 (dated 28 March 2008).
709 File 12, p. 776 (dated 12 December 2007); File EJ, p. 844-845, nr. 46 and 47 (dated 28 March 2008).
710 File 12, p. 777 (dated 12 December 2007).
711 File EJ, p. 854, nr. 115 and p. 870, nr. 216 (dated 28 March 2008).
712 File EJ, p. 843, nr. 35 (dated 28 March 2008).
713 Official Record of Court hearing dated 27 October 2008.
714 File EJ, p. 862, nr. 168 (dated 28 March 2008).
715 File EJ, p. 840, nr. 14 (dated 28 March 2008).
716 File EJ, p. 860, nr. 157 (dated 28 March 2008).
717 File 12, p. 82 (dated 27 July 2006).
718 File 12, p. 82 (dated 27 July 2006).
719 File 12, p. 94 (dated 27 July 2006); File EJ, p. 162, nr. 2 (dated 17 and 18 January 2007).
720 File EJ, p. 165, nr. 15 (dated 17 and 18 January 2007) .
721 Official Record of Court hearing dated 27 October 2008; File 12, p. 50 and p. 84 (dated 27 July 2006).
722 File EJ, p. 162, opening lines of the witness statement (dated 17 and 18 January 2007).
723 File 12, p. 45, answer to question 17 (dated 16 November 2006).
724 File EJ, p. 513, nr. 22 (dated 15 October 2007); File 12, p. 456, answer to question 9 and 10 (dated 16 November 2006).
725 File EJ, p. 522, nr. 69 (dated 15 October 2007).
726 Official Record of Court hearing dated 27 October 2008.
727 File EJ, p. 509, opening lines of witness statement (dated 15 October 2007).
728 Official Record of Statement [witness 10], File 12, p. 103 (dated 27 July 2007); Official Record of Statement [witness 25], File 12, p. 666 (dated 28 March 2007); Official Record of Statement [witness 25], File EJ, p. 537, nr. 81 (dated 27 October 2007); [witness 24], File EJ, p. 853, nr. 102 (dated 28 March 2008); Official Record of Statement [witness 22], File EJ, p. 519, nr. 49 (dated 17 December 2007).
729 Official Record of Statement [witness 10], File 12, p. 138-139, answer to question 49 and 50 (dated 1 August 2006); Official Record of Statement [witness 24], File 12, p. 777 (dated 11 December 2007); Official Record of Statement [witness 24], File EJ, p. 847, nr. 62, p. 849, nr. 76, p. 1862, nr. 169 (dated 28 March 2008); Official Record of Statement [witness 22], File EJ, p. 518-519, nr. 44 and 49 (dated 15 October 2007); Official Record of Statement [witness 8], File EJ, p. 92, nr. 124 (dated 14 and 15 November 2007); Official Record of Statement [witness 9]. p. 176,

File EJ, nr. 54 (dated 17 and 18 January 2007).
730 Official Record of Statement [witness 8], File. 12, p. 67 (dated 27 July 2006); Official Record of Statement [witness 8], File EJ, p. 88, nr. 94 (dated 14 and 15 November 2007); Official Record of Statement [witness 10], File 12, p. 104 (dated 27 July 2006); Official Record of Statement [witness 25], File EJ, p. 525-526, nr. 10 (dated 17 October 2007); Official Record of Statement [witness 22], File EJ, p. 509, nr. 7 and p. 519, nr. 48 (dated 17 December 2007); Official Record of Statement [witness 12], File EJ, p. 233, nr. 21 (dated 25 January 2007); Official Record of Statement [witness 24], File 12, p. 778 (dated 12 December 2007); [witness 24], File EJ, p. 858, nr. 137 (dated 28 March 2008).
731 File 12, p. 69 (dated 27 July 2006); File EJ, p. 84, nr. 65 and p. 85, nr. 73 (dated 14 and 15 November 2007); File EJ, p. 148, nr. 5 (dated 16 January 2007).
732 File 1, p. 1058.
733 Sometimes also spelled as Kagabe.
734 Transcript of hearing dated 14 January 2003 in Removal Proceedings, United States Immigration Court, submitted on 24 November 2007 by the Prosecution; Memorandum of investigation dated 18 November 2002; Record of sworn statement dated 22 July 2002.
735 Sworn statement [witness 8], United States Department of Justice, Immigration & Naturalization Service, answer to question 28 (dated 22 July 2007).
736 File 1, p. 896 (Dutch translation).
737 For the determination of the exact dates see: Official Record of investigation of the dates of the Gacaca-Examinations, dated 30 October 2008, submitted by the Prosecution on 3 November 2008.
738 Parquet Général dated 29 June 2006, File 1, p. 47.
739 Witness statements dated 28 November 1995, 30 November 1995, 16 April 1996, 15 November 1999 and 27 August 2002. File ICTR [witness 8].
740 Witness statements dated 28 November 1995, 16 April 1996 and 27 August 2002. File ICTR [witness 8].
741 File EJ, p. 1081, nr. 34, r. 37, 38, 39 and 54 (dated 16 and 17 December 2008).
742 Handwritten appendix to witness statement dated 28 November 1995.
743 File EJ, p. 1081, nr. 37 (dated 16 and 17 December 2008).
744 File EJ, p. 1083, nr. 45. (dated 16 and 17 December 2008).
745 File EJ, p. 1088, nr. 89 (dated 16 and 17 December 2008).
746 Witness statement dated 27 August 2002, File ICTR [witness 8], p. 5.
747 File EJ, p. 1092, nrs. 113-114 and p. 1093, nrs. 119-124 (dated 16 and 17 December 2008).
748 Parquet Général, dated 28 June 2006, File 1, p. 64-70.
749 See File 1, p. 896 (Dutch translation) and p. 836 and 837 (in Kinyarwanda) which indicated the date 19 April 2005. It is assumed that this statement was made before that date. For the determination of the dates see: Official Record of investigation of the dates of the Gacaca-Examinations, dated 30 October 2008, submitted by the Prosecution during the Court hearing on 3 November 2008, p. 5. In this Official Record it sais that this witness statement was drawn up between the following dates: 31 May 2005 and 7 June 2005.
750 Dated 16 January 2003 p. 1336, lines 1-19. In 2002 this witness also gave evidence to the U.S. Authorities, but in this statement he did not mention the attack on the Seventh Day Adventists Complex (dated 23 July 2002 and 18 November 2002).
751 Trial testimony dated 1 October 2001, p. 134, p. 145; Trial testimony dated 2 October 2001, p. 64. Trial testimony dated 30 April 2004, p. 8 (Witness B1 is witness [witness 10]), File ICTR [witness 10].
752 Dated 23 July 2002, p 6.
753 Case Niyitegeka, ICTR-96-14-T, 16 May 2003, l.gr. 132. Trial testimony dated 14 August 2002, p. 37 (witness GGY is witness [witness 10]), File ICTR [witness 10].
754 File EJ, p. 1175, nr. 17, nr. 18, p. 1176, nr. 23 and p. 1177, nr. 33 (re. US-statement) (dated 26 January 2009).
755 File EJ, p. 1177, nr. 30 and nr. 34 (dated 26 January 2009).
756 File EJ, p. 1098, nr. 15 (dated 17 December 2008).
757 Trial testimony dated 1 October 2001, File ICTR [witness 10], p. 145 lines 23 up to page 146, line 1 and p. 146, lines 17 and 18. (Witness FF is witness [witness 10]).
758 File EJ, p. 1176, nr. 25, nr. 26, 27 (dated 26 January 2009).
759 Official Record of Statement [witness 10], File EJ, p. 112, nr. 108 (dated 16 and 17 November 2007); Official Record of Statement [witness 10], File EJ, p. 1189, nr. 128 (dated 26 January 2009).
760 Official Record of Statement [witness 10], File EJ, p. 1190, nr. 133, p. 1191, nr. 142, and p. 1192, nr. 147 (dated 26 January 2009); Mika Muhimana, ICTR-95-1b-T, 28 April 2005, l.gr. 223 and 224 (witness B1 is witness [witness 10]).
761 File EJ, p. 1191, nr. 142 (dated 26 January 2006).
762 Official Record of Statement [witness 10], File EJ, p. 1193, nr.157 and p. 1195, nr.168 (dated 26 January 2009).
763 Official Record of Statement [witness 10], File EJ, p. 1195-1196, nr. 169 (dated 26 January 2009).
764 Official Record of Statement [witness 10], File 12, p. 143, answer to question 94 (dated 1 August 2006).
765 Document of African Rights, submitted by the Defence including appendices, appendix 5, p. 16, paragraphs 4 and 5.

766 Trial testimony dated 2 October 2001, p. 35, p. 37 and p. 38, File ICTR [witness 10].
767 Official Record of Statement [witness 10], File EJ, p. 1196, nrs. 173 - 175 and p. 1197, nr. 185 (dated 26 January 2009).
768 Official Record of Statement [witness 10], File EJ, p. 1197, nr. 185 (dated 26 January 2009).
769 Official Record of Statement [witness 10], File EJ, p. 1197, nr. 179, 181 and 182 (dated 26 January 2009).
770 File EJ, p. 113, nr. 114 (dated 16 and 17 November 2006).
771 File EJ, p. 1187, nr. 113 (dated 26 January 2009).
772 Parquet Général dated 28 June 2006, File 1, p. 554-555.
773 File 12, p. 659 ff. (dated 28 March 2007).
774 File EJ, p. 525 ff. (dated 17 October 2007).
775 Witness statement dated 11 April 1996, p. 3; witness statement dated 19 October 1999, p. 4, File ICTR [witness 25].
776 Trial testimony dated 16 October 1997, File ICTR [witness 25].
777 File EJ, p. 1108, nr. 37 and 39 and p. 1109, nr. 44 (dated 18 December 2008).
778 File EJ, p. 1109, nr. 47 (dated 18 December 2008).
779 File EJ, p. 1106, nr. 24 (dated 18 December 2008).
780 Trial testimony dated 16 October 1997, p. 65, line 14, File ICTR [witness 25].
781 Trial testimony dated 13 August 2002, p. 67, p. 68 and p. 81/82, File ICTR [witness 25].
782 File 12, p. 671, answer to question 130 (dated 28 March 2007).
783 File EJ, p. 1114, nrs. 75 and 79, p. 1115, nrs. 82 and 86 (dated 18 December 2008).
784 File 1, p. 701-703.
785 Parquet Général dated 30 June 2006, File 1, p. 91-92. The District Court concluded that a part of the text has disappeared.
786 File EJ, p. 1122-1123, nr. 33 and p. 1124, nrs. 40 and 44 (dated 19 December 2008).
787 File EJ, p. 1123, nr. 34 (dated 19 December 2008).
788 File EJ, p. 1123, nr. 44 (dated 19 December 2008).
789 File EJ, p. 1120, nr. 17 (dated 19 December 2008).
790 File EJ, p. 305, nr. 77 and p. 306, nr. 80 (dated 20 March 2007).
791 Trial testimony dated 20 September 2001 (p. 143) in the case against Elizaphan and Gérard Ntakirutimana, Cases no. ICTR-96-10 & ICTR-96-17-T.
792 File EJ, p. 1128, nr. 79 (dated 19 December 2008).
793 File EJ, p. 1129, nr. 82 and nr. 86 (dated 19 December 2008).
794 ICTR-95-1-T, para. 414.
795 File 12, p. 294, answers to questions 100-105 (dated 4 August 2006).
796 File EJ, p. 1131-1132, nr. 100 (dated 19 December 2008).
797 See File EJ, p. 1132-1140, nrs. 104-150 (dated 19 December 2008).
798 File EJ, p. 1134, nr. 120 (dated 19 December 2008).
799 Trial testimony in the case against Mika Muhimana dated 19 April 2004, File ICTR [witness 14], p. 16, line 3.
800 File EJ, p. 1138, nr. 145 (dated 19 December 2008).
801 Parquet Général dated 28 June 2006, File 1, p. 581.
802 File 1, p. 1130; File 1, p. 1196.
803 Witness statement dated 2 April 1996, p. 4; Witness statement dated 27 August 2002, p. 3; Trial testimony dated 25 September 2001 in the case G. and E. Ntakirutimana, p. 119-120. File ICTR [witness 24].
804 Witness statement dated [witness 24] dated 2 April 1996, line 59 tot 67 and line 73-75, submitted by the Public Prosecutor at the Court hearing dated 24 October 2008.
805 File EJ, p. 1202 and 1203, nrs. 28 and 29 (dated 27 January 2009).
806 Trial testimony dated 25 September 2001, p. 120, line 6 up to and including line 22. The observation submitted by the Public Prosecutor is included after nr. 33 (EJ file, p. 1203-1204).
807 File EJ, p. 1199, nr. 15 (dated 27 January 2009).
808 Trial testimony dated 26 September 2001 (p. 8) in the case against Gérard and Elizaphan Ntakirutimana, Cases no. ICTR-06-10 & ICTR07-17-T, 21 February 2003.
809 File EJ, p. 870, nr. 217 (dated 28 March 2008).
810 File EJ, p. 1210, nr. 87 and 88 (dated 29 January 2009).
811 File 12, p. 83 (dated 27 July 2006).
812 File 12, p. 93-94 (dated 27 July 2006).
813 File 12, p. 93-94 (dated 27 July 2006).
814 File EJ, p. 175, nr. 52 (dated 17 and 18 January 2007).
815 File EJ, p. 169, nr. 27 and nr. 29 (dated 17 and 18 January 2007).
816 File EJ, p. 171, nr. 35 and p. 172, nr. 38 (dated 17 and 18 January 2007).
817 File EJ, p. 172, nr. 40 and p. 173, nr. 44 (dated 17 and 18 January 2007).
818 File EJ, p. 173, nr. 44 and nr. 46 (dated 17 and 18 January 2007).

819 Statement dated 12 February 2002.
820 File 1, p. 760 ff.
821 File 12, p. 457, answer to question 13 (dated 16 November 2006).
822 File EJ Examinations, p. 510, nr. 9 (dated 15 October 2007).
823 File 12, p. 461, answer to question 66 (dated 16 November 2006).
824 File 12, p. 464, answer to the questions 90 and 94 (dated 16 November 2006).
825 File EJ, p. 521, nr. 66 (dated 15 October 2007).
826 File 12, p. 464, answer to question 89 (dated 16 November 2006).
827 Public Prosecutor's Closing Speech, p. 193-194.
828 At the Court hearing on 2 February 2009, the Defence requested to question the interviewers (and the interpreters concerned) who took the statement of the above five victim witnesses; this regards the witness statements and interviews within the framework of the legal proceedings in the United States and Canada.
829 Official NPA Report dated 27 August 2007, regarding the execution of a request for legal assistance (File 1, p. 676-679); Official NPA Report dated 14 May 2007, concerning Rwandese interview documents (File 1, p. 537-540); Official NPA Report dated 3 December 2006, concerning the receipt of the case file against [Defendant] (File 1, p. 900-901).
830 Statement of [witness 8] at the Parquet Général (Rwanda) dated 29 June 2006 (File 1, p. 47-58).
831 Official NPA Report dated 16 August 2006, concerning the execution of a request for legal assistance in Rwanda (File 1, p. 11).
832 Public Prosecutor's Closing Speech, p. 205-209.
833 Official NPA Report dated 20 September 2006, regarding the interrogation of Defendant (File 5, p. 186-187); Official Record of court hearing dated 28 October 2008.
834 Counsel's Plea, Incident Kayitesi, p. 6 and 7.
835 See [witness 24] who stated that there was a person with that name at the Seventh Day Adventists Complex. Official Record of Witness Examination [witness 24] before the Examining Judge dated 29 March 2008 (File EJ Examinations, p. 847, para. 63). See also the list of victims of the attack on 16 April 1994, File 1, p. 636 appendix 1 to the Official NPA Report dated 18 July 2007, regarding the investigation of the victims at the Seventh Day Adventists Complex.
836 Official Record of Witness Examination [witness 25] before the Examining Judge dated 17 October 2007 (File EJ Examinations, p. 526, para. 14) and the Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007 (File EJ Examinations, p. 159 para. 44).
837 Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007 (File EJ Examinations, p. 157-160, paras. 39- 45 and 49); Official NPA Report dated 27 July 2006, regarding the interview of [witness 8] (File 12, p. 74-75); Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 December 2008 (File EJ Examinations, p. 1087-1088, paras. 76-80).
838 Statement dated [witness 8] before the Gacaca (Dutch translation), (File 1, p. 896). This Statement dates back to the period between end May/beginning June 2005. For the determination of the exact dates see: Official NPA Report dated 30 October 2008, regarding the investigation of the dates of the Gacaca Examinations, p. 5 (submitted by the Prosecution on 3 November 2008).
839 Official NPA Report dated 28 March 2007, regarding the interview of [witness 25] (File 12, p. 670).
840 Official NPA Report dated 2 August 2006, regarding the interview of [witness 12] (File 12, p. 154, answer to question 11); Official Record of Witness Examination [witness 12] before the Examining Judge dated 25 January 2007 (File EJ Examinations, p. 233 and 234, paras. 21 and 22).
841 Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 December 2008 (File EJ Examinations, p. 1091, observation Examining Judge after para. 106); Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007 (File EJ Examinations, p. 157, para. 39).
842 Official NPA Report dated 27 July 2006, regarding the interview of [witness 8] (File 12, p. 73).
843 Official NPA Report dated 28 March 2007, regarding the interview of [witness 25] (File 12, p. 669-670, answers to questions 115, 116 and 118).
844 Official Record on the investigation of the victims at the Seventh Day Adventists Complex (File 1, p. 629 ff.).
845 Official NPA Report dated 18 July 2007, on the investigation of the victims at the Seventh Day Adventists Complex (File 1, p. 630-635). At the Court hearing of 28 October 2008, the Prosecution distanced itself from that observation.
846 For this list see File 1, p. 636-637. The Official Record belonging to this list includes the remark that this is a list of employees of the Seventh Day Adventists Complex in Mugonero. However, this is a list of victims.
847 International request for legal assistance to the competent judicial authorities in Rwanda dated 15 February 2007 (File 1, p. 455-459).
848 Official NPA Report dated 27 August 2007, regarding the execution of a request for legal assistance (File 1, p. 676-679); Official NPA Report dated 14 May 2007, concerning Rwandese documents of witness interviews (File 1, p. 537-540); Official NPA Report dated 3 December 2006 concerning the receipt of the case file against [Defendant] (File 1, p. 900-901).

849 Statement of [witness 14] to the Parquet Général dated 30 June 2006 (File 1, p. 91-92).
850 Official NPA Report dated 16 August 2006 regarding the execution of a request for legal assistance in Rwanda (File 1, p. 11).
851 Official NPA Report dated 4 August 2006, regarding the interview of [witness 14] (File 12, p. 291, answer to question 84).
852 Third Reply, p. 6.
853 Official Record of court hearing dated 27 and 28 October 2008. Also see Official NPA Report dated 20 September 2006, regarding the interview of Defendant (File 5, p. 188-189, answers to questions 94, 95 and 97).
854 Counsel's Plea, Hospital Incident, p. 24.
855 Official NPA Report dated 4 August 2006, regarding the interview of [witness 14] (File 12, p. 290-293, answer to the questions 80-90); Official Record of Witness Examination [witness 14] before the Examining Judge dated 22 and 23 January 2007 (File EJ Examinations, p. 189-213, nrs. 23 t/m 33, 52, 54, 89, 96 (File EJ)); Official Record of Witness Examination [witness 14] before the Examining Judge dated 30 March 2007 (File EJ, p. 309, nrs. 96 - 97); Official Record of Witness Examination [witness 14] before the Examining Judge dated 19 December 2008 (File EJ Examinations, p. 1132-1140, nrs. 104-150)
856 Statement of [witness 14] to the Parquet Général (Rwanda) dated 30 June 2006 (File 1, p. 91-94).
857 Witness statement dated [witness 14] dated 12 November 1999; witness statement of [witness 14] dated 27 August 2002; The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, 28 April 2005, Judgement and Sentence, paras. 273-275 (Witness AT is [witness 14]) and paras. 276-277.
858 International request for legal assistance to the competent judicial authorities in Rwanda dated 15 February 2007 (File 1, p. 455-459).
859 International request for legal assistance to the competent judicial authorities in Rwanda dated 14 June 2006 (File 1, p. 1-9).
860 Official NPA Report dated 27 August 2007, regarding the execution of a request for legal assistance (File 1, p. 676-679); Official NPA Report dated 14 May 2007 concerning Rwandese interview documents (File 1, p. 537-540); Official NPA Report dated 3 December 2006 concerning the receipt of the case file against [Defendant] (File 1, p. 900-901).
861 Statement made by Adrien Harorimana to the Parquet Général (Rwanda) in June 2006 (File 1, p. 33-35).
862 Official Record of court hearing dated 23 October 2008, in which the District Court concluded that according to Dutch standards this referred to a relationship to the fifth degree.
863 Official Record of Witness Examination Adrien Harorimana before the Examining Judge dated 21 March 2007 (File EJ Examinations, p. 319-320, para. 27.
864 Statement of Adrien Harorimana to the Parquet Général (Rwanda) dated June 2006 (File 1, p. 32-33).
865 Statement made by Adrien Harorimana to the Gacaca dated 18 July 2006 (File 1, p. 1206).
866 File 12, p. 6 (dated 26 July 2006); File EJ Examinations, p. 313, nr. 9 and 10 (dated 21 and 22 March 2007).
867 See Official NPA Report of Findings dated 17 April 2009, concerning the visit to Bisesero (File 1, p. 483-498), especially p. 484, which in the second paragraph recorded by mistake that 'the three Interahamwe and [Defendant] had reached Muyira Hill by then'. In the opinion of the District Court this must be a misunderstanding. Clearly they intended to say 'Kagali Hill'. At the Court hearing the Prosecution joined this conclusion. See Official Record of court hearing dated 23 October 2008. Subsequently this was recorded in (an additional) Official Record of Findings in relation to the visit to Bisesero dated 27 October 2008, which was submitted at the hearing of 28 October 2008.
868 The Prosecutor v. Eliézier Niyitegeka, Decision on the Prosecutor's Motion for Judicial Notice of Facts, Case No. ICTR-96-14-T, para. 5: 'On 13 and 14 May 1994, a large scale attack occurred on Muyira Hill against Tutsi refugees.' See furthermore The Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, 21 May 1999, Judgement and Sentence, paras. 415-425; The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, 28 April 2005, Judgement and Sentence para. 375; The Prosecutor v. Gérard and Elizaphan Ntakirutimana, Case Nos. ICTR-96-10 & ICTR-96-17-T, 21 February 2003, Judgement and Sentence, para. 642.
869 See: Official NPA Report dated 27 July 2006, regarding the interview of [witness 8] (File 12, p. 73); Official Record of Witness Examination [witness 8] before the Examining Judge dated 16 January 2007 (File EJ Examinations, p. 150, para. 13); Official NPA Report dated 3 August 2006, regarding the interview of [witness 13] (File 12, p. 172 and 174, answers to questions 6 and 26). This witness was not examined by the Examining Judge. In the Statement made to the Parquet Général on 29 June 2006, he also situated the Defendant at Muyira Hill on 13 May 1994 (File 1, p. 78-83).
870 Official NPA Report dated 1 August 2006, regarding the interview of [witness 10] (File 12, p. 147 and 148, answers to questions 142 and 144). Before the Examining Judge no questions were asked about this subject.
871 The Prosecutor v. Eliézier Niyitegeka, Case No. ICTR-96-14-T, 16 May 2003, Judgement and Sentence, para. 131 and 132 and 178. In para. 153 the Trial Chamber considers this to be a 'credible witness'.
872 Record of sworn statement of [witness 10] (United States Department of Justice, Immigration & Naturalization Service dated 23 July 2002, p. 6.
873 Official NPA Report dated 27 July 2006, regarding the interview of [witness 9] (File 12, p. 84 and p. 91).

874 Public Prosecutor's Closing Speech, p. 237.
875 Counsel's Plea, Incident Consolata Mukamurenzi, p. 6.
876 Counsel's Plea, Incident Consolata Mukamurenzi, p. 4-5.
877 Counsel's Plea, Incident Consolata Mukamurenzi, p. 13.
878 Counsel's Plea, Incident Consolata Mukamurenzi, p. 6.
879 Official Record of Witness Examination of Adrien Harorimana before the Examining Judge dated 21 March 2007 (File EJ Examinations, p. 318 and 321, paras. 21en 29); Official NPA Report dated 8 August 2006, regarding the interview of Adrien Harorimana (File 12, p. 17 and 18, answers to questions 8 and 21.
880 Official Record of Witness Examination of Adrien Harorimana before the Examining Judge dated 21 March 2007 (File EJ Examinations, p. 314, para. 10).
881 Official Record of Witness Examination of Adrien Harorimana before the Examining Judge dated 21 March 2007 (File EJ Examinations, p. 317 and 319-320, paras. 18, 27 and 29).
882 Official NPA Report dated 8 August 2006, regarding the interview of Adrien Harorimana (File 12, p. 27, answer to question 105).
883 International request for legal assistance to the competent judicial authorities in Rwanda dated 15 February 2007 (File 1, p. 455-459).
884 Official NPA Report dated 4 August 2006 regarding the 1st Witness Statement of [witness 14] dated 4 August 2006 (File 12, p. 295, question 112).
885 Official NPA Report dated 10 December 2007 concerning the witness interview in Rwanda (EJ file, p. 1058-1074).
886 Public Prosecutor's Closing Speech, p. 244; Reply, p. 26-27.
887 Counsel's Plea, Grandchildren Incident [witness 5], p. 1-19.
888 Official NPA Report dated 10 August 2006, containing the Statement of [witness 5] dated 10 August 2006 (File 12, p. 318, answer to question 19). Official Record of Witness Examination [witness 5] before the Examining Judge, dated 27 March 2007 (EJ file, p. 352, 353 and 354, paras. 12, 14 and 17);
889 Official NPA Report dated 24 November 2006, containing the Statement of [witness 36] dated 24 November 2006 (File 12, p. 474, answer to question 4); Official Record of Witness Examination [witness 36] before the Examining Judge, dated 23 March 2007 (EJ file, p. 335, para. 17).
890 Official NPA Report dated 14 November 2006, containing the Statement of [witness 6] dated 14 November 2006 (File 12, p. 449, answer to question 7);
891 Official Record of Witness Examination [witness 6] before the Examining Judge, dated 26 March 2007 (EJ file, p. 343, 344, 346 and 37, paras. 9, 10, 19 and 37).
892 Official NPA Report dated 14 November 2006, containing the Statement of [witness 37] dated 14 November 2006 (File 12, p. 441, answer to question 9).
893 Official Record of Witness Examination [witness 37] before the Examining Judge, dated 28 March 2007 (EJ file, p. 365-366, para. 9-12).
894 Official Record of Witness Examination [witness 22] before the Examining Judge, dated 15 October 2007 (EJ file, p. 510-511, paras. 10-12).
895 Official Record of Witness Examination [witness 14] before the Examining Judge, dated 22 January 2007 (EJ file, p. 202, para. 35).
896 Parliamentary Documents II, 1950-1951, 2258, nr. 3, p. 9.
897 For that matter the Criminal Law in Wartime Act is still applicable in cases involving the prosecution and trial of a number of crimes which are specifically related to an armed conflict in which the Kingdom has become engaged. Parliamentary Documents II, 2001-2002, 28 337, nr. 3, p. 3.
898 Parliamentary Documents II, 2001 - 2002, 28 337, nr. 3, p. 10 and p. 11.
899 Parliamentary Documents II, 2001 - 2002, 28 337, nr. 3, p. 10.
900 See in this context: DC The Hague 14 October 2005, LJN AU 4347 and DC The Hague 23 September 2005, LJN AU8685. AC The Hague 9 May 2007, LJN BA4676. The Explanatory Memorandum to the Act only refers to the main rule of art. 1, paragraph 1, Criminal Code, without mentioning the exception outlined in paragraph 2. Parliamentary Documents II, 2001-2002, 28 337, nr. 3, p. 53.
901 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted on 12 August 1949, Trb. 1951, 72;
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted on 12 August 1949
Trb. 1951, 73; Geneva Convention relative to the Treatment of Prisoners of War, adopted on 12 August 1949 , Trb. 1951, 74; Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949, Trb. 1951, 75.
902 Parliamentary Documents II, 1950 - 1951, 2258, nr. 3, p. 8.
903 Parliamentary Documents II, 1950 - 1951, 2258, nr. 3, p. 9; Also see the description in legal history included in the bill which resulted in the WIM: Parliamentary Documents II, 2001 - 2002, 28 337, nr. 3, p. 10.
904 Also see Explanatory Memorandum to the WIM, Parliamentary Documents II, 2001 - 2002, 28 337, nr. 3, p. 6.

905 Additional Protocol to the Geneva Conventions, adopted on 12 August 1949 regarding the protection of victims of international armed conflicts (API), Trb. 1978, 41; Additional Protocol to the Geneva Conventions, adopted on 12 August 1949, regarding the protection of victims in a non-international armed conflict (APII), Trb. 1978, 42.
906 Parliamentary Documents II, 2001-2002, 28 337, nr. 3, p. 10.
907 Case Tadic, Decision of the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, l.gr. 94.
908 Prosecutor v. D. Tadic, Case No. IT-94-1, "Decision on the defence motion for interlocutory appeal on jurisdiction", 2 October 1995, para. 89; Prosecutor v. Z. Delalic et al. (Celebici case), Case No. IT-96-21-A, "Judgement", 20 February 2001, paras. 125, 126 and/or 136; Prosecutor v. D. Kunarac et al., Case No. IT-93-23-T & IT-96-23/1-T, "Judgement", 22 February 2001, para 401.
909 HR 8 July 2008, BC 7418.
910 J-M Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules , Cambridge, 2005, p. 590-591 and p. 593.
911 J-M Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules , Cambridge, 2005, p. 590, 593.
912 J-M Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules , Cambridge, 2005, p. 591, p. 593, p. 597.
913 J-M Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules Cambridge, 2005, p. 575.
914 In any case the District Court has not been able to establish this fact from the afore mentioned investigation conducted by the International Red Cross: J-M Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules, Cambridge, 2005.
915 Public Prosecutor’s Closing Speech, p. 16-17.
916 See the Trial Chamber in the Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 368.
917 ICTY, Boškoski and Tarculovski, IT-04-82, T. Ch., 10 July 2008, l.gr. 295.
In this respect the Trial Chamber also concluded that there is no specific case law regarding the mens rea in relation to the armed conflict in the context of the GA 3. In its case law the ICTR does not go into this specific requirement.
918 Karemera et al., Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, ICTR-98-44-AR73(C), AC, l.gr. 26-32.
919 Concerning the RPF see the case Akayesu, ICTR-96-4-T, 2 September 1998, l.gr. 627.
920 Official Record of Court hearing dated 13 October 2008.
921 TK 2002-2003, 28337, MvT, p. 6; EK 2002-2003, 28337, nr. 108a, p. 1; EK 2002-2003, 28337, nr. 108b, p. 1.
922 Apart from the ones that will still be mentioned – some in the text of the judgement, others in a note – these cases are: case Stakic, IT-97-24, T. Ch., 31 July 2003, para. 569; case Kamuhanda, ICTR-95-54A-T, 22 January 2004, l.gr. 733-736; Case Simic et al., IT-95-9, T. Ch., 17 October 2003, para. 105; Case Brdanin, IT-99-36, T. Ch., 1 September 2004, para. 123; Case Blagojevic and Jokic, IT-02-60, T. Ch., 17 January 2005, para. 536; Case Strugar, IT-01-42, T. Ch., 31 January 2005, para. 215; Case Halilovic, IT-01-48, T. Ch., 16 November 2005, para. 29; Case Limaj et al., IT-03-66, T. Ch., 30 November 2005, para. 91; Case Hadžihasanovic and Kubura, IT-01-47, T. Ch., para. 16; Case Stakic, IT-97-24, A. Ch., 22 March 2006, para. 342; Case Oric, IT-03-68, T. Ch., 30 June 2006, para. 256; Case Krajišnik, IT-00-39, T. Ch., 27 September 2006, para. 846; case Lubanga Dyilo, ICC-01/04-01/06, P-T. Ch., 29 January 2007, para. 287 - 289; case Martic, IT-95-11, T. Ch., 12 June 2007; case Brima et al., SCSL-04-16, T. Ch., 20 June 2007, para. 247; case Fofana and Kondewa, SCSL-04-14, T. Ch., 2 August 2007, para. 129 and 130; case Mrkšic, IT-95-13/1, T. Ch., 27 September 2007, para. 423; Haradinaj et al. case, IT-04-84, T. Ch., 3 April 2008, l.gr. 61; Boškoski and Tarculovski case, IT-04-82, T. Ch., 10 July 2008, para. 293; Katanga and Ngudjolo Chui case, ICC-01/04-01/07, 30 September 2008, l.gr. 381 - 382; ICTY, Milutinovic et al., judgement in first instance, case no. IT-05-87-T, 26 February 2009, l.gr. 127 and 128; SCSL, Sesay et al., case no. SCSL-04-15-T, T.Ch., 2 March 2009, l.gr. 101 - 102.
923 For example: Musema case, ICTR-96-13-A, TC, 27 January 2000, l.gr. 973-974; Elizaphan and Gerard Ntakirutimana cases, ICTR-96-10 and ICTR-96-17-T, TC, 21 February 2003, l.gr. 861; Rutaganira case, ICTR-95-1C-T, 14 March 2005, l.gr. 104. Also see the observations of the Prosecution about these two judgements. Prosecution’s position on the nexus requirement MATON dated 30 September 2008 (hereafter: Position) , p. 7-9.
924 Resolution 955 (1994), http://69.94.11.53/ENGLISH/Resolutions/955e.htm.
925 T. Meron, International criminalisation of internal atrocities, The American Journal of International law, 1995, p. 554-577, p. 558 and 561.
926 Tadic case, Decision of the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, l.gr. 70.
927 Trial Chamber in the case Tadic, IT-94-1, 7 May 1997.
928 See Trial Chamber in the Akayesu case, ICTR-96-4-A, 1 June 2001, l.gr. 443-444. Akayesu was acquitted of the indicted war crimes, because the Trial Chamber had not been able to establish the nexus with the armed conflict.
929 Kunarac et al. case, ICTY, IT-96-23& IT-96-23&23/1-A, 12 June 2002.
930 Rutaganda case, ICTR-96-3-A, 26 May 2003. Furthermore see note 1066, in which the Trial Chamber explains how, until that moment, the nexus concept was interpreted in the administration of justice of the ICTY and the

ICTR. 'Trial Chambers of this Tribunal have four times considered charges under Article 4 of the Statute in their judgements. The definitions of the nexus requirement used in the four cases were similar but not identical to each other. In the Akayesu case, the Trial Judgement stated that the nexus requirement means that the acts of the accused have to be committed "in conjunction with the armed conflict." (Akayesu Trial Judgement, para. 643) In Kayishema-Ruzindana, the Trial Chamber used four different formulations to characterize the nexus requirement, apparently considering them synonymous. It sometimes stated that there must be "a direct link" or "a direct connection" between the offences and the armed conflict. (Kayishema-Ruzindana Trial Judgement, paras. 185, 602, 603, 623 ["direct link"]; 188, 623 ["direct connection"]. It also stated that the offences have to be committed "in direct conjunction with" the armed conflict. (Idem, para. 623). Finally, it stated that the offences had to be committed "as a result of" the armed conflict". (Idem). In the Musema case, the Trial Chamber took the view that the offences must be "closely related" to the armed conflict. (Musema Trial Judgement, para. 260). In the Ntakirutimana Case (currently on appeal), the Trial Chamber acquitted one of the accused of the count under Article 4(a) of the Statute based, inter alia, on the Prosecution's failure to establish a nexus between the offence and the armed conflict, but it offered no definition of the nexus requirement. (Elizaphan and Gérard Ntakirutimana Trial Judgement, para. 861).

931 Draw up by W. Ferdinandusse, legal assistant specialised in international criminal law (at the time) at the National Office of the Public Prosecution Service, at present one of the Public Prosecutors in charge of this criminal case.

File 6, p. 173-190.

932 P. 247-265.

933 See Public Prosecutor’s Closing Speech, p. 247; Position, p. 3; Reply, p. 8

934 Position, p. 4; Reply, p. 9.

935 Position, p. 5 and p. 16.

936 Position, p. 1-2.

937 Position, p. 3, Public Prosecutor’s Closing Speech, p. 247-248.

938 Public Prosecutor’s Closing Speech, p. 249-250.

939 Public Prosecutor’s Closing Speech, p. 255.

940 See Public Prosecutor’s Closing Speech, in which attention is given to the civilian self defence program on several occasions, p. 81-83, p. 93, p. 96 and p. 259.

941 Public Prosecutor’s Closing Speech, p. 90-91 in Chapter 5 on "The genocide' and in Chapter 7 on 'The war crimes', p. 262 with reference to different locations in the case file.

942 Public Prosecutor’s Closing Speech, p. 262.

943 Public Prosecutor’s Closing Speech, p. 262; in relation to this the Prosecution quotes from p. 223 of the book ‘Leave none to tell the story’: 'Regardless of the responsibilities of individuals or units, the widespread and systematic participation of military personnel throughout the entire period of genocide indicates that the most powerful authorities at the national level ordered approved their role in the slaughter'.

944 Public Prosecutor’s Closing Speech, p. 263.

945 See Counsel’s Plea, Legal Considerations, not numbered.

946 Art. 8, in: Otto Triffterer (editor), Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article, 2nd Edition, Ch.H. Beck - Hart - Nomos, 2008, p. 293, note 51.

947 Van A. Cassese (Editor in Chief), The Oxford Companion to International Criminal Justice, Oxford University Press, 2009, p. 435-436.

948 The District Court presented this case as question 16 to the Prosecution.

Reply, p. 42-44.

949 Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 2 and l.gr. 30. The Trial Chamber assumed a nexus but acquitted the accused of war crimes, because it believed that the accused could not be convicted on account of the same charges for both ('complicity in') genocide and war crimes. The Appeals Chamber did find the accused guilty of committing war crimes on the grounds that had already been established by the Trial Chamber. In the opinion of the Appeals Chamber a conviction on account of genocide does not preclude a conviction of the accused for war crimes. ICTR-97-20-A, 20 May 2005, l.gr. 368-371.

950 Rutaganda case, ICTR-96-3-A, 26 May 2003, l.gr. 30.

951 Bagambiki, Ntagerura and Imanishimwe case, (Cyangugu), ICTR-99-46-T. 25 February 2004, l.gr. 13. Bagambiki and Ntagerura were acquitted by the Trial Chamber.

952 Bagosora et al. case (Military I), ICTR-98-41-T, 18 December 2008, l.gr. 1. Kabiligi, general in the government army, was acquitted by the Trial Chamber.

953 Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 518; Bagosora et al. case, ICTR-98-41-T, 18 December 2008, l.gr. 2232.

954 Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 518 and Bagosora et al. case, (Military I), ICTR-98-41-T, 18 December 2008, l.gr. 2232.

955 Rutaganda case, ICTR-96-3-A, 26 May 2003, l.gr. 579.

956 Rutaganda case, ICTR-96-3-A, 26 May 2003, l.gr., 577.

957 Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 519. In relation to this case the Trial Chamber considered: 'The involvement of military officials and personnel in the killings of local Tutsi civilians tied these killings to the broader conflict.'
958 Bagosora et al. case (Military I), ICTR-98-41-T, 18 December 2008, l.gr. 2224.
959 Rutaganda case, ICTR-96-3-A, 26 May 2003, l.gr. 436.
960 Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 518.
961 Semanza case, ICTR-97-20-T, 15 May 2003, l.gr. 522.
962 Case Ntagerura, Bagambiki, Imanishimwe (Cyangugu), ICTR-99-46-T, 25 February 2004, l.gr. 793.
963 Rutaganda case, ICTR-96-3-A, 26 May 2003, l.gr. 579.
964 Bagosora et al. case (Military I), ICTR-98-41-T, 18 December 2008, l.gr. 2233.
965 It is a matter of fact that a specific crime, as observed rightfully by the Prosecution (Public Prosecutor's Closing Speech, p. 248), can both constitute a crime of genocide and a war crime.
966 Report from expert Alison L. des Forges, answer to question 2 under a, dated 21 January 2008, RC-File, p. 658 (Dutch translation).
967 ICTR-96-4-T, 2 September 1998, l.gr. 127.
968 Bagosora et al. case (Military I), ICTR-98-41-T, 18 December 2008.
969 Kayishema and Ruzindana case, ICTR-95-1-T, 21 May 1999, l.gr. 621.
970 Position, p. 1, 2 and 7; Reply, p. 16 ff.
971 See Akayesu case, ICTR-96-4-T, 2 September 1998, l.gr. 125: 'Clearly therefore, the massacres which occurred in Rwanda in 1994 had a specific objective, namely the extermination of the Tutsi, who were targeted especially because of their Tutsi origin and not because they were RPF fighters. In any case, the Tutsi children and pregnant women would, naturally, not have been among the fighters.'
972 Report expert Alison L. des Forges I, answers to questions 7 and 8, dated 20 November 2006, File EJ, Examinations p. 29 and p. 31.
973 Kayishema and Ruzindana case, ICTR-95-1-T and ICTR-96-10-T, 21 May 1999, l.gr. 283.
974 Report from expert Alison L. des Forges, answer to question 11, dated 20 November 2006, File EJ Examinations, p. 32 (Dutch translation).
975 Kambanda case, ICTR-97-23-S, 4 September 1998, l.gr. 39.
976 Quote from A. des Forges, answer to question 27, dated 20 November 2006, File EJ, p. 38 (Dutch translation).
977 In this context see the Trial Chamber in the Ignace Bagilishema case, ICTR-95-1A-T, l.gr. 938. The Chamber is, of course, aware that the true purpose of (...) any other roadblock (...) is best sought not in documentation or recalled oral instructions pertaining to its operations but rather in the operations themselves.
978 Trb. 1985, 69.
979 Stb. 2003, 340.
980 Parliamentary Documents II, 2001-2002, 28 337, nr. 3, Explanatory Memorandum, p. 8. District Court Rotterdam, 7 April 2004, LJN AO7178l; District Court The Hague, 25 October 2005, LJN: AU4547.
981 The District Court refers to Article 6 paragraph 2 TIA.
982 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 3.
983 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 1 and p. 8.
984 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 2.
985 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 2. Also see the Explanatory Memorandum to the WIM: Parliamentary Documents II, 2001-2002, 28 337, nr. 3, p. 8
986 Summary record of the first part (public) of the 203rd Meeting: Morocco. 22/11/94, UN Doc., CAT/C/SR.203, para. 47; Report of the Committee against Torture, 21 June 1990, UN Doc. A/45/44, para. 260; Summary record of the 238th meeting: Colombia. 27/11/95, UN Doc. CAT/C/SR.238, para. 41; Concluding observations of the Committee against Torture: Paraguay. 05/05/97, UN Doc. A/52/44, para. 206 (a); Summary record of the public part of the 211th Meeting: Netherlands. 01/05/95, UN Doc. CAT/C/SR.211, para. 37; Summary record of the public part of the 108th meeting: Luxemburg. 18/09/92, UN Doc. CAT/C/SR.108, para. 129.
987 Miguel Angel Estrella v. Uruguay, Communication No. 74/1980, 29 March 1983, UN Doc. Sup. No. 40 (A/38/40), 1983, p. 150; Tshitenge Muteba v. Zaire, Communication No. 124/1982, 25 March 1983, UN Doc. Sup. No. 40 (A/39/40), p 182; Lucía Arzuaga Gilboa v. Uruguay, Communication No. 147/1983, 1 November 1985, UN Doc. CCPR/C/OP/2, p. 176.
988 HR 18 September 2001, LJN AB1471, NJ 2002, 559, l.gr. 5.2.
989 Parliamentary Documents II, 1986-1987, 20 042, B, p. 7.
990 Also see art. 6 paragraph 2 TIA, which shows that also an official who holds a public office while employed by a foreign state, falls within the scope of this provision.
991 Parliamentary Documents II, 1986-1987, 20 042, B, p. 7.
992 Explanatory Memorandum to the Act sanctioning the Agreement on the Torture Convention. See Parliamentary Documents II, 1985-1986, 19 617 (R1312), nr. 3, p. 1; Explanatory Memorandum to the TIA bill: Parliamentary Documents II, 1987-1988, 20 042, nr. 6, p. 4.
993 Kambanda case, ICTR-97-23-T, 4 September 1998 l.gr. 39; Niyitegeka case, ICTR-96-14-T, 16 May 2003, l.gr. 5

and l.gr. 493; Kayishema and Ruzindana case, ICTR-95-1-T, 21 May 1999, l.gr. 9; Muhimana case, ICTR-95-1B-T, 28 April 2005, l.gr. 4.
994 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 3; Parliamentary Documents II, 1987-1988, 20 042, nr. 6, p. 4.
995 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 3.
996 Parliamentary Documents II, 1986-1987, 20 042 B, p. 5-6.
997 Parliamentary Documents II, 1986-1987, 20 042, B, p. 5.
998 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 3.
999 Parliamentary Documents II, 1987-1988, 20 042, nr. 6, p. 4.
1000 In this context also read the comments made by H. Burgers and H. Danelius, The United Nations Convention against Torture: Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dordrecht, 1988, p. 118 and M. Nowak and E. McArthur, The United Nations Convention against Torture - A Commentary, Oxford, 2008, p. 75.
1001 Parliamentary Documents II, 1986-1987, 20 042, nr. 3, p. 7.
1002 See the Kambanda case, ICTR-97-23-T, 4 September 1998, l.gr. 39 and the Niyitegeka case, ICTR-96-14-T, 16 May 2003, inter alia, l.gr. 115, 130, 178, 225, 238 and 251.
1003 Kayishema and Ruzindana case, ICTR-95-1-T, 21 May 1999, l.gr. 14; Muhimana case, ICTR-95-1B-T, 28 April 2005, l.gr. 604.
1004 Alison L. des Forges, Leave none to tell the story, p. 231 and p. 234, 1999. This book can also be consulted on the internet: http://www.hrw.org/legacy/reports/1999/rwanda/rwanda0399.htm
1005 Report written by expert Alison L. des Forges, answer to question 5 (from the Prosecution), dated 20 December 2007, File EJ, p. 659.
1006 Report written by expert Alison L. des Forges, answer to question 3 (from the Prosecution), dated 20 December 2007, File EJ, p. 658-659.
1007 Alison L. des Forges, Leave none to tell the story, p. 3, 1999. This book can also be consulted on the internet: http://www.hrw.org/legacy/reports/1999/rwanda/rwanda0399.htm
1008 Report written by expert Alison L. des Forges, answer to question 7 (from the Prosecution), dated 20 December 2007, File EJ, p. 660; Alison des Forges, Leave none to tell the story, p. 8, 1999. This book can also be consulted on the internet: http://www.hrw.org/legacy/reports/1999/rwanda/rwanda0399.htm. Also see for example: Official Record of Witness Statement [witness 22], File 12, p. 457 (dated 12 November 2006).
1009 The Public Prosecution Service only mentions the above means of inducement in the Torture memorandum, p. 11-14, submitted in court during the hearing on 4 December 2008.
1010 Reply, p. 3.
1011 Reply, p. 4.
1012 The proven charges form part of this judgement appendix III.
1013 The transitory provisions of this Act are outlined in Article IX which, in so far as relevant, reads as follows: The Articles I up to and including VI of this Act are not applicable to criminal offences committed before the effective date of this Act.
1014 HR 9 May 2007, LJN BA6734 and HR 9 May 2007, LJN BA4676.
1015 Article 3 CLA contains the following provisions:
1. Obligations resulting from unlawful acts are governed by the law of the State on whose territory this act occurred.
2. Contrary to the first paragraph, if the unlawful act causes damage to a person, an object or the natural environment other than in the State on whose territory the act occurred, the law of the State on whose territory the damage is suffered shall be applicable, unless the perpetrator could not reasonably foresee the occurrence of that damage.
3. If the perpetrator and the aggrieved party have their regular place of residence in the same State, contrary to paragraph one and two the law of that State shall be applicable.
1016 Article 7 CLA contains the following provision:
The applicable law based on Articles 3 up to and including art. 6 specifically determines the following:
a) the grounds for and the extent of the liability;
b) the grounds for exclusion, limitation and division of the liability;
c) the existence and the nature of the damage that qualifies for compensation; d) the extent of the damage and the compensation method;
e) the possibility of transfer or transmission of the entitlement to compensation for damages;
f) the persons who themselves are entitled to receive damages;
g) the liability of a client for acts of the person who acts on his behalf;
h) the prescription or the extinction of the entitlement to damages, as well as the date of commencement of that term and the termination or suspension thereof.
1017 This Article reads as follows:
L'action civile née d'une infraction se prescrit selon les règles du Code civil. Toutefois, si la prescription de l'action

civile était acquise alors que celle de l'action publique n'est pas encore accomplie, l'action ne se prescrirá que selon les règles touchant à l'action publique.
1018 Article 647 reads as follows:
Toutes les actions, tant réelles que personnelles, sont prescrites par trente ans sans que celui allègue cette prescription soit obligé d'en reporter un titre, ou qu'on puisse lui opposer l'exception déduite de la mauvaise foi.
1019 Article 34 of the Organic Law No 16/2004 in so far as relevant:
A victim referred to in point 1-f is anybody killed, hunted to be killed but survived, suffered acts of torture against his or her sexual parts, suffered rape, injured or victim of any other form of harassment, plundered, and whose house and property were destroyed because of his or her ethnic background or opinion against the genocide ideology.

[End of translation]

1 The witness is confronted with photos or video footage in order to identify a defendant. A variation on Oslo confrontation, in which the witness identifies a defendant in a lineup - (transl.)
2 See page above.