

The Prosecutor v. Siméon Nchamihigo
Case No. ICTR-01-63-T
[Summary of the Judgement, 24 September 2008]

1. Trial Chamber III will now render a summary of its judgement in the case of *The Prosecutor v. Siméon Nchamihigo*. The written judgement, which is the authoritative version, will be filed in due course.

2. Siméon Nchamihigo was Deputy Prosecutor in Cyangugu in 1994. He is charged with genocide and three crimes against humanity (extermination, murder and other inhumane acts). These charges relate to allegations that he planned, instigated, ordered, or aided and abetted others to kill Tutsi, accomplices of the RPF and Hutu political opponents of the authorities and that his actions resulted in mass killings at roadblocks he had established, the killing of several individuals, the massacre of two groups who were removed from the Kamarampaka Stadium, and the massacre of Tutsi at places where they had taken refuge.

3. Siméon Nchamihigo admitted that many of the massacre and killings alleged in the Indictment occurred but denied that he had any involvement in these events. In support of his story that he could not have committed the alleged crimes, he offered an alibi, presented in three facets.

4. Firstly, he testified that, prior to March 1994, he was not working or living in Cyangugu, but had been stationed in other districts. Therefore, he

asserted, the testimony of Prosecution witnesses who adduced evidence of background and contextual activities, during 1992, 1993 and early 1994 should not be believed. There was conflicting testimony from some Defence witnesses, including Nchamihigo's wife, Mrs Collette Uwubuheta. Although she corroborated some aspects of Nchamihigo's testimony, she also gave evidence that they lived together in their own home, in the Kamurera cellule, Cyimbogo commune, Cyangugu Prefecture, from 1991 until their departure from Rwanda in July 1994. Her testimony was consistent with evidence presented by Defence Witness SCJ, a motor cycle taxi driver, who testified that he used to drive her to work in 1992 and 1993.

5. Secondly, Nchamihigo stated that, between 6 April and 17 July 1994, he was in his office all day, every day. He stated that his Suzuki vehicle, in which Prosecution witnesses testified that they saw him, was not functional during that period. Some of his witnesses conceded that they saw him in his Suzuki during that period, and that he used to go out to do investigations during the period. The Chamber thus considers this facet of Nchamihigo's alibi unbelievable.

6. Thirdly, Nchamihigo testified that he assisted religious sisters to cross the border into Bukavu on 12 April 1994 and that he could not have been at the places at which Prosecution witnesses placed him. This aspect of his alibi will be considered in the Chamber's discussion of the relevant events.

7. The Chamber recalls that, even if it does not believe the alibi, the Prosecution still has the obligation to prove its case beyond reasonable doubt. If the Prosecution fails to do so, the Accused, who is presumed innocent until proven guilty, shall be acquitted.

8. The Chamber will now consider and discuss its findings in relation to five categories of allegations in this case: (1) Nchamihigo's political connections; (2) the killing of individuals; (3) the killings at roadblocks; (4) the killing of Tutsi removed from the Kamarampaka Stadium; and (5) the killings at various places of refuge.

POLITICAL CONNECTIONS

9. It is alleged in the Indictment that: (i) Siméon Nchamihigo was appointed as the Deputy Prosecutor of Cyangugu Prefecture on the basis of a forged diploma because he was a supporter of the MRND political party; (ii) that he was involved in politics with the MRND and CDR Parties; (iii) that he was a member of a clandestine group called *Tuvindimwe* and (iv) and that he was an *Interahamwe* leader responsible for recruiting and providing military training.

10. In respect of the first allegation, no evidence was adduced to show that the Accused presented a forged diploma when he applied for the position of Deputy Prosecutor in Cyangugu Prefecture. The Chamber considers that the Prosecution did not establish any impropriety in the appointment of Nchamihigo to that post.

11. In respect of the second allegation that he was involved in politics with the MRND and CDR parties, Mrs Marianne Baziruhiha testified that she and Nchamihigo were political opponents. Mrs Baziruhiha is a Hutu, and she survived the Kamarampaka Stadium events in relation to which Nchamihigo is charged with genocide and crimes against humanity in this Indictment. She stated that Nchamihigo made his political affiliations to the MRND and the CDR parties publicly known during political campaigns, during rallies, during meetings and demonstrations prior to and during 1994. After President Habyarimana's plane was shot down, Nchamihigo worked closely with local MRND party authorities. The Chamber believes the evidence presented by Mrs Baziruhiha and concludes that Nchamihigo publicly exhibited his support for the MRND and CDR parties. However, it was not established that he held any official position with either the MRND or the CDR parties.

12. In respect of the third allegation, Witness LM testified that Nchamihigo was a member of a clandestine political group called *Tuvindimwe*. The Chamber considers that the witness' testimony lacked detail and, in short, was based on rumour. The Chamber therefore does not find proof beyond a reasonable doubt of the existence of *Tuvindimwe* or of Nchamihigo's membership in it.

13. In respect of the fourth allegation, no evidence was adduced to prove that Nchamihigo held any official position as a leader of the *Interahamwe* or *Impuzamugambi*. However, the Chamber accepted the testimony of witnesses

who testified that Nchamihigo recruited them and other young Hutu men for militia training as *Interahamwe* and *Impuzamugambi*.

INDIVIDUAL KILLINGS

14. The Indictment charges that Nchamihigo committed genocide and crimes against humanity: specifically, murder, extermination or other inhumane acts, by ordering or instigating or aiding and abetting the killing of targeted individuals. It specified that as a result of Nchamihigo's actions on 7 April 1994, a number of killings occurred, and that other killings were perpetrated as a consequence of acts of the Accused on subsequent occasions.

15. Prosecution Witness LAG testified that around 9.00 a.m., on 7 April 1994, he saw Siméon Nchamihigo, armed with a rifle, in his vehicle, a Suzuki Samurai, on a road in Kamembe. According to the witness, Nchamihigo was talking to a group of *Interahamwe*, including Thompson Mubiligi. Nchamihigo said that the Tutsi, the *Inyenzi* and the RPF had shot down the presidential plane, and told the *Interahamwe* to search for the Tutsi wherever they were, and to seek out their accomplices and those who were in opposition to the authorities. He told them to find and dismantle the flags of the opposition. Witness LAG emphasized that Siméon Nchamihigo clearly meant that the *Interahamwe* should kill the Tutsi, *Inyenzi* and RPF accomplices. The witness further testified that, shortly after this meeting, and as a consequence, some of these *Interahamwe* killed people, including a Tutsi businessman by the name of Karangwa; Kongo,

who was a Hutu businessman; the wife and daughter of Trojean, a Tutsi; and Dr. Nagafizi, a Tutsi doctor. All of these victims lived in the neighbourhood of Siméon Nchamihigo.

16. The Chamber notes that Witness LAG is Nchamihigo's accomplice and accordingly considers his testimony with caution. Witness LAG was arrested in Rwanda in 1995 on charges of complicity in genocide and illegal possession of a weapon, confessed his guilt and was sentenced, in August 1999, to 11 years in prison. The Chamber does not see any motive for this witness to falsely incriminate the Accused. In addition, his evidence was supported in several material particulars by other witnesses. The Chamber has relied upon the testimony of Witness LAG.

17. The Chamber believes, therefore, that the Prosecution established that Siméon Nchamihigo told LAG and *Interahamwe* and others to whom he spoke at Kamembe on 7 April 1994 to seek out and kill Tutsi, with the intention to destroy the Tutsi ethnic group, and other civilians who were RPF accomplices, as part of a widespread attack against civilians in Cyangugu on political and ethnic grounds. The Chamber is satisfied that, as a result of the orders of Nchamihigo, many were killed, including Karangwa, Nagafizi, Kongo and the family of Trojean. These victims, apart from Kongo, were burnt to death. The Chamber also believes the evidence that Nchamihigo looted the property of Karangwa and Trojean.

18. There was another victim on 7 April 1994: Serubyogo. LAG testified that it was not his group that killed him. The evidence was that Serubyogo was killed by soldiers who were not shown to have been influenced by Nchamihigo. The Chamber, therefore, finds that it cannot impose criminal responsibility on Nchamihigo for the killing of Serubyogo.

19. There also are allegations against Nchamihigo in respect of the killing of Jean de Dieu Gakwandi and Canisius Kayihura, Émilien Nsengumuremyi, three Tutsi girls, two Tutsi students, Father Boneza and 13 FAR soldiers.

20. In respect of the alleged murders of Gakwandi and Kayihura, the Chamber observes that they were not killed, although it believes the evidence of the witnesses who testified that Nchamihigo gave instructions to kill these two men. The Indictment charged that Nchamihigo committed genocide by ordering or instigating *Interahamwe* at a roadblock to kill Kayihura. The Indictment further charges Nchamihigo with murder as a crime against humanity by ordering or instigating a group of *Interahamwe* to kill both Gakwandi and Kayihura. The Chamber cannot enter a conviction for the killing of the two men in the absence of proof of their death.

21. Additionally, in relation to Gakwandi, Nchamihigo was charged with ordering or instigating the commission of an inhumane act, as a crime against humanity. Inflicting serious bodily harm in certain circumstances may constitute a crime against humanity. The evidence revealed that Gakwandi had been hit on

the head, knocked unconscious, and left for dead, by his assailants. The Chamber believes the prosecution witnesses on this attack and the suffering of the victim. The Chamber finds that Nchamihigo instigated a crime against humanity for inhumane treatment of Gakwandi.

22. LAG testified that, on 15 April 1994, Siméon Nchamihigo, came to the roadblock he was manning. Nchamihigo told the *Interahamwe* there to hunt down and kill the Tutsi who were hiding in the area, and he read out the names of Émilien Nsengumuremyi, Gasali Aloys, Isidore Kagenza and Jean-Marie Vianney Tabaro, from a list. The evidence established that Émilien was shot by a soldier. LAG testified that his *Interahamwe* were not involved in this killing. No causal link was established between Nchamihigo's reading out the victim's name at the roadblock and his subsequent death. As a consequence, the Chamber finds that the Accused is not criminally responsible for the death of Émilien. There was no evidence that any of the other people whose names were read out at the roadblock was killed.

23. Siméon Nchamihigo is also alleged to have ordered or instigated, aided and abetted the killing of three Tutsi girls – Joséphine Mukashema, Hélène and Marie – who sought refuge at the home of a male classmate, who lived with his brother Jonas. The Chamber believed the testimony of Witness BRD that, in late April 1994, Siméon Nchamihigo, accompanied by an *Interahamwe*, took the three girls from the home of Jonas. Shortly afterwards, Witness BRD went in

search of the girls and found their dead bodies. Nchamihigo, who was present, informed Witness BRD that the three girls had been killed because they were *Inkotanyi*, and that the witness and Jonas should not be hiding *Inyenzi*. The only reasonable inference from the evidence is that Nchamihigo aided and abetted the killing of these three Tutsi girls.

24. Witness BRD also testified that on another occasion he was with two Tutsi students, Ukwizagenza Uzier and Innocent, on the road leading to the Nyungwe Forest, seeking transportation. Nchamihigo picked up the students and gave them a lift. Approximately one hour later, Witness BRD saw the bodies of the two students near a roadblock, and the Accused was among the crowd gazing at their corpses.

25. The Chamber believes the testimony of Witness BRD. The Chamber recalls that it can draw inferences from the facts that it finds. However, this power is restricted in the sense that it should not draw an inference leading to a conviction unless it is the only reasonable inference that could be drawn. The fact that Nchamihigo picked up the students and approximately one hour later was on the scene where their dead bodies were found, allows more than one inference to be drawn. One inference would be that he handed the students to the killers. But, an hour had elapsed, and there is no evidence about what he did during that time. He could have delivered the students anywhere and

travelled to another destination and on his return have seen their bodies, like other spectators.

26. This situation is different from that of the three Tutsi girls. In that case, there was evidence that Nchamihigo knew that they were Tutsi and that he specifically sought them out. After they were killed, he told Witness BRD that they were killed because they were *Inkotanyi*, and uttered threats to the witness about assisting Tutsi. This testimony provided an undeniable link between Siméon Nchamihigo and the killing of the three girls. In the case of the two students, however, it would be speculative to conclude that Nchamihigo identified the students as Tutsi when he was driving past and suddenly decided to pick them up for that reason. There was no evidence that he did or said anything, before or after their death, from which any inferences could inevitably be drawn. The Chamber concludes that the Prosecution has failed to show beyond reasonable doubt that Nchamihigo ordered or instigated or aided and abetted the killing of these two students.

27. Father Joseph Boneza was a Tutsi priest at Mibirizi parish. Prosecution Witnesses LAG, LDC and BRF testified that Nchamihigo chased Father Boneza to the Kucyapa Roadblock and that at that location he called on an “intelligent Hutu” to kill the priest. Mutabazi and Félicien Nyagatere responded and killed Father Boneza. The witnesses’ testimonies were supported in many material particulars even by witnesses called by the Defence, whose evidence about the

circumstances of the killing was consistent with that of Prosecution witnesses, except in regard to the presence of Nchamihigo. Thus the Chamber finds that Nchamihigo instigated the killing of Father Boneza.

28. The Indictment further alleges that, by transferring thirteen FAR soldiers from the Cyangugu central prison to the Prefecture, Siméon Nchamihigo facilitated their killing. One Prosecution Witness, BRO, testified about this alleged event. The Chamber did not believe Witness BRO. Accordingly, the Chamber finds that the allegation of the Accused's criminal responsibility for the killing of 13 FAR soldiers has not been proved.

ROADBLOCKS

29. The Prosecution alleges (i) that Siméon Nchamihigo instigated and ordered the erection of several roadblocks to intercept and kill Tutsi; (ii) that he supervised the effective manning of those roadblocks; (iii) and that several Tutsi were killed by his *Interahamwe* at the roadblocks. Both Prosecution and Defence witnesses, including Nchamihigo, testified that there were roadblocks at several locations.

30. Having considered the evidence, the Chamber concluded that it was Prefect Bagambiki who directed the local authorities to set up the roadblocks, and not Nchamihigo. However, there was evidence that Siméon Nchamihigo visited these roadblocks and that he gave instructions to the persons manning the roadblocks from time to time.

31. Evidence relating to killings at roadblocks has already been considered in relation to the killing of the three Tutsi girls, the two Tutsi students, and Father Boneza.

KAMARAMPAKA STADIUM

32. The Indictment alleged that Nchamihigo attended Prefecture Security Council meetings in Cyangugu on 11 and 14 April 1994, and participated in planning and organising acts of genocide and crimes against humanity. Following these meetings and as part of the agreed strategy, it is alleged that 16 Tutsi who were removed from the Kamarampaka Stadium on the instructions of the Prefecture Security Council were killed on 16 April by *Interahamwe* as ordered or instigated by Nchamihigo. It is further alleged that the Accused and others returned to the stadium on or about 18 April 1994 and removed certain individuals who also were subsequently killed

33. Witness AOY was the main Prosecution witness to give evidence that Nchamihigo participated in the Security Council meetings at which acts of genocide, including the Kamarampaka Stadium incident, were planned. The Chamber considered his evidence with the requisite degree of caution, as he was an accomplice. The Chamber noted that he did not attempt to lessen his own criminal responsibility and did not have any motive to falsely implicate Nchamihigo. Furthermore, aspects of his testimony were corroborated by other witnesses. On the strength of Witness AOY's testimony, the Chamber finds that

Nchamihigo participated in the Prefecture Security Council meetings on 11 and 14 April, where the events that transpired at Kamarampaka Stadium were planned.

34. It is not disputed that refugees were transferred from the Cyangugu Cathedral to the stadium on 15 April 1994 on the instructions of the Prefecture Security Council. The Chamber has found, on the basis of the evidence of Marianne Baziruwiha, that Nchamihigo, together with other members of the Prefecture Security Council, were present when refugees were transferred from the Cathedral to the stadium.

35. The Chamber finds that Nchamihigo was present at the stadium on 16 April 1994 with other members of the Prefecture Security Council. Prefect Bagambiki told the refugees that there were some among them who were accomplices of the RPF and had to be removed for questioning. He instructed the Gendarmerie Commander to read out the list of names that had been prepared by order of the Security Council. On the basis of the evidence of Marianne Baziruwiha and Witnesses LBB, LCR and LM, the Chamber believes that the individuals, whose names were called out, including that of Marianne Baziruwiha, were removed from the stadium. Apart from Marianne Baziruwiha, they were all Tutsi.

36. The Chamber has concluded, based primarily on the evidence of Witness BRK, who testified that he was one of the killers, that the refugees were taken to

the Brigade de Gendarmerie at Ruzizi. Witness BRK testified that Nchamihigo and other authorities, including Prefect Bagambiki and Imanishimwe were present. BRK testified that Nchamihigo had come to Mutongo earlier in the day and arranged for assailants to come to carry out the killings. At the Brigade, Nchamihigo had a list of the intended victims and BRK participated in killing them all, except for Marianne. She testified that she had managed to escape from the group and to find refuge in the residence of the commander of the Gendarmerie. BRK testified that after the killing, Nchamihigo instructed the *Interahamwe* not to throw the bodies into the Ruzizi River, but into pit latrines at Gapfumu's home. Gapfumu was one of the victims. As the *Interahamwe* drove to Mutongo to dispose of the bodies, Nchamihigo asked them to sing "No Enemy Can Attack an Armoured Vehicle."

37. A couple days later, Nchamihigo and Imanishimwe went to the residence of the gendarmerie commander and promised to spare Marianne's life if she went to the stadium and told the refugees there that those previously removed had not been killed. Marianne testified that when she refused they ordered her to be delivered to the gendarmes, but she escaped and fled to Bukavu and onwards.

38. The Chamber considered the testimony of Witness BRK with caution. It concluded that it was corroborated in many material particulars. In his testimony, Siméon Nchamihigo denied knowing Witness BRK, but confirmed that the witness was on the official list of those suspected of killing the people

removed from the stadium. The Accused's evidence supports Witness BRK's admission that he was present and was one of the killers. In addition, although Nchamihigo denied going to Mutongo Centre on that day, he revealed knowledge, in his testimony, that *Sous-préfet* Munyagabe went to the centre to pacify the population. Indeed BRK testified that Munyagabe was at the centre, but with Nchamihigo. Witness BRK's testimony that *Interahamwe* were outside the stadium to attack those removed was supported by Prosecution Witness LM who heard the shouting, and by Marianne Baziruwaha who saw the *Interahamwe*.

39. There were several witnesses who testified that those removed from the stadium were killed. Defence Witness SBA gave evidence that the Gendarmerie Commander reported the killings to the Prefecture Security Council. Prosecution Witness AOY testified that Prefect Bagambiki telephoned him to confirm that the killings had taken place as planned. Moreover, Nchamihigo himself testified that the Prosecutor informed him that the people removed from the stadium had been brought to the Gendarmerie and murdered, and that the Prosecutor ordered that arrest warrants be issued against the perpetrators.

40. Several witnesses confirmed that the bodies were buried in Gapfumu's latrine and that, when they were subsequently exhumed, they were identified by relatives as the people removed from the stadium on 16 April 1994. Although Witness BRK was an accomplice, his evidence was supported in many material

particulars. In fact, he confessed to the Rwandan judicial authorities that he was one of the killers at the gendarmerie and is liable to suffer penal consequences for his crime. The Chamber believed his testimony.

ATTACKS ON PLACES OF REFUGE

41. Nchamihigo is charged with genocide and with extermination as a crime against humanity for ordering, instigating or aiding and abetting attacks against, killings of Tutsi who sought refuge at places including Gihundwe secteur, Bisesero, Shangi parish, Hanika parish, Nyamasheke parish, Nkanka parish, Mibilizi parish and hospital and Nyakanyinya school. During the presentation of its case, the Prosecution did not adduce any evidence about killings at Nkanka parish. Consequently, the Chamber finds that no conviction can be entered against Nchamihigo in relation to that event.

42. With respect to Mibilizi, Nchamihigo was alleged to have participated in an attack on or around 18 April 1994. Prosecution Witness BRK gave detailed evidence which was corroborated by three other Prosecution witnesses. The Chamber recalls having already rejected Nchamihigo's alibi that he was in his office all day, and considered the remaining Defence evidence on the matter to be weak. After considering the totality of the evidence adduced, the Chamber concludes that Nchamihigo's actions and words substantially contributed to the massacres perpetrated against the Tutsi civilian refugees at Mibilizi parish and hospital on or about 18 April 1994.

43. With respect to Nchamihigo's alleged role in the massacre at Nyamasheke parish, the Chamber observes that evidence presented by the Prosecution did not address the substance of the allegations in the Indictment, and is far from direct evidence. Neither Witness BRD nor Witness BRF personally saw the attack at the parish. Neither witness presented any evidence as to Nchamihigo's presence at the parish or his instigation of the attack.

44. The Chamber therefore concludes that the Prosecution failed to establish Nchamihigo's criminal responsibility for the massacre at Nyamasheke parish, as alleged in the Indictment.

45. With respect to Nchamihigo's alleged role in the massacres at Bisesero in Kibuye Prefecture, the Chamber notes that the evidence presented by the Prosecution was too limited to support a finding beyond reasonable doubt that Nchamihigo ordered or instigated *Interahamwe* to kill Tutsi who had taken refuge in Bisesero. Additionally, there is a discrepancy between the date alleged in the Indictment, late June 1994, and the date about which the witnesses testified, which was late April 1994. The Chamber therefore dismisses the charges against Nchamihigo in relation to the massacres at Bisesero.

46. With respect to Nchamihigo's role in the massacres at Shanghi parish, the Chamber heard evidence from Witness AOY. He testified that Nchamihigo had been appointed zone supervisor for a district which included Shanghi parish at a meeting of the Prefectural Security Council on 11 April. Subsequently, during a

Prefecture Security Council meeting held on 14 April 1994, when supervisors were giving their reports, Nchamihigo requested additional arms or manpower to kill the Tutsi refugees at Shangi parish. His request was granted, and a decision was made to dispatch Munyakazi's *Interahamwe* from Bugarama to intervene. Witness BRF testified that, sometime later in April, Munyakazi's *Interahamwe* stopped, on route to Shangi parish, at Nchamihigo's village, where they were fed and entertained by Nchamihigo. The next day these *Interahamwe* attacked the refugees at Shangi parish.

47. The Defence evidence was that a notorious killer, Pima, led the attacks at Shangi. The Defence also provided witnesses who claimed that they never heard Nchamihigo's name used in connection with the Shangi massacres. In the Chamber's view, the Defence evidence, even if true, is not inconsistent with the Prosecution testimony. The Chamber believes the testimonies of Witnesses AOY and BRF, and finds that Nchamihigo instigated Munyakazi's *Interahamwe* to kill the Tutsi refugees at Shangi parish.

48. With respect to Nchamihigo's alleged role in the attack on Hanika parish, the Prosecution led evidence from Witness BRN, who was one of the killers during the attack. The witness testified that, on the afternoon of 11 April 1994, in Gatare commune, Nchamihigo addressed a meeting he attended. Witness BRN testified that Nchamihigo, among others, took the floor and said that the

Tutsi refugees had to be driven out of the parish because they could create a security risk. An immediate but failed attack ensued.

49. The following day, 12 April 1994, according to Witness BRN, Nchamihigo returned to Gatare and threatened civilians with death if they did not hurry up and kill the Tutsi refugees. He left grenades, which were used in the attack. Over one thousand Tutsi refugees were massacred at Hanika parish. Nchamihigo later returned to reward the assailants with beer.

50. Both Nchamihigo and Witness RLN testified that, on 12 April, Nchamihigo spent much of the day helping Belgian nuns to escape from Rwanda by driving them across the border into Zaire. The Chamber believes that this occurred, but does not believe the exercise took more than one hour. Thus, the evidence of Witness RLN and the Accused is not inconsistent with the testimony of Witness BRN.

51. The Chamber believes the testimony of BRN beyond reasonable doubt and finds that Nchamihigo instigated soldiers and civilians to kill the refugees at Hanika parish on or about 12 April 1994, with the intent to destroy in whole or in part the Tutsi group and as part of a widespread attack against a civilian population.

52. With respect to Nchamihigo's alleged role in the attack at Nyakanyinya School on 12 April, Prosecution Witness BRK recalled that Nchamihigo convened members of the population to a small meeting at the *conseiller's* house

in Mutongo secteur, which lasted some 20 minutes, and at which Nchamihigo said that there were Tutsi refugees at Nyakanyinya School attacking Hutu. After the meeting, approximately 150 attackers left Mutongo town centre for Nyakanyinya in two vehicles. Nchamihigo and Sergeant Major Marc Ruberanziza arrived at Nyakanyinya after the assailants had already started shooting at the refugees. They came with three cartons of grenades, one of which they handed over to the leader of the attack before leaving the massacre scene. After the killing, the assailants were welcomed in Mutongo by Nchamihigo and others who bought them beer.

53. The Chamber considers that Nchamihigo's alibi of assisting the religious sisters to cross into Bukavu is not inconsistent with the evidence of Witnesses BRK and BRN. The Chamber believes the testimony of Witness BRK beyond reasonable doubt.

54. Finally, with respect to Nchamihigo's alleged role in the killings in Gihundwe secteur, the Chamber heard from Prosecution Witness LDC, who was also a participant in the killings. He recalled that on either 14 or 15 April 1994, soldiers, *Interahamwe*, *Impuzamugambi*, and civilians carried out an attack against the four cellules of Gihundwe secteur. Nchamihigo divided the group of civilians and militiamen into four, one for each cellule, and then left with assailants for Murindi. The attack on Gihundwe secteur, which lasted some hours, resulted in the death of hundreds of Tutsi.

55. Witness LDC further testified to a meeting he attended at the Gihundwe secteur office on 24 April 1994. Participants included members of the public, as well as important authorities. At this meeting, Nchamihigo asked those in attendance whether they had killed all the Tutsi, whether there were any more Tutsi in hiding, and what needed to be done to exterminate all the Tutsi in all the secteurs. At that point, one of the leaders of the assailants requested a two-week allowance to accomplish the task; Védaste Habimana responded that the Tutsi had to be exterminated within three days. As a result, attacks were launched within the three following days; Tutsis were found in the bush and killed.

56. Nchamihigo denied the allegations, and attested that he was in his office all day on 14 and 15 April 1994. He admitted that a meeting was held on 24 April 1994, but he denied having been present. The Chamber does not consider his alibi to be credible. Instead, the Chamber believes Witness LDC.

57. The Chamber finds that, on 14 or 15 April 1994, Nchamihigo instigated civilians, *Interahamwe* and *Impuzamugambi* to launch attacks against Tutsi who had been hiding in their or others' homes in the four cellules of Gihundwe secteur. His contribution to the gathering of civilians and the organization of the citizens into four groups was substantial in bringing about the subsequent massacre of Tutsi on that day.

58. The Chamber also finds that, at a meeting held on 24 April 1994, Nchamihigo made inquiries into the status of the extermination of the Tutsi in

Gihundwe secteur, and that the nature of his inquiries instigated others present at the meeting to find more Tutsi in hiding to kill within the following three days.

VERDICT

59. Cumulative convictions for genocide and crimes against humanity based on the same conduct are permitted, because the crimes contain distinct elements requiring proof of a fact not required by the other.

60. However, in the instances where there are charges for Extermination, murder and/or other inhuman acts arising from the same conduct the position is equally well settled that the crime of extermination subsumes the crime of murder, as murder does not require any additional materially distinct element than what is contained in the definition of extermination. In return, extermination requires an additional element, i.e. the killing of one or more persons as part of a mass killing of civilians and the crime of inhumane acts is subsumed by every other crime against humanity as it requires no additional element to any other crime against humanity.

61. Genocide is a crime against a national, ethnic, racial or religious group with intent to destroy the group in whole or in part. It has been judicially determined that acts committed against “Hutu political opponents”, may be crimes against humanity, but they cannot be perceived as acts of genocide, because the victim of an act of genocide must have been targeted by reason of the fact that he or she belongs to a protected group. The crime against humanity

is broader than genocide, as the perpetrator need not target a specific group, but is committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The Chamber has found that Nchamihigo instigated, ordered and aided and abetted killings of Tutsi with intent to partially destroy the Tutsi ethnic group. It also found that these killings and the killings of Hutu political opponents of the Rwandan authorities were committed as part of a widespread attack on the civilian population in Cyangugu, on the ethnic grounds of destroying the Tutsi and on the political grounds of destroying accomplices of the RPF and those engaged in removing the government from power.

[The Presiding Judge will invite the Accused to stand up]

62. The Chamber has found Nchamihigo guilty on

Count 1 for genocide

Count 2 for murder as a crime against humanity

Count 3 for extermination as a crime against humanity.

Count 4 for other inhuman acts as a crime against humanity.

SENTENCE

63. All crimes under the Tribunal's Statute are serious violations of international humanitarian law. Under Rwandan law genocide and crimes against humanity carry the possible penalty of life imprisonment.

64. At the time of conviction Siméon Nchamihigo is a Hutu Rwandan citizen. He is 49 years old; he is married and has five children. He has spent the totality of his professional career in Rwanda, working for the Rwandan Ministry of Justice as a deputy prosecutor.

65. Among the aggravating factors in this case, the Chamber notes that Siméon Nchamihigo, as a deputy prosecutor of Cyangugu Prefecture, was in a prominent public position of trust; yet he exhibited zeal in the perpetration of these grave crimes. Because of his position in the justice system, he was expected to uphold the rule of law and principles of morality. Some witnesses testified that, because of Nchamihigo's position, they believed that they would suffer no legal consequences for their participation in the genocide and widespread killings and looting. Siméon Nchamihigo promoted an environment of impunity for mass atrocity. The Chamber also considers the large number of victims directly affected by the Accused's crimes to be an aggravating factor. Additionally, note must be taken of his cruelty and disregard for human dignity. Witness LDC saw Nchamihigo looting Trojean's house, while Trojean's wife and daughter were burning to death. Witness BRK testified that Siméon Nchamihigo ordered *Interahamwe* to bury corpses in a latrine. The Chamber considers the details of his criminal activity, the distances he travelled to supervise numerous massacres, as well as the number of locations where he intervened all to be cumulative factors, demonstrating his zeal in the commission of his crimes.

66. The Chamber finds few mitigating circumstances. While the Accused may be a good father, this factor has little impact on the sentence. Evidence also exists that the Accused assisted a few people, especially close to him. This factor carries limited weight as a mitigating factor, in light of the totality of the evidence. The Chamber believes that limited mitigation is warranted.

67. In those circumstances, the Chamber sentences Siméon Nchamihigo to LIFE IMPRISONMENT.

68. Siméon Nchamihigo shall serve that sentence in a State designated by the President of the Tribunal, in consultation with the Chamber, and The Registrar shall so notify the Government of Rwanda and the designated State.

69. Until his transfer to his designated place of imprisonment, Nchamihigo shall remain in detention under the present conditions.

70. Pursuant to Rule 102 (B) of the Rules, on notice of appeal, if any, enforcement of the above sentences shall be stayed until a decision has been rendered on the appeal, with the convicted person nevertheless remaining in detention.