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WITNESS STATEMENTS ENCLOSED WITH THE JUDGMENT

TERMS AND ABBREVIATIONS

DRC	Democratic Republic of Congo
FAR	Rwandese Armed Forces
FPR	Front Patriotique Rwandaise (also RPF)
HRW	Human Rights Watch
ICTR	International Criminal Tribunal for Rwanda
Ibuka	national genocide survivors' association
Inkotanyi	a term used to refer to members of the RFP, i.e. the Rwandese Patriotic Front. The word literally means “fierce fighter” and originally referred to the militia of the 19 th -century king Rwabugiri
Interahamwe	a trained paramilitary group consisting of Hutus who played a key role in the acts of genocide
Inyenzi	a Kinyarwandan word for “cockroach”, commonly used to refer to the RFP
MDR	Mouvement démocratique républicain
MRND	Mouvement révolutionnaire national pour le développement from 1975 to 1991; from 1991, Mouvement républicain national pour le développement et la démocratie
OPAM	Organisation for HIV Positive African Men
PDistrict Court	Parti démocrate chrétien (Christian Democratic Party)
PDI	Parti démocrate islamique
PL	Parti libéral
PSD	Parti sociale démocrate
RTL	Radio Télévision Libre des Mille Collines
RPA	Rwandese Patriotic Army
RPF	Rwandese Patriotic Front, the same as the French FPR
UEBR	Union des Eglises Baptistes au Rwanda (Union of Baptist Churches of Rwanda)
UNAMIR	United Nations Assistance Mission for Rwanda
UNHCR	United Nations High Commissioner for Refugees

VASA A witness for the defendant whose name was ordered not to be disclosed and who was heard in the absence of the public; decisions nos. 812 of 7 September 2009, 1201 of 4 December 2009 and 2 of 5 January 2010

I CHARGE AND DEFENCE

The defendant has been indicted for the following offences:

A PRIMARY CHARGE: GENOCIDE

Criminal Code, Chapter 13:4 (987/1974)

1 January 1993 – 31 May 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings, Cyahinda church and its surroundings, and Mount Nyakizu and its surroundings)

1 BACKGROUND

1.1 The native population of Rwanda is made up of three ethnic groups: the Hutu, the Tutsi and the Twa. The Hutu and the Tutsi are the largest of the groups. The majority of the population is Hutu.

1.2 Until 1959, Rwanda was a monarchy led by a Tutsi monarch. The form of government changed from monarchy to republic in 1959 when the Tutsi monarch was overthrown by the Hutu.

1.3 The tensions between the Hutu and the Tutsi originating in the colonial era simmered beneath the surface until 6 April 1994, on which date they erupted into genocide. The genocide is deemed to have started in earnest at the moment when the airplane carrying President of the Republic of Rwanda Juvénal Habyarimana and President of the Republic of Burundi Cyprien Ntaryamira, who had been conducting peace talks concerning the Republic of Rwanda in Tanzania, crashed at the airport in Kigali, the capital of Rwanda.

1.4 The administrative vacuum arising from the death of President Habyarimana allowed the Hutu Power party, representing extremist Hutus, and the interim government formed by it to declare itself to be in control of the country. Following this, the Rwandan army and the Interahamwe militia established by President Habyarimana set up roadblocks around Kigali. Across the country, the Presidential Guard, the militia and other paramilitary organisations started to kill Tutsis as well as moderate Hutus who supported peace and power-sharing. On 12 April, when the Rwandan authorities announced on Radio Rwanda that, "we need to unite against the enemy, the only enemy and this is the enemy that we have always known...it's the enemy who wants to reinstate the former feudal monarchy", it became clear that the Tutsi were the target of widespread, systematic and extremely brutal genocide. The Hutu intended to destroy the Tutsi in whole.

1.5 The genocide reached its peak in the period between 14 and 21 April 1994. After the president of the interim government, the prime minister and some key ministers had travelled to Butare and Gikongoro, the killings started also in these regions, which despite the planning and preparation conducted in the local security councils established specifically for this purpose had remained peaceful until then. Thousands of people, unsuspecting and often encouraged by local officials, gathered in churches, schools, hospitals and other public buildings in hopes of finding safety. In reality, they were led into traps to ensure rapid and as widespread as possible extermination.

1.6 The genocide in which neither women, children nor the elderly were spared continued until 18 July 1994, when Kigali was occupied by the RFP, a movement formed by the Tutsi.

1.7 The genocide claimed from 500,000 to 1,000,000 or more victims, a large number of people furthermore being injured or maimed and most of them suffering permanent mental or physical injury.

2 ADMINISTRATIVE STRUCTURE OF RWANDA

2.1 Rwanda is divided into eleven prefectures, each of which is governed by a prefect. The prefectures in turn are divided into sub-prefectures and communes, the latter being headed by burgomasters, i.e. mayors appointed by the president. The communes are divided into sectors and cells headed by councilmen and responsables.

2.2. The mayors of the communes perform a number of public duties and possess considerable statutory authority well as general influence. The mayors govern the communes through their inner circle, which often comprises scholars and persons of wealth. The de facto authority held by the educated classes in the mayor's inner circle is thus considerably greater than may be concluded solely on the basis of their position de jure.

2.3 The events referred to in the charge take place in the Nyakizu (now Nyagizozi) commune located in Butare prefecture, in its Maraba and Cyahinda sectors and their surroundings, at the church of Cyahinda located in Cyahinda sector and the church's surroundings, and on Mount Nyakizu and its surroundings, located in part in Nyakizu commune.

3 INDICTMENT

3.1 DEFENDANT

3.1.1 Francois Bazaramba was born in 1951 in Nshili commune belonging to Gikongoro prefecture. He is a Hutu. When the genocide started, Bazaramba was living in the Maraba sector of Nyakizu commune.

3.1.2 Bazaramba held no formal leadership role in the administration of Nyakizu commune or Maraba sector. However, Bazaramba was an active member of the MDR Power (Movement Démocratique Républicaine) party which represented extremist Hutu, a national leader of the youth wing of the Rwandan Baptist Church (Union des Eglises Baptistes au Rwanda, UEBR), the headmaster of a technical college in Maraba sector, and one of the managers of the refugee camp Karamba in Nyakizu commune established by the United Nations for the safety of Hutu refugees who had fled from Burundi to Rwanda, having been appointed to the last-mentioned position by Ladislas Ntaganzwa, the mayor of Nyakizu commune. Owing to this and because Bazaramba graduated secondary school and held a BA from Cameroon University, and because he was a part of the innermost circle of mayor Ntaganzwa, wealthy and respected also through his wife, who managed the local health centre, he had considerable general authority among the residents of Maraba sector and its surroundings.

3.1.3 While the genocide was underway, Bazaramba carried a weapon in public and served as a member of the security council of Nyakizu commune. Owing to this and based on his general authority recounted above, especially the close ties forged with mayor Ntaganzwa, the orders and instructions given by Bazaramba concerning the destruction of Tutsis were followed without reservation by the Hutu and their supporters in Maraba sector and its surroundings, also during the genocide. Bazaramba's position of leadership is also reflected in the fact that he was in a position to acquire the weapons used in the genocide and to give monetary rewards to the Hutu who took part in the killings. He was also a member of the property distribution commission tasked with deciding on the distribution among the Hutu of property left behind by and forcibly seized from the Tutsi. As a member of the security council and a person of influence in other respects as well, Bazaramba organised or at least took part in meetings at which anti-Tutsi propaganda was disseminated and the killings of the Tutsi were incited.

3.1.4 Bazaramba was one of the most important leaders of the genocide in Nyakizu commune.

3.2 GENOCIDE

Bazaramba committed acts of genocide with the intent to destroy in whole or in part the Rwandan Tutsis as a group. Bazaramba killed Tutsis and ordered them to be killed and also inflicted on them conditions of life calculated to bring about their destruction.

3.2.1 Inflicting on Tutsis living in Maraba sector and its surroundings conditions of life calculated to bring about their physical destruction in whole or in part

With the intent to destroy the Rwandan Tutsis in whole or in part, Bazaramba inflicted on Tutsis living in Maraba sector and its surroundings conditions of life calculated to bring about their physical destruction, through the following acts:

- (i) Bazaramba disseminated anti-Tutsi propaganda and incited Hutus to kill by fomenting hatred and contempt of the Tutsi among them;
- (ii) Bazaramba organised road blocks and night patrols set up for the purpose of controlling the Tutsi, and led this activity;
- (iii) Bazaramba forced Tutsis to leave their homes;
- (iv) Bazaramba acquired and distributed the supplies such as matches used in burning residential and other buildings owned by Tutsi, and incited and ordered Hutus to burn these buildings; and
- (v) Bazaramba distributed among the Hutu movable and immovable property which had been left behind by the Tutsi or forcibly seized from them.

3.2.2 Killings

3.2.2.1 Provision of preparatory training in killings and acts of violence, and procurement of weapons

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba provided the preparatory training utilised in the killings and acts of violence referred to below in sections 3.2.2.2 – 3.2.2.4 to civilians and especially to Burundian refugees placed in a camp by the name of Karamba situated in Nyakizu commune. Bazaramba provided training at and outside Karamba camp, i.a. at the municipal firing range suitable for shooting practice.

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba procured and distributed weapons used in the killings and acts of violence referred to below in sections 3.2.2.2 – 3.2.2.4, such as guns and machetes.

3.2.2.2 Maraba sector and its surroundings

A

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba ordered Hutus to kill Tutsis and Hutus known to be moderates, as follows:

- (i) On 16 April 1994, Bazaramba ordered the killing of five Tutsi men who remain unidentified. As a result of the order and in the presence of Bazaramba, the men were clubbed to death.
- (ii) In mid-April 1994, Bazaramba ordered the killing of Emmanuel Habonimana, a moderate Hutu, his Tutsi wife Dina and a Tutsi woman by the name of Agnes Mukamutesi as well as an unidentified Tutsi

woman in their company. As a result of the order and in the presence of Bazaramba, the victims were clubbed to death.

- (iii) After mid-April 1994, Bazaramba ordered the killing of a Tutsi woman by the name of Bellansilla Mugagashugi. As a result of the order and in the presence of Bazaramba, the woman was killed with either a mace or a spear.

B

After mid-April 1994, with the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba ordered Hutus to seek out and kill Tutsis in hiding. Upon the discovery of the following persons, Bazaramba ordered their killing:

- (i) An approximately 12-year-old Tutsi boy by the name of Mujemana. As a result of the order given by Bazaramba and his presence, the boy was clubbed to death.
- (ii) A Tutsi woman by the name of Agnes and her infant child. As a result of the order given by Bazaramba and his presence, the victims were clubbed to death.
- (iii) A Tutsi man by the name of Anderea. As a result of the order given by Bazaramba and his presence, the man was clubbed to death.
- (iv) A Tutsi woman by the name of Beatrice, who was the wife of a man by the name of Gedeon. As a result of the order given by Bazaramba and his presence, she was clubbed to death.

3.2.2.3 Cyahinda church and its surroundings

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba between 15 and 18 April 1994 led some of the attacks on the buildings and surroundings of the church located in Cyahinda sector. Attacks of several hours' duration were made at least on 15 April and 17 April. During the attacks, Bazaramba killed several Tutsis. Bazaramba also gave orders leading to the killing of Tutsis.

When news of the threats against Tutsis and moderate Hutus and the first killings of them spread around the southern parts of Butare prefecture, Tutsis and moderate Hutus sought shelter and sanctuary i.a. in Cyahinda church. Churches were known as places where violence would not extend. The authorities moreover had urged the Tutsi to gather at the church, announcing that their safety could thus better be guaranteed.

Between 15 and 18 April, the church came under constant attack by several Hutu groups, each with their own leaders. The attacks were a part of the genocide planned and prepared in advance at the national level. Among the groups was also the group led by Bazaramba, which besides gendarmes and former and current soldiers also comprised civilians enlisted or coerced into participation especially from the Karamba camp of Hutu refugees from Burundi as well as from elsewhere in Nyakizu commune. At least some of these civilians had been trained in killing and acts of violence by Bazaramba and third parties. The group led by Bazaramba had the mission, along with the other groups, to kill all Tutsi who had sought refuge in the church. With this intent, Bazaramba gave orders to attack and kill. Bazaramba also personally took part in the attacks and killed several Tutsi with the gun in his possession.

Roughly 37,000 Tutsi were killed in the attacks on Cyahinda church and its surroundings. Only some of the Tutsi who had sought refuge in the church managed to escape to the nearby Mount Nyakizu and its surroundings.

3.2.2.4 Mount Nyakizu and its surroundings

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba between 15 and 18 April 1994 led some of the attacks on Mount Nyakizu and its surroundings. Attacks of several hours' duration were made at least on 16 April, 17 April and 18 April 1994. During the attacks, Bazaramba killed several Tutsis. In addition, Bazaramba gave orders leading to the killings of Tutsis.

The Tutsi who had managed to escape the attacks on Cyahinda church together with other Tutsi fleeing the area fled to the nearby Mount Nyakizu and its surroundings. The Hutu groups taking part in the attacks on the church followed and together with Hutu chasing Tutsi from other areas killed thousands of Tutsi in attacks made on the mountain's slopes and peaks. Among the groups killing Tutsi was also the group led by Bazaramba, which besides gendarmes and former and current soldiers also comprised civilians enlisted or coerced into participation especially from the Karamba camp of Hutu refugees from Burundi as well as from elsewhere in Nyakizu commune. At least some of these civilians had been trained in killing and acts of violence by Bazaramba and third parties. The group led by Bazaramba had the mission, along with the other groups, to kill all Tutsi who had fled to the mountain. With this intent, Bazaramba gave orders to attack and kill. Bazaramba also personally took part in the attacks and killed several Tutsi with the gun in his possession.

In a place by the name of Gatobwe on Mount Nyakizu, Bazaramba ordered his son to fire on Tutsis with the intent to kill. Bazaramba was driving a motorcycle owned by him and his son was riding the motorcycle as a passenger. On the order of Bazaramba, the son fired the gun in his possession at the surrounding Tutsis with the intent to kill. The shooting resulted in the death of several Tutsis.

B ALTERNATIVE INDICTMENTS

1 FIVE COUNTS OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

16 April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to kill five unidentified Tutsi men. The men were clubbed to death in the presence of Bazaramba.

The order to kill was given with premeditation and the killing of the victims took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner at a road block set up for the purpose. The giving of the order to kill was due especially to the hatred and contempt Bazaramba had for the victims because they were Tutsis. Having regard to the facts leading to and demonstrated by the act, which concerned several victims, the act shall be deemed especially aggravated.

2 FOUR COUNTS OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

Mid-April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to kill Emmanuel Habonimana, his Tutsi wife Dina and a Tutsi woman by the

name of Agnes Mukamutesi as well as an unidentified Tutsi woman in their company. The victims were clubbed to death in the presence of Bazaramba.

The order to kill was given with premeditation and the killing of the victims took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner. The giving of the order to kill was due especially to the hatred and contempt Bazaramba had for the victims, because with the exception of Emmanuel they were Tutsis. Emmanuel was a Hutu but a moderate, and he was married to a Tutsi woman. Having regard to the facts leading to and demonstrated by the act, which concerned several victims, the act shall be deemed especially aggravated.

3 ONE COUNT OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

After mid-April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to kill a Tutsi woman by the name of Bellansilla Mugagashugi. Mugagashugi was killed with a mace and/or a spear in the presence of Bazaramba.

The order to kill was given with premeditation and the killing of the victims took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner. The giving of the order to kill was due especially to the hatred and contempt Bazaramba had for the victim because she was a Tutsi. Having regard to the facts leading to and demonstrated by the act, it shall be deemed especially aggravated.

4 ONE COUNT OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

After mid-April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to seek out Tutsis from hiding and to kill them. The Hutus who were given this order found a Tutsi boy of roughly 12 years of age, by the name of Mujemana, and clubbed him to death in the presence of Bazaramba.

The order to kill was given with premeditation and the killing of the victims took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner. The giving of the order to kill was due especially to the hatred and contempt Bazaramba had for the victim because he was a Tutsi. Having regard to the facts leading to and demonstrated by the act, which taking into account the young age of the victim concerned a helpless person, the act shall be deemed especially aggravated.

5 TWO COUNTS OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

After mid-April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to seek out Tutsis from hiding and to kill them. The Hutus who were given this

order found a Tutsi woman by the name of Agnes and her infant child. At the new, express order to kill given by Bazaramba, both the woman and the child were clubbed to death in the presence of Bazaramba.

The order to kill was given with premeditation and the killing took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner. The giving of the order to search and kill was due especially to the hatred and contempt Bazaramba had for the victims because they were Tutsis. Having regard to the facts leading to and demonstrated by the act, which furthermore concerned an especially helpless infant child, the act shall be deemed especially aggravated.

6 ONE COUNT OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

After mid-April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to seek out Tutsis from hiding and to kill them. The Hutus who were given this order found a Tutsi man by the name of Anderea. At the new, express order to kill given by Bazaramba, Anderea was clubbed to death in the presence of Bazaramba by a man forced into the killing by Bazaramba.

The order to kill was given with premeditation and the killing took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner. The giving of the order to search and kill was due especially to the hatred and contempt Bazaramba had for the victim because he was a Tutsi. Having regard to the facts leading to and demonstrated by the act, it shall be deemed especially aggravated.

7 ONE COUNT OF MURDER

Criminal Code, Chapter 21:2 (491/1969)

After mid-April 1994

Abroad (Republic of Rwanda, Butare prefecture, Nyakizu commune, Maraba sector and its surroundings)

Bazaramba, by exercising the de facto influence and authority he held as recounted above in sections 3.1.2 and 3.1.3, ordered Hutus to seek out Tutsis from hiding and to kill them. The Hutus who were given this order found a Tutsi woman by the name of Beatrice (wife of a Tutsi man by the name of Gedeon). At the new, express order to kill given by Bazaramba, Beatrice was clubbed to death in the presence of Bazaramba.

The order to kill was given with premeditation and the killing took place with Bazaramba's knowledge and in his presence, in a particularly cruel and brutal manner. The giving of the order to search and kill was due especially to the hatred and contempt Bazaramba had for the victim because she was a Tutsi. Having regard to the facts leading to and demonstrated by the act, it shall be deemed especially aggravated.

In the second alternative, Bazaramba is guilty at least as an inciter, under Chapter 5:2 of the Criminal Code in force at the time of commission (Act 39/1889), of a total of fifteen counts of incitement to murder in accordance with Chapter 21:2 of the Criminal Code in force at the time of commission (Act 491/1969), corresponding to the descriptions of the offence in the alternative indictments.

4 OTHER PROSECUTORIAL REQUESTS

Reimbursement of costs of presenting evidence

Bazaramba shall be ordered to reimburse the State for the costs of presenting evidence in the matter which are payable from State funds.

The request is based on Chapter 9:1 of the Criminal Procedure Act.

DEFENCE

A GENOCIDE

1. On the defendant's de facto social ascendancy in Maraba sector in 1994 alleged in the charge (points 3.1.2 – 3.1.4 of the charge)

Bazaramba denies the allegation that he would have been a leader in the acts of genocide in Nyakizu commune. Bazaramba had no involvement in the acts of genocide that took place in Nyakizu commune. The indictment also misrepresents his influence in society at the time by describing it to be such that Bazaramba could have influenced the actions of possible extremist Hutus in Maraba sector. In fact, the social regard in which Bazaramba was held in Maraba sector originated with persons quite other than the extremist Hutus who were capable of extreme crimes during the genocide, over whose actions Bazaramba at the time furthermore had not influence whatsoever.

Bazaramba did not belong to any political party or movement, nor was he otherwise involved in the activities of any such group in Rwanda after he returned to Rwanda in 1992 after his studies in Cameroon. The allegation made in the charge of his having been a member of the MDR Power party is thus wholly untrue. Bazaramba's membership in the MRND party ended already in 1990 when he started his university studies in Cameroon. Until 1992, party membership was mandatory to all persons of majority age.

Bazaramba was in charge of the distribution of food and supplies at a refugee camp by the name of Karamba under the auspices of UNHCR and served as camp coordinator. Bazaramba was not the head of the refugee camp, as the charge mistakenly alleges. In addition to the Baptist church, i.e. UEBR, actors at the camp were also OPAM, UNHCR, the Red Cross and Caritas. Bazaramba could not control the decisions taken by these operators. Bazaramba headed the resources of UEBR. The children's nutrition centre was under his direct responsibility.

Bazaramba had not been appointed to his post by the then mayor of Nyakizu commune Ladislas Ntaganzwa. His position at the camp had come about when Nyakizu commune, pursuant to an order from the nation's central government via Butare prefecture, had been assigned the task of setting up and managing a camp for Burundian refugees. After investigating the situation, UEBR informed the prefecture that it would take responsibility for the camp and stated that they had a suitable person to head the distribution of food and supplies in place in the commune. This is also indicated by the prosecutor's exhibit in which mayor Ntaganzwa reports to the prefecture the persons designated from the commune and on the same occasion states that Bazaramba has already been appointed to the position of head of food and supplies distribution.

Bazaramba was not a person in mayor Ntaganzwa's 'inner circle', the relations between the two instead being distant. The interaction between the two, what little there was, was dictated by the circumstances and did not take place, as the charge mistakenly alleges, within a relationship based on acquaintanceship and mutual loyalty. Ntaganzwa was prejudiced against Bazaramba since he became mayor. Ntaganzwa had overthrown the former mayor Jean Baptiste Gasana from his position and bulldozed his house down as a part of the so-called "kubohozo" he practiced in the area. Gasana had been a close family friend of Bazaramba. Ntaganzwa's men had harassed Bazaramba's wife Immaculée Kamuhanda in the yard of her hospital, putting Kamuhanda in physical danger. Bazaramba had been in Cameroon at the time. Kamuhanda was rescued from

the situation by her neighbours, who formed an escort to bring Kamuhanda, besieged by Ntaganzwa's men, home to safety.

Bazaramba and Ntaganzwa had a final falling out when Ntaganzwa took for his personal use or possibly for re-sale supplies intended for the camp and held in the commune's warehouse, for which Bazaramba had personally criticised the mayor. This took place before the acts of genocide.

Based on the above it can be stated that Bazaramba's de facto social standing in Maraba sector was not as significant and influential as the indictment suggests. As concerns the defendant's alleged de facto social standing, let it furthermore be stated that Bazaramba served as the headmaster of the technical college only until 1990 and thus no longer held that position at the time of commission presented in the charge.

The indictment moreover ignores the fact that before the acts of genocide taking place there, Nyakizu commune as a part of Butare prefecture was a very peaceful part of Rwanda despite the state of war prevailing in the country. Nyakizu commune and Butare prefecture had a considerable proportion of Tutsi residents, who accounted for up to roughly 20 percent of the area's population, with plenty of marriages between Hutus and Tutsis. In other words, Tutsis and Hutus lived side by side in the area, in peace and harmony, without any significant and visible tension between the two groups.

Extremist Hutu political movements had not been as visible and influential in the prefecture before the genocide as elsewhere in Rwanda. This view of Bazaramba's finds support i.a. from the Human Rights Watch report *Leave None to Tell the Story* (B 001), which on page 7 recounts how two prefects of southern provinces were killed because they did not undertake genocide in their area. Several commune mayors were killed for the same reason. The region of Butare differed in this respect considerably from Kigali and other areas where the confrontations between the ethnic groups were obvious.

Bazaramba lived in the same community with John Nyunzuguru, a Tutsi, and his Tutsi relatives, who included i.a. Ibambasi, Karambizi, Rwaduka, Rukimbana and Rwibasira among the witnesses for the prosecution. They all now have a personal financial interest in giving false testimony against Bazaramba, however. Ethnicity was of no relevance in Maraba sector, but had someone considered it, they would undoubtedly have concluded that Bazaramba and his family were Tutsis. At the time, education was mainly the province of the Tutsi, which further indicated that Bazaramba is a Tutsi. Bazaramba and his spouse's family gave generously of their welfare to persons in need, Hutu and Tutsi alike. Objectively speaking, he may indeed be equated with the so-called moderate Hutu.

In the political setting described above, an allegation of effectively inciting and fomenting a certain local group of people into crimes against another local group of people is implausible from the outset. The persons actually guilty of the acts of genocide which subsequently took place in the commune were extremist Hutus living outside the commune who invaded the commune in mid-April 1994 with the intent of killing Tutsis. It is thus clear, of course, that Bazaramba would have been unable to incite, organise and foment a group such as this, consisting mainly of outsiders, into crimes against Tutsis, even had he so desired.

Bazaramba and his family members came in mortal danger during the acts of genocide taking place in Nyakizu commune owing to his close and friendly relations with the local Tutsi population. It became known at the time that he had harboured two Tutsi friends of his in his home, Agathea (now Amber Lynn) and her fiancée Claver Misago, to protect them from the extremist Hutu who threatened them.

2. On the actual charge with regard to genocide in Nyakizu commune

Bazaramba denies having committed the acts of genocide alleged in the charge. Bazaramba denies having killed Tutsi or ordered Tutsi to be killed, or having impaired their conditions of life in any way. Bazaramba used his position, property, persona and actions in an attempt to protect the Tutsi living in Maraba sector.

Inflicting on Tutsis living in Maraba sector conditions of life calculated to bring about their physical destruction in whole or in part (point 3.2.1 of the charge)

Bazaramba denies having disseminated anti-Tutsi propaganda. He denies having incited Hutus to kill or having fomented hatred and contempt of the Tutsi among them.

Bazaramba did not organise road blocks or night patrols for the purpose of catching Tutsis. He was a member of the committee in charge of security, under the auspices of the communal council, established in consequence of an order arriving from the prefecture on 9 May 1994. On that day, there were some two hundred persons present in the town hall yard. A special body in charge of security matters was appointed at this meeting. Minutes were kept of the meeting. The manner of scrutinising the minutes in the municipal body was for the minutes of the previous meeting to be read at the beginning of the following meeting and then adopted. Bazaramba was not present at the following meeting and thus had no opportunity to influence the adoption of the said minutes. The next meeting attended by Bazaramba was held on 2 June 1994. Bazaramba had no opportunity to be involved in the adoption of the minutes of that meeting either, as he did not attend the following meeting. On the other hand, he does not know if the security council even held any further meetings.

Bazaramba did not head the committee. In his own estimation, he was chosen to the position to improve security in the commune because he is an educated person and was held in high regard by his neighbours. He was believed to possess the wisdom and restraint needed to increase the residents' sense of security as well as actual security in circumstances where infiltrators from the FPR rebel army were active in the area, recruiting persons and caching weapons to promote the ascension of the FPR. The road blocks were for discovering FPR soldiers, not for segregating or harming the civilian population.

In his service as a member of the committee to promote security, Bazaramba executed orders from the central administration. The Rwandan form of government in 1994 dated back to the era of the single-party system. The government was and remains strictly centrally planned. The decisions taken by the government in Kigali were enforced in the provinces, i.e. the prefecture and communes, directly on the basis of orders from above. The communes had no decision-making authority unless expressly delegated to them in the respective orders. In the communes, the central government was represented by the mayors who were confidants of the president. The mayor or burgomaster was aided by the communal council, the members of which were chosen by election. The communal council as well was an executive body and not a decision-making body. The sectors were represented by five persons appointed by the communal council. Likewise, at the level of cell decisions were enforced by a team of five responsables. These persons authorised by the communal council even had policing powers. They could settle minor disputes locally and detain persons in consequence of disturbing the peace or on suspicion of crime.

Bazaramba was not a responsable in his sector and did not belong to the team of responsables in his cell or sector. He had no policing or coercive measure powers in the commune.

Reports were submitted to the prefecture on activities and the carrying out of orders. The report prepared on the town hall meeting of 9 May 1994 to the sub-prefect of Busoro, for example, provides information on the steps taken in the commune in consequence of precisely such an order. Likewise, the letter from mayor Ladislas Ntaganzwa to the prefecture on the appointments at Karamba camp is a report on i.a. the steps taken in the commune in consequence of the order to set up the camp.

In the aftermath of the days of war, the mandate of the security council also comprised attending to the property of those who died or fled, Hutu and Tutsi alike. The minutes of the meetings show that the commune was concerned with residents not appropriating others' property, it instead remaining under the control of the commune. Particular concern was had for securing the coming harvest.

The Human Rights Watch report states the before the war, Rwanda was among the poorest nations in Africa, i.a. having insufficient farmland to feed its people and owing to a decline in the prices of traditional export products. Under these circumstances, attending to the coming harvest and cattle husbandry was the primary duty of the commune's persons in charge. It was in these activities that Bazaramba took part. They constituted neither preparation for genocide nor acts of genocide.

Killings (3.2.2)

Provision of preparatory training in killings and acts of violence, and the procurement of weapons (3.2.2.1)

Bazaramba denies having had any involvement whatsoever in the crimes described in the charge.

Killings in Maraba sector (point 3.2.2.2 of the charge)

Bazaramba denies having had any involvement whatsoever in the crimes committed in Maraba sector described in the charge.

Killings in Cyahinda sector and Mount Nyakizu and its surroundings (points 3.2.2.3 and 3.2.2.4 of the charge)

Bazaramba denies having committed any killings in Cyahinda sector and Mount Nyakizu, as he was not present at these locations at the relevant time.

When the acts of murder attributed to Bazaramba in the charge were committed, Bazaramba was on the run and in hiding along with his family and close Tutsi neighbours. As the villagers, scared by the rumours, in the morning of 15 April 1994 were ascending the mountain slope from Nyantanga towards Kibangu, they were attacked by an armed group arriving from the direction of Cyahinda. The attackers carried both firearms and traditional weapons. Bazaramba's family managed to escape back to Nyantanga hospital, where the group had also sought shelter the night before. Other arrivals at the hospital were Bellansilla Mugagashugi (Bazaramba's "adoptive sister"); Virginia, wife of neighbour Mageza Damose; and Francine, wife of neighbour, gendarme Athanase. Risking their own reputation and security, Bazaramba and Kamuhanda hid these women on the premises of the hospital's maternity clinic.

A few days later, Bazaramba and Kamuhanda again put their personal security at risk for these women. Before again taking off to flee to Kibangu, Bazaramba and Kamuhanda made sure that Francine and Virginia found shelter with relatives outside the village while Bellansilla was found a place of hiding at Bazaramba's house in the mountains where, while Bazaramba and Kamuhanda were in hiding in Kibangu, she was discovered and killed.

B ALTERNATIVE INDICTMENTS

B.1 Five counts of murder

Bazaramba denies complicity in the five counts of murder under point 1 of the alternative indictments. Bazaramba patrolled the road blocks in the vicinity of his village a few times in May and June 1994. In consequence of an order from the prefecture, making a man available to the commune to guard the road blocks was made a rotating duty. After the period of genocide and confusion in the latter half of April, Bazaramba stayed in his home commune for a further two months, and guard duty fell on his household on a few occasions. No one was killed at the road blocks while Bazaramba was on guard. Based on an order from the prefecture, a captured enemy was to be taken prisoner and handed over to the communal authorities for transport to the prefecture.

In Bazaramba's observation, the messages from central government on the radio urged residents to leave the war against the rebels solely to government soldiers. This intention of the central government came to ruin at the turn of June/July when government soldiers started to desert. The situation became untenable and, like hundreds of thousands of other Rwandese people, Bazaramba's family had to leave their home and flee to the Congo.

B.2 Four counts of murder

Bazaramba denies complicity in the four counts of murder. He came in contact with the situation when hiding out in his home, soon after returning from Kibangu chapel. Bazaramba's family were at home when they heard screaming and the sound of fighting from beyond a stand of trees. Soon after the noise Maurice Mbayire came to pound on the gates of Bazaramba's home. It was possible to see over the gate who was outside and Bazaramba asked this man, who was known to him, to come inside. The man told them that a mob had killed his wife as well as Emmanuel Habonimana and his wife, and he demanded that Bazaramba come to their house. Bazaramba remembers offering the man Coca-Cola and trying to calm him down. Bazaramba assured the man that it was best for him to stay at Bazaramba's house instead of going home, as his wife was already dead. In any case, Bazaramba refused to accompany the man to his house. The man was very emotional and he left. After this event, Bazaramba no longer dared to leave his house, until he left to flee Nyantanga for Kibangu, where his friend Joseph Nyabenda was.

B.3 One count of murder

Bazaramba denies complicity in the murder of Bellansilla Mugagashugi, who was his "adoptive sister". Bazaramba lost contact with Mugagashugi after fleeing for Kibangu, having first hidden the woman in his second home on the mountain.

Bazaramba had become the head of the family by the declaration of intent of Mugagashugi's father John Nyunzuguru, who considered his own children to be unstable and willed the position of head of the family to Bazaramba in 1985. The elder daughter Bellansilla Mugagashugi had been married three times, and in between marriages she returned to her father's home. The younger daughter Odette had gone to her uncle's in Kigali but had gotten into a bad situation there and had apparently ended up on the streets. Bazaramba tried to make contact with Odette a few times and to get her to return to the home village. Odette indeed visited the village but returned to Kigali, and her present circumstances are unknown.

Nyunzuguru's son Gatera was a good son but not suitable to head the family. Nyunzuguru had fairly considerable land holdings and the position called for wisdom and industriousness. Nyunzuguru's family lived around him. The prosecution witnesses Karambizi, Rubaduka (Rwaduka), Rukimbana and Rwibasira are Nyunzuguru's fraternal nephews. Ibambasi is the brother of Nyunzuguru. Nyunzuguru found no support from these relatives of his. Despite his considerable land holdings, he and his wife lived in a building where it rained inside. For the elderly man whom he greatly respected, Bazaramba commissioned a house of stone with a tile roof. For Nyunzuguru's only son Bazaramba commissioned a kiosk, with the income from which Gatera could support his family. It was for these and other gestures of love and respect that Bazaramba was

eventually rewarded with the position of head of the family and burdened with the duties of head of the family.

Since Nyunzuguru's own children were shiftless, according to African custom the other close family members of working age should have looked after this old man and his wellbeing. Apparently the aforementioned nephews also lacked industry, because at least the children of Kashugi and Karambizi were regularly fed at Bazaramba's house, they were clothed by Bazaramba and Kamuhanda, and their school fees were paid by Bazaramba and Kamuhanda. Kashugi and sometimes Karambizi as well served as cattle herds for Bazaramba's family, and the cousins served as guards and handymen at Bazaramba's house when the master of the house was in Cameroon studying, in the years 1990–1992. Rubaduka was eventually able to marry because Bazaramba gave him a piece of land and a house, the place which Bazaramba had once been bequeathed by Nyunzuguru.

B.4 One count of murder

Bazaramba denies complicity in the murder of the approximately 12-year-old Tutsi boy by the name of Mujemana. Bazaramba has no knowledge of the incident. He did not even know the boy.

B.5 Two counts of murder

Bazaramba denies complicity in the murder of the Tutsi woman by the name of Agnes and her infant child. He has no knowledge of the incident and did not know the woman.

B.6 One count of murder

Bazaramba denies complicity in the murder of the Tutsi man by the name of Anderea. He has no knowledge of the incident and did not know the person in question.

B.7 One count of murder

Bazaramba denies complicity in the murder of the Tutsi woman by the name of Beatrice. He has no knowledge of the incident and did not know the woman named.

On the background to the charge

The accusations of the complicity of Francois Bazaramba in the genocide which took place in Rwanda in 1994 are wholly false and apparently made and furthermore supported by false testimony given in order to achieve a number of distinct objectives. As to the motives of these persons, Bazaramba can only guess.

The Baptist priest Samuel Gasana resented and expressed open anger towards another pastor, Bazaramba's brother-in-law Eleazar Ziherambere. Gasana competed for the same positions in the Rwandan Baptist Church UEBR as Ziherambere. Gasana's fraternal nephew Justin Karabaranga was one of the persons heard for the preparation of the report by the organisation African Rights. The name of Ziherambere was given to the organisations' rapporteurs by Gasana and his nephew on false premises and with the intent of harming him. Gasana has admitted to this lie and apologised to Ziherambere and the Baptist Church for his conduct. In the same context, the men also accused Bazaramba of crimes against humanity. Bazaramba was not present when Ziherambere and the Baptist Church of Denmark started to look into the matter with Gasana. Gasana provided information and apologised on the initiative of the Baptist Church. A lack of good faith apparently caused the name of the second man falsely accused, Bazaramba, to remain uncleared.

After Bazaramba left his home district, his property came into the possession of his former neighbours. Bazaramba had received land holdings from John Nyunzuguru, a relative of the prosecution witnesses Ibambasi, Karambizi, Rugimbana, Rwibasira and Rubaduka (Rwaduka), and had been named as the head of their family. Bazaramba had additionally purchased pieces of land from at least Gashugu, Ibambasi and Karambizi when they had offered to sell owing to their poor financial circumstances. These persons had taken possession of Bazaramba's property, which was considerable on the local scale. Immaculée Kamuhanda appearing to testify in Arusha before the ICTR came as a surprise to the locals. In Arusha, Kamuhanda met Karambizi, who was patently astonished and fearful after encountering Kamuhanda. These witnesses directly benefited from any sentence imposed on Bazaramba.

According to Rwanda's former foreign minister Habyalimana, accusing and bringing to justice the Hutu elite living abroad is a means prioritised by Rwanda's current government to solidify its political standing in Rwanda. Soon after the war ended, the Organisation of African Unity produced a study on social conditions in Rwanda. The organisation is highly respected in the UN as an expert body. The said report is available for review on the UN website and according to it, two years after the end of the war, fifteen out of twenty-two (15/22) of ministerial under-secretaries, sixteen out of nineteen (16/19) ministerial permanent secretaries and 80% of mayors in the nation were Tutsis who supported the victorious FPR. At the same point in time, 95% of the teaching staff and 80% of the students at Butare University were Tutsis. Tutsis controlled nearly the entire police force, local security forces and the army. Six out of eleven (6/11) prefects and 90% of all judges were Tutsis.

Ethnicity in modern Rwanda is taboo. According to the current government, the presentation of statistical data on ethnic background is a crime punishable by imprisonment. Nonetheless, the ratio among officeholders has remained unchanged. According to witness Timothy Longman, with the ascendancy of the FPR Rwandan society transitioned from one undemocratic monolithic social order to another.

According to Longman, the current Rwandan government considers the Hutu population who came of age during the war to be responsible as a whole for the genocide. Longman holds that the current government has stated its desire and objective to be to put one million persons on trial for crimes committed during the war. However, Longman believes that these figures cannot be based on any proper study conducted on the topic.

Based on Longman's investigations, the Gacaca courts cannot take under consideration crimes committed by Tutsis against Hutus during the war. According to Longman, there was no genocide of Tutsis at all in some prefectures, the thousands of dead in those prefectures instead being Hutus killed by the FPR. According to the mandate given by the current government to the Gacaca, these acts cannot be examined. Longman holds that the FPR in other respects as well has been wholly incapable of taking responsibility for its human rights violations.

In the eyes of the current Rwandan government, Bazaramba is guilty because of his birth and social standing. This idea is also supported by the fact that most of the persons testifying for the accused end up being accused of similar crimes themselves. Three months after Immaculée Kamuhanda was called to give testimony before the ICTR in the matter of Tharcisse Muvunyi, who was not known to her, an international arrest warrant on behalf of the Rwandan people was issued on Francois Bazaramba, on 4 May 2006.

Kamuhanda was charged with crimes in the Maraba Gacaca in April 2008. The charges had barely been read when the session erupted in a huge commotion. The women present at the Gacaca started in one voice to accuse the parties making the accusations and to demand that Kamuhanda be left in peace as the mother of the commune's people, a great bringer of wellbeing and protector. The case concluded in a judgment to dismiss the charges.

The same fate befell Lazare Kobagaya when he stepped up to testify for Bazaramba. It was not until after the pre-trial investigation authority had informed the Rwandan prosecutor's office of this witness for the defendant that the Rwandan people issued an international arrest warrant on Kobayaga. Immediately upon being named as witnesses for the defendant, VASA 10 and VASA 8 were also brought up on charges.

Other prosecutorial requests

The body of evidence to be presented in the criminal matter now at hand is vast. Taking into account the financial circumstances of the defendant, it is requested that should he be found guilty, the State bear the costs of presenting evidence.

II EVIDENCE

Witness testimony (numbered in order of hearing)

1. Francois Bazaramba for evidentiary purposes

Prosecutor:

- S2. Philip Lancaster
- S3. Timothy Longman
- S6. Viateur Kambanda
- S7. Antoine Ibambasi
- S8. Jean Marie Byiringiro
- S9. Augustin Banganakwinshi
- S10. Martin Ngoga
- S12. Clement Gasarasi
- S13. James Gakire
- S14. Viateur Rubumba
- S15. Augustin Karambizi
- S16. Annonciate Mukarushema
- S17. Mathias Munyaneza
- S18. Athanase Nkurunziza
- S19. Apollinaire Ndabamenye
- S20. Jean Mukama
- S21. Bertin Ntakabumwe
- S22. Theoneste Ruzigamanzi
- S23. Apollinaire Rugimbana
- S25. Ildephonse Rwibasira
- S26. Apollinaire Karemanzira
- S27. Appoloni Gatera
- S28. Ladislav Rukaka
- S29. Esperance Mukanusi
- S30. Bertin Nduwayezu
- S31. Lavelian Rwaduka
- S32. Paul Karasira
- S33. Jean Kambanda
- S34. Celestin Nkeramihigo
- S35. Laurent Musana
- S36. Francois Mushimiyamana
- S37. Martin Ntahonkinye
- S38. Emmanuel Nzabandora
- S39. Joseph Rutayisire
- S40. Angelo Nshimiryayo
- S41. Valens Murindangabo
- S43. Elias Ntezilyayo

Defendant:

- V4. Emmanuel Habyarimana

- V5. Fidèle Nsengiyumva
- V11. Bertin Bagaragaza
- V24. Charles Mbanda
- V42. Marie-José Mukarurangwa
- V44. Immaculée Kamuhanda
- V45. Amber Lynn
- V46. Helmut Strizek
- V47. Pascal Ndengejeho
- V48. Filip Reyntjens
- V49. Joy Sifa
- V50. Anastase Nyandwia
- V51. VASA 1
- V52. VASA 2
- V53. VASA 3
- V54. VASA 4
- V55. Virginia Mukamurenzi
- V56. Sophie Manariyo
- V57. Josephine Hakizimana
- V58. Bernadette Nizigiyimana
- V59. Simon Bititi
- V60. Rose Haratimana
- V61. Gregor Miburo
- V62. Evariste Ayigwana
- V63. Johnson Nshirimana
- V64. VASA 5
- V65. VASA 6
- V66. VASA 7
- V67. VASA 8
- V68. VASA 9
- V69. VASA 10

Exhibits

Prosecutor:

1. Letter dated 19 November 1993 from Nyakizu mayor Ladislav Ntaganzwa to the prefect of Butare
2. List compiled by the prefect of Butare of persons taking part in the receipt and supervision of refugees, December 1993
3. Telegram dated 14 December 1993 from the prefect of Butare to the Ministry of Labour and Social Services. The telegram provides the names of the persons appointed to head the camps.
4. Request submitted on 2 May 1994 by Bazaramba to Ladislav Ntaganzwa, the mayor of Nyakizu commune. The request concerns a plot of land.
5. Minutes of the meeting of the Nyakizu security council, 2 June 1994
6. Letter dated 20 May 1994 from Bazaramba to Nyakizu mayor Ladislav Ntaganzwa. The letter concerns a request to carry a Kalashnikov weapon.

7. Letter dated 30 May 1994 from Nyakizu commune mayor Ntaganzwa to the sub-prefect of Busoro concerning the establishment of a security committee in Nyakizu on 9 May 1994 (same as defendant's Exhibit 1)
8. Writ of execution of judgment, 13 March 2009
9. Letter dated 10 May 1994 from Nyakizu commune mayor Ntaganzwa to the sub-prefect of Busoro. Concerns the security council meeting of 28 April 1994.
10. Letter dated 30 May 1994 from Nyakizu commune mayor Ntaganzwa concerning the dismissal of certain councilmen
11. Letter dated 15 June 1994 from Nyakizu commune mayor Ntaganzwa to Ignace Mnyazikwiye, the regional coordinator of CRR (Rwandan Red Cross)
12. Documents on the acquisition of Bazaramba's land holdings (same as defence Exhibit 2)
13. Minutes of a Maraba region security meeting, 26 June 1994
14. Minutes of a security council meeting, 18 May 1994
15. Report prepared in Rwanda dated 30 August 2009 (National Bureau of Investigation) on the assets of Bazaramba and his family

Other trial materials

- Quotes from the book "Leave None to Tell the Story" presented by the prosecutor in his opening statement
- The following sections of the pre-trial investigation interview of Bertin Ntakabumwe entered in the pre-trial investigation record: p. 2, lines 34–40 and p. 10, lines 37–41
- The following sections of the interview of Jean Kambanda entered in the pre-trial investigation record: p. 7, lines 41–52 and p. 9, lines 5–8
- Page 13, lines 47–52 of the pre-trial investigation interview of Johnson Nshirimana entered in the pre-trial investigation record
- The following sections of the pre-trial investigation interview of Celestin Rusesabagina entered in the pre-trial investigation record: p. 3, lines 50–52; p. 7, lines 10–15; p. 5, lines 5–6; and p. 13, lines 30–36
- The following sections of the pre-trial investigation interview of VASA 8 entered in the pre-trial investigation record: p. 4, lines 4–6; p. 9, lines 26–29, 43, 45–47; and p. 11, lines 29–42
- The following sections of the pre-trial investigation interview of VASA 9 entered in the pre-trial investigation record: p. 6, lines 22–50 and p. 8, lines 12–15
- The following sections of the pre-trial investigation interview of VASA 10 entered in the pre-trial investigation record: p. 37, lines 22–28 and p. 15, lines 27–48

Defendant:

1. Letter dated 30 May 1994 from Nyakizu commune mayor Ntaganzwa to the sub-prefect of Busoro concerning the establishment of a security committee in Nyakizu on 9 May 1994 (same as prosecutor's Exhibit 7)

2. Letter dated 17 May 1994 from Nyakizu commune mayor Ntaganzwa to the sub-prefect of Busoro: The letter reported an attack on the mayor in which the driver was Francois Bazaramba and requested that the problem be reported to the authorities in Gikongoro
3. Certificate issued by the ICTR on 17 May 2006 proving that Bazaramba's wife Immaculée Kamuhanda testified for the defence before the ICTR on 28 January 2006
4. Documents on the acquisition of Francois Bazaramba's land holdings
5. Human Rights Watch report *Law and Reality in Rwanda* (2008), page 30, footnote 78; pp. 40–41
6. Letter dictated by Augustin Karambizi, 18 June 2009 (translations into French and Finnish)
7. Finnish Wikipedia article on the Kalashnikov rifle
8. Annex to the pre-trial investigation record marked secret, A Yleinen, 004 Yhteenveto
9. Article *Rafles et expulsions d'étrangers*, in French, in the Belgian online publication *Foyer*
10. Pre-trial investigation record, sections K417, interview of Jean de Dieu Maniraho by Ville Hoikkala, and K019, pp. 30–45, interview of Aimable Iyamurenye by Ville Hoikkala in Bujumbura, 5–10 January 2009

Other trial materials:

- Report by the Organisation of African Unity, *Rwanda, The Preventable Genocide*
- Report by the Human Rights Watch, *Law and Reality in Rwanda*, 2008
- Page 16 of the witness interview of Jean Marie Byiringiro conducted on 26 April 2006 at the office of the Prosecutor General of Rwanda, included in the pre-trial investigation materials
- The following sections of the pre-trial investigation interview of Augustin Banganakwinshi entered in the pre-trial investigation record: p. 6, lines 41–52; p. 7, lines 1–46; p. 8, lines 8–32; and p. 21, lines 44–45
- Page 7, lines 29–45 of the interview of James Gakire entered in the pre-trial investigation record
- Page 1, lines 34–42 of the interview account of Annonciate Mukarushema, entered in the pre-trial investigation record
- The following sections of the additional interview of Theoneste Ruzigamanzi entered in the pre-trial investigation record: p. 1, line 44; p. 2, line 29; and the following sections of the interview proper: p. 2, lines 22–26; p. 10, lines 27–52; and p. 5, lines 15–27
- Page 1, lines 27–35 of the pre-trial investigation interview of Apollinaire Rugimbana entered in the pre-trial investigation record
- The following sections of the pre-trial investigation interview of Apollinaire Karemanzira entered in the pre-trial investigation record: p. 8, lines 12–39 and p. 10, lines 8–11
- Page 4, lines 31–42 of the pre-trial investigation interview of Ladislav Rukaka entered in the pre-trial investigation record
- Page 2, line 29 and page 3, line 37 of the pre-trial investigation interview of Esperance Mukanusi entered in the pre-trial investigation record
- Page 1, lines 47–52 of the interview of Paul Karasira entered in the additional investigation record
- The following sections of the interview of Valens Murindangabo entered in the pre-trial investigation record: p. 11, lines 29–32; p. 13, lines 1–8; and p. 19, lines 23–33

- Page 37, lines 49–52 of the interview of VASA 10 entered in the pre-trial investigation record

III JURISDICTION OF THE COURT

Under Chapter 1:3(1) of the Criminal Code in force at the time of commission of the acts charged (Act 320/1963), a foreign national who is not permanently resident in Finland shall be convicted according to Finnish law of any offence which the person has committed outside Finland on a Finnish vessel or aircraft or which has been directed at Finland, a Finnish national or a Finnish corporation, agency or foundation or a foreign national permanently resident in Finland, and of any other criminal act committed outside Finland when the act is punishable also under the law of the place of commission or if it has been committed in an area where the law of no State applies.

In addition, under Chapter 1:3(2) of the Criminal Code in force at the time of commission (Act 987/1974), the provisions of subsection 1 above notwithstanding, a foreign national may be convicted according to Finnish law also when the offence committed by that person is not punishable under the law of the place of commission when the offence is i.a. a military offence or a violation of human rights, genocide or conspiracy to commit genocide. The provisions of the Finnish Criminal Code concerning genocide are originally based on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948. The Convention was adopted in Finland with an Act enacted in 1959 (Act 557/59). Penal provisions on genocide were first incorporated in the Finnish Criminal Code in the Act which entered into force on 1 March 1975 (Act 987/1974).

Under Chapter 1:7 of the Criminal Code in force at the time of conviction (Act 626/1996), Finnish law applies to an offence committed outside Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (international offence). Under section 1 of the Decree on the application of Chapter 1:7 of the Criminal Code, international offences include i.a. genocide and the preparation of genocide referred to in the Convention on the Prevention and Punishment of the Crime of Genocide.

The District Court finds that the crime of genocide as such is within the jurisdiction of the International Criminal Court of The Hague (Rome Statute of the International Criminal Court, Articles 5(1) and 6). However, the Statute only entered into force on 1 July 2002 and under its Article 11(1), the Court has jurisdiction only with respect to crimes committed after the entry into force of the Statute.

As concerns the alternative indictments, the jurisdiction of the court is based on the Chapter 1:3(1) of the Criminal Code in force at the time of commission (Act 320/1963), explained above, and Chapter 1:8 and 11 of the Criminal Code in force at the time of conviction (Act 626/1996). Under Chapter 1:8 of the Criminal Code in force at the time of conviction (626/1996), Finnish law applies to an offence committed outside of Finland which, under Finnish law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a Finnish court or that the offender be extradited because of the offence, but the extradition request has not been granted, as is the case in the matter now at hand. In such an event, it is required pursuant to Chapter 1:11 of the Criminal Code that the offence is punishable also under the law of the place of commission and a sentence could have been passed for it also by a court of that foreign State. In this event, no sanction that is more severe than what is provided by the law of the place of commission shall be imposed in Finland. Pursuant to Chapter 1:12 of the Criminal Code, a criminal case may not be investigated in Finland without a prosecution order by the Prosecutor General, where the offence was committed abroad. The Rwandan judicial authorities have provided a report on the punishability of the offences under Rwandan law. The Prosecutor General issued on 29 May 2009 the prosecution order in the case required under Chapter 1:12 of the Criminal Code. Under Chapter 4:2 of the Criminal Procedure Act, a charge for an offence committed outside Finland is to be heard,

unless otherwise provided elsewhere in the law, by the court of the place where the person to be charged lives, is resident or is apprehended.

Based on the aforementioned statutes, the District Court finds that it had jurisdiction to hear the charges brought against Francois Bazaramba, who resides and was apprehended in the city of Porvoo.

IV REASONING OF THE DECISION OF THE DISTRICT COURT

1. ETHNIC RELATIONS AND POLITICAL SITUATION IN RWANDA UP TO 1994

The historical development of Rwanda and the linkage of its recent history to earlier events are complex issues on which unanimous views are not always held. Certain events and causal connections have been established, however, and must be reviewed here in brief in order to put the violent events of 1994 better into context.

The population of Rwanda is traditionally divided into three groups, the (ba)Twa, (ba)Hutu and (ba)Tutsi. The Twa (Pygmies) are an aboriginal people who account for only about one percent of the population, and they have had no political role. The background of the Hutu and the Tutsi remains unclear. It has been suggested that the Hutu would be land-cultivating Bantu who moved to Rwanda, while the Tutsi were originally cattle farmers who came to Rwanda after the Hutu from the north, possibly Ethiopia. Determining the veracity of such claims in an objective manner is exceedingly difficult. The idea of there being some fundamental racial and ethnic difference between the Hutu and the Tutsi has gained powerful ideological overtones. In speaking of the typical Hutu and the typical Tutsi, the two possess racial characteristics which clearly differ from each other. Nonetheless, the ethnic groups have largely intermingled and at least today, most of the people no longer match these “typecasts”. The Hutu and the Tutsi also share the same language and culture, and the two groups have long lived among each other. Before the colonial era, the barrier between the two groups was permeable, and it has even been said that a Hutu became a Tutsi when he acquired cattle while a Tutsi became a Hutu when he gave up his cattle.

Before the colonial era, there was a Hutu identity and a Tutsi identity, yet these were pliable and complementary to each other rather than opposites. The population, divided into clans, was governed by a Tutsi monarch through Tutsi nobility. The clans comprised both Tutsi and Hutu, and the complex system of government provided positions of importance for Hutus as well. During the Belgian colonial government, the distinctions between Tutsi and Hutu grew clearer, deeper and more fixed. In the 1930s, the population was permanently divided into three groups (Hutu, Tutsi and Twa) and identity cards indicating ethnicity became mandatory. The feudal society under the Tutsi monarch came to a head and the supremacy of the Tutsi within it grew stronger. The Tutsi became the confidants of the Belgians, who held the view that the Tutsi as a people were more evolved than the Hutu and inherently better suited to assist the Belgians and rule the Hutu. This view spread among the Tutsi themselves as well, while at the same time resulting in problems with self-esteem for the Hutu and embittering them.

The revolution in 1959 dethroned the Tutsi monarch and made Rwanda a republic. The ruling principle of the republic came to be that political power had to follow population breakdown. On this basis the Tutsi, who accounted for 10–15 percent of the population, were politically powerless. This state of affairs continued also after 1972, when General Juvénal Habyarimana seized power. However, there was no systematic persecution of the Tutsi and they had opportunities for success e.g. in the world of finance. Nonetheless, the Tutsi were the victims of occasionally extensive violence, also taken part in or at the least supported by some local authorities. These were not genocide or attempted genocide. However, it is worthy of note that violence of this kind usually did not lead to criminal liability, nor was it clearly condemned by the higher authorities.

Owing to the events of 1959 and also thereafter, a large number of people had fled Rwanda for the neighbouring countries. These Rwandans, most of whom were Tutsi, were politically and militarily active especially in Uganda. The RFP (Rwanda Patriotic Front) was established in Uganda in 1987. Many Rwandans also came to occupy high positions in the Ugandan armed forces. In October of 1990, RFP troops crossed the border into Rwanda. This led to protracted and complex negotiations on a truce and power-sharing. In the early 1990s, the Rwandan government was forced to transition to a multi-party system, and

compulsory membership in President Habyarimana's MRND party ended. President Habyarimana remained at the head of the nation but his position between the various interests became increasingly constrained. At the same time, the battle between the government and the RPF became more and more of a conflict between ethnic groups. This development was in part a conscious strategy on the part of radical Hutu from different parties to blame the Tutsi for the war. Several widespread attacks against the Tutsi took place in the early 1990s. These were localised phenomena, yet claimed a considerable number of victims. Underlying the attacks at least in part were provocations by radical Hutu designed to increase the fear and suspicion of the Tutsi among the Hutu.

While peace talks were still underway, Habyarimana was killed on 6 April 1994 when his plane was shot down over Kigali airport. The plane also carried Burundi President Cyprien Ntaryamira, who also lost his life. The reason for the murder of President Habyarimana as well as the person or persons responsible for it remain unclear. Among some Hutu, including those in his own MRND party, however, Habyarimana had for long been considered too moderate and wavering towards the RPF and foreign countries. It was known that his ouster in one way or another was in the works. Taking into account the speed at which the implementation of the genocide started, already on the day following Habyarimana's death, it is clear that the genocide had been planned for a long time and that Habyarimana's death was not its cause, only its starting shot.

It shall be deemed to have been established that the total eradication or at the very least banishment from Rwanda of all Tutsis was an undertaking that was well planned and executed with determination by certain government circles, soldiers and private individuals exercising de facto power. The popularity or acceptability among the ordinary people of a solution such as genocide is not well known, nor is it likely that it could ever be comprehensively determined. The general awareness of the plan of destruction among lower-ranking officials and local leaders as well as their ideological commitment to it is thus also unclear. Apparently, the situation varied in different parts of Rwanda.

When the widespread violence against the Tutsi and moderate Hutus started in April 1994, the following conditions for genocide were in place:

- many Hutus linked the RPF with the pre-1959 Tutsi administration and were afraid that a victory of the RPF would again lead to a subjugation of the Hutu;
- some leaders knowingly exploited this fear in order to make people identify the RPF, Tutsi supremacy and the Tutsi as an ethnic group with each other;
- anti-Tutsi propaganda had been systematically disseminated through the press and on the radio;
- the radical Hutu had in place detailed plans for the destruction of both their political rivals and the ethnic Tutsi as a group in whole;
- owing to the small size, dense population and well-organised bureaucracy of Rwanda, the genocide could be rapidly and efficiently implemented;
- a hierarchical social structure and the discipline of the people resulted in it being possible to implement the genocide, led from above, also in areas where there was no observable hatred of the Tutsi or any desire to treat them with violence.

2. GENOCIDE AS DEFINED BY CONSTITUENT ELEMENTS AND IN RWANDA IN 1994

2.1 Legislative background and constituent elements

Under Chapter 13:4 of the Criminal Code (Act 987/1974), a person who with the intent to destroy in whole or in part a group of a certain race, nationality or ethnicity or a religious group kills members of the group or inflicts on members of the group grievous physical or mental injury, inflicts on the group conditions of life

calculated to bring about its destruction, undertakes measures to prevent procreation among the group, or forcibly moves children from one group or another, shall be sentenced for genocide to imprisonment in the penitentiary for at least four years or for life. An attempt is punishable.

In the Criminal Code in force at the time of conviction, the provisions on the crime of genocide are laid down in Chapter 11:1 (Act 212/2008). As will be explained below, the Act in force at the time of commission shall be applied, as the more recent Act would not lead to a more lenient outcome for the defendant.

Underlying the penal provisions on the crime of genocide and other offences made punishable in 1974 were the provisions of certain conventions binding on Finland, according to which the prohibited acts referred to in the conventions were to be efficiently prevented through national legislation. According to the conventions, persons guilty of the offences referred to therein were to be sentenced in the contracting States regardless of place of commission unless the contracting State extradited the offender to stand trial in another State. A key objective of the said conventions was to extend legal protection to a certain group discriminated against as a collective. In other words, in distinction from the national penal provisions seeking to protect the individual, international offences include the constituent element of the offence being directed at a person who is part of a group discriminated against in some manner (see e.g. Government Bill HE 241/1973, pp. 1–2).

To be more precise, the criminalisation of the crime of genocide is based on the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the United Nations on 9 December 1948 (International Treaties 5/1960, hereinafter the UN Genocide Convention). The aim of criminalising genocide was to protect the right of a certain group to exist. The Convention as such was adopted in Finland already with an Act enacted on 13 November 1959 (Act 557/59), yet it was not until 1974 (Act 987/1974) that the penal provision which the Convention was deemed to require was incorporated into the Finnish Criminal Code (Chapter 13:4(1–2)).

The legislative history of the said provision contains no definition for genocide, the statement in this respect that the constituent elements of the offence are in accordance with the wording of the Convention being deemed instead to be sufficient (Government Bill HE 241/1973 vp, p. 12). In interpreting the substance of the constituent elements, guidance can thus also be found from the UN Genocide Convention, even though the provisions of the said treaty are not as such binding on the Court.

The manner of interpretation of conventions has been agreed in the Vienna Convention on the Law of Treaties which was ratified by Finland in 1977 and which entered into force in 1980 (International Treaties series 33/1980). Under Article 31 of the Convention, the terms of the treaty shall be given the ordinary meaning in their context and in the light of its object and purpose. Under Article 32, the preparatory work of the treaty and the circumstances of its conclusion are only supplementary means of interpretation which may be used in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31 leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.

In keeping with its wording, fulfilment of the constituent elements of the crime of genocide requires the existence of specific intent, *dolus specialis*. The perpetrator must have committed the act enumerated in the constituent elements because the object of the act belongs to a certain group which the perpetrator wishes to destroy in whole or in part. If a member of that group is killed for a reason other than to destroy the group, the perpetrator is not guilty of genocide but of homicide as provided for in Chapter 21 of the Criminal Code. It was specifically because of *dolus specialis* that it was held in the legislative history of the provision that the other provisions of the Criminal Code were not sufficient to meet the terms of the Convention and that it was necessary to incorporate into the Criminal Code a specific provision on the punishability of genocide, the provision to have the same substance as the definition of the act in the Convention (Government Bill HE 241/1973 vp p. 8).

The constituent elements of the crime of genocide make no stipulation as to the circumstances in which the act must take place in order for it to be punishable as genocide. In this respect, genocide differs from the other acts made punishable under law at the same time (currently crime against humanity and war crime), which require that the act be committed during war, armed conflict, attack or occupation. Genocide may be committed in times of war and peace alike, which is also indicated in Article 1 of the UN Genocide Convention. Owing to the said consideration, the fact that the military situation in the southern parts of Rwanda at the time of commission mentioned in the charge has remained unclear in certain respects does not affect the legal evaluation of the case.

Neither is it required in the constituent elements of the crime of genocide that the acts are based on or have underlying them some kind of national programme or plan for the acts to be deemed to be genocide. The wording of the law is unambiguous in this respect. Since the defence has argued that the existence of some kind of genocide plan would be one of the constituent elements of genocide according to the UN Genocide Convention, the matter will be examined in more detail below.

2.2 Interpretational effect of international sources of law

As demonstrated in the case, all of the acts in the charge were committed abroad and the defendant as well as the victims are also all foreign nationals. The charge was brought and the case is being heard pursuant to the universality principle, a rarity in the Finnish legal system. The charge also concerns a penal provision, underlying the enactment of which was, in the manner recounted above, an international convention binding on Finland. The legislative history of the applicable Act defines the crime of genocide as a crime of jus cogens, peremptory international norms, belonging to the very core of international criminal law. Jus cogens obligations are binding on all States directly pursuant to international law regardless of whether the State accepts the relevant norm (Government Bill HE 241/1973).

Internationally speaking, the national courts of only a few States have ever heard cases of genocide. Owing to the rarity of the cases, the national penal provisions enacted pursuant to the UN Genocide Convention, that in the Finnish Criminal Code included, have been unable to evolve from the letter of the law into living justice in the same manner as other penal provisions. Scholars of international criminal law have held that although the definition of genocide appearing in the UN Genocide Convention is international customary law, the definition was only developed into living justice by the international criminal tribunals established by the United Nations Security Council to investigate genocide in the former Yugoslavia and Rwanda. It should be noted that the definition of genocide in the Statute of both tribunals is verbatim with the definition of genocide appearing in the UN Genocide Convention.

The points of departure in Finnish criminal proceedings are always the application of the Finnish Criminal Code and the use of Finnish sources of law. Since in the manners recounted above, the genocide trial may be deemed to have a heightened international nature, the District Court has also studied the development and dogmatics of international criminal law as well as the case law of international criminal courts and tribunals.

Never before has the crime of genocide or any other crime of jus cogens been heard in the Finnish legal system on the basis of the universality principle. Even in jurisprudence, no actual debate except for a few isolated articles has been undertaken as to whether a different approach in a case of this kind should be adopted to international sources of law than in a case of purely domestic interpretation of law. International sources of law primarily include treaties and conventions, international customary law and legal principles deemed globally universal, and secondarily the case law of international criminal courts and tribunals and international jurisprudence. In the view of the District Court, at least when an interpretation according to international sources of law in respect of a penal provision would unambiguously lead to a more narrow interpretation than an interpretation of a national penal provision, international sources might be relevant to

the interpretation. Owing to the allegation concerning the planning of genocide put forward by the defence, the District Court has sought to determine whether the constituent elements of genocide in light of international sources involve the existence of an advance plan.

2.3 Does international criminal law require there to have been an advance plan for genocide?

As mentioned above, the defence has argued that although the events in Rwanda in 1994 involved elements of genocide as defined in the UN Genocide Convention, the mass murders of Tutsis cannot be deemed to have constituted genocide. The killings had not been planned in advance but were instead, in the view of the defence, spontaneous acts of war between the Hutu and the Tutsi erupting after the sudden death of President Juvénal Habyarimana.

International genocide investigators have also debated whether the definition of genocide contains the requirement of the specific planning of genocide. Some investigators have held that only acts committed as part of a specific plan or underlying which has been a programme or policy of some level should be deemed to be genocide in accordance with the UN Genocide Convention. This requirement has been expressly incorporated in the national law of some nations (e.g. Article 211-1 of the French Criminal Code). Other investigators have held that although genocide is difficult to implement in practice without some degree of national planning, the fulfilment of the constituent elements of the crime does not as such require the existence of a plan, and a plan need thus not be proven to have been in place.

Doctor of Political Science Helmut Strizek, heard by the District Court as a witness on Hutu-Tutsi relations and the social development of Rwanda, recounted being of the opinion that the events in Rwanda did not correspond to the elements imposed for genocide in the UN Genocide Convention, as the killings of the Tutsi had not been centrally planned, whereas Filip Reyntjens, Doctor of Laws and Professor of African Law and Politics, likewise heard by the District Court as a witness, was of the opinion that genocide as defined in the Genocide Convention does not call for proof of the existence of a plan, only that *dolus specialis* is established. According to Reyntjens, the planning of the genocide could in the first place be interpreted such that it may take place gradually and in stages, not necessarily referring to a given moment in time when people came together and decided to commit genocide.

The international criminal tribunals ICTR and ICTY have both held in their judgments that a finding of genocide does not require proof being presented in the criminal proceedings of the existence of some kind of national plan. In the ICTR case of the prosecutor v. Théoneste Bagosora et al, leading Rwandan general Bagosora was sentenced on 18 December 2008 to life imprisonment for genocide even though all charges of conspiracy to commit genocide against him and other government officials were dismissed (ICTR -98-41-T). In other words, although the existence of any plan prior to the killings of the Tutsi was not proven, Bagosora et al were still found guilty of genocide. In its judgment the ICTR stated that “there are indications which may be construed as evidence of a plan to commit genocide, in particular when viewed in light of the subsequent targeted and speedy killings immediately after the shooting down of the President’s plane. However, the evidence is also consistent with preparations for a political or military power struggle and measures adopted in the context of an on-going war with the RPF.” Subsequent to the appellate judgment issued on 5 July 2001, it has also been considered clear in ICTY case law that a national policy concerning genocide is not a constituent element of the crime of genocide. In the case of the prosecutor v. Jelacic, the Appeals Chamber stated that the existence of a plan or policy was not a legal ingredient of the crime, although it might facilitate proof of the crime (ICTY- IT-95-10-A).

The said issue in relation to genocide in the Criminal Code has not been addressed in Finnish jurisprudence, whereas the international criminal law textbook by Gerhard Werle, *Principles of International Criminal Law*, addresses the matter in respect of the concept of genocide in the UN Genocide Convention. Werle is of the opinion that genocide may in theory be committed also by a person acting wholly on his own when in

committing the act the person has the intent to destroy a group in part or in full which is required for the crime. According to Werle, the ICTY and ICTR have repeatedly brought up the fact that the existence of a high-level policy or extensive agreement or plan is not an independent legal ingredient of genocide, instead only having value as proof of the perpetrator's intent to commit genocide. Werle considers this clear stand taken by the tribunals to constitute international customary law (said book 2009, p. 271).

In light of the aforementioned sources, the District Court has arrived at the conclusion that the constituent elements of the crime of genocide also in the light of international sources do not require an advance plan underlying the acts. A literal interpretation of the Criminal Code would thus in this respect appear to correspond to the definition of genocide in international criminal law.

2.4 Historic and legal evaluation of the events in Rwanda

In the application for a summons, the prosecutor submits that the acts with which Bazaramba has been charged were a part of the genocide of the Rwandan Tutsi population and moderate Hutus between 1 January 1993 and 31 May 1994. The defence submits that there was no genocide in Rwanda but a war between the Rwandan government and the RPF, in which civilian population from both ethnic groups was killed.

Associate Professor of Political Science Timothy Longman, heard by the District Court as a witness, studied the democratisation process in Rwanda in the years 1992–1993. In October 1995, he again arrived in Rwanda as an investigator for the Human Rights Watch organisation. The investigation launched by Human Rights Watch in March 1995 sought to determine the reasons why genocide on a massive scale had taken place in Rwanda. According to Longman's testimony, the investigation focused on human rights violations perpetrated by the Rwandan government and its supporters. He emphasised that the investigation took place at a time when the trials were yet to begin. Longman interviewed both Hutus and Tutsi survivors of the genocide as a part of the investigation. All persons interviewed had been eye witnesses to acts of genocide, and any conflicting statements had been compared against each other. Longman found the interview accounts to be reliable and had no doubt that genocide of the Tutsi population had taken place in Rwanda at the said time. The report on the investigation was entitled *Leave None to Tell the Story*.

Philip Lancaster, who arrived in Rwanda on 10 May 1994 as military aide to General Roméo Dallaire, commander of the UNAMIR troops, recounted when heard as a witness the historical and political reasons leading to the genocide of the Tutsi in 1994. Lancaster investigated the genocide for eight months in the Gitamara region and also he heard eye witness accounts of the events. According to Lancaster, the organisational structure of the killings had involved both an official and unofficial element. At the level of commune, the killings were organised in the same manner as "umugunda", i.e. the mandatory community service which everyone had to perform at regular intervals. The intention had been to involve as many Hutu civilians as possible in the killings. For example, when the responsible of a cell had had the assignment of killing a certain number of people, the responsible had assembled a group of people to carry out the acts. People had been bribed into committing acts of violence with beer and weapons, and by appealing to their fear and civic duty. Many people involved in the killings perceived themselves to be carrying out their civic duty.

Doctor of Sociology Pascal Ndengejeho, who served as the Rwandan Minister of Communications in 1992–1993, recounted when heard as a witness that in his understanding genocide had taken place in Rwanda. Some Rwandans died because they belonged to a certain ethnic group. However, the witness did not believe that any advance preparations had been made for killing people in the ethnic group. The reason for the killings of the Tutsi civilians had been war and the fact that people had been pressured into killing. It had been a matter of the RPF's military strategy, and the genocide had been to be expected. According to the witness, both Hutus and Tutsis had been killed since 1 October 1990, and the killers as well had been both

Hutus and Tutsis. In the witness' opinion, it could not be unequivocally said that one ethnic group was the victim and another ethnic group the killer.

The aforementioned witness Filip Reyntjens recounted that the killings started on 7 April 1994 and at first targeted those ethnic Tutsis believed to be the enemy and supporters of the RPF. From the outset, extremist Hutus also killed Hutus, however, such as the nation's Prime Minister, candidate for Speaker of Parliament, and President of the Constitutional Court. The killing of the said high-ranking officials had been necessary so that the vacuum arising after the killing of the nation's president not be filled. The killings ultimately spread to all Tutsis because they were all considered to be supporters of the RPF.

Reyntjens recounted that he had not seen any compelling evidence of the genocide having been planned in advance. Based on his investigations, he nonetheless had strong suspicions that the nation's highest military leadership decided in the morning of 7 April 1994 between 2 a.m. and 7 a.m. that they would put into action the machinery that had been prepared since the 1990 attack by the RPF. The intent was the genocide of the Tutsi. The witness had no scientific certainty of this, however.

According to the aforementioned witness Helmut Strizek, the Rwandan army did not have the intent to destroy the Tutsi as a group. This intent was only held by those members of a limited group of Hutus who had earlier been driven from their homes by the RPF. This group of Hutus hated the Tutsi, and the killing potential of the group had been known to the RPF when its army had attacked Rwanda from Uganda in 1994. According to Strizek, the Interahamwe were never given military training and the genocide was not committed with state-issued military weapons. To the contrary, the army of the Rwandan government had defined the enemy specifically as the RPF. Civilian Tutsis or other supporters of the RPF living in Rwanda were not the enemy.

Strizek criticised the aforementioned investigation by Human Rights Watch. According to him, the purpose of the investigation had been to prove that the genocide had been planned in advance. All the sources which prove the genocide to have consisted of planned acts have, according to Strizek, been proved to be false. Among other things, it was wrong to claim that the genocide would have been referred to in Rwanda as "the war", as language usage differentiated between the war and the genocide. The allegation that any exhortation to fight the RPF would have meant fighting against all Tutsis was also mistaken.

The District Court finds that the investigation by witness Strizek of the events in Rwanda did not address events at the level of individual as much as the politics and the power-seeking of the various groups, in particular the RPF, underlying the events of 1994. Strizek's view of it not being possible to deem genocide to have taken place in the country is based above all on the aforementioned fact of no advance plan having been established to have been underlying the killings of Tutsis.

The District Court finds that with the exception of a few witnesses, all witnesses heard in the proceedings who were eye witnesses to the events have recounted attacks against the Tutsis. According to the witness testimonies, the Hutu and the Tutsi had lived in peace with each other in Nyakizu before the events of 1994, and ethnicity had played no role in their social interactions. The situation had changed after the plane of President Habyarimana was shot down, however. The Hutu had started to kill their Tutsi neighbours and the killings had not been limited only to the men; women and children were also systematically sought out from hiding and killed. According to the witnesses, people had been killed expressly because they were Tutsi.

Some of the witnesses recounted that the acts of violence had been combat operations between the Hutu and the Tutsi and that attacks were made equally against Hutus and Tutsis. These accounts were vague, however, and the District Court does not find them to be plausible, taking into account the many times higher number of Tutsis than Hutus among the victims, especially in Nyakizu.

The manner of historical and legal evaluation of the events of 1994 in Rwanda has also been addressed by the ICTR on many occasions. At the direction of the Appeals Chamber, the court of first instance (Trial Chamber III) addressed these questions specifically in its judgment No. ICTR-98-44-T issued on 11 December 2006. According to the judgment:

“The following state of affairs existed in Rwanda between 6 April 1994 to 17 July 1994: There were throughout Rwanda, widespread or systematic attacks against a civilian population based on Tutsi ethnic identification. During the attacks, some Rwandan citizens killed or caused serious bodily or mental harm to person[s] perceived to be Tutsi. As a result of the attacks, there were a large number of deaths of persons of Tutsi ethnic identity.

“Between 1 January 1994 and 17 July 1994 in Rwanda there was an armed conflict not of an international character.

“Between 6 April 1994 and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group.”

Based on the evidence presented in the proceedings, the District Court considers it be undisputed that genocide of the Tutsi as an ethnic group took place in Rwanda at the time noted in the charge. The aforementioned judgment of the ICTR supports this conclusion of the District Court. The conduct with which defendant Bazaramba is charged took place in this context. However, the District Court stresses that consideration of whether to convict ultimately does not involve the question of how to evaluate the events of 1994 in Rwanda as a whole, conviction instead being based on whether Bazaramba, on the basis of evidence obtained in the case, shall be deemed to have committed those individual acts of which he had been indicted. In evaluating the acts, the constituent elements of the crime charged shall naturally be borne in mind, the said elements requiring specific intent on the part of the defendant to destroy in whole or in part the Rwandan Tutsis as an ethnic group.

3. GACACA SYSTEM

Since 1994, charges of genocide have been brought against more than a million people in Rwanda. At some point since the genocide, at least 120,000 persons have been held in prison on charges of genocide. At the same time, statistics indicate that in 1994, the judicial administration only had twelve trained lawyers in its employ.

Since the regular legal system was inoperative and the number of defendants vast, Rwanda re-introduced the system of Gacaca courts which originally settled family disputes and land ownership matters in villages, making its central task to judge persons accused of genocide and establish the events relating to the genocide.

According to Timothy Longman, who was an investigator for Human Rights Watch in Rwanda between 1995 and 1997, the primary purpose of the introduction of the Gacaca system had been get people out of prison. It had been seen as a procedure which expedited criminal proceedings. Subsequently it had also been thought to promote the amicable settlement of acts of genocide.

The Act on the new Gacaca courts entered into force in 2004 (Organic law N:o 16/2004) and the courts were adopted nationwide in 2005, a pilot Act having been in force earlier. There are a total of some 15,000 Gacaca courts in Rwanda. The judges for these courts are chosen from among villagers by election. A Gacaca court consists of 5–7 judges.

In the Gacaca procedure, the persons founds guilty must confess their crimes, often to their victims’ families, and ask for their forgiveness. Besides the admission of personal complicity, the Gacaca procedure has entailed also a wider investigation of the events of the genocide, and in relation to this, the requirement of

naming other persons involved in the genocide (procedure of confessions, guilt plea, repentance and apologies). The nature of the procedure has involved the advance gathering of information about persons guilty of genocide by using i.a. lists circulating in prison. A Gacaca trial may be preceded by a preparatory camp where facts relating to the trial are reviewed.

By confessing his crimes, apologising for them and relating the crimes of other perpetrators, a suspect can have his sentence of imprisonment reduced by several years and be given the opportunity of serving at least half of the sentence in the form of community service. In practice, for the defendants the Gacaca courts have had the advantage of giving quicker access to a trial through confession, thus possibly shortening the time spent in remand under inhuman conditions.

Crimes of genocide are divided into three categories of severity. The first category, comprising the severest of crimes, includes i.a. leadership in the genocide from the national level all the way down to level of commune. The sentence for acts in category one varies at present from 20 years of imprisonment to imprisonment for life depending on whether there has been confession, apology and forgiveness of the crimes. The death penalty was originally also a possible sanction. Crimes in the second category include i.a. homicide. Persons found guilty of crimes in the second category who have not confessed or whose confession and other duties under the Gacaca system have been rejected are sentenced to imprisonment of 25–30 years. In respect of sentences for crimes confessed to, apologised for and forgiven, half of the sentence imposed can be served as community service, for example road construction and building houses for survivors of the genocide. The second half of the sentence consists of imprisonment, which can be imposed in part as a suspended sentence. Nowadays, with exemplary performance of the community service portion of the sentence, a person sentenced to community service can also have the imprisonment portion of the sentence commuted to community service as well.

The lowest level of Gacaca courts, the Gacaca Court of Cell, only deals with property crimes. The two higher levels, Gacaca Court of Sector and Gacaca Court of Appeal, may hear e.g. cases in which the accused have taken part in killings and rapes. After the legislative amendment of 2008 (Organic Law N:o 13/2008), Gacaca courts have been allowed to hear also cases involving some of the crimes in category 1, such as charges against leaders of the genocide at the level of commune. Cases involving persons suspected of planning or leading crimes of genocide at the national level or level of prefecture are heard by the ordinary courts of Rwanda, by military courts, or by the ICTR in Tanzania.

4. ON THE OVERALL RELIABILITY OF THE EVIDENCE

4.1 Differences in accounts compared to accounts during pre-trial investigation

The reliability of witnesses in general is usually evaluated on the basis of how well witness accounts of the same events support each other and how consistent they are with each other. Significance has also been attached to how consistent each witness's testimony remains after the pre-trial investigation. In the case at hand, difficulties in interpretation may have affected the contents of the accounts in pre-trial investigation. Many of the witnesses are illiterate and were unable to review the English transcripts of their pre-trial investigation accounts, which have not been stored in any format in the original Kinyarwandan. Some witnesses have denied, in a seemingly genuine and plausible manner, having given the accounts attributed to them in pre-trial investigation.

Account shall moreover be had of the long time elapsed since the acts on which testimony is given, owing to which differences in minor details of less significance to the main action are understandable.

Due to the aforementioned facts, differences between the pre-trial investigation accounts and the accounts given to the court cannot be assigned any great weight in evaluating the reliability of the accounts of the witnesses.

4.2 Effect of interpretation

There is cause to ponder evidentiary issues arising from interpretation during the main hearing as well, especially upon interpretation of witness testimony given in Kinyarwanda first into French and then into Finnish. The possibility of misunderstanding increases with the use of an intermediate language. With regard to interpretation, it must be noted that Bazaramba, whose native language is Kinyarwanda and whose French is very good, had very few comments on the interpretation between Kinyarwanda and French.

It has also come to light in the case that the meaning of many Kinyarwanda words alone varies depending on context, which fact presents a challenge to interpretation as well as the comprehension of the actual account. The meaning of the terms Inkotanyi, Inyenzi and Interahamwe, for instance, has varied depending on time and place. Inkotanyi originally, before the ouster of the monarch in 1959, referred to the king's personal guard. In the context of the genocide, it referred to either RPF supporters or the Tutsi as an ethnic group. The word Inyenzi means cockroach and originally referred to the mainly Tutsi refugees fleeing abroad in connection with the revolution in 1959, who conducted night-time attacks and disappeared from sight in daytime. Inyenzi was also a derogative term used of the Tutsi as an ethnic group during the genocide. The word Interahamwe translates as working together or attacking together. Working together can also mean killing together. It was the term used of the youth movement of the MRND during the one-party system. During the war, it could refer to a term used for extremist Hutus or at least anti-Tutsi persons working together with the MRND youth, or a group of vagabonds who fled the northern part of the country towards the south after the beginning of the war. To the witnesses, the word war could mean besides the events relating to the genocide, also the attack by the RPF from Uganda into Rwanda which started in 1990.

4.3 Effect of cultural aspects

Filip Reyntjens, who serves as professor of African law and politics at Antwerp University, spoke of the concept of "ubgenge". According to him, acting in accordance with ubgenge is widely known and used in Rwandan culture. The concept refers to strategic narration and speech. It means cleverness, not being caught when having done something, strategic action. In most European cultures, Reyntjens said, this would be called lying. For example, when responding to a question a witness may ask himself whether the person asking the questions will be able to harm or help him. According to Reyntjens, a Rwandan always gives the matter wider consideration when answering questions. However, the premise cannot be adopted that cultural aspects as such would serve to reduce the value of the witness accounts. Ultimately, the matter must be judged on a case by case basis.

In hearing the witnesses, a particular aspect that has come to light is that some of the witnesses have given very concise responses instead of providing a continuous narration of events on their own initiative. For example, when asked whether they knew something about a given matter, witnesses would often respond "yes". When asked to elaborate, the responses given have not necessarily described the course of events in chronological order. The said form of narration has also led to linkage of events to time and place often being established and formed according to the questions each person asking them has thought to ask. The said manner of describing events has thus hampered the formation of the bigger picture from the accounts given by the witnesses, as the account has evolved based on the quality of the further questions.

4.4 Gacaca courts and the subordinate standing of the witnesses

Many of the witnesses heard in the case had also gone through Gacaca procedure. Suspicions have been raised in the case of the abuse of this system e.g. by accusing persons for reasons of revenge, or naming persons who were unable to retaliate, such as the deceased, prisoners or persons who had moved abroad.

In the Gacaca courts, the length of sentences was influenced by whether one's confession of one's crimes and confirmation of the guilt of one's co-suspects was accepted. As such, the fact that confession was a means to receive a more lenient sentence cannot as a rule be taken to impair the reliability of witness accounts. The said principle of criminal law is one that is accepted, subject to certain limitations, e.g. in the legislation of Great Britain (guilty plea sentencing reduction), Italy, Estonia and Germany. In the Finnish Criminal Code, the attempt to further the clearing up of one's offence appears among the grounds for reducing the sentence. A special feature of the Gacaca procedure was naming other persons guilty of genocide. In addition, those who confessed to their crimes, apologised for them and reported the crimes of others could reduce their sentence by several years, i.e. by exceptionally much, and at least half the sentence could be served in the form of community service.

Many of the persons heard as witnesses for the prosecution were held in inhuman prison conditions for several years. Many of those heard in this case as witnesses were abused in connection with their arrest and in prison until they confessed their complicity in genocide. In the same context, others also complicit in genocide may have been named. Prisoners subordinate to the authorities may have recounted the events in the manner desired by the authorities in order to improve their own standing. For example witness for the defendant Bertin Bagaragaza recounted confession to have the advantages of shorter sentences and expedited trial. If the lists compiled in prison or in the training camps preceding the actual Gacaca proceedings of persons guilty of genocide and their alleged crimes were not accepted there, persons were at risk of having to return to prison.

It is possible that also false denunciations were made in the hopes of considerably reducing one's own sentence. VASA 1 and VASA 2 recounted lists circulating in prison for the purpose of gathering information. The name of Bazaramba also appeared on these lists. Jean Marie Byiringiro recounted that the inmates either had to write down their own confessions, or then a trusty wrote their confession for them. The written confessions were then taken to an advisor who forwarded them to the prison management. According to Byiringiro, Francois Mushimyamana had been responsible for the safety of the inmates at the prison and had served as the inmates' advisor with regard to the Gacaca trials. Mushimyamana had i.a. advised the inmates only to tell about they had done, without volunteering any further information. The courts in question must have been the Gacaca courts for the region of Nyakizu commune. According to Timothy Longman, the lists of accomplices compiled sometimes contained the names of persons who could not retaliate against those who named them. For example, some of the allegations concerning Bazaramba on the lists did not, according to the witnesses, hold true, while others were correct. The said procedure has not produced wholly false information. In this context, it should also be noted that lying to a Gacaca court could result in the harshest possible sentence.

The advantage of the Gacaca courts, i.e. the village tribunals, was that people knew each other. VASA 6, whose job after 1998 was i.a. to gather information on the acts of genocide in Nyagisozi commune (formerly Nyakizu commune), recounted that the information-gathering was usually accomplished by bringing together a large number of villagers who all tried to recall a certain event. In addressing matters as village communities, the participants in the proceedings gained an overall picture of the involvement of each villager in the events. This entails a risk of the witness' personal eye witness observations and facts heard in the village tribunal becoming confused over time, without the witness even being aware of this. This has been demonstrated in the accounts of some witnesses such that when recounting the events, they have at first narrated events which in light of facts arising when asked to elaborate, they cannot have observed in person. Too far-reaching conclusions may have been drawn from certain facts. Some of the witnesses have seemed to have rather too accurate recall of series of events, considering the passage of time.

In any case, the possible subordinate position of the persons heard as witnesses when information was being collected on the genocide and the possibility referred to above, of the arising of a “collective truth,” are facts which only make the evaluation of the evidence pertaining to individual events even more of a challenge.

4.5 Manner in which criminal suspicion of Bazaramba came up

Bazaramba worked for the UEBR (Union des Eglises Baptistes au Rwanda, Union of Baptist Churches of Rwanda) as the head of its youth wing until July 1994, when he and his family fled Nyakizu via Gikongoro to the Democratic Republic of Congo (DRC). From there, he travelled to the capital of Zambia, Lusaka, where he lived at an UNHCR refugee camp. In March 2003, he used a refugee travel document to come to Finland and sought asylum here. The Rwandan judicial authorities issued an international search warrant on him on 4 May 2006. The National Bureau of Investigation of Finland started work in December 2006 to establish whether a pre-trial investigation was warranted. In March 2007, the National Bureau of Investigation received from the Rwandan judicial authorities copies of interview records prepared in 2006 by the prosecutor’s office of the city of Butare in a southern province of the nation. Based on these, the National Bureau of Investigation filed on 30 March 2007 police report no. 2400/R/166/07. Bazaramba was arrested in Finland on 5 April 2007 and remanded by Porvoo District Court on 6 April 2007, since which date he has been held on remand.

Since the events of 1994, tens of thousands of people have been arrested in Rwanda on suspicion of complicity in genocide. According to one source, in 2000 there were roughly 120,000 prisoners awaiting trial. The Gacaca courts started handing down sentences on a wider, nationwide scale in 2005. In May 2007, there were a total of more than 800,000 registered suspected, charged and convicted persons. Charges of genocide concerning Bazaramba have been filed in the Gacaca court of Nyakizu commune in Maraba sector. The international search warrant on Bazaramba issued only in 2006 may have to do with the Gacaca proceedings at the time. Bazaramba’s relocation abroad and the difficulties in general having to do with the clearing up of the genocide may have affected the lateness with which the matter came up in respect of Bazaramba. The defence in turn claims that Bazaramba being suspected of offences is motivated by political reasons.

4.6 Political reasons

The Rwandan judicial authority issued an international search warrant on Bazaramba only on 4 May 2006. Even taking into account the allegedly significant role of Bazaramba, the extent of the genocide and the difficulty of investigating it, a rather considerable time elapsed between the genocide and the issue of the search warrant. In relation to this, it has been claimed that the accusations against Bazaramba are untrue and politically motivated.

Bazaramba, who has denied the allegations of his complicity in the genocide, has in general terms stated these to be based on the politically motivated false allegations by the current Rwandan government and on evidence obtained through improper means against exiled Hutus who belonged to the country’s elite. According to Bazaramba, accusing and bringing to justice the Hutu elite for the genocide is a means prioritised by the current Rwandan government to solidify its political position in Rwanda. Bazaramba holds that in the eyes of the current Rwandan government, he is guilty because of his birth and social standing. According to Bazaramba, this view finds support from the fact that most of the persons testifying for the accused have ended up being accused themselves of similar crimes. The international arrest warrant on Bazaramba was issued soon after his wife Immaculée Kamuhanda had been called, in February 2006, to testify in the case of Tharcisse Muvunyi, a person not known to her. The criminal charges against Kamuhanda were heard in April 2008 in the Gacaca court of Maraba sector. The charges were ultimately dismissed. According to Bazaramba, soon after being named witnesses for the defence, a charge or an

international search warrant was also issued against VASA 8 and VASA 10, as well as Lazare Kobagaya, who was subsequently decided not to be called as a witness. The matter coming up may have been influenced by Bazaramba's wife testifying before the ICTR.

The witnesses heard in Rwanda recounted the events without any visible fear and directed open criticism against prison conditions. As far as they are concerned, at least based on outward appearances there is no reason to conclude that the witnesses would have been subject to undue influence by the Rwandan authorities.

The report issued by Human Rights Watch in 1999 contains mentions of Bazaramba's complicity in the genocide. The interviews for the report were conducted in the years 1995–1996. The persons mentioned in the publication were interviewed without the authorities being present and they could remain anonymous if they so desired. The witnesses for the prosecution heard in this case have testified to similar activities on the part of Bazaramba. This fact does not support the defendant's allegation that the Rwandan authorities would have later in the 2000s encouraged or otherwise manipulated witnesses to give false testimony on Bazaramba's involvement in the genocide. No direct conclusions as to the guilt of Bazaramba can be drawn from the manner in which the matter came up.

4.7 Reports by human rights organisations

Bazaramba recounted his understanding to be that the Baptist minister and former mayor of Butare, Samuel Gasana, is behind the false allegations against him as well, and that the reports prepared by human rights organisations are at least in part based on these allegations. Anastase Nyandwira, who worked in Nyantanga Baptist church together with Bazaramba, recounted as a witness that Samuel Gasana used Bazaramba as a tool to destroy Bazaramba's brother-in-law, pastor Eleazar Zihembere, who competed with Gasana for the same positions in the Rwandan Baptist Church, UEFR. According to Bazaramba, his name and the name of Zihembere were given to the investigators of the organisation African Rights under false pretences. According to Bazaramba, Gasana had admitted to the lie with regard to Zihembere. Bazaramba's name was left uncleared.

VASA 3, who worked as an investigator for African Rights, recounted that in the matter of Bazaramba, the Rwandan public prosecutor (Parquet General) and African Rights worked together. According to the witness, the goal of the organisation was to lay the blame for the genocide on the Hutus. If a Hutu was in trouble with the authorities, he could not turn to the organisation for help. In 2005, the head of African Rights, Rakiya Omaar, was contacted. His office was located in a State-owned building. Omaar had shown the witness a document discovered on the Internet bearing a picture of Zihembere. The document had originated with the Rwandan intelligence services. Zihembere was a Baptist minister who had considerable power in the American Baptist church, and there was a risk of his becoming a big problem for Rwanda. Omaar had said that this man had to be trapped and that African Rights would be aided by a pastor by the name of Samuel Gasana. The plan was to hold Bazaramba accountable at the same time. VASA 3 was charged with locating evidence of Zihembere having distributed weapons to Bazaramba. According to the witness, when the intelligentsia were accused, the charges usually involved either distribution of weapons or holding anti-Tutsi meetings. The investigation into Bazaramba was discontinued because the investigation into the principal suspect, Zihembere, had been discontinued. VASA 3 believed he was under the surveillance of the Rwandan intelligence services in May–July 2008. At the time, he had still conducted investigations as a consultant. Rakiya Omaar had told him that the Finnish authorities had contacted him concerning Bazaramba and requested information on Bazaramba. The witness criticised the actions of the Finnish police in that they had cooperated with African Rights in the investigation of Bazaramba. The police should also have contacted Human Rights Watch and Amnesty International. VASA 3 believed that the pre-trial investigation conducted by the Finnish police in Rwanda had been under the direction of African Rights.

There is only a single mention of Bazaramba's complicity in the genocide in the African Rights reports for 1994 and 1995. He is additionally mentioned in the publication *Leave None to Tell the Story* published by the Human Rights Watch organisation in 1999 and in the report of the Danish Baptist Church from 1998. The allegedly false accusations by Gasana have no direct link to the publication by Human Rights Watch, which contains several mentions of Bazaramba. No direct conclusions as to his guilt can be drawn from the reports by human rights organisations.

4.8 Personal disputes and other motives

According to Reyntjens, being named guilty of genocide can also have been influenced by personal disputes and resentments. It has been claimed in the case that after Bazaramba left his native region, his property would have come into the possession of his former neighbours, now heard as witnesses in the case, who would benefit if Bazaramba were to be convicted. Bazaramba had received land holdings from John Nyunzuguru, a relative of prosecution witnesses Antoine Ibambasi, Augustin Karambizi, Apollinaire Rugimbana, Ildephonse Rwibasira, Mathias Munyaneza and Lavelian Rwaduka (Rubaduka), and had been named the head of his family. According to Bazaramba's wife Immaculée Kamuhanda, Nyunzuguru's relatives were jealous of Nyunzuguru for Bazaramba having helped him. Bazaramba had moreover purchased pieces of land from at least Ibambasi and Karambizi. According to Bazaramba, these individuals had gained possession of Bazaramba's property, considerable on the local scale, which property at least in respect of the land holdings received from Nyunzuguru should, according to Rwandan custom, have gone to his kin, i.e. in Bazaramba's absence to the son of Nyunzuguru's son Gatera, Felix Nshimiyimana. After Bazaramba had been arrested Kamuhanda had received from Nshimiyimana a letter stating that Nshimiyimana had not been able to take possession of the land holdings, as people had not wanted to return the property to him.

Bazaramba inherited land from his adoptive father John Nyunzuguru, he purchased land himself and after the genocide, he sat on the so-called property distribution committee to decide on the distribution of land holdings left by e.g. the Tutsi, in this context also acquiring plots of land and farm land for himself (see section 7.2.4 of the judgment). The Gacaca court of Maraba confiscated the properties acquired during the genocide (National Bureau of Investigation report of 30 August 2009; prosecutor's Exhibit 15). According to the report, family members authorised by Bazaramba have bought back the confiscated property. In other respects, according to the National Bureau of Investigation report in many cases the buyer/assignor had resumed possession of the property after Bazaramba left the country. Some of the property was in all likelihood disposed of by the Rwandan State. Bazaramba's home, for example, was assigned to a person by the name of Nyamaskwan.

Of the persons named by Bazaramba, Karambizi recounted that John had given to Bazaramba an area housing cattle shelters and other buildings. According to Karambizi, this area should in fact have gone to Silvestere, the son of Nyunzuguru's younger brother. At present, the area was controlled by the children of Karambizi's uncle.

Ibambasi recounted that he had not been sidelined in the distribution of John Nyunzuguru's assets, as the rule was that the land was controlled or its disposal decided by a direct heir, in this case John Nyunzuguru's grandson Felix Nshimiyimana. Ibambasi recounted that he earned a living from land inherited from his father. According to Ibambasi, the fate of Bazaramba's property other than that inherited from Nyunzuguru had been decided by the authorities. In respect of the list of land holdings appearing as the prosecutor's Exhibit 15, Ibambasi recounted that the property referred to in item 8 and the house thereon was controlled by his nephew Ntagozera, and that the house built on the land in item 1 had been destroyed.

According to Mathias Munyaneza, he had sold Bazaramba eucalyptus trees during the war and not the piece of land referred to item 20 of the land holdings listing appearing as the prosecutor's Exhibit 15, which piece of land Munyaneza said is in his possession.

As such, it is possible that any land ownership disputes or other disputes of a personal nature may be relevant when evaluating the reliability of witnesses. In this respect, no such facts deemed to be worthy of note have come to light in this case that would undermine the reliability of the witnesses.

5. ALLEGATION OF TORTURE AND USABILITY OF WITNESS ACCOUNTS

The defendant has asked that the District Court discard the statements in the criminal case concerning genocide of the following prosecution witnesses who have been tortured, except inasmuch as these statements relate to prison conditions and proceedings in the Gacaca courts:

Gasarasi, Clement
 Kambanda, Jean
 Karasira, Paul
 Murindangabo, Valens
 Musana, Laurent
 Mushimiyamana, François
 Ndabamenye, Apollinaire
 Nduwayezu, Bertin
 Nkeramihigo, Celestin
 Nkurunziza, Athanase
 Ntahonkinye, Martin
 Ntakabumwe, Bertin
 Ntezilyayo, Elias
 Nzabandora, Emmanuel
 Rubumba, Viateur
 Ruzigamanzi, Theoneste
 Kambanda, Viateur
 Byiringiro, Jean
 Banganakwinshi, Augustin

Under Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings. In the course of the main hearing, the District Court on 29 September 2009 in its decision no. 09/928 found that in respect of the witnesses alleged to have been subjected to torture, it is not possible at least before their hearing, based solely on the claim made by the defendant, to arrive at the conclusion that their statements could be found to have been obtained in violation of the said Convention, through the use of torture.

Admitting evidence obtained through the use of torture, being in violation of Articles 3 and 6 of the European Convention on Human Rights, may also result in a breach of the requirement of a fair trial and the so-called prohibition on the use of evidence.

For the purposes of the Convention, torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining information or a confession. The threshold of severe pain or suffering cannot be precisely placed. In this respect, the matter must be judged on a case by case basis.

In the case law of war crimes tribunals, for example, the fact that a prisoner falsely and under brutal circumstances is told that they will be killed has been held to equal the intentional infliction of severe suffering. In several of its judgments, the European Court of Human Rights has found a State Party guilty of torture. In the case of *Aksoy v. Turkey* (1996), the applicant had first been stripped naked and had his hands tied behind his back, after which he had been hanged by his hands (“Palestinian hanging”). The judgment states i.a. that “In the view of the Court this treatment could only have been deliberately inflicted; indeed, a certain amount of preparation and exertion would have been required to carry it out. It would appear to have been administered with the aim of obtaining admissions or information from the applicant.” The Court has subsequently found Turkey guilty of torture i.a. in the case of *Aydin v. Turkey* (1996), in which the applicant had been put in isolation, blindfolded and stripped, subjected to cold water at high pressure, and raped; in the case of *Tekin v. Turkey* (1997), in which the applicant had been kept blindfolded in a dark and cold cell and had been repeatedly beaten; in the cases of *Illhan v. Turkey* (2000) and *Salman v. Turkey* (2000), in which the applicants, held in police custody, had been beaten with sticks and rifle-stocks; in the case of *Dikme v. Turkey* (2000), in which the detained applicant had been subjected to beatings over an extended period of time; the case of *Akkoc v. Turkey* (2000), in which the applicant had been given electric shocks and doused with alternating hot and cold showers, beaten on the head and subjected to psychological pressure; in the case of *Bati et al. v. Turkey* (2000), in which the security forces had brutally abused both physically and mentally the applicants for several days; and the case of *Selmouni v. France* (1999), in which the police had treated with brutality and beaten over the course of several days the applicant, whom they had detained on suspicion of drug-trafficking. According to the Court, the violence had been intentional and its intent had been i.a. to make the applicant confess to the drug offences. Under these conditions, the conduct was torture.

The European Court of Human Rights has emphasised the relevance of the intentionality and motive of the act in assessing whether ill-treatment is to be categorised as torture.

Clement Gasarasi had himself been in prison for acts of genocide since he had returned to the country in 1997. He had first been arrested in the sector and then taken to Butare, to Karubanda central prison. He had been released in 2005. The conditions at the prison had been poor. According to Gasarasi, he had first been held in the jail in Nyakizu commune. There had been too many prisoners in the small cells and the prisoners had been beaten. Fresh air had been easier to come by at the central prison, although sleeping was sometimes difficult there as well. According to Gasarasi, he had been beaten at the jail when he was first taken into custody. Some of the prisoners had even died from the beatings. Gasarasi had been beaten in order to get him to say how many men he had killed. He had been asked nothing about Bazaramba and he had not named Bazaramba because he had not been undergoing the confession procedure. The beatings had been administered by the prison guards. The surviving Tutsis had sometimes paid them to beat the prisoners. Prosecutors had arrived at the prison to explain to the prisoners how they could confess their acts. Religious people had also come by the urge the prisoners to confess. Gasarasi had confessed his own crimes and given the names of those who had been involved. Gasarasi and the other prisoners had not been abused at Karubanda, only urged to confess their crimes. According to Gasarasi, there had been a block at Karubanda prison called Arusha, into which were placed the prisoners who had confessed to their crimes. Gasarasi had also been in this block after confessing to his crimes and accepting the charges. The difference in Arusha block was that its conditions were somehow more acceptable, for instance the sleeping arrangements were better.

Jean Kambanda recounted that the prison guards had abused prisoners when they first came to prison. The prisoners had been asked how many people they had killed and who these people had been. If a prisoner responded by saying that he had not killed anyone, he was abused, but if he confessed to his crimes, he was not abused. According to Kambanda, this abuse had resulted in prisoners even dying, for instance Kambanda’s own child had died. According to Kambanda, he was accused of killing his neighbour. Kambanda had not admitted to the killing and had told the court that his employees had killed the neighbour.

The court had believed Kambanda's employees, however, and had sentenced Kambanda to 25 years in prison.

Paul Karasira had fled from Rwanda to the Congo after the war, in 1994. He had returned to Rwanda in 1997. Karasira had subsequently been accused of killing the man Anderea and of complicity in the genocide and murders. In addition, he had been accused of destroying and appropriating Tutsi property. Having pled guilty, Karasira had been taken into custody on 1 November 2006 and placed in the jail in Nyakizu commune. He had been held in a cell for eight days, after which he had been transferred to Gikongoro prison. Karasira's case was heard by a Gacaca court on 8 November 2006 and the verdict had been handed down on the same day. In connection with his confession, Karasira had informed on other persons, Bazaramba included. At no point had Karasira been pressured or coerced into relating these matters. According to Karasira, in the Gacaca court he had told what he had seen and what others had said at Gacaca trials about Bazaramba. Karasira had been sentenced to ten years' imprisonment. He had been released from prison on 2 August 2007 but continued to serve a sentence of community service. The Finnish police interviewed Karasira on 22 May 2007.

Valens Murindangabo said that he had been in prison for ten years and two months. He had been detained on 13 May 1997 and convicted on 16 August 1997. He had first been held at Nyakizu jail until 2001, after which he had been at Karubanda central prison until his release. According to Murindangabo, he had first related his crimes on 26 January 2003. At the same time, he had also told about what Bazaramba had done. Murindangabo had given his confession and other information in writing to the prosecutor in Butare. He provided the information because of his conscience, and no one had coerced him into saying anything. According to Murindangabo, people including Jean de Dieu Maniraho, Bazaramba's wife, a Burundian police officer and Bazaramba's defence counsel Ville Hoikkala had instead tried to get him to change his story.

Laurent Musana recounted that in 1996, after being detained, he had been placed in the prison in Nyakizu commune where he had been abused on several occasions. The criminal inspector of the commune had abused the prisoners because he wanted them to confess to their crimes. Musana had confessed to his crimes in 1996 after being abused. It had not been enough to confess one's own crimes; in addition, one had to give the names of accomplices. The person who had abused Musana had immediately written down his confession. Musana had signed the confession and it had been forwarded to the prosecutor in Butare at the same time as Musana was transferred to Karubanda prison. However, in this context Musana had not confessed to all his crimes, instead doing this only in 1999 in Karubanda prison. According to Musana, he gave no information on Bazaramba in 1996 at Nyakizu jail because Musana had thought the Bazaramba had left the country for good. Neither had he been asked anything relating to Bazaramba. Musana had not talked about Bazaramba until at Karubanda prison in 1999, when he was better at liberty to tell about events and other persons. Prisoners had not been abused at Karubanda. Musana had not informed on Bazaramba as a result of abuse.

Francois Mushimiyamana recounted that he had not been abused at Nyakizu jail but had been abused on 22 May 1997 on the way to the jail. His abusers had been third parties, i.a. soldiers, and not those who were taking him to the jail. Mushimiyamana had pled guilty already earlier, in connection with his arrest. In Mushimiyamana's view, he had been abused as a punishment for the crimes which he had committed and confessed.

Mushimiyamana had on 22 May 1997 for the first time spoken about what Bazaramba had done. Mushimiyamana had not been pressured into informing on Bazaramba, nor had this been the case in 2006 with the Rwandan prosecutorial authorities or in 2007 with the Finnish police and their interviews. On the other hand, Mushimiyamana has also stated that he informed on Bazaramba on 22 May 1997 on the occasion of being abused.

Apollinaire Ndabamenye had been in exile in Burundi and had returned to Rwanda in 1997. Ndabamenye had been in prison for killing a young boy. Ndabamenye had been detained in November 2006 and he had been released in October 2007. At prison, he had been treated the same as everyone else; Ndabamenye had been given corn and other food. Upon his release, Ndabamenye had been sent to serve community service. According to Ndabamenye, he had informed on Bazaramba's complicity for the first time when the nationwide information-gathering for the Gacaca trials had started. In Ndabamenye's recollection, this had been in 2004. According to Ndabamenye no one had ever pressured him to relate these matters. He had even served as the secretary in his home village during the information-gathering. The Finnish police also had not pressured him. According to Ndabamenye, he had not been told why it had taken so long before he was detained and his case heard. Ndabamenye had wanted to confess. According to Ndabamenye, his problem had been that in addition to the boy found and killed at Baryanga's house (section 7.3.2.4 of the judgment), he had taken another boy along with him when he fled the country. The boy had been killed by others and the witness had been accused of killing this boy. Ndabamenye had related this event when he confessed to his crimes. The people living in the boy's village had held the witness complicit in the death of the boy because the boy had died after Ndabamenye had taken the boy with him. Ndabamenye did not consider himself to be guilty of this killing, however. Ultimately Ndabamenye had been sentenced to 27 years' imprisonment for the killing of the said boy and the boy found at Baryanga's house. In 2007, the sentence had been reduced by 10 years. Ultimately, he served 11 months in prison. He had still been in prison when the Finnish police interviewed him and has been serving community service after that.

Bertin Nduwayezu said that he had killed one person in Nyakizu forest. He had also been involved in other attacks in which people were killed. Nduwayezu had been in prison for these events. He had been detained on 26 October 1994 and released on 18 December 2008. Nduwayezu had been held at Karubanda prison in Butare. There had been no troubles at the prison. There had been enough to eat, and treatment for the sick. It had of course been a prison, which meant that one could not leave. Nduwayezu recounted having informed on Bazaramba already in 1994 when he had been detained. The Rwandan prosecutorial authorities had questioned him about matters relating to Bazaramba in 2007. According to Nduwayezu, he had not been pressured into saying anything about Bazaramba, however. At the same time, Nduwayezu had also related the acts committed by mayor Ladislas Ntaganzwa. Nduwayezu had also never been pressured or coerced into talking about Bazaramba to the Finnish police or the court.

Celestin Nkeramihigo recounted that he had been detained in 1996 and that he was currently an inmate at Karubanda prison. Before being transferred there, Nkeramihigo had been held for seven years at the prison in Nyakizu commune, where prisoners had not been treated well. According to Nkeramihigo, he had been abused on a regular basis at Nyakizu jail for his first nine months there. The abuse had not been a daily occurrence. After this initial period he had always been beaten when people had tried to make him confess to crimes he had not committed. The abuse also had to do with the abusers wanting to take revenge on the prisoners for the crimes of which they were suspected. According to Nkeramihigo, he had told about Bazaramba's complicity in the genocide while held at Nyakizu prison. Conditions had nonetheless improved when he had been transferred to Karubanda prison. In 2002, Nkeramihigo had been let go home from prison because he had been abused so severely that he was seriously ill. Nkeramihigo had been detained again in 2006. Gathering information on the genocide had started in 2005. According to Nkeramihigo, he continued to suffer the consequences of being abused. Nkeramihigo recounted having known prisoners who had confessed to crimes which they had not committed just so that they would no longer be abused. Nkeramihigo himself had only confessed to the crimes which he had in fact committed. At the same time, he had told about crimes committed by others which he had seen.

Athanase Nkurunziza had been detained on 15 November 2006 on suspicion of complicity in genocide. He had been released in August of 2007 after being found not guilty by an appellate court. According to Nkurunziza, he had first made statements on Bazaramba and other perpetrators in 1995. This had taken place

in Nyakizu commune. No one had pressured him into informing on the perpetrators; he had related what Bazaramba had done on his own initiative. According to Nkurunziza, his statement at the time was the same as now before the court. Neither had anyone pressured Nkurunziza into talking about Bazaramba to the Finnish police.

Martin Ntahonkinye recounted that he had been detained in January 2007 for complicity in genocide. According to Ntahonkinye, some Hutu had told a lie of the witness having encouraged and urged the killing of Tutsis, although Ntahonkinye had done nothing during the genocide. In Ntahonkinye's recollection, he had first spoken about Bazaramba in October 2006 when the Butare prosecutor had discovered him in a Gacaca trial. Ntahonkinye had not spoken about Bazaramba in Gacaca, however, only to the prosecutor. Ntahonkinye had not been in prison at the time. When Ntahonkinye had spoken with the Finnish police, it was the first time that he had talked about Bazaramba with a white person. According to Ntahonkinye, no one had coerced or pressured him into giving information on Bazaramba in the interviews or in court. Ntahonkinye had related what he heard in the gathering of information. He had personally only seen and heard the things relating to the death of Mugagashugi and the meeting in Kibangu.

Bertin Ntakabumwe related that he had spent eight years in prison for events having to do with the genocide. He had taken part in Gacaca proceedings two years after his release. After his arrest, the sector advisor had taken Ntakabumwe and three other persons to the commune. They had first been beaten and then the advisor had ordered them to be put in prison. When the advisor had been asked to name the person who accused them, the advisor had replied that the informants would come later. They had never come, however. The sector advisor at the time had been Antoine Ibambasi. Ntakabumwe had first served six years in Nyakizu commune jail and then two years at Karubanda prison in Butare. Except for the day on which he was put in prison, Ntakabumwe had not been subjected to violence per se. Before entering the prison building all detainees had nonetheless been beaten because they were killers. The conditions at the prison had been poor; there had not been enough food, for instance. It had run out on many days. Ntakabumwe had been released from prison in 2005. He had been summoned to testify at a Gacaca trial in 2007 to explain what he had already related earlier. He had also been a defendant on the same occasion. He had been convicted of throwing a body into a septic tank and for shouting at and intimidating Tutsis running past his house, who had then run to be killed. Ntakabumwe had first spoken about Bazaramba in prison in connection with confessing his own crimes. He had been released after this. According to Ntakabumwe, no one had forced him to say anything about Bazaramba, however. All prisoners had been asked to relate everything they knew about the genocide, starting with its first day. This was what Ntakabumwe had done. Ntakabumwe recounted that many murders that needed to be cleared had been committed in the country. Many people had been put into prison so as to obtain information about the murders. The persons guilty of these crimes were convicted and the innocent were ultimately released. According to Ntakabumwe, he had been imprisoned for many years although no charges had been made against him. Ntakabumwe had committed no crimes but had been accused of killing Tutsis. Ntakabumwe never did find out the specific crimes of which he was accused. When they had been asked to confess all their crimes, Ntakabumwe had said that he had killed no one, after which he had been released.

Elias Ntezilyayo recounted that he had been arrested on 20 May 1997. He had first been held in the commune jail for two years and then transferred to Karubanda prison, where he had been held for ten years. Ntezilyayo's Gacaca trial had been held in June 2008. He had been sentenced to 18 years' imprisonment. Ntezilyayo had confessed to his crimes immediately upon returning from the Congo in May 1997. He had felt guilty about his crimes. He had returned to Rwanda to confess his crimes and to apologise. Ntezilyayo had given all his testimony of his own free will. Ntezilyayo spoke about a neighbour of his by the name of Nkozosa. Before the war, Ntezilyayo had not been on good terms with Nkozosa, who had always been belligerent. Nkozosa had sent soldiers to abuse Ntezilyayo as soon as he had been arrested. The abuse could have killed Ntezilyayo but he had survived because of the will of God. The then sector advisor Antoine Ibambasi had been present when Ntezilyayo had been beaten for the first time. Ntezilyayo explained that

prisoners were usually beaten on the first day after their arrest, before they had confessed. On the second day, the prisoners were beaten again, unless they had confessed. He had been beaten on both the first and the second day. The beatings had caused Ntezilyayo to suffer so much pain that he had asked his abusers to stop beating him so that he might tell what he had done. At the same time as he confessed his own crimes, he had told things about Bazaramba. Accomplices had to be disclosed at the same time as one confessed one's own crimes. According to Ntezilyayo, no one had forced him to say something about Bazaramba. After his confession, Ntezilyayo had felt relieved and he had felt that God had forgiven him. The authorities had told those who wished to confess that they should only speak about what they had seen with their own eyes.

Emmanuel Nzabandora had been in prison for the events of 1994. He had been detained on 6 December 2006 and he had served 7 months and 25 days. After this, Nzabandora had continued to serve his 10-year sentence as community service, which continued for another two years. As far as Nzabandora recalled, he had not talked about Bazaramba until he was already in prison. Nzabandora had confessed to his own crimes in 2006 and it was possible that Bazaramba's name had come up already in that context. Nzabandora had attended a meeting where people were told about the advantages of Gacaca trials. Nzabandora had been urged to confess to his crimes. At the same time, he had been told that he also had to give the names of accomplices. They had been told that they had the right to confess their crimes and to apologise. Nzabandora had confessed to killing people. He had been sentenced to ten years and had been released from prison in July 2007. The Finnish police had questioned him in May 2007. At no point had Nzabandora been pressured to inform on Bazaramba.

Viateur Rubumba had been detained for complicity in genocide and had spent seven years in prison. He had been arrested in 2000 and had first been put in Nyakizu commune jail for more than a year, after which he had served his sentence in Butare prison. When Rubumba had arrived at the prison, he had been asked to confess to the crimes he had committed. After the confession, there were no further questions about any crimes. Rubumba had not been beaten before his confession. Rubumba was under the impression that prisoners were no longer beaten in 2000. Rubumba had confessed to complicity in genocide already in 2001–2002, before the entry into force of the Act on the Gacaca. When the Finnish police had come to question Rubumba, he had told them what he knew, i.e. what he had already told earlier. Rubumba assured that no one had threatened or bribed him into making a statement. He had told everything on his own volition and had confessed to his acts for the sake of his own peace of mind. Rubumba's Gacaca trial had been held in August 2008. According to Rubumba, people had been beaten at the prison. There were also people at the prison who had been falsely accused. They had not confessed even despite the beatings. According to Rubumba, the commune jail had been overcrowded. Life had been a little better at Butare prison. Even though it was crowded as well, the problems had been lesser than at the commune jail.

Theoneste Ruzigamanzi said he had been in prison for taking part in the genocide. At first, since 23 May 1997, he had been held at Nyakizu commune jail, from which he had been transferred to Karubanda prison in 2001. At Karubanda prison, Ruzigamanzi had at first been kept in a separate prison block because he had come from the commune jail, where people were often sick. Ruzigamanzi had not been sick, however. Life in prison had been ordinary but it could not be said to have been beautiful. Ruzigamanzi had not been abused at the prison. According to Ruzigamanzi, no one had been beaten at the prison for not confessing their crimes. Ruzigamanzi had first talked about Bazaramba in 2007 in connection with Gacaca proceedings. No one had ever pressured or coerced Ruzigamanzi to inform on Bazaramba. Ruzigamanzi assured that he had told the truth about Bazaramba. It was natural that while confessing to and recounting one's own crimes, one also spoke about those who had also been involved. No one knew that Bazaramba had left the country. In the Gacaca trial, Ruzigamanzi had been sentenced to 12 years' imprisonment. He had been released after the trial because he had already served ten years in prison. According to Ruzigamanzi, he had not been in prison because of what he had done, but so that it might be established what he had done. At first Ruzigamanzi had been detained because of his mother-in-law, who had been killed. When the actual perpetrator had confessed to killing Ruzigamanzi's mother-in-law, that person had also lied that Ruzigamanzi would have revealed the

location of his mother-in-law. Only later had the perpetrator admitted to having told a lie. According to Ruzigamanzi he had not confessed to any killings because he had never killed anyone. Ruzigamanzi had only confessed to kicking a person and being a member of a death squad. Ruzigamanzi personally considered himself to be complicit in the death of Emmanuel Habonimana. Ruzigamanzi said that the person who detained him had been Antoine Ibambasi.

Viateur Kambanda had been in prison for the events of 1994. He was put in prison in 2000 and had now been free for a year. No one at the prison had pressured him into talking about these things. When Kambanda was called to testify, he only wanted to relate what he knew about these persons. Kambanda himself had killed a woman. This was the only crime he had committed. When the Gacaca courts started to hold trials, Kambanda had been sentenced to 11 years in prison. The time of 7.5 years already served by Kambanda had been deducted from the sentence and after doing forced labour for 4 months he had been released. Kambanda's Gacaca trial had started after he had been questioned about matters pertaining to Bazaramba. Francois Mushimiyamana, who had been detained at the same time as Kambanda, was still in prison because he had killed many more people than Kambanda. Kambanda knew Mushimiyamana well because the two had been neighbours. Mushimiyamana had been a "trustee", i.e. one of those who protected the others at the prison at night. He had been given this position because he had killed many people. According to Kambanda, a kind of "prison Gacaca proceedings" were held at the prison. All those accused of killings gathered together for these proceedings. At the gathering, others confessed to having committed the killings of which they were accused while others denied being guilty. On this basis, people were divided into two groups, after which the group of those who had confessed put pressure on the group of those who had denied until also those who had denied were convinced that they had to confess and come clean. Kambanda had been questioned by the Rwandan prosecutorial authority in April 2006. At first, Kambanda had not known why the questioner had wanted information about Bazaramba from him. Kambanda had nonetheless talked about Bazaramba, because he had known him. Before this, no one had asked him questions about Bazaramba or anything else about the genocide. The questioner had told Kambanda that Bazaramba was suspected of genocide. At time of the questioning, Kambanda had been in prison for six years. According to Kambanda, at this juncture the Rwandan prosecutorial authority had told him nothing about when his case would come to trial. Kambanda was in prison and at no point had he received any information as to when his own case would come under consideration. Kambanda had had no attorney because he could not afford to pay one. According to Kambanda, there had really been a lot of people at Karubanda prison in Butare. The prisoners had spent time in the prison yard and only gone into the cells at night to sleep. There had been over 10,000 prisoners there. Food had been served in a water cup and water was available straight from the tap. Kambanda had had the chance of meeting with his family while in prison. Visiting hours had been on Tuesdays and Fridays. If one was rich, one could have visitors more often, even on Saturdays. Minor illnesses had been treated at the hospital but if the illness was serious, the prisoner had been taken to the hospital. Many prisoners had died of starvation, especially those who had no family to bring them food. There had been only few fights between prisoners, the prisoners protected each other. Every effort was made to settle disputes amicably.

Jean Marie Byiringiro was at Karubanda prison from 22 August 2000 to 27 March 2007. When arrested, he was suspected of crimes which he had not committed. In 2005, Byiringiro had confessed to the authorities that he had burned Tutsis' homes and in 2006, he acknowledged some degree of complicity in the killing of a 12-year-old boy. He had been afraid to confess his crimes earlier because he had feared that he would be killed for them. When the Gacaca trials had started, prisoners had been given the opportunity of confessing their crimes in exchange for a more lenient sentence. Byiringiro had made a full voluntary confession in February 2007 when he had finally confessed to having killed the 12-year-old boy himself.

Augustin Banganakwinshi recounted having been in prison and served community service in consequence of these events. He was put in prison in 2000. He had killed one person and been complicit in some other killings. He had been held in prison for 7 years and 9 months. Considering the crimes committed by

Banganakwinshi and others, they had been well cared for in prison. When arriving at the prison for the first time, prisoners were asked whether they had committed the crimes of which they were accused. If a prisoner refused to admit what they had done, they were beaten. After confessing, there was no more abuse. Banganakwinshi knew of no one who would have confessed to something that they had not done so that they would not be abused, whereas some people had not confessed and had been abused and put in prison. A “prison Gacaca” had operated at the prison where Banganakwinshi was. According to Banganakwinshi, he had not been beaten because he had immediately confessed the crimes which he had committed. After the questionings, Banganakwinshi had not been told to keep quiet about the abuses taking place at the prison. There was some misunderstanding in the questionings, as he had not been abused. According to Banganakwinshi, the prison conditions had had no impact on what he now said about Bazaramba. What Banganakwinshi told about Bazaramba in this trial was true. When he had first spoken of Bazaramba, he had not even known if Bazaramba was alive any more. His account was not made up. According to Banganakwinshi, his case had been heard in Gacaca in March 2007. He had been sentenced to 10 years’ imprisonment. He had confessed to his crimes in 2003. According to Banganakwinshi, it was possible for a person to be sent back to prison even after confessing and having been released after serving the sentence. In Burundi, a person had approached Banganakwinshi when he had been shopping in the border region. This person had threatened Banganakwinshi with a gun in the toilet and said, “You dog dared accused Bazaramba, who do you think you are!” A woman had arrived at the scene, however, and knocked on the door of the toilet, which had been locked. This woman had started to scream in a loud voice, and the man had fled. The Burundian police had been unsuccessful in their attempts to locate the man who threatened Banganakwinshi. Banganakwinshi had additionally received a letter at his home at night. This had taken place three years and three months after Banganakwinshi had returned from his shopping trip to Burundi. Banganakwinshi cannot read but his child had read the letter to him. The letter had said that Banganakwinshi had continued to accuse Bazaramba even though he had been warned. According to the letter, he was sure to die if he still continued.

Usability of the witness accounts

It is undisputed in the case that the prison conditions in which the witnesses were held in Rwanda were inhuman to a certain extent. The conditions were narrated by e.g. defence witness Fidèle Nsengiyumva. The length of remand has in many cases been contrary even to Rwanda’s own legislation. Prisoners suspected of genocide have numbered at most roughly 120,000–130,000, however, and more than one million persons in all have been suspected of genocide. The matter is thus in part a question of whether the inhuman conditions during loss of liberty and the drawn-out proceedings were more of a consequence of the high number of prisoners relative to resources or whether suffering was inflicted on purpose in order to obtain information or confessions. Reference has moreover been made on behalf of the defendant to severe shortcomings relating to the prison conditions and their possible impact on the witnesses’ free formation of intent. Of the witnesses, e.g. Bertin Ntakabumwe and Theoneste Ruzigamanzi recounted their view to be that they had been held in prison for the purpose of establishing those guilty of genocide. The accounts of several of the witnesses indicated that they had been kept in the dark for years as to the detailed charges against them. Martin Ngoga and Johnson Nshirimana in turn spoke about deficient resources and attempts to improve prison conditions.

The facts discussed above notwithstanding, no evidence has been obtained in the case of the systematic torture of prisoners for the purpose of eliciting information. It is therefore more warranted to decide on the allegations of the effect of torture and inhuman prison conditions individually in each case and in respect of each witness, instead of taking a categorical decision one way or the other on a general level (cf. judgment No ICTR 97-21-T and 98-42-T issued by the ICTR on 22 January 2009 as well as judgment No. ICTR-96-8-T of 25 October 2004, which concerned the effect of prison conditions on the reliability of witness accounts).

Some witnesses spoke openly and without visible fear of the incidents of abuse to which they were subjected and conditions in prison in general. Some of the witnesses called did not perceive having been subjected to abuse. Solely on the basis of the defence’s allegation, there are no grounds in the case to arrive at the

conclusion that the witnesses' own views could not be assigned weight in this respect, especially in the absence of any further evidentiary material on the topic.

As indicated in the witnesses' accounts, prisoners were abused especially in connection with their arrest and at the holding facilities at Nyakizu commune jail before transfer to the prison proper. The abuses would seem to have had to do at least with attempts to make the detainees confess to their own crimes relating to the genocide. It cannot always be unequivocally deduced from the witness accounts if the naming of other persons complicit took place when they were abused, e.g. in connection with their arrest, or only years later in Gacaca proceedings, in which persons were apparently heard in the absence of any threat of violence. Besides admitting to one's own complicity, the nature of the Gacaca proceedings has entailed a wider investigation in the events of the genocide and as a part of the proceedings, persons have had to give the names of others complicit in the genocide (procedure of confessions, guilt plea, repentance and apologies).

If the witnesses did not speak about Bazaramba in connection with the abuse to which they were possibly subjected, it is justified to arrive at the conclusion that their accounts of Bazaramba given perhaps years later are usable, as there is no causal link between the violence and possible other undue conditions and the accounts given of Bazaramba.

The prohibition of using witness accounts obtained through torture could be evaded if its effect was eliminated by re-hearing the witness under appropriate conditions. The witnesses' accounts of Bazaramba relating to the genocide cannot, in the District Court's view, be used in support of the charge even at a later date owing to the original undue conditions.

With regard to statements made in undue circumstances, decisive significance in all likelihood cannot be attached to the original substance of the witness account. A statement which is established as having been obtained through torture cannot be used as evidence in judicial proceedings. From the viewpoint of the prohibition on using evidence, it is not justified to break down the genocide in its entirety into smaller wholes, on some of which evidence could be taken if the witness subjected to torture had not originally recounted that particular fact.

Nkeramihigo spoke about Bazaramba's complicity in the genocide at Nyakizu prison, where according to his own account he had been abused on several occasions over an extended period of time. The violence had been inflicted at least by genocide survivors, among them police officers and holders of local government positions. Torture as defined in the Torture Convention is only at issue when the torture is carried out by an official or another person acting in an official capacity. The prison authorities must have silently condoned e.g. the violence inflicted by genocide survivors on the prisoners. Taking into account the prison conditions, other evidence besides the testimony of Nkeramihigo is not reasonably obtainable on the violence employed. The evidence concerning Bazaramba in respect of Nkeramihigo has been judged to have been obtained through torture or comparable inhuman treatment. Invoking his testimony as evidence in this trial would violate the prerequisites for a fair trial. The lack of awareness on the part of the subsequent invoker of a statement as to the conditions prevailing at the time at which the statement was made is of no relevance in deciding the matter. The account of Nkeramihigo shall be disregarded.

Ntezilyayo recounted having been in so much pain from the abuses that he had asked his abusers to stop beating him so that he might tell them what he had done. At the same time as he confessed his own crimes, he also spoke about Bazaramba. The evidence concerning Bazaramba in respect of Ntezilyayo has been judged to have been obtained through torture or comparable inhuman treatment. Invoking his testimony as evidence in this trial would violate the prerequisites for a fair trial.

The prohibition on the use of evidence was furthermore given particular consideration in respect of **Mushimiyamana**, who gave a conflicting account of whether he had been abused in connection with relating

Bazaramba's involvement in the genocide. It has not been reliably established that the account of Mushimiyamana could be established to have been obtained through torture or comparable conduct in the manner referred to in Article 15 of the Convention.

With the exception of the aforementioned witnesses, no facts have come to light in the case, in reliance on which the witness accounts could be established to have been obtained through torture or comparable conduct for the purpose of obtaining information, as referred to in Article 15 of the Convention. The possible subordinate position of the persons heard as witnesses at the time of the gathering of information on the genocide and the effect of prison conditions on the reliability of the evidence will be taken into account in respect of each witness individually in connection with the overall evaluation of the evidence concerning individual incidents.

6. ACTUAL AUTHORITY OF BAZARAMBA IN HIS COMMUNITY

According to the charge, the orders and instructions given by Bazaramba with the intent to destroy the Tutsi were obeyed without reservation among the Hutus and their supporters in Maraba sector and its surroundings owing to Bazaramba's authority.

Bazaramba's social position constitutes an integral background factor to the charge. It is unlikely that a person of low social standing would in practice be accused according to the description of the offence now at hand for offences of the kind of which Bazaramba now stands accused. Bazaramba was a highly educated person in a society where a large portion of the adult population is unable to read or write. He was held in high regard as both headmaster and an employee of the Baptist church. Bazaramba was also indisputably a person of considerable wealth. He was selected to attend to an important duty at Karamba refugee camp. His position was underscored by the fact that his wife managed the local health centre.

The aforementioned circumstances prevailed already before the genocide. After the most active stage of the genocide, Bazaramba was furthermore elected to the security council of Nyakizu commune. The most important duty of this council was to maintain public order and strengthen public confidence, and it was for this reason that widely trusted commune residents held in high regard were selected to serve on it. In addition, the District Court finds on the grounds indicated below in the section of the judgment addressing the distribution of Tutsi property (section 7.2.4) that Bazaramba took part in the distribution of the property of Tutsis on a commission established for this very purpose.

The prosecutor has submitted that Bazaramba's social standing would have been reinforced by his position as an actor of the MDR party in Nyakizu commune. As such, it has been established that Butare prefecture, comprising also Nyakizu commune, was a stronghold of the MDR party. It has also been established that the leaders of the MDR party wielded de facto power in the commune alongside the official administration. The witnesses have given highly conflicting statements on Bazaramba's political activity, however. Some have alleged that Bazaramba would have been a member of MDR and a very active member to boot. He has, however, also been alleged to have been a member of the MRND and politically passive, or at least passive in party politics. It has also been put forward that Bazaramba as the pastor of a religious community could not even have been active in party politics. It is worthy of note that many of those who have commented with confidence on this topic are Tutsis or otherwise persons for whom it would have been difficult to monitor the activities of an anti-Tutsi political movement. In this instance, the collective view of the events arising in the Gacaca trials would seem to be more prevalent than ordinary and to be closely entwined with the witnesses' personal observations. The District Court finds that nothing can be said of Bazaramba's possible political activities or his activities in the MDR party in particular to such a degree of certainty that it would be relevant to an evaluation of his guilt.

Bazaramba has been alleged to have collaborated with Nyakizu commune mayor Ladislas Ntaganzwa in the preparation and implementation of the genocide of the Tutsi. In this instance, as with regard to the political activity preceding the genocide, the evidence presented is conflicting and inconsistent. For all intents and purposes, the witnesses have put forward every possible permutation of the relationship between Bazaramba and Ntaganzwa, running the gamut from a deep personal friendship to public animosity. No individual allegation or witness can be considered to be more reliable than the others on this topic, nor has any other manner of establishing the matter to a sufficient degree of certainty been put forward. The District Court finds it to be clear that Bazaramba and Ntaganzwa could not have been on very bad terms at the time of the genocide. It is implausible for Ntaganzwa to have let an enemy of his gain a position on a body of the importance of the commune security council. An absence of hostility is also indicated by the letters from Bazaramba to Ntaganzwa included among the prosecutor's exhibits. The District Court finds that based on the evidence presented, nothing save the above can be stated about the relationship between Bazaramba and Ntaganzwa with certainty or even probability.

It has come to light in the case that mayor Ntaganzwa's inner circle comprised intellectuals considered to be influential. One such is Geoffrey Dusabe, who according to the witness Gakire was seen teaching the use of firearms at a football field in Birambo. There is no cause to doubt that Bazaramba was on warm terms with many intellectuals. No general conclusions can be drawn from this.

At this juncture, the ethnic standing of Bazaramba in an ethnically divided or at the very least ethnically determined community warrants examination. Bazaramba is a Hutu who was nonetheless adopted into a Tutsi family and raised to be the head of the family. It is undisputed that this arrangement, which was general knowledge, worked well for a long time. As is stated below (section 7.2.1 of the judgment), no evidence has been put forward of Bazaramba having hated Tutsis before 1994 or having disseminated hateful and disparaging propaganda about them. There is no reason to presume that he would independently have developed resentment towards his adoptive family or their ethnic group. On the other hand, in a situation where Tutsis came to be persecuted, the position of intermediary such as occupied by Bazaramba was conflicted and potentially very dangerous. It is natural for a person in such a position to try to disassociate himself from the undesirable ethnic group. All in all, the ethnic standing of Bazaramba per se cannot be deemed to be such that it would increase any more than decrease the likelihood of his having committed the offences mentioned in the charge.

It is submitted in the charge that Bazaramba would have had such great authority that because of it, people would have taken part in the killings and other persecution of Tutsis without reservation. The District Court finds no grounds for this view based on unconditional obedience. Several witnesses nonetheless explained that they themselves or other persons obeyed Bazaramba as a matter of course, without daring even to think about refusing. It has come to light, however, that many persons refused, in various circumstances, from taking part in actions against Tutsis, without having to suffer any consequences. When people were directly coerced into taking part in the genocide against their will, they were coerced through the use of violence or the threat of violence, which had nothing to do with the standing and authority of Bazaramba.

Bazaramba was armed at the time of the events at Cyahinda church and Mount Nyakizu addressed below. It is undisputed that firearms were very rare among the civilian population in Rwanda. The vast majority of the killings in the genocide were carried out with traditional weapons, yet firearms also played a major role in leading attacks and breaking down Tutsi resistance. Bazaramba furthermore was not a security guard, reservist or the like. When he nonetheless carried a firearm during the genocide, this indicates that his position differed from that of an ordinary civilian.

Bazaramba's relatively high social standing has not been disputed as such. It has on the one hand been claimed that this standing would have been exaggerated, on the other it has been claimed that the said standing in a Rwandan village community would not have provided him with any de facto leadership or

freedom of action different from those of others. The latter claim has been made by the witnesses VASA 8 and VASA 10 and, on a more general level, in particular by the witness Pascal Ndengejeho. These statements must be juxtaposed against the large number of witnesses who held that despite his lack of formal power, Bazaramba had considerably greater authority in Birambo than “ordinary people”. This was recounted by the witnesses Antoine Ibambasi, Paul Karasira, Bertin Nduwayezu, Apollinaire Rugimbana, Viateur Rubumba, Emmanuel Nzabandora, Joseph Rutayisire and Athanase Nkurunziza, among others. Unlike Ndengejeho, these witnesses lived in Nyakizu in 1994. Although they cannot possess the kind of scientific perspective held by Ndengejeho, who took his doctorate in sociology, the views they hold as persons in a position to closely observe the events must nonetheless be deemed reliable.

The District Court finds that based also on his wealth and good education, Bazaramba held in the local community a social position that made it considerably easier for him than for most others to have his ideas heard and to take these to the level of action. Western society as well is more receptive to the ideas of persons of great wealth, good education and high social standing. No cause has come to light to presume that Rwandan society in this respect would crucially differ from Western society. Bazaramba’s exhortations and orders to act, which he gave in the higher than ordinary position described above, will be addressed below under each individual offence.

7. BAZARAMBA’S COMPLICITY IN ACTS OF GENOCIDE

7.1 Bazaramba’s alibi

The acts of murder and destruction of Tutsi property recounted in the charge mainly took place after 14 April 1994. The genocide in Bazaramba’s neighbourhood in Nyakizu started in earnest on Friday 15 April 1994 and peaked between 15 and 21 April 1994, at which time Mount Nyakizu, where some Tutsis had fled the unrest, came under attack. The majority of the attacks on the mountain took place between 16 and 18 April 1994. Cyahinda church was under attack apparently from 15 to 18 April 1994.

According to Bazaramba, news reports on the advances made by the RPF guerrillas had people fleeing and going into hiding on Thursday, 14 April 1994. Some people had concealed themselves at Nyantanga health centre, others had fled further afield. Bazaramba’s family was also in hiding in the area of the health centre.

The people who had sought shelter at the health centre had gone to the chapel in Kibangu. Bazaramba recounted having fled there with his family on the day after they had gone to the health centre, i.e. on Friday morning, 15 April 1994. According to Joy Sifa heard as a witness, people had stayed at the health centre for approximately two days before going to the chapel.

Bazaramba recounted having returned from Kibangu chapel to Nyantanga health centre and then going onward to his home in Birambo. According to Bazaramba’s wife Immaculée Kamuhanda, the return had taken place on the same day. According to Joy Sifa, people had returned from the chapel on the day after they had arrived there.

Bazaramba further recounted that after staying at home for about two days, he and his wife had gone to Kibangu to the home of a person by the name of Rusadanza, where according to Kamuhanda they had stayed for approximately two weeks without Bazaramba ever leaving the place on his own. According to Jean Mukama, the son of Rusadanza heard as a witness, Bazaramba’s visit had lasted 3–4 days and Bazaramba had been away in the daytime, returning each night. VASA 10, whose children had been safe at the same place as Bazaramba’s children, also recounted having talked daily with Bazaramba in Birambo, i.a. during an attack on Mount Nyakizu. According to VASA 10, Bazaramba was spending the nights in Kibangu at the time.

Viateur Rubumba, Theoneste Ruzigamanzi, Clement Gasarasi and Augustin Banganakwinshi related the order given by Bazaramba to kill Emmanuel Habonimana. The order was allegedly given on Friday, 15 April 1994, on which date at the latest the burning of Tutsi houses and the killing of Tutsis started in the region of Nyakizu. The same day saw the killing of at least those referred to in charge A (ii), i.e. Emmanuel Habonimana, his Tutsi wife Dina, the agronomist's wife Agnes Mukamutesi and an unidentified Tutsi woman. People at the health centre had heard of their death already before going to Kibangu chapel.

VASA 5, Bazaramba's next-door neighbour who was 16 years of age at the time of the events, recounted that on the day after the president's plane had been shot down a police officer by the name of Silas had arrived in Birambo and urged people to prepare to go on the run. After this, the burning of houses had started on Mount Nyakizu and a teacher by the name of Emmanuel and a woman by the name of Dina had died. Emmanuel and Dina had been killed by a shopkeeper by the name of Francois Mushimiyamana, who after the killings had said that the witness' mother would be next. The witness had asked Lazare, Mbanda and Bazaramba why they had wanted to kill the witness' mother. To the separate question put to the witness of whether he was absolutely sure that Bazaramba had been present at the time, VASA 5 replied that this was what had happened. The witness' account suggests that Bazaramba was in Birambo at the time of the killings of Emmanuel and Dina.

VASA 10 related a situation in which Francois Mushimiyamana had first killed a young boy and later on two women and one man. All people returning from Kibangu had seen Mushimiyamana kill the young boy. There had been a large number of people present. Bazaramba had also been present, towards the back of the crowd.

Bazaramba's complicity in the burning of houses on Friday, 15 April 1994 was related by at least Jean Marie Byiringiro, Augustin Banganakwinshi, Emmanuel Nzabandora, Athanase Nkurunziza and Joseph Rutayisire.

Appoloni Gatera, Joseph Rutayisire, Esperance Mukanusi, Ladislav Rukaka, Lavelian Rwaduka and Bertin Nduwayezu recounted having seen Bazaramba during the attacks on Cyahinda church.

Correspondingly, Augustin Banganakwinshi, Clement Gasarasi, Antoine Ibambasi, Paul Karasira, Mathias Munyaneza, Bertin Nduwayezu, Theoneste Ruzigamanzi, Ladislav Rukaka, Viateur Rubumba and Appoloni Gatera recounted having seen Bazaramba in the attacks on Mount Nyakizu between 15 and 18 April 1994. VASA 10 recounted having watched one attack on the mountain in Birambo together with Bazaramba.

Amber Lynn's observations of Bazaramba concern May of 1994 and the time thereafter.

Based on the evidence presented in the case, the possibility that Bazaramba was complicit in the offences alleged in the charge to have been committed by him cannot be ruled out.

7.2. Inflicting on Tutsis living in Maraba sector and its surroundings conditions of life calculated to bring about their physical destruction in whole or in part

According to the charge, Bazaramba with the intent to destroy in whole or in part the Rwandan Tutsis as a group inflicted on Tutsis living in Maraba sector and its surroundings conditions of life calculated to bring about their physical destruction, through the following acts:

7.2.1 Dissemination of propaganda and incitement of Hutus to kill

Charge

(i) Bazaramba disseminated anti-Tutsi propaganda and incited Hutus to kill by fomenting hatred and contempt of the Tutsi among them.

Response

Bazaramba contested the charge in this respect. He did not foment hatred and contempt of the Tutsi, nor would he have had any reason to do so.

Evidence

The defendant **Francois Bazaramba** recounted that he had always been on good terms with the Tutsi and had even been the head of a Tutsi family despite being an ethnic Hutu. This fact was general knowledge in his home region. He had in fact jeopardised his own safety and the safety of his family by harbouring Tutsis during the genocide. During the worst of the genocide in April 1994, at which time he is alleged to have made inflammatory speeches against the Tutsi in Birambo and nearby, Bazaramba had been in hiding at Nyantanga health centre, his home and Kibangu, and could not possibly have acted in the manner alleged in the charge.

Witness for the prosecution **Viateur Kambanda** recounted that he had lived in the Maraba sector of Nyakizu commune in 1994. He had been personally present when Bazaramba had arrived with a refugee by the name of Lazare to hold a meeting for Hutus at Rushunguriro village. The meeting was held outdoors, in the market square. At the meeting, Bazaramba had urged those present to kill all Tutsis in the village. He had also urged those present to burn down the houses of Tutsis and had given them money for matches. According to the witness, the people obeyed Bazaramba, who did not himself take part in the killing. According to the witness, the killings had already been going on for many days elsewhere, but not in his village.

Witness for the prosecution **Antoine Ibambasi** recounted that after the plane of president Habyarimana had been shot down on 6 April 1994, Bazaramba had organised political meetings at both his home and elsewhere, together with Lazare and Geoffrey, among others. Being a Tutsi, the witness Ibambasi could not attend these meetings. At the time, attitudes towards the Tutsi had grown clearly more negative and they had started to be looked upon with hostility. Bazaramba had said that the same cockroaches had attacked Burundi in 1993 and that they had been Tutsis. The meetings organised by Bazaramba had also been attended by commune mayor Ladislas Ntaganzwa.

Witness for the prosecution **Augustin Banganakwinshi** recounted that Bazaramba was the first in town to urge people into action against the Tutsis. He had been on good terms with mayor Ntaganzwa and had been in his company when he had incited against the Tutsis on various occasions. On the day when the war started, the witness had gone to Birambo to look for work. Bazaramba and his guard Ignace had called all people present to a meeting in front of Bazaramba's house. Ignace had had a firearm. At the meeting, Bazaramba had said that everyone had to go to Rushunguriro to look for Tutsis, and burn Tutsi homes. Bazaramba had said that he had just come back from a meeting in Butare where it had been said that the Tutsis had to be attacked. Killing was opposed, but everyone went along with Bazaramba and Kabayiza to burn down Tutsi houses, because the two had firearms. Bazaramba had told people that Kabayiza and Ignace would kill anyone who did not come along to burn down houses. After the genocide, in July 1994, Bazaramba had gotten into a car and told others in front of the house that everyone had had to leave the country because it had been taken over by the cockroaches. According to Bazaramba, the Inkotanyi were already in power and would kill them all if they did not leave the country.

Witness for the prosecution **Jean Marie Byiringiro** recounted that Bazaramba had gotten people together to kill Tutsis and had been one of the initiators in this. On Friday, 15 April 1994 between 9 and 10 in the

morning, a police officer had come by on his bicycle and told people that they had to protect their safety. After this, Bazaramba had arrived with Ignace and Lazare Kobagaya. They had urged everyone to close the doors of their homes and had fetched people out into the street for a meeting. Viateur Kambanda had also been present at the meeting. All in all, there had been 50–60 people there. The meeting, which had been held between the houses of Bazaramba and Kabayiza, had only lasted 10 minutes and its main speaker had been Bazaramba. He had said that the war had started and that Tutsis had to be killed. One person whom the witness did not know had spoken against the killing of Tutsis. The people at the meeting had been urged to kill the teacher Emmanuel and a farmer, who were the only people present who were known to be Tutsi. Bazaramba had told the people at the meeting that they must ask Lazare why the Tutsis had to be killed, and Lazare Kobagaya had said that the people cannot understand because they are so young. Then Bazaramba himself had said that the Tutsis had to be killed because they were the enemy and would otherwise take over the country. The witness had no knowledge of other meetings. According to the witness, the people at the morning meeting refused to kill Tutsis and had therefore been urged to go to the mountain to burn down Tutsi houses. The Tutsis had learned that their houses would be burned and that they would be killed, and had therefore fled.

Witness for the prosecution **Clement Gasarasi** recounted that he had only heard Bazaramba urge people to kill Tutsis on one occasion. This had been when Bazaramba had urged the killing of Emmanuel, Dina and her two children, and the agronomist's wife. The attack squad to which the witness belonged had not obeyed Bazaramba at once but at the end, all of the Tutsis of which he spoke had been killed.

Witness for the prosecution **James Gakire** recounted that in 1994, he had returned from Goma to his former home commune of Nyakizu, where he had spent two weeks before fleeing to Burundi via Butare. While in Nyakizu, the witness had been to Birambo market square twice. Immediately upon his arrival in Nyakizu, he had found Bazaramba and others in the market holding a meeting, where it had been said that people had to go and kill Tutsis. When the attendees noticed that the witness was present, they left the market to continue their meeting on the premises of the Baptist church UEBR. They had also threatened the witness, who had had to get out of there. Besides Bazaramba, the meeting had also been attended by Lazare Kobagaya and mayor Ladislas Ntaganzwa, among others. Hit lists of people who had to be killed had been drawn up in town. Bazaramba and Ntaganzwa had been involved in drawing up such a list.

Witness for the prosecution **Viateur Rubumba** recounted that Bazaramba had given the order to kill a man by the name of Emmanuel, who according to Bazaramba was a Tutsi. He had also given the order to kill the Inyenzi in Birambo, the reference being to all Tutsis there.

Witness for the prosecution **Augustin Karambizi** recounted that Bazaramba had played an important role in the killing of Tutsis and that many meetings at which the killing of Tutsis was planned had been held at his home. These meetings had started already a month before the war. The witness himself had not been allowed to attend the meetings but attendees had told him some of the things said at the meetings. Mayor Ntaganzwa had also attended the meetings. On 15 April 1994, people had gathered in Birambo market square with the intention of going to burn down Tutsi houses. Bazaramba had been there and had given people instructions but the witness was not aware of the precise contents of these instructions because he had had to flee the scene. Bazaramba had also given orders and instructions to Burundian refugees when they had attacked the Tutsis at Cyahinda church. One day before the start of the war, Bazaramba had prepared beef for the crowds. It had been offered free of charge, as its purpose was to encourage people to kill Tutsis.

Witness for the prosecution **Annonciate Mukarushema** recounted that she had once been eating in a restaurant in a party which had also comprised Bazaramba. When a Tutsi had brought the food, Bazaramba had said that he loathed Tutsis and did not wish to eat food prepared by a Tutsi. The entire party had laughed at these words. On one occasion, the witness had been present when Bazaramba had visited the husband of his wife's sister, Ziherambere, and there had been Tutsis present. Bazaramba had become angry and said that

he did not enjoy visiting Tutsis and did not like Tutsis. The witness had not heard Bazaramba talking this way about Tutsis at any public events.

Witness for the prosecution **Mathias Munyaneza** recounted that when the young Bazaramba had arrived from Burundi as a refugee, a Tutsi family had taken a liking to him and had given him land. When the father of the family was dying, Bazaramba had been made the head of the family. Before the war, Bazaramba had liked this family although he had disliked Tutsis in general, considering them all to be Inyenzi. Of the meeting allegedly held on 15 April 1994 in Birambo market square the witness Munyaneza knew nothing. Munyaneza had only heard about it at a Gacaca trial.

Witness for the prosecution **Athanase Nkurunziza** recounted that Bazaramba had held a meeting in Kibangu at the primary school, where he had said that the Tutsi were evil. The witness had been present in the capacity of cell leader. When a person in Bazaramba's position summoned people to a meeting, one had to go. On Wednesday, 13 April 1994 in Birambo market square Bazaramba had urged people to burn down Tutsi houses. On Friday, 15 April 1994 Bazaramba had again spoken in the market square and said that the Tutsis should die and that people should burn down their houses. On neither day was there an actual meeting in Birambo; there had just been a lot of people in the market square. On Friday, Bazaramba's orders were given, according to the witness, in the afternoon or the evening, and as a consequence of this people went to burn down houses that same day. The witness himself had not gone along but had not been persecuted for this reason, because he had been a cell leader. Later on, he had been persecuted when people had come to his house looking for his wife's nephew, who was a Tutsi. A goat and some money had been taken from him.

Witness for the prosecution **Bertin Ntakabumwe** recounted that on the first day of the genocide, 15 April 1994, he had gone to Birambo market square where small groups of people had gathered. In another sector, houses had already been on fire by then. When the people in Birambo market square had seen that Tutsi houses were on fire farther away, the people in the market square had also gone to Rushunguriro to burn down Tutsi houses. Bazaramba had led the group of house-burners by giving instructions and orders on burning houses and by encouraging people. The witness had heard this in the market square before the group had left it to go and set fire to houses. The witness himself had been a part of Bazaramba's group in principle, but he had had to go to his bar, which was just at the edge of the market square, to serve beer, and he had thus not gone along with the house-burners. He had seen from the market square how Tutsi houses were being burned, however. He knew no details of how they were set on fire. The witness had seen no other meetings in the market square. It was certainly possible that meetings could have been held without his knowledge, but he considered this unlikely. During the genocide the witness had decided that he would not leave his house and would not take part in the attacks.

Witness for the prosecution **Theoneste Ruzigamanzi** recounted that Bazaramba was complicit in the genocide. Bazaramba had attended a meeting organised in Nyakizu, at which Bazaramba was given command of organising the genocide in Maraba sector. At the same meeting, Geoffrey had been asked to command the troops in Yaramba sector and a man by the name of Mukasa those in Bunge sector. The witness had not been asked to the meeting but he had been standing close by behind the house and heard everything that was said at the meeting. On 15 April 1994, Bazaramba had asked a man by the name of Johnson to tell the people in Birambo that everyone had to come along to kill Tutsis. No one was allowed to stay behind. The witness furthermore recalled that Bazaramba had held at least one meeting in Birambo market square after Tutsis had already died. Bazaramba had gotten up on top of a table and said, "This is the market square that I wanted." With this, he meant that there were no longer any Tutsis in the market square. Bazaramba had asked the locals whether there were still any Tutsis left anywhere. Lazare Kobagaya and Kabayiza as well as a lot of locals had also been present. This meeting had been held some time in May 1994. No other meetings had been held after this. After the meeting, people had started looking for any Tutsis who might still be alive and hiding in buildings. The order to do this had been given by Lazare.

Witness for the prosecution **Apollinaire Rugimbana** recounted that he had seen for himself Bazaramba holding two meetings. One had been held in March 1994 at Bazaramba's home and attended by members of the MDR, MRND and PSD. The witness himself had not attended the meeting because he was a Tutsi and a member of the PL. The second meeting had been in the daytime on 14 April 1994 at Nyantanga school. The witness had recognised several attendees including Bazaramba and Geoffrey. The witness did not know what had been said at the meeting, but the killings had started on the following day. On Friday 15 April 1994, mayor Ntaganzwa had sent Bazaramba a message through someone. The message said that work was to be started, which had meant starting the killings. The witness heard for himself Ntaganzwa in the yard of Maraba health centre urging people to get started and saying that in half an hour's time, he no longer wanted to see a single Tutsi. The witness is certain that he would have been killed, had he not gone into hiding. The burning of Tutsi houses and the killing of Tutsis had started on the day on which Ntaganzwa had sent the messages to Bazaramba and Geoffrey.

Witness for the prosecution **Ildephonse Rwibasira** recounted that before the year 1990, he had never heard of Bazaramba having a bad word to say about Tutsis, but that after October 1990 Bazaramba had started to hate them. Among other things, he had said that the Tutsi would be killed with machetes. The friendship between Bazaramba and mayor Ntaganzwa had grown stronger in February–March 1994. The two visited each others' homes. According to the witness Rwibasira, Bazaramba was a leader in the genocide in 1994. Before the genocide, he had tried to get people to stop Tutsis from fleeing Birambo. The killing of Tutsis had already been planned earlier, as there were only Hutus on the patrols and they searched Tutsi houses for Inyenzi. In addition, civilians had been issued firearms although technically, this was not allowed.

Witness for the prosecution **Bertin Nduwayezu** recounted that he had known Bazaramba well in 1994. Bazaramba had come to a road block on 15 April 1994 and said that the Tutsis were their enemies. Mayor Ntaganzwa had also said the same. Bazaramba, Ntaganzwa and the sector advisor Munyakazi had given the order to kill all Tutsis who came to the road block. If a passerby was a stranger, they were instructed to ask for an identity card.

Witness for the prosecution **Lavelian Rwaduka** recounted that in his understanding, Bazaramba had been a member of the MDR, and the witness had seen him be active in the party. MDR meetings had been attended by all, including Tutsis, who had been frightened and had wanted the Hutus to think that they were on their side. There had been singing at the MDR meetings to the effect that if President Habyarimana were to lose power, the people would rejoice. The witness had never heard Bazaramba speak ill of the Tutsi at these meetings.

Witness for the prosecution **Paul Karasira** recounted that Bazaramba had organised a meeting in Birambo market square on Friday, 15 April 1994, and had ordered people to seek out and kill Inyenzi. The Tutsis had fled to the mountains and the witness had been seeking safety in Birambo market square along with other Hutus. The witness had fled to Bazaramba because he was thought to be a person of authority. Bazaramba had also had a firearm and an armed reservist had lived at his house. Bazaramba had acted like a leader and had given orders to others. The witness himself had not been present in the morning but had heard from others that already in the morning, Bazaramba had ordered people to burn down Tutsi houses. Bazaramba had also organised another meeting in Maraba, where he had ordered people, under pain of punishment, to seek out the Tutsis hiding on the mountain. Later on, in Birambo market square Bazaramba and Lazare had forced the witness to kill an unidentified man under pain that the witness' wife would otherwise be killed.

Witness for the prosecution **Jean Kambanda** recounted that a meeting had been held in Birambo market square in front of Bazaramba's house. Bazaramba had not organised this meeting, however. It had been said at the meeting that in certain houses in Rushunguriro, there were Tutsis in hiding who had not fled to Mount Nyakizu with the others. It was these Tutsis that they now were to go and seek out. According to the witness, sector advisor Munyakazi, Bazaramba and the residents had all joined in in the urging. No one had to obey,

however. Bazaramba had not spoken, nor had he urged people into anything, the speaker having been Munyakazi instead. He had formed an attack squad for seeking out the Tutsis, in which squad Bazaramba had been an ordinary squad member. This squad had immediately gone out to look for Tutsis.

Witness for the prosecution **Laurent Musana** recounted that while the witness was on night patrol, Bazaramba had told him that all Tutsis had to be killed and that not a single one was to be allowed to escape.

Witness for the prosecution **Francois Mushimiyamana** recounted that Bazaramba had been active in the genocide and had said mean things about the Tutsi. This may have had something to do with the fact that he had come from Burundi, where the Tutsi had killed the president. The witness believes Bazaramba to have thought that the Tutsi would kill him some day. Mayor Ntaganzwa had also spoken ill of the Tutsi, which certainly had had an impact on the witness' own participation in the genocide.

Witness for the prosecution **Emmanuel Nzabandora** recounted that in the morning of 15 April 1994 he had heard Bazaramba giving a speech near his home in Birambo. There had been a lot of people present, men, women and children alike. Bazaramba had said that if they wished to force the enemy to leave, they had to burn down his house, and that others had already started. The witness took this to mean that the enemy were the Tutsi. After Bazaramba gave the instructions, the attack squad in which the witness Nzabandora also was had gone to burn houses in Rushunguriro. Emmanuel Habonimana had also been forced to go along. In addition to house-burning, Bazaramba had also led and instructed people in several distinct killings. Before 15 April 1994, the entire concept of Tutsi had been very vague to the witness. He had seen the mention of ethnic group on his identity card but had not understood its meaning. What a Tutsi was only became clear to him when he saw that the houses of Tutsis were being burned and Tutsis were being killed.

Witness for the prosecution **Valens Murindangabo** recounted that in the morning of Friday, 15 April 1994, there had been a lot of people in the centre of Birambo who had not really known what it was they should do. At this time, Bazaramba had given a speech saying that the burnings of Tutsi houses and the killings of Tutsis had already started. According to Bazaramba, this was what had to be done now in this area as well. After Bazaramba's speech, the witness had gone home. When he had been on the way back to Birambo market square, he had seen an attack squad along the way, burning down Tutsi houses. Murindangabo himself had gone along as well to burn down houses.

Witness for the prosecution **Joseph Rutayisire** recounted that Bazaramba had been a member of the MDR and a close advisor of mayor Ntaganzwa in planning the genocide. He had organised meetings both before and during the genocide. At the meetings, Bazaramba had once said that citizens had to go after the Inyenzi on Mount Nyakizu, and another time he said that they had to go to Gahene to kill Inyenzi. It was the witness' understanding the Inyenzi meant Tutsis. In the morning of 15 April 1994, at approximately 9, Bazaramba had come to tell everyone that the houses of Ntaganzwa and some other important people had been burned. This had been Bazaramba's way of trying to get people to burn down Tutsi houses. According to the witness, Bazaramba had ordered all Tutsis to be killed. Many Tutsis had then been shot or killed by other means in various locations by those in Bazaramba's company. The witness had seen with his own eyes the killing of two children, a fugitive from Nyaguru and 6–8 captured men in Bitare. He had moreover heard of the killing of a man by the name of Joseph and the agronomist in Nyantanga along with his wife and children. In addition, an estimated 50–60 Tutsis had died in Gatobwe and a great many people at Cyahinda church and on Mount Nyakizu. The witness had been at all these places at one time or another.

The account of the witness **Elias Ntezilyayo** has been not been taken into consideration as evidence on the grounds stated in the section of the judgment addressing the allegation of torture (section IV 5).

Witness for the defendant **Johnson Nshirimana** recounted that he personally witnessed the meeting held in Kumugano in Maraba sector nine days after the death of the presidents. At this meeting, the mayor and a

gendarme had ordered people to burn down Tutsi houses. Bazaramba had been nowhere to be seen at the meeting. The witness had not heard of Bazaramba having held any meeting. The witness had not heard of any meetings before the death of the president on 6 April 1994.

Witness for the defendant **Immaculée Kamuhanda** recounted that her husband Bazaramba had sheltered Tutsis during the mass killings. The witness herself had concealed several Tutsi women in the maternity ward, including Sifa and Bazaramba's adoptive sister Bellansilla Mugagashugi. Bazaramba, who had been in hiding with Rusadanza in Kibangu at the time, had agreed that they had to give shelter to the women and had given advice relating to this.

Witness for the defendant **Amber Lynn** recounted that she was a Tutsi and in 1994 had been a student of agriculture at Butare University. In May 1994, the situation towards the Tutsis had become so threatening that she and her boyfriend Claver Misago had fled to Nyakizu, to Bazaramba's house. Claver Misago was a Hutu and Bazaramba's godson. In the witness' understanding, Bazaramba understood that the witness had been in mortal danger because she looked like a Tutsi and all Tutsis had been in danger at the time. The witness had spent two weeks with Bazaramba's family. She had not personally noticed any threats against Bazaramba but her boyfriend had said that they had to leave because Bazaramba had been threatened with having his house burned down if he did not get rid of this Tutsi. The witness had returned to Butare, where she had stayed in hiding until the end of June. Then the shooting and chaos had started in the city and the witness had again left for Bazaramba's place, where she had arrived on 1 July 1994. A few days later, everyone had left the area. Bazaramba's family and the witness had left in three cars with the intention of going abroad via Gikongoro. After various stages the witness had arrived in the Congo later in July. The witness absolutely believes that Bazaramba saved her life, first by giving her shelter and then by helping her from Nyakizu to Gikongoro.

Witness for the defendant **Joy Sifa** recounted that she was a Tutsi but that her mother and husband were Hutus. The witness' husband had died in 1982 and the witness and her children had moved from Kigali to Nyakizu, to a place at the edge of Birambo market square next door to Bazaramba's house. The witness had been a teacher at Nyantanga elementary school. The people in Birambo region were well aware that the witness was a Tutsi. Bazaramba had helped the witness in building her house and his wife had helped her with the children. The fact that Bazaramba was a Hutu and the witness was a Tutsi had caused no problems. Bazaramba had other Tutsi friends as well, and everyone knew this. Bazaramba also had such a warm relationship with his Tutsi adoptive father John Nyunzuguru and his children that the witness had first thought Bazaramba to be the actual son of Nyunzuguru. The witness had never seen Bazaramba in the company of mayor Ladislas Ntaganzwa, who according to the witness was not a good person. After the airplane of Rwanda's president was shot down on 6 April 1994, everyone had been scared and no one had known what to do. After the curfew had been declared, people had withdrawn into their homes, or at least had not travelled very far. The witness had no knowledge of any meetings held in Birambo market square although she lived right next to the market square. Bazaramba had had no position whatsoever in local government. The witness did not know if Bazaramba belonged to any political party but the witness had never seen him be politically active. Neither had the witness ever seen Bazaramba to be in possession of a firearm. The witness could not believe that Bazaramba would have had anything to do with the killers of Tutsis. Bazaramba was a religious man and he had principles and wished to develop the commune, whereas the attackers were from the lower classes and drank alcohol and possibly used drugs as well. Bazaramba had been afraid of the attackers just like everybody else. The witness' brother Stanley Safari was a high-ranking politician who had been a part of President Juvénal Habyarimana's inner circle. Geoffrey Dusabe was the son of the witness' late husband's sister.

Witness for the defendant **VASA 5** recounted that he was very young in 1994 and therefore did not know very much about things. He nonetheless recalls that various political parties had held their rallies in Birambo market square before the genocide and that there had even been violent altercations at these rallies

sometimes. The witness had not heard of Bazaramba having been present at these meetings, nor had he any reason to believe that he had. The witness had been next to the market square throughout the genocide. He had seen but one meeting in the square. This had taken place towards the end of the period of the genocide. All residents of Birambo had been called to a meeting addressing security in the area. The meeting was to tell people that people who were still in hiding could now come out. The purpose of the meeting had been to restore peace among the people. The witness did not recall who had led the meeting. The witness did not recall whether Bazaramba was present at this meeting.

Witness for the defendant VASA 8 recounted that he had had a grocery store and a bar in the Birambo market square area. He knew Bazaramba, who had lived at the other end of the square, but Bazaramba was neither a friend nor a customer. According to the witness, no such meetings where the killing of Tutsis was urged were held in the market square in April 1994. After the death of the president on 6 April 1994, no political parties or religious groups held meetings in the square either. Not even the communal authorities had visited in the square.

Evaluation of the evidence and conclusions

Many witnesses spoke about the speech of incitement against the Tutsis given by Bazaramba on Friday, 15 April 1994 at the meeting in Birambo market square. At least the witnesses Banganakwinshi, Byiringiro, Karambizi, Nkurunziza, Ntakabumwe, Karasira, Nzabandora, Murindangabo and Rutayisire recounted having been present in person. There is quite great variance between the witnesses as to the time of the meeting and the number of its attendees. The use of the term meeting itself is unclear, and perhaps the event was indeed more a spontaneous speaking event in a situation where there had been many people in the market square. Taking into account the time elapsed from the event and the traumatic events following it, this variance in the witness accounts cannot be deemed decisive. The fact that Bazaramba expressed in public his obvious hostility towards the Tutsi and called for violent action against them was brought up in the accounts of all of the aforementioned witnesses. Only the testimony of the witness VASA 8 speaks against the foregoing. Having regard to the fact that this witness' account is wholly different from those of the other witnesses, the District Court does not find it plausible. The existence and approximate substance of Bazaramba's speech shall thus be deemed to have been proven. Taking into account the events following this speech, it must be held to have had a direct link with the ensuing acts of violence against the Tutsi.

The witnesses also recounted several other occasions on which Bazaramba expressed hatred and contempt of the Tutsi and called for violent action against them. Such occasions allegedly took place in Birambo on 13 April 1994, at Nyantanga school on 14 April 1994, at a road block on 15 April 1994 and in Birambo market square some time after 15 April 1994. Additionally, it has been claimed that there were several closed meetings which outsiders could not attend. The time and substance of these meetings and the speeches given there as well as Bazaramba's activeness in them remains unclear, however. Several witnesses did not take part in speaking events at all, instead drawing their conclusions as to these on the basis of hearsay or the events following the meetings. Even the accounts of those persons who claimed to have been present and to have heard Bazaramba speak do not provide any reliable view of the matter. The District Court therefore finds that the charge of dissemination of hateful propaganda has not been proven in this respect.

Inasmuch as Bazaramba's talk against the Tutsi had to do with burning down Tutsi houses and his actions with regard to the road blocks and night patrols as well as individual killings, these will be addressed below under the relevant headings.

7.2.2 Road blocks and night patrols

Charge

(ii) Bazaramba organised road blocks and night patrols set up for the purpose of controlling the Tutsi, and led this activity.

Response

Bazaramba has contested the charge in this respect. He was not involved in the activities of the road blocks or night patrols at the time that there was genocide in the Nyakizu area. Before this, he was only involved to the extent as was mandatory for all citizens in a state of war.

Evidence

Witness for the prosecution **Timothy Longman** recounted that in the Human Rights Watch interviews, many of the interviewees had said that Bazaramba together with Geoffrey Dusabe had led a patrol, the assignment of which had ostensibly been to prevent RPF troops from entering Nyakizu commune. Gradually, all Tutsis had come to be taken as RPF supporters and thus persons who had to be killed. The first acts of violence committed by Bazaramba's patrol had taken place on 13 April 1994. The patrol had been set up without an order from the central government. In May 1994, patrols such as these had nonetheless been put on an official footing with the issue of an order to set up security councils to supervise the road blocks and night patrols.

Witness for the prosecution **Antoine Ibambasi** recounted that Bazaramba had been the leader of the night patrols at the time of the genocide. This approach had been taken to attending to security when the new parties had come to power a few years earlier.

Witness for the prosecution **Jean Marie Byiringiro** recounted that in 1994, he had lived next door to Bazaramba. The witness had also been involved in a road block patrol. Bazaramba and others had arrived and said that the patrol was to go and kill Tutsis. The witness himself had thereafter killed a 12-year-old Tutsi boy.

Witness for the prosecution **Augustin Banganakwinshi** recounted that Bazaramba had set up a road block next to a kiosk which he owned. Because the witness had lived in Maraba, he was unable to relate what had happened at this particular road block. Usually, the road blocks were for preventing Tutsis from escaping, and if Tutsis were caught at the road blocks, they were killed. Attempts had been made to put one literate person at each road block so that people's identity cards could be examined. The recruiting for road block duty was usually handled by the cell leader, but sometimes Bazaramba as well had been authorised to recruit people.

Witness for the prosecution **Viateur Rubumba** recounted that the road block and night patrol in Nyakizu had first been set up so that the Inyenzi could not make their way to the town. Later on, their mission had been to kill Tutsis, and every Tutsi who had come to the road block had been killed. Since Bazaramba was in charge of security in the area, he had been involved in setting up the road blocks and night patrols. One of the road blocks had been situated next to his kiosk.

Witness for the prosecution **Augustin Karambizi** recounted that Bazaramba had set up guard patrols which had set out on their rounds from the kiosk owned by Bazaramba.

Witness for the prosecution **Athanase Nkurunziza** recounted that there had been a road block in front of Bazaramba's kiosk. It had been set up already before the start of the killings. The sector advisor had demanded that road blocks be set up, and had also selected their locations and the people to man them. Bazaramba had instructed the patrols that no Tutsis were to be allowed through a road block and that they

were to be killed instead. Bazaramba had also visited the road blocks to inspect that they were manned throughout the night. During these inspection visits, Bazaramba had had a rifle with him.

Witness for the prosecution **Ildephonse Rwibasira** recounted that he had personally seen Bazaramba organising road blocks and patrol rounds in Rushunguriro during the genocide. There had been road blocks already since 1990 but they had only been used at night. In 1994, they were in place 24 hours a day. Bazaramba had coordinated the activities of the road blocks and the night patrols and had decided i.a. who was on patrol during the day and who at night. He had also supervised the work of the guards and the night patrol participants had reported on their activities to Bazaramba alone. The witness had heard patrols talk in the mornings about who would take the report to Bazaramba.

Witness for the prosecution **Bertin Nduwayezu** recounted that Bazaramba had been responsible for the road blocks set up in Rushunguriro. According to the witness, in practice this had meant that Bazaramba had driven around on a motorcycle to supervise the road blocks in Maraba sector together with the sector advisor Munyakazi. The witness himself had stood guard at a road block in Rushunguriro. Bazaramba had come to the road block on 15 April 1994 and said that the Tutsi were their enemies. Mayor Ntaganzwa had also said the same. Both Bazaramba, Ntaganzwa and advisor Munyakazi had given orders to kill all Tutsis who came to the road block. If a passerby was a stranger, they were instructed to ask for an identity card.

Witness for the prosecution **Paul Karasira** recounted that he did not know how the road blocks were led. He knew, however, that Bazaramba had supervised them and received daily reports on them, and that those who were guilty of negligence had to explain themselves to him. Bazaramba had given punishments for disobedience and a person could even be sentenced to death for it.

Witness for the prosecution **Laurent Musana** recounted that he had been on night patrol when Bazaramba had arrived on a moped. Bazaramba had said that no Tutsi was to be allowed to escape and that the Tutsi were to be killed. Bazaramba had been wearing an army uniform and he had had a rifle with him when he had toured the night patrols on a moped.

Witness for the prosecution **Joseph Rutayisire** recounted that many Tutsi fugitives were killed in front of Bazaramba's kiosk. The kiosk was named "Ruhuka", which means "rest in peace". The witness had been present in person when Bazaramba, who had been wearing a long green army coat, along with Johnson, Lazare and two shopkeepers had been at the kiosk and four Tutsi fugitives had come up. Three of them had fled but one had approached the party. Johnson had killed the fugitive, but the witness considers also Bazaramba and Lazare to have been complicit.

Witness for the prosecution **Valens Murindangabo** recounted that he had been a part of the night patrols in the area of Ruhuka. Bazaramba had supervised this group and done the same for three other groups on patrol. If one had not gone on night patrol, one had had to pay a fine of 2,000 francs the following morning.

Witness for the prosecution **Clement Gasarasi** recounted nothing that would impact the evaluation of this point of the charge.

The account of witness for the prosecution **Celestin Nkeramihigo** has not been taken into consideration as evidence on the grounds stated in the section of the judgment addressing the allegation of torture (section IV 5).

Witness for the defendant **Amber Lynn**, while staying with Bazaramba in May 1994, learned about the road blocks, but these had all been situated far away from Bazaramba's house. The witness had not heard any discussions about road blocks or night patrols or any other discussions having to do with security at Bazaramba's place.

Witness for the defendant **Joy Sifa** directly recounted nothing about road blocks or night patrols. Her account only has to do with Bazaramba's alibi, which has been addressed above in this judgment.

Witness for the defendant **Johnson Nshirimana** recounted that there had been night patrols in Nyakizu from the very beginning of the war. The authorities had said that they had to defend themselves from enemy attacks. The enemy had been the RPF. The witness himself had taken part in night patrols. Nothing had taken place while he was on patrol. The witness did not know if Bazaramba had taken part in night patrols, because he himself had been on patrol on the opposite side of the village from where Bazaramba had been. The witness did not recall having ever seen Bazaramba on night patrol.

Witness for the defendant **VASA 8** recounted that he had not been involved with the road blocks or night patrols. In his understanding, there had not even been any road blocks in Birambo.

The exhibits **S5** and **S9** demonstrate the role of the Nyakizu commune security council as the establishers and controllers of the road blocks and night patrols. According to the council, more road blocks had to be set up and they had to be supervised better. Night patrolling and supervision in general were to be stepped up. Bazaramba was a member of the security council.

Evaluation of the evidence and conclusions

Several witnesses recounted Bazaramba's involvement in organising, leading and supervising the road blocks and night patrols. Bazaramba's activities as such cannot be taken as evidence of his being guilty of genocide. If anything, it would have to be deemed peculiar for a person in Bazaramba's position to have no responsibility for matters such as these in the uncertain and restless conditions prevailing in 1994.

Being involved with the road blocks and night patrols cannot thus as such be deemed to constitute genocide or even activity suggesting genocide. Several witnesses nonetheless recounted that with the orders he gave, Bazaramba shifted the activities of the road blocks and night patrols directly against the Tutsi as an ethnic group. He urged the capture and killing of all Tutsis caught. Of the witnesses who recounted such orders, at least Byiringiro, Nduwayezu and Musana had themselves taken part in the night patrols whose activities were directed by Bazaramba. Of the other witnesses, in particular Nkurunziza, Rwibasira and Rutayisire gave credible accounts of Bazaramba's actions in this respect. There is no cause to doubt these accounts given by Hutus and Tutsis alike. No credible counter-evidence to undermine the value of the evidence put forward by the prosecution has moreover been presented. The District Court finds it to have been established that by acting in the manner recounted in the charge, Bazaramba sought to inflict on the Tutsis living in Maraba sector conditions of life calculated to bring about their physical destruction in whole or in part.

7.2.3 Bazaramba's complicity in forcing Tutsis to leave their homes and in destroying their homes

Charge

(iii) Bazaramba forced Tutsi to leave their homes.

(iv) Bazaramba acquired and distributed supplies such as matches needed for setting residential and other buildings owned by Tutsis on fire, and incited and ordered Hutus to burn these buildings.

Response

Bazaramba has contested the charge in this respect. He did not act in the manner submitted by the prosecutor. He did not burn down the houses of Tutsis himself, nor did he incite anyone else to do so. Neither did he furnish the house-burners with any supplies that would have facilitated the burning.

Evidence

The defendant **Bazaramba** recounted that at the time in question he and his family were in hiding in various places in Nyantanga, Kibangu and their home of Birambo. He did not take part in evicting Tutsis or in burning their residential or other buildings. He observed burning buildings and it only being the houses of Tutsis that were burned. He had no more specific observations of the matter.

Witness for the prosecution **Jean Marie Byiringiro** recounted that on Friday, 15 April 1994 between 9 and 10 in the morning, a police officer had come by on his bicycle and told people that they had to protect their safety. After this, Bazaramba had arrived with Ignace and Lazare Kobagaya. They had urged everyone to close the doors of their homes and had fetched people out into the street for a meeting. Viateur Kambanda had also been present at the meeting. All in all, there had been 50–60 people there. The meeting, which had been held between the houses of Bazaramba and Kabayiza, had only lasted 10 minutes and its main speaker had been Bazaramba. He had said that the war had started and that Tutsis had to be killed. This had given rise to discussion. The people at the meeting in the morning had refused to kill Tutsis and they had therefore been urged to go the mountain to burn down Tutsi houses. A certain Alphonse had brought along matches, and Bazaramba had brought more of them. The witness himself, along with the others who attended the meeting, had been involved in the house-burnings. The Tutsis had learned that their houses were to be burned and they were to be killed, and they had therefore fled. Emmanuel, who had been accused at the market square meeting of being a Tutsi, had claimed to be a Hutu, and he had also been given matches. Emmanuel had been involved in the house-burnings. Had he not done this, according to the witness Byiringiro he would have been killed on the spot. In the evening, Emmanuel had nonetheless been killed because he had been thought to be a Tutsi.

Witness for the prosecution **Augustin Banganakwinshi** recounted that on the day that the war started, Bazaramba together with his guard Ignace had called everyone present to a meeting in front of Bazaramba's house. Ignace had had a firearm. Bazaramba had told the meeting that everyone was to go to Rushunguriro to seek out Tutsis, and to burn the houses of Tutsis. Bazaramba had said that he had just arrived from a meeting in Butare where it had been said that the Tutsis had to be attacked. Bazaramba had gone to buy matches and everyone had gone along with him. Bazaramba had told people that he was the leader, and that Kabayiza and Ignace, who had firearms, would kill everyone who did come along to burn down Tutsi houses. The witness considered Bazaramba to have been the leader also in reality. A teacher by the name of Emmanuel had been forced to go along so that he could prove that he was not a Tutsi. Bazaramba had given him matches as well.

Witness for the prosecution **Augustin Karambizi** recounted that he had first seen Bazaramba bearing arms on the same day on which the war and the killing of Tutsis had started. On that day, people had gathered in Birambo market square with the intention of going to burn down Tutsi houses. Bazaramba had been there and had given people instructions, but the witness was not aware of the precise contents of these instructions because he had had to flee the scene.

Witness for the prosecution **Mathias Munyaneza** recounted that the killings of Tutsis had started in his neighbourhood on 15 April 1994, and the burnings of Tutsi houses had started on the same day. Bazaramba had led two groups who had burned down Tutsi houses. The witness knew nothing of the meeting held in Birambo market square and had only heard of it at a Gacaca trial.

Witness for the prosecution **Athanase Nkurunziza** recounted that on Wednesday, 13 April 1994, in Birambo market square Bazaramba had urged people to burn down Tutsi houses. On Friday, 15 April 1994 Bazaramba

had again spoken in the market and said that the Tutsi should die and that people should burn down their houses. On neither day had there been an actual meeting in Birambo; there had just been a lot of people in the market square. On Friday, Bazaramba's orders were given, according to the witness, in the afternoon or the evening, and as a consequence of this people went to burn down houses that same day. According to the witness Nkurunziza, Bazaramba had burned down no houses himself but had urged others to do so. The house-burnings started on 15 April 1994, i.e. the same day as the killings. The witness had not been involved in the house-burnings but had not gotten into trouble for this because he had been a cell leader.

Witness for the prosecution **Bertin Ntakabumwe** recounted that on the first day of the genocide, 15 April 1994, he had gone to Birambo market square where small groups of people had gathered. In another sector, houses had already been on fire by then. When the people in Birambo market square had seen that Tutsi houses were on fire farther away, the people in the market square had also gone to Rushunguriro to burn down Tutsi houses. Bazaramba had led the group of house-burners by giving instructions and orders on burning houses and by encouraging people. The witness had heard this in the market square before the group had left it to go and burn down houses. The witness himself had been a part of Bazaramba's group in principle, but instead of going along with the house-burners, he had had to go to his bar, which was just at the edge of the market square, to serve beer. He had seen from the market square how Tutsi houses were being burned, however. He knew no details of how they were set on fire.

Witness for the prosecution **Bertin Nduwayezu** recounted that houses had been burned down in Rushunguriro on the orders of Bazaramba.

Witness for the prosecution **Paul Karasira** recounted that he had been present when Bazaramba had organised a meeting in Birambo market square on Friday, 15 April 1994, and had ordered people to seek out and kill Inyenzi. The Tutsis had fled to the mountains and the witness had been seeking safety in Birambo market square along with other Hutus. The witness had fled to Bazaramba because he was thought to be a person of authority. Bazaramba had also had a firearm and an armed reservist had lived at his house. Bazaramba had acted like a leader and had given orders to others. His orders had to be obeyed, like the orders of leaders in general. The witness himself had not been present in the morning but had heard from others that already in the morning, Bazaramba had ordered people to burn down Tutsi houses.

Witness for the prosecution **Jean Kambanda** recounted that Bazaramba had urged everyone to get to work. According to the witness, it was clear that "work" in this context meant killing Tutsis and burning down their houses. Bazaramba had not presented himself as the leader of the attack. The squad leader had been sector advisor Munyakazi.

Witness for the prosecution **Emmanuel Nzabandora** recounted that in the morning of 15 April 1994 he had heard Bazaramba giving a speech near his home in Birambo. There had been a lot of people present, men, women and children alike. Bazaramba had said that if they wished to force the enemy to leave, they had to burn down his house, and that others had already started. The witness took this to mean that the enemy were the Tutsi. After Bazaramba gave the instructions, the attack squad in which witness Nzabandora also was had gone to burn down houses in Rushunguriro. The witness thought it clear that failure to obey Bazaramba's orders could lead to death. The witness personally had taken part in burning down some eight houses. Emmanuel Habonimana had also been forced to go along. Before 15 April 1994, the entire concept of Tutsi had been very vague to the witness. He had seen the mention of ethnic group on his identity card but had not understood its meaning. What a Tutsi was only became clear to him when he saw that the houses of Tutsis were being burned and Tutsis were being killed.

Witness for the prosecution **Joseph Rutayisire** recounted that in the morning of 15 April 1994, at approximately 9, Bazaramba had come to tell everyone that the houses of Ntaganzwa and some other

important people had been burned. This had been Bazaramba's way of trying to get people to burn down Tutsi houses.

Witness for the prosecution **Valens Murindangabo** recounted that in the morning of Friday, 15 April 1994, there had been a lot of people in the centre of Birambo who had not really known what it was they should do. At this time, Bazaramba had given a speech saying that the burnings of Tutsi houses and the killings of Tutsis had already started elsewhere. According to Bazaramba, this was what had to be done now in this area as well. After Bazaramba's speech, the witness had gone home. When he had been on the way back to Birambo market square, he had seen an attack squad along the way, burning down Tutsi houses. Bazaramba had been there, as had at least his son Nilsson, Lazare Kobagaya, Ignace and Kabayiza. The witness himself had gone along as well to burn down houses. All of the matches used in the incidents came from Bazaramba's kiosk.

Witness for the defendant **Johnson Nshirimana** recounted that in April 1994, he had seen the houses of Tutsis being burned down everywhere they lived. The witness had seen a meeting held in Kumugano in Maraba sector nine days after the death of the presidents where the mayor and a gendarme had ordered people to burn down Tutsi houses. Besides the mayor, the meeting had also been attended by influential people from Maraba sector and an army representative. The meeting had taken place one week and two days after the president's plane had been shot down. The witness had not heard of any such meetings before the downing of the plane. The mayor's exhortations to burn down Tutsi houses and take their property had been obeyed because it had been an order from a superior. The witness had not seen Bazaramba in Kumugano or at any other meetings.

Witness for the defendant **VASA 5** recounted that he had observed house-burnings on Mount Nyakizu. This happened at the same time as Francois Mushimiyamana had killed the teacher Emmanuel and the woman Dina.

Witness for the defendant **VASA 8** recounted that he had personally seen houses being burned in the area of Birambo after the death of the president on 6 April 1994. A house on the market square in Birambo had also been destroyed. According to the witness, the perpetrators had been young people from the same village.

Evaluation of the evidence and conclusions

According to the charge, Bazaramba forced Tutsi to leave their homes, acquired and distributed supplies such as matches needed for setting residential and other buildings owned by Tutsis on fire, and incited and ordered Hutus to burn these buildings.

Several witnesses testified to the role of Bazaramba in the burning of residential and other buildings owned by Tutsis. According to the witnesses, Bazaramba incited and ordered Hutus to burn down buildings and in this manner forced Tutsis to leave their homes. Of the witnesses, at least Byiringiro, Nzabandora and Murindangabo themselves took part in the house-burnings. The accounts of the witnesses differ in respect of details, which is natural considering the confusion of the events and the long time which has elapsed since them. The main elements of the accounts are consistent, however, and there is no cause to doubt the accounts. Bazaramba justified the actions with the example set in other areas. The witnesses for the defendant furthermore recounted nothing in their testimonies that would give cause to doubt the aforementioned accounts. Neither is there any cause to doubt the accounts inasmuch as they describe Bazaramba's role in acquiring and distributing matches for the arsonists.

Several witnesses considered Bazaramba to have been in a position that allowed him to force people to go along with the house-burning without their own will in the matter being of any relevance. For example the subsequently killed Emmanuel Habonimana felt he was forced to go along with the house-burning to show

that he was not a Tutsi. It was a case of collective pressure which not a single participant in the genocide who was heard as a witness was ultimately desirous or capable of defying without putting himself in serious peril. As a person of influence among the residents, Bazaramba gave orders and instructions on the matter in circumstances of the kind mentioned.

7.2.4 Bazaramba's role in distributing to Hutus property appropriated from Tutsis

Charge

(v) Bazaramba distributed to Hutus movable and immovable property which had been left behind by the Tutsi or forcibly seized from them.

Response

Bazaramba has contested the charge. He was on the security council in Nyakizu commune which attended to public order in the commune post-genocide. The duties of the security council also comprised supervising the property of Tutsis who had died or fled, for instance bringing in the harvest from the fields. These were vital measures to avoid the spoilage of the crops and other property left behind by Tutsis. Managing the property was also vital in order to ensure public order. Bazaramba did not take part in distributing property of the Tutsis among Hutus and he did not personally benefit from managing property.

Evidence

Witness for the prosecution **Augustin Banganakwinshi** recounted that already when the witness along with others had in April 1994 attacked Mount Nyakizu for the first time, Bazaramba and cell leader Vitali had offered them alcohol and said that once all the Tutsis had been killed, their property would be distributed among those taking part in the attack. When the Tutsis had been killed, Bazaramba and mayor Ntaganzwa had divided up between themselves the land left by them. They had said that later on they would re-distribute it to the people. Bazaramba had distributed smaller pieces of farmland to those who had taken part in the attack. According to the witness, Bazaramba had been responsible for selling the property of Tutsis in Maraba sector.

Witness for the prosecution **Clement Gasarasi** recounted having no observations of Bazaramba having obtained any Tutsi property. This had only been told to him once he was in prison.

Witness for the prosecution **Viateur Rubumba** recounted that in 1994, he had lived in Nyakizu commune, in Maraba sector, and had been chosen to lead his cell. The witness had accompanied Bazaramba in distributing property left by the Tutsis. They had both been councilmen on the council which had distributed property. The witness had been asked to join the council as the villagers' representative. The property left by the Tutsis was to be sold to the civilian population. Bazaramba had also bought for himself property left by the Tutsis, including a plot of land where a house had stood earlier. The people chosen for the commission had been educated and included communal councilmen and the headmaster of the elementary school. The money obtained from selling the crops left by the Tutsis had been taken to the commune. Surviving Tutsis had later come to reclaim their property.

Witness for the prosecution **Bertin Ntakabumwe** recounted that after the genocide, he was a member of the same committee as Bazaramba. There had been a total of ten members on the committee, which was chaired by the sector advisor. The duty of the committee had been to sell property left by the Tutsis.

Witness for the prosecution **Theoneste Ruzigamanzi** recounted that after the war, Bazaramba had headed a committee that had distributed property left by the Tutsis. Bazaramba himself had also appropriated land that had been owned by Tutsis.

Witness for the prosecution **Bertin Nduwayezu** recounted that Bazaramba was on a commission that had planned the selling of property left by the Tutsis. Bazaramba had also come to Bugarama cell to sell farmland that had been owned by Tutsis. The witness had been present in Bugarama at the time.

Witness for the prosecution **Paul Karasira** recounted that Bazaramba had taken part in the distribution of property left by the Tutsis. Bazaramba and Lazare had decided, for example, that all cows owned by the Tutsi were to be killed at once so that all would get their share of their meat. The witness had been present at the time and had received his share. Bazaramba had furthermore been on a commission that had decided on selling the farmland owned by the Tutsis. Bazaramba had himself also brought property of this kind. The witness had seen these sales take place but had had no money to buy any of the property himself. On the other hand, it was up to a person's position in the commune whether he was allowed to buy such land.

Witness for the prosecution **Francois Mushimiyamana** recounted that Bazaramba had wanted to appropriate property of the Tutsis for himself and had also done so. For example, he had posted a notice on the house of Masemaja in the centre of Birambo saying that the house was owned by Bazaramba. Bazaramba had also earmarked all the good farmland for himself. Bazaramba had been a member of the committee which distributed Tutsi property and had furthered his own interests on this committee.

Witness for the prosecution **Martin Ntahonkinye** recounted that Bazaramba had been the leader of the commission which had distributed property left by the Tutsis. The witness had bought a plot of land from this commission.

Witness for the prosecution **Valens Murindangabo** recounted holding that after the death of the Tutsi, Bazaramba had played a major role in the distribution of their property. Bazaramba had been the leader of the committee that was in charge of the re-distribution of Tutsi property. The witness had deduced this from Bazaramba presiding over committee visits to some farmland that was to be distributed. Bazaramba had also decided who was allowed to buy property. The best property and the best plots of land Bazaramba had taken for himself, for example a house and the woods owned by Jean Kajumba. He had also taken for himself the rest of the property of his adoptive father John Nyunzuguru after seeing that the wife and daughter of Nyunzuguru had died.

The account of the witness **Elias Ntezilyayo** has been not been taken into consideration as evidence on the grounds stated in the section of the judgment addressing the allegation of torture (section IV 5).

Witness for the defendant **Johnson Nshirimana** recounted that there had been a security council in Nyakizu commune tasked with matters relating to the security of commune residents. The witness had learned of the existence of this council after the start of the war. The witness did not know whether Bazaramba was a member of this council.

Witness for the defendant **VASA 7** recounted that after the battles, a security council had been established in Nyakizu commune. This had taken place between 22 April and 25 April 1994. The witness had driven mayor Ladislav Ntaganzwa to this meeting. The witness himself had attended the meetings as the deputy for the commune secretary. Bazaramba had also been at the meeting. He had been chosen to join because he was the headmaster of the school and he had constructive ideas about developing the commune. The purpose of the council had been to restore order and respect for the authorities in the commune. The witness had not attended subsequent meetings. He had no knowledge of any possible role of the council in distributing Tutsi property.

Prosecution exhibit **S4** shows that Bazaramba asked mayor Ntaganzwa to set aside for him the plot of land owned by Joseph Kabanda in the Maraba shopping district of Nyakizu commune.

Prosecution exhibit **S8** shows that Bazaramba's family bought back real estate confiscated from Bazaramba. Among them is the house of Joseph Kabanda, buy-back price RWF 204,000.

Evaluation of the evidence and conclusions

It is undisputed that Bazaramba was a member of a commune body known as the security council, which after the most active phase of the genocide was tasked i.a. with managing the property owned by Tutsis who had been killed or driven away. This as such can be deemed to be an acceptable measure and, in respect of maturing crops, even a vital one. Several witnesses recounted, however, that Bazaramba was also a part of a body that carried out re-distribution of Tutsi property to Hutus, such distribution intended to be permanent. This was also recounted by the witnesses Rubumba and Ntakabumwe, who themselves were members of this committee and therefore of necessity were aware of its purposes and activities, as well as by the witness Ntahnkinye, who bought a plot of land from the said committee.

Having regard to the violent manner by which Tutsi property was left with absentee owners, Bazaramba could not have assumed that its permanent re-distribution would be lawful. Neither is there any evidence that the taking into possession of the property would only have been intended as a temporary measure to calm down the situation. Bazaramba being forced into this activity cannot be deemed credible, taking into consideration the witness accounts. The witnesses Banganakwinshi, Mushimiyamana and Murindangabo related in detail Bazaramba's activities on the property distribution committee. According to them, Bazaramba's participation was active and also self-serving to a degree. The witnesses Rubumba and Ntakabumwe, who themselves were members of this committee and who thus have a clearer picture of its activities than the other witnesses, have confirmed this. The allegation is furthermore supported by exhibits S4 and S8. Based on the above, the District Court finds the charge of genocide to have been proven in this respect.

7.3 Killings

7.3.1 Training relating to the killings and acts of violence, and procurement of weapons

Charge

With the intent to destroy in whole or in part the Rwandan Tutsis as a group Bazaramba provided preparatory training utilised in the killings and acts of violence referred to in points 3.2.2.2–3.2.2.4 of the charge to civilians and especially to Burundian refugees placed in the camp by the name of Karamba situated in Nyakizu commune. Bazaramba provided training at Karamba camp and outside it, i.a. at the communal firing range suitable for shooting practice.

With the intent to destroy in whole or in part the Rwandan Tutsis Bazaramba procured and distributed weapons used in the killings and acts of violence referred to in points 3.2.2.2–3.2.2.4 of the charge, such as guns and machetes.

Response

Bazaramba has contested the charge.

Evidence

Witness for the prosecution **Timothy Longman** recounted that in the investigations conducted by the organisation Human Rights Watch, mention had been made in at least some accounts of training provided next to a refugee camp, and of Bazaramba helping in organising the training. The persons interviewed by Longman had had no first-hand observations of this, however.

Witness for the prosecution **Bertin Nduwayezu** recounted that in 1994, he had lived in Bugarama cell in Maraba sector in Nyakizu commune. He was a carpenter by occupation, as were his other relatives. Nduwayezu had known Bazaramba well because they had lived in the same sector, albeit in different cells. Nduwayezu had also shopped in the same market as Bazaramba. According to Nduwayezu, Bazaramba had been the headmaster of craft school. According to Nduwayezu, Bazaramba had been the head of the Karamba refugee camp and had provided military training at the camp, together with the mayor of Kabarule, to the refugees who had later attacked Cyahinda church. The mayor of Kabarule in turn had been the leader of the Burundians living outside the refugee camp. There had also been a sports group at Karamba who had practiced at the camp. Bazaramba had been with them when they practiced. After their exercise, the group had practiced shooting. Nduwayezu had seen this from the road passing by the camp. The Burundians had gone to practice shooting with others than Bazaramba. Nduwayezu had himself seen, from a certain hilltop, Bazaramba training young people at the camp. The Burundian refugees had arrived at the camp already in October 1993. Burundian refugees from other camps as well had been brought to the camp to practice. Nduwayezu knew this because he had seen them practicing on many occasions. At the time, Nduwayezu had thought that the Burundians were practicing so that they could kill Tutsis when they returned to their own country. It was not until the refugees took part in the events of 1994 that Nduwayezu and others had understood that they had in fact been practicing for the genocide in Rwanda. The hoes used by the refugees had been different from those used for working. The refugees' hoes had been made for killing. Nduwayezu had himself seen the hoes used for killing at Cyahinda church. After the mayor had asked for Bazaramba's help, refugees trained by Bazaramba had been brought to Cyahinda to kill people. According to Nduwayezu, he had never visited Karamba refugee camp but he had met young Burundians who were in the company of the mayor of Kabarule and Bazaramba and had talked with them. In Nduwayezu's estimate, there had been 30–40 young Burundian refugees taking part in the attack on Cyahinda church. Since the refugee soldiers had fought the Tutsi on many occasions in their own country, they had wanted to train the witness and other Rwandans. Nduwayezu knew by name two Rwandans who had been trained by the Burundians. They had been taught to shoot and to kill Tutsis. These Rwandans had also taken part in the attack in Cyahinda.

Witness for the prosecution **James Gakire** recounted that he had lived in Butare in Goma commune in 1994. When the killing of people had started in Butare, Gakire had returned to Nyakizu, his former home commune. Gakire had been in Nyakizu for two weeks before fleeing first to Bitare and then across the border into Burundi. While in Nyakizu, the witness had been to Birambo market square twice. Gakire was a Tutsi. Gakire recounted having known Francois Bazaramba since they had been neighbours. Gakire had lived in Yaramba, which was about one kilometre from Bazaramba's home. Gakire recounted that Bazaramba, Burasanzi and Geoffrey had taught the use of firearms at Birambo football field to the Interahamwe and to others who had not known how to use a gun. Bazaramba had taught ordinary villagers as well how to use a gun. There had also been machetes and traditional weapons called "ntamponjano". According to Gakire, he had told the Finnish police that he had witnessed this kind of military training, and he did not understand why it had not been entered in the pre-trial investigation record. Gakire had witnessed tens of times how military training was provided while drums were playing. Training had been provided every day and every evening, because they had planned to kill the Tutsis on those days. Training had been provided in many sectors. When one sector had been trained, the team had gone by car to the next sector to provide training. Gakire had not seen this with his own eyes because by then, he had already fled to Bitare.

VASA 6 recounted that he was from Nyagisozi in Nyakizu commune, close to the town hall. The witness was a guard by occupation, he had guarded the Red Cross base and the food stores at the refugee camp since

1 March 1994. The witness knew Bazaramba because he was a teacher. Usually everybody knew teachers and headmasters. According to the witness, all Burundian refugees had lived at the refugee camp except for those who had held some kind of position of authority in Burundi. They had lived outside the camp, as had the Burundian doctors who worked at the camp. Burundian women who had married a Rwandan man had also lived outside the camp. Six young Burundian students had also lived outside the camp. It was these people to whom the witness had referred when he had said in the pre-trial investigation interviews that some Burundians lived with the local population. According to the witness, the Burundian refugees had not been provided with any training at the camp. He had not seen any battle exercises at the camp but sometimes he had seen sports training. Some Burundians had stayed with Anastace Nshimiye, assistant to the mayor, and Nshimiye had taught them how to use a gun. These exercises had taken place outside the refugee camp. Some Burundians had also stayed with Joseph Musa, and they had killed people at a road block. The witness had not seen this happen but had heard them being accused of it. As far as the witness knew, one Burundian had taken part in the events at Cyahinda church and had later been convicted of this. The witness did not know for sure if any other refugees had been involved in the attacks in Cyahinda or Nyakizu. If they had taken part in attacks, they would have been there with the intent of stealing property left behind by the Tutsi. When the witness during pre-trial investigation had accused the Burundians of the acts of genocide in Nyakizu, the witness had meant the four Burundians who had been staying with Joseph Musa. He had not meant Burundians living in the refugee camp.

Witness for the prosecution **Joseph Rutayisire** recounted that Bazaramba along with Kabayiza and Claver, who lived in his house, had taught four refugees from Burundi how to use a gun, and that based on that heard during the information-gathering, training had also been provided to a larger group of refugees from Burundi on a wide field.

Witnesses for the defendant **Virginia Mukarumenzi, Sophie Manariyo, Josephine Hakizimana, Bernadette Nizigiyimana, Simon Bititi, Rose Haratimana, Gregor Miburo, Evariste Ayigwana**

The said Burundian witnesses were in the refugee camp in Nyakizu commune during the genocide and saw nothing at the camp to suggest the preparatory training utilised in the acts of violence. The refugee camp had been cramped owing to the large number of refugees and there had been no space there suitable for sports or military practice. The witnesses had not seen any military training being provided on the hills surrounding the camp.

Witness for the prosecution **Esperance Mukanusi** recounted that Bazaramba had brought weapons to Jean Kambanda in Cyahinda on a red motorcycle. The machetes had been tied together with a flexible rope and tied onto the rack of Bazaramba's motorcycle. The knives had been in plain sight and had not been covered with anything. According to the witness, the aforementioned machetes were used in an attack in Gasasa. The witness was under the impression that a mistake had been made in the police interviews as to what she had said. She had not said that Bazaramba would have brought firearms to the location. Instead, the witness had said that she had seen Bazaramba arrive at the church in a red car on 15 April 1994.

According to witness for the prosecution **Jean Kambanda**, Bazaramba had never brought him any machetes.

Evaluation of the evidence and conclusions

The observations of Nduwayezu are based at least in part on inference after the fact as to the sports training which he saw. The account of VASA 6 suggests that training of the kind alleged in the charge was provided. Bazaramba's involvement in the provision of training is not indicated in any detail in the account of VASA 6. The accounts of Gakire and Rutayisire lend the weightiest support to the charge. The Burundian refugees may have been given weapons training also for the purpose of their being able to draw on it after returning to their home county, in the civil war which broke out there after October 1993 and the start of which had to do

with the murder of the country's first Hutu president committed by Tutsi officers in the Burundian army. At the time in question, conditions in southern Rwanda remained relatively peaceful despite the war being waged in the northern part of the country.

Based on an overall evaluation, based on the evidence referred to above it has not been established to a sufficient degree of certainty that Bazaramba would have provided at the refugee camp or outside it the kind of preparatory training which could be utilised in killings and acts of violence that would have originally been intended for subsequent utilisation in the killings and acts of violence relating to the genocide. The account of Mukanusi alone, having regard to the account of Jean Kambanda as well, is not sufficient proof of Bazaramba having distributed weapons used in the killings and acts of violence, such as firearms and machetes.

7.3.2 Maraba sector and its surroundings

7.3.2.1 Five unidentified Tutsi men

Charge and response

According to the charge Bazaramba, with the intent to destroy in whole in part the Rwandan Tutsis as a group, ordered Hutus to kill Tutsis and Hutus known to be moderates, as follows:

(i) Bazaramba on 16 April 1994 ordered the killing of five unidentified Tutsi men. As a result of the order and in the presence of Bazaramba, the men were clubbed to death.

Bazaramba has contested the charge.

Evidence

Emmanuel Nzabandora, who knew Bazaramba who lived in the same sector, recounted that on 16 April 1994 at about 5 in the morning Bazaramba, Kabayiza, Ignace and Lazare, who had been on night patrol, had come to Mbanda's workshop where Nzabandora worked as a guard. They had told Nzabandora that he had to come along to see the Inyenzi who were to be killed. All had talked in the same way and at the same time. Nzabandora had gone along with the group under duress. Lazare had stabbed Nzabandora in the leg to make him come along. Lazare had ordered Nzabandora to walk ahead of the group. Nzabandora had been told that he stood guard for money while the others guarded the country for no pay. Because of this, Nzabandora also had to take part in the said activity.

Nzabandora had been put at the head of the group as they walked to Ruhuka, where there had been five Tutsi men in civilian clothing held under guard. The Tutsi men had been fleeing to Burundi when they had been caught at the road block. Kabayiza had ordered Nzabandora to kill the men. The group had not had a distinct leader under those circumstances. Bazaramba had nonetheless been there along with the others. They had said that then the Inkotanyi arrives, it will seek support from its brothers. These Tutsis therefore had to be killed before the Inkotanyi arrived. The Tutsi men had been clubbed to death immediately. Others besides Nzabandora had also taken part in the killing. A person by the name of Melchior Ngendahimama had also been there, and he had refused to confess to his complicity in this act. He had subsequently been sentenced to community service for it.

Evaluation of the evidence and conclusions

According to the charge, the Tutsi men were killed as a result of an order from Bazaramba.

According to the account of Nzabandora, Bazaramba, the reservist Kabayiza and the guard Ignace who stayed at Bazaramba's house, and Lazare had fetched him to go and kill the five Tutsi men held under guard at the road block.

In Nzabandora's understanding, the group had had no distinct leader in that situation. Bazaramba had been there along with the others. All members of the group had said the same things at the same time. The armed Kabayiza had ordered Nzabandora to kill the men.

Of the group who killed the Tutsis, the reservist Kabayiza and Bazaramba's guard Ignace lived in Bazaramba's house. This fact would strongly suggest the leadership position of Bazaramba in the group which came to fetch Nzabandora. Nzabandora did not clearly say that Bazaramba ordered the killing of the Tutsi men in the manner alleged in the charge. The order to kill would seem to have been given by Kabayiza, who had had a rifle. Bazaramba's position of leadership and the task given to Nzabandora, who was paid to serve as a guard, could in the said context have been clear to such a degree that no separate order needed to be given. Kabayiza may have acted as Bazaramba wanted. Bazaramba, Lazare, Ignace and Kabayiza would also seem to have had a common view of killing the Tutsi men. Lazare was nonetheless the person who had struck Nzabandora in the leg with his sword to make him go along with the group.

In the manner recounted in the section concerning the overall reliability of the evidence (IV4), it is possible that false denunciations were also made in the Gacaca proceedings in the hopes of significantly reducing one's own sentence. Nzabandora, who was detained on 6 December 2006, confessed to having killed people in 1994 and informed on Bazaramba on the same occasion. Nzabandora was sentenced to ten years for his crimes. He served 7 months and 25 days in prison. Nzabandora was released from prison to serve community service in July 2007, the Finnish police having interviewed him in May 2007.

On a general level, Bazaramba has argued that the charges are based on politically motivated false accusations by the current Rwandan government and on improperly obtained evidence against exiled Hutus who belonged to the elites. Bazaramba's wife Immaculée Kamuhanda was heard as a defence witness in February of 2006 before the ICTR. The international search warrant on Bazaramba was issued on 4 May 2006. Nzabandora's detention took place thereafter, on 6 December 2006. The Act on the new folk tribunals entered into force in 2004 (Organic law N:o 16/2004) and the nationwide handing down of sentences in Gacaca proceedings started on a wider scale in 2005. A person sentenced to community service may in Gacaca proceedings at least today serve the community service portion of the sentence first and also have the unconditional imprisonment portion of the sentence commuted to community service through exemplary performance of the community service. The time at which Nzabandora's case came up in Gacaca proceedings and his quick release could be based on the legislation applied and be explained by practical considerations without it being a question of the unfounded vendetta alleged by Bazaramba.

In section 7.3.2.7 B (iv) of the judgment, Nzabandora recounts a similar situation in which he was brought to the wife of a man by the name of Gedeon by Bazaramba and others. Taking into account the facts serving to undermine the overall reliability of the evidence, based on the account of Nzabandora alone, which account furthermore is not unambiguous, it has not been established to a sufficient degree of certainty that the Tutsi men would have been killed as a result of an order given by Bazaramba in the manner alleged in the charge.

7.3.2.2 Emmanuel, Dina, a Tutsi woman by the name of Agnes Mukamutesi and an unidentified Tutsi woman

Charge and response

Bazaramba, with the intent to destroy in whole or in part the Rwandan Tutsis as a group, ordered Hutus to kill Tutsis and Hutus known to be moderates, as follows:

(ii) According to the charge, Bazaramba in mid-April 1994 ordered the killing of Emmanuel Habonimana, known to be a moderate Hutu, his Tutsi wife Dina and a Tutsi woman by the name of Agnes Mukamutesi as well as an unidentified Tutsi woman in their company. As a result of the order and in the presence of Bazaramba, the victims were clubbed to death.

Bazaramba has contested the charge. Bazaramba was in hiding in his home after returning from Kibangu chapel. An acquaintance by the name of Maurice Mbayire had come to the gate of Bazaramba's house and said that a mob had killed his wife, Emmanuel Habonimana and his wife Dina. After this event, Bazaramba had not dared to leave the house before going once again to his friend's place in Kibangu.

Evidence

Witness for the prosecution **Augustin Banganakwinshi** recounted having lived in Maraba sector in Nyakizu in 1994 and having known Bazaramba, whose occupation had been headmaster of the craft school. Bazaramba and his wife had had three children. According to Banganakwinshi, Bazaramba was complicit in the acts of genocide. Banganakwinshi himself had collaborated with Bazaramba. Banganakwinshi stated that he was a Hutu by ethnicity.

On the day on which the war started, Banganakwinshi had gone to Birambo to the market square next to Bazaramba's house to look for work. In the market square, Banganakwinshi had seen Bazaramba's guard Ignace, who had been armed with a firearm. Bazaramba and Ignace had called everyone who was there to a meeting in front of Bazaramba's house. At the meeting, Bazaramba had said that everyone had to go to Rushunguriro to seek out Tutsis and burn down their houses. According to Bazaramba, he had just arrived from a meeting in Butare where it had been said that the Tutsis were to be attacked.

A teacher by the name of Emmanuel had been present at the meeting. Bazaramba had said that this Emmanuel was also a Tutsi and had to be killed. Emmanuel had assured that he was not a Tutsi and that it was all a misunderstanding. Bazaramba had urged Emmanuel to go along with the others to burn down Tutsi houses if he considered himself to be a Hutu. Bazaramba had gone to buy matches and everyone had gone together to Bazaramba's kiosk. Everyone had gone along with Bazaramba and Kabayiza because they had a firearm and Bazaramba had said that Kabayiza and Ignace would kill anyone who did not go along to burn down Tutsi houses. Bazaramba had also said that he was the leader. In Banganakwinshi's understanding, Bazaramba was also the actual leader. He had given matches to Emmanuel as well.

Banganakwinshi himself had gone along on his way because according to Bazaramba, those from Maraba had to go to the Mugano area to make sure that no Tutsis had managed to escape from there. When Banganakwinshi had come to the town hall, houses had already been on fire. By two to three in the afternoon, all Tutsis in Maraba had been killed. The Tutsis in Mugano had been gathered into one place. The Tutsis had been told that if they stayed put, nothing would happen to them. Banganakwinshi, along with others, had nonetheless attacked these Tutsis as well.

Banganakwinshi had been celebrating with the other attackers with money taken from the dead Tutsis when a person had come to bring word from Bazaramba. According to Bazaramba's message, the people in Maraba were stupid because they had done nothing but drink even though Tutsis had just attacked neighbouring areas. Banganakwinshi and the others had stopped drinking and had gone to Kizungu, where Bazaramba had told them that Emmanuel, who also had a Ugandan identity card, had lied about being a Hutu.

Bazaramba had ordered the people who were there to kill Emmanuel. Francois Mushimiyamana had reminded Emmanuel of an outstanding debt. Emmanuel had asked for mercy but Bazaramba had said that he would kill anyone who refused to kill Emmanuel. Mawuko had struck Emmanuel with a hoe and

Mushimiyamana with a machete on the head. Emmanuel had died as a result of these blows. At the same juncture, Emmanuel's wife Dina had been killed by Zabora at the lower edge of the market square. Mushimiyamana had also killed another woman. Banganakwinshi had followed others to the scene and had witnessed these killings. According to Banganakwinshi, he had not given an inconsistent account of this when interviewed. The police had not understood him and he had had to repeat himself many times over.

Witness for the prosecution **Clement Gasarasi** recounted knowing Bazaramba, who worked as a teacher at the craft school. Bazaramba had a wife who worked at the health centre, and they had children.

According to Gasarasi, Bazaramba had had an active role in the events relating to the genocide. In Gasarasi's recollection, the killing had started on 15 April. A police officer had arrived and said that people had been killed in Nyakizu. The police officer had said that the townspeople had to defend themselves so that no one would enter their sector. Gasarasi had been shopping in Birambo at the time.

Gasarasi had gone home after realising the situation was dangerous. He had taken a machete and a club and gone to Mugano. He had encountered a man driving a moped who had told him about the killings. Gasarasi had gone along with others to Nyantanga, where the group had come across Emmanuel, Dina and her two children, and the wife of a certain agronomist.

Emmanuel had denied being a Tutsi and had shown the group his identity card. Emmanuel had told Bazaramba, who had arrived on the scene, "Do you not recognise me, we used to work together." Emmanuel had shown Bazaramba his identity card. Bazaramba had replied that he did not know what Emmanuel was, and had gone away. Moments later Bazaramba had returned and said that all of these Tutsis had to be killed. He had meant Emmanuel, Dina and her two children, and the agronomist's wife.

The attack squad to which Gasarasi had belonged had not immediately obeyed Bazaramba, because people had seen Emmanuel's identity card and because Emmanuel had helped them burn down Tutsi houses in Rushunguriro. At the end, this team had nonetheless killed all of these Tutsis, including Emmanuel, with a mace. Bazaramba had no longer been present when the killings took place. Bazaramba had been driving around in his car in the vicinity at the time. After the killing of the Tutsis, Bazaramba had left the location. This had been the only situation in which Gasarasi had observed Bazaramba give an order to kill people.

Witness for the prosecution **Paul Karasira**, who lived in Rushunguriro cell of Maraba sector in Nyakizu commune, recounted knowing craft school headmaster and subsequent UEBR youth responsible Bazaramba, who had lived on Birambo market square in Rushunguriro.

According to Karasira, Bazaramba had played a major role in the acts of genocide in 1994. When the murders had started in Maraba on 15 April 1994 between noon and two in the afternoon, Bazaramba had asked everyone to a meeting in Birambo market square and had ordered people to seek out and kill Inyenzi. In fact, Karasira and other Hutus had fled the uneasy conditions to Birambo market square, because the Tutsis had fled to the mountain. Karasira had fled specifically to Bazaramba because Bazaramba was thought to be a person of authority who could protect their safety. Bazaramba had had a firearm. There had been a great many people in the market square. Bazaramba had told all the people there that they had to go and seek out Inyenzi. According to Bazaramba, some Inyenzi had gone to the UEBR centre. Bazaramba's orders had to be obeyed, like the orders of leaders in general.

Before Bazaramba had ordered people to go and seek out Inyenzi, he had already ordered people to go and burn down people's houses. This had taken place on the same day, at roughly 9.30–10 in the morning, which Karasira had heard from others in the afternoon, as he had not been present in the morning.

Karasira had gone with others to the UEBR centre. Bazaramba, VASA 10, Johnson and Zagora had brought out three persons, who had been Dina, the agronomist's wife and Dina's niece. Later he had heard from others that the agronomist's wife had been called Agnes. When these persons had been brought out, everyone had looked at each another wondering, were these now the Inyenzi of which Bazaramba had spoken. A man by the name of Emmanuel Rukuenzi who worked as a teacher at the school where Bazaramba was the headmaster had also been on the scene. This person had been with the group that had been out all day burning down houses. He had said that he was a Hutu. When Bazaramba and the others had brought these three persons out from the UEBR premises, Emmanuel had already been in front of the house. Bazaramba had asked Emmanuel if he really was a Hutu. After this, Francois Mushimiyamana had asked Emmanuel to pay back the money he owed him. Emmanuel had replied to Mushimiyamana that he did not have any money. Instead of the money, Emmanuel had given Mushimiyamana a mattress. After this, everyone had doubted whether Emmanuel really was a Hutu. Emmanuel had told Bazaramba that certainly Bazaramba knew him to be a Hutu because they had worked together, but Bazaramba had only laughed at him. Emmanuel had asked Sengoga, who was also a teacher at the same school, to help him. Sengoga had said that he knew nothing about Emmanuel, however. Emmanuel had shown his identity card to Bazaramba, who had shown it to others, but no one had believed that Emmanuel was a Hutu. Then Francois Mushimiyamana had killed Emmanuel with a club. Bazaramba had been present when this happened at the middle one of the three roads leading to the UEBR centre.

Witness for the prosecution **Valens Murindangabo** recounted that he knew Bazaramba very well because Bazaramba had been his immediate neighbour. Bazaramba had been responsible for the development work of the Rwandan Baptist Church (UEBR).

According to Murindangabo, Bazaramba was responsible for organising the genocide in two different sectors, Maraba and Kibangu. The genocide had started in Rushunguriro on Friday, 15 April 1994 between 9 and 10 in the morning. Many people in the centre of Birambo had wondered what they should do. Then Bazaramba had given a speech saying that the burnings of Tutsi houses and killings of Tutsis had already started elsewhere. According to Bazaramba, that was what was to be done in this area as well. Murindangabo had gone home to Rushunguriro to take his cows inside. Then he had returned to Birambo market square. Before arriving in Birambo, Murindangabo had seen along the way an attack led by Bazaramba and his son Nilsson along with Lazare Kobagaya, Ignace and Kabayiza. Bazaramba's son Nilsson had had boxes of matches, and by two in the afternoon, the burning down and destruction of Tutsi houses in Rushunguriro had followed. Murindangabo had gone along with a group he had met to burn down houses. Bazaramba had led this burning attack. All of the matches used in the incident came from Bazaramba's kiosk. On the same day, at around three in the afternoon, a second attack squad which Bazaramba had asked to come had arrived from Mugano. Johnson Nshirimana had gone to fetch them on Bazaramba's moped. Murindangabo had indeed been present in Birambo but had not taken part in this attack. He could see from the market square to the place where the killings had taken place. Murindangabo had heard from others that Dina, the agronomist's wife, Dina's niece and a teacher by the name of Emmanuel had died in that attack. Murindangabo knew these people well and he had been a part of the group that had buried them.

Witness for the prosecution **Francois Mushimiyamana** recounted having lived in Nyakizu commune, Maraba sector in 1994 and knowing Francois Bazaramba, who before studying abroad had worked as the headmaster of the craft school. Bazaramba had been complicit in the acts of genocide in 1994. Firstly, he had been complicit in the killing of four Tutsis in Nyantanga, namely Dina Dusabe, the craft school teacher Emmanuel, the wife of Nyakizu's agronomist, and Dina's niece on her sister's or brother's side. The others had not been sure of their ethnicity but Bazaramba had said that they were Tutsis. Mushimiyamana himself had been present when these Tutsis had been killed in the afternoon of 15 April 1994.

Mushimiyamana and others had been in Mugano on 15 April 1994 when Johnson Nshirimana had arrived there on Bazaramba's motorcycle and told them that they had to come to Nyantanga to help because there

had been Inyenzi there. It was the impression of Mushimiyamana that Bazaramba had given the order to come and fetch them to Nyantanga, because Nshirimana had arrived on Bazaramba's motorcycle. Mushimiyamana and the others had gone from Mugano to Nyantanga as ordered. Mushimiyamana had talked with Emmanuel and had gone with him to collect a debt from him. The other Tutsis had not yet been at the location when the group from Mugano had arrived there. They had been told that the Inyenzi had been in hiding. When the Tutsis had been brought to the location, it had been noticed that they were in fact neighbours and acquaintances, and no one had wanted to kill them. Bazaramba had nonetheless said that they were Tutsis.

Emmanuel had been considered a Hutu because he had been involved in burning down Tutsi houses and because of this, he had not been killed straight away. Bazaramba had nonetheless assured the crowd that Emmanuel was a Tutsi for certain, which Bazaramba had known because he had worked at the same place as Emmanuel. According to Mushimiyamana, Bazaramba was complicit in the death of Emmanuel because Bazaramba had said that Emmanuel was a Tutsi, and Tutsis had to be killed. These Tutsis had been spared because they were people's neighbours and friends from Rushunguriro and no one had wanted to kill them. According to Mushimiyamana, this attack squad from Mugano, to which he himself had belonged, had killed these four Tutsis using clubs and spears. Mushimiyamana himself had had a club. There had also been people who had come from Rushunguriro among the attackers. Mushimiyamana did not recall their names, but at least Viateur Rubumba, Theoneste Ruzigamanzi, Johnson Nshirimana, Balthazare Badaharanwa, Francois Bazaramba and Runenga Karabanda had been there.

Witness for the prosecution **Theoneste Ruzigamanzi** recounted having lived in 1994, at the time of the acts of genocide, in Maraba cell, Maraba sector, Nyakizu commune, and knowing Bazaramba.

According to Ruzigamanzi, Bazaramba was also behind the death of the man by the name of Emmanuel. Many had died in Maraba already on 15 April 1994. Bazaramba and Lazare had come round at night to ask who all were dead here. Others had told them that some people had died, at which time Bazaramba had asked whether Kazimbani and Kamatari were dead. They were. On the same day, at roughly half past two in the afternoon, Bazaramba had asked a person by the name of Johnson to tell people in Birambo that everyone had to come along to kill Tutsis. No one was allowed to stay behind. Ruzigamanzi and the others had gone to Birambo, where they had met Bazaramba and Johnson in front of the UEBR house. A man by the name of Emmanuel, who had been a teacher at the school where Bazaramba was the headmaster, was nearby, as was an agronomist's wife and a woman by the name of Dina. Bazaramba had ordered these people to be killed because he no longer wished to see them. Ruzigamanzi had kicked Emmanuel. After this, Emmanuel had tried to escape but the others had caught up with him and he had been killed. The aforementioned Tutsi women had also been killed. Francois Mushimiyamana had clubbed Emmanuel to death. Mushimiyamana had also killed the women with blows from his club. Bazaramba had no longer been present when Emmanuel and the others were killed. According to Ruzigamanzi, Bazaramba had later rewarded Mushimiyamana, who had found Emmanuel's mattress, by offering him beer.

Witness for the prosecution **Viateur Rubumba** recounted having lived in 1994 in Maraba sector in Nyakizu commune. Before his party political activities, he had been a cell leader. He had been chosen to this position by the people living in the cell. Rubumba recounted knowing Bazaramba.

Bazaramba had been complicit in acts of genocide in Nyakizu. Bazaramba was the one who had given Rubumba, Mushimiyamana, Viateur Kambanda, Clement and Ruzigamanzi the order to kill the man by the name of Emmanuel because he was a Tutsi. Emmanuel had been a teacher at the same craft school as Bazaramba.

The aforementioned group had been in Mugano when an ambulance driver by the name of Johnson had arrived there. He had spoken about Inyenzi in Birambo who had to be killed. Johnson had said that the order

had been given by Bazaramba. When the group had gone to Birambo, they had found no Inyenzi, only Tutsis. Since the killing of Tutsis had started on that day, the group had started to kill Tutsis. They had hesitated when it came to Emmanuel, however, because according to his identity card, he was a Hutu. However, Bazaramba had said that he knew Emmanuel and that he was a Tutsi. Emmanuel had been a teacher at the school where Bazaramba had been headmaster. At Bazaramba's urging, Rubumba and the others had killed Emmanuel in Nyantanga. A woman by the name of Dina, who worked at the health centre, and the agronomist's wife as well as a young girl who had worked for Dina had been nearby. In addition, a child had been killed in Gisengi Valley. These people were killed with a mace. Bazaramba had been present the whole time.

According to witness for the prosecution **Jean Marie Byiringiro**, Bazaramba had brought the people together to kill Tutsis. He had been one of the initiators. According to Byiringiro, between 9 and 10 in the morning of 15 April 1994 a police officer had come from the police station on his bicycle telling people that they had to protect their safety. After this, Bazaramba had arrived together with Ignace and Lazare Kobagaya. They had urged everyone to close the doors of their homes and had fetched people out into the street for a meeting. When asked, Byiringiro stated that Viateur Kambanda had also been present at the meeting, which was attended by 50–60 people in all. The meeting had been held between the houses of Kobagaya and Bazaramba and it had only lasted 10 minutes. The main speaker at the meeting had been Bazaramba. It had been said at the meeting that the war had started and that Tutsis were to be killed. A person unknown to Byiringiro had spoken out against the killing of Tutsis. The people at the meeting were urged to kill Emmanuel, who was a teacher, and a farmer, both of whom were Tutsis. These two were only known Tutsis to be present at the meeting that morning.

Bazaramba had told the crowd at the meeting, "Ask Lazare why the Tutsi have to be killed." Lazare had replied to Bazaramba, "Leave it alone, they are so young, they do not understand." Bazaramba had said that the Tutsi had to be killed because they were the enemy. If the Tutsi were not killed, they would take over the country. Since the crowd nonetheless refused to kill Tutsis, they were told to go to the mountain to burn down Tutsi houses. A person by the name of Alphonse was ordered to go to his older brother's store to fetch matches. When Alphonse had brought the matches, the people attending the meeting had gone to the mountain via Bazaramba's kiosk to burn down Tutsi houses. Bazaramba had taken more matches from the kiosk. Byiringiro himself had taken part in the house-burnings, as had the other persons attending the meeting. At the meeting, Emmanuel had said that he was not a Tutsi but a Hutu. When his identity card was checked, it showed that he was a Hutu. Therefore Emmanuel as well had been given matches and he had also been ordered to burn down Tutsi houses.

According to Byiringiro, Emmanuel had gone along because otherwise he would have been killed on the spot. In the evening, however, there had been an attack in the village centre in which Emmanuel had died. Byiringiro had seen people coming from the village with Emmanuel's things, including a mattress and some chairs. Byiringiro had asked what had happened and he had been told that they had killed Emmanuel because he was a Tutsi. Byiringiro had been told, "How could you spend the entire day with the enemy like this, he could have killed you." According to Byiringiro, Bazaramba had not been present when this took place. Bazaramba had given the original order to kill Emmanuel, however.

Witness for the defendant **VASA 5** recounted that before Emmanuel had died, he had come to Birambo market square to meet a friend and also greeted the witness' family. From there, Emmanuel had gone on towards Rushunguriro. VASA 5 has been told that at the market square, Emmanuel had come across a group of robbers who had come from Kibangu and had stolen cows and pigs from Mount Nyakizu. Emmanuel had been taken somewhere when people had gone to burn down houses. After this, the thugs and Emmanuel had gone to Emmanuel's place. The witness did not understand how Francois Mushimiyamana had ended up with the group of robbers. After midday, the witness had seen from his house that there were lots of people at Emmanuel's house. The witness and his older brother had talked about it and decided to look in Birambo

market square for a place where they could hide their Tutsi mother. The witness' older brother had stayed with his mother and the witness had gone to Birambo market square. He had noticed that there were a lot of people at Emmanuel's place and Dina had been there as well. VASA 5 had quickly headed for the health centre. When he returned, he had seen Mushimiyamana make Emmanuel and Dina sit down in the road. Mushimiyamana had been holding a club with which he had clubbed Emmanuel and Dina to death. After this, Mushimiyamana had taken the bodies into the nearby woods. The witness had gone on his way and when he had passed the group, his and Mushimiyamana's gazes had met, at which point Mushimiyamana had said to the witness, "Now there is only one Tutsi missing who needs to be killed and that is your mother." The witness had hurried home and talked about the incident with his older brother. The witness and his brother had decided to visit Lazare, Mbanda and Bazaramba to ask for advice, because they were like parents to them. The witness had asked Lazare, Mbanda and Bazaramba why people wanted to kill the witness' mother. When the witness was separately asked whether he was absolutely certain that Bazaramba had been present at the time, the witness replied yes, this did happen. Lazaro, Mbanda and Bazaramba had told the witness and his brother that they did not know what had happened and had urged the witness and his brother to go home. They would be coming by later. Later on, Lazaro, Mbanda and Bazaramba had said that it would be best for the witness' mother to hide out at the health centre, which she subsequently did.

Witness for the defendant **Johnson Nshirimana** recounted that he had known a teacher by the name of Emmanuel in Nyakizu. Nshirimana had seen him die. Nshirimana had been on his way to the market square along a shortcut, because it had been war. While beneath Emmanuel's house, Nshirimana had heard noise. Emmanuel had been with the people who had been burning houses. When they had returned, the rest of the group had turned on Emmanuel and called him Inkotanyi. The group had gone to Emmanuel's place to check if he had any weapons. They had taken Emmanuel's possessions and killed him at the intersection of three roads. When two women had come to see what had happened there, they too had been killed at the same intersection. Nshirimana had recognised Francois Mushimiyamana among the killers. Nshirimana had known him as a shopkeeper from the market. Bazaramba had not been present during these events.

Nshirimana recounted recalling that before the aforementioned events, at around four in the afternoon on that same day he had taken Bazaramba to Rusanza's place in Kibangu. Before this, at around noon, Nshirimana had taken the children of Bazaramba and Kamuhanda to Nkawkwa, to Immaculée's parents. The witness did not recall the number of children. The witness had also visited Immaculée's parents on previous occasions.

Witness for the defendant **VASA 10** recounted having been a student in Gikongoro in 1993 and having stayed in Nyakizu only during the holidays. In December 1993, he had had two weeks' holiday, after which he had not returned to Nyakizu until the Easter break. The witness had seen Bazaramba often during his Easter break in 1994. Bazaramba had lived very close to the parish facilities where the witness had lived. The witness had been on holiday for a week when the president's plane had been shot down. The downing of the plane had frightened people and no one had dared go to work any more. People had been told that the Inkotanyi, i.e. the Tutsi, had shot down the plane, and this had caused tension and unrest between the Hutus and the Tutsis. According to the witness, there had not been any killings in his area at first, because the prefect of Butare had been a Tutsi. However, this prefect had been dismissed by the government, and then the trouble had started in that area as well.

The witness did not know whether Bazaramba had seen Mushimiyamana kill Dina, who had worked at the health centre, the agronomist's wife, and the man by the name of Emmanuel. These people had been killed on the grounds of the parish, at a crossroads, and the witness had seen the killings for himself. According to the witness, not many people had been present then, but the witness did not know if Bazaramba had been at such a distance that he could have seen the events from farther away. Besides Mushimiyamana and the witness, the church pastor as well as other people who lived near the church had been at the scene. The witness was under the impression that Mushimiyamana had committed the acts alone. This had surprised people, because Mushimiyamana was known as a shopkeeper. Then it had been thought that Mushimiyamana

perhaps committed the acts in order to get their money. The witness later recounted having seen Mushimiyamana meet Dina, the agronomist's wife and Emmanuel in the road. Mushimiyamana had killed the two women immediately but had only killed Emmanuel later, at Emmanuel's house. The witness had not observed any discussion preceding the killing of Emmanuel.

Witness for the defendant **Charles Mbanda** recounted that he had not been present when the man by the name of Emmanuel had died, but the witness had seen the people who had taken Emmanuel to be killed. This group had consisted of Francois Mushimiyamana, Viateur Rubumba and Jabal. There had been many others as well, but these were the ones whom the witness recalled. The witness himself had been in a car when he saw the incident and he had not gotten out of the car.

Witness for the defendant **Joy Sifa** recounted having heard, while at the health centre, that Dina's killer had been a person by the name of Francois Mushimiyamana.

Evaluation of the evidence

Based on the witness accounts, which are consistent in the main, Bazaramba asked i.a. Hutus from the Mugano area to Nyantanga, to the UEBR or Rwandan Baptist Church centre, where according to him Inyenzi had been observed. No actual RPF enemy soldiers or military forces sympathetic to them were discovered there, however, but civilians who were ethnic Tutsis. In the manner recounted by Karasira, besides Emmanuel, who was already in front of the centre and who had taken part in the house-burnings earlier in the day, Emmanuel's wife Dina, the agronomist's wife Agnes and an unidentified Tutsi woman, possibly Dina's niece, had been brought out from inside the UEBR centre. In talking about Emmanuel Rukuenzi, Karasira actually meant Emmanuel Habonimana, i.e. the teacher from the school where Bazaramba was the headmaster.

Rubumba, Ruzigamanzi, Gasarasi and Banganakwinshi related the order given by Bazaramba to kill at least Emmanuel Habonimana. The alleged order was given on Friday, 15 April 1994, on which date the burning of Tutsi houses and the killing of Tutsis in the region started. There had been uncertainty as to Emmanuel because he had taken part in the burning of Tutsi houses and he had carried an identity card which indicated that he was a Hutu. Bazaramba had known Emmanuel best, having worked with him at the same place, and had named him to be a Tutsi, which alone in the said context put Emmanuel in immediate mortal danger. According to Banganakwinshi, Emmanuel had asked for mercy but Bazaramba had said that he would kill anyone who refused to kill Emmanuel. According to Ruzigamanzi, Bazaramba's order had concerned all of the Tutsi individuals brought to the scene, whom Bazaramba no longer wished to see. Gasarasi gave a similar account.

Nshirimana's account speaks against the charge. His account with its precise times as to taking Bazaramba to Kibangu is not very credible relative to the precision of other recollections. Nshirimana's account is inconsistent with facts appearing from the accounts of Bazaramba himself and VASA 5. VASA 5 recounted having met Bazaramba soon after the killing of Emmanuel in Birambo. The witness' recollection appears credible because Mushimiyamana had before this threatened to kill the witness' Tutsi mother and the matter thus credibly stuck in the witness' mind. Bazaramba himself recounted having been at home, and thus not in Kibangu, when the agronomist came by to tell Bazaramba about the killings of his wife, Emmanuel and Dina.

The accounts of VASA 5 and VASA 10 also speak against the charge inasmuch as they did not see Bazaramba give any orders in the said circumstances or otherwise take part in the killings. It may also be a question of the said witnesses only making observations of the events at a later stage. The account of VASA 10 does not rule out the possibility that Bazaramba would have been nearby at the time of the incident. VASA 5 and VASA 10 gave differing accounts of the killing of Emmanuel.

In the manner recounted in greater detail in the section of the judgment concerning the overall reliability of the evidence, it is possible that also false denunciations have been made in the Gacaca proceedings in the hopes of significantly reducing one's own sentence. Of the witnesses lending the strongest support to the charge, Rubumba, Ruzigamanzi, Gasarasi and Banganakwinshi were imprisoned for many years and went through Gacaca proceedings. Rubumba was imprisoned for approximately seven years from the year 2000. His Gacaca trial was held in 2008. Ruzigamanzi was imprisoned for approximately ten years from 1997. He was sentenced to 12 years in Gacaca and was released after the trial. Gasarasi was imprisoned from 1997 to 2005. Banganakwinshi was imprisoned for nearly eight years from the year 2000. He was sentenced in Gacaca to ten years in 2007. Of the aforementioned witnesses, only Gasarasi recounted having been abused in connection with his arrest. At the time, he had been asked nothing about Bazaramba. The hearing of the witnesses left the impression that they related the events absent any external coercion. They all had personal, first-hand information of the same set of events. Their observations as to the events and Bazaramba's involvement are also consistent in respect of essential elements. Their accounts have been deemed reliable in the overall evaluation even though the overall reliability of the evidence is subject to a certain degree of justified doubt.

Conclusions

In contesting the charge, Bazaramba recounted having been either at the chapel in Kibangu or at home at the time of the events addressed. In the manner recounted in the section of the judgment concerning Bazaramba's alibi (IV 7.1), Bazaramba had the opportunity of taking part in the offence alleged in the charge.

Based on the accounts of Rubumba, Ruzigamanzi, Gasarasi and Banganakwinshi in particular, it has been established that Bazaramba ordered and incited in mid-April 1994 the killing of Emmanuel Habonimana, his Tutsi wife Dina, a Tutsi woman by the name of Agnes Mukamutesi and an unidentified Tutsi woman in their company. As a result of the order and the incitement, the victims were killed by using various weapons such as clubs and swords. The orders were given in a situation where the intent was to destroy in whole or in part the Rwandan Tutsis as a group.

The witnesses gave conflicting accounts as to whether Bazaramba was present at the time of the killings. The fact of whether Bazaramba remained on the scene after giving the order to kill the Tutsis is of no material legal relevance to resolving the matter.

7.3.2.3 Bellansilla Mugagashugi

Charge and response

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba ordered Hutus to kill Tutsis and Hutus known to be moderates, as follows:

(iii) According to the charge, after mid-April Bazaramba ordered the killing of a Tutsi woman by the name of Bellansilla Mugagashugi. As a result of the order and in the presence of Bazaramba, the woman was killed with a club and/or a spear.

Bazaramba has contested the charge

Evidence

According to **Bazaramba**, owing to news announced of the advancing of the RPF guerrillas the townspeople had started on 14 April 1994 to take flight and hide. Some of the people were hiding in Nyantanga health centre, others had fled farther afield. Among those hiding in the inner courtyard of the health centre were both Hutus and Tutsis. Bazaramba's family had also hid there. There had been some 100 persons all told, most of them women and children. It had been said on the radio that the RPF had taken control of the entire country. The situation had been so tense that even the slightest movement in the night had had everyone panicking. People had been truly terrified. Because the health centre was situated in a valley, the following day it had been decided to take shelter on higher ground where any possible attack could be better detected. The group had therefore moved into hiding in the Catholic chapel in Kibangu. The group had been attacked there, however, and they had returned to the health centre in Nyantanga.

There had been three Tutsi women hiding out at the health centre: Bellansilla Mugagashugi, Francine and Virginie. Bazaramba had discussed the matter with his wife and they had decided to hide the women in the health centre's delivery room, which the attackers might not enter. Of the women, Mugagashugi had been known to Bazaramba in advance, as she was a relative of his, but he had not really known the other women.

When the women had been hidden, Bazaramba had decided to go back home with his family. Bazaramba's family had been very frightened and they had not dared leave the house at first. Bazaramba had decided to go to a new hiding place in Kibangu with his family. Since it was possible that the attackers might come to his house or to the health centre looking for Tutsis in hiding, he and his wife had decided that Mugagashugi was to be found a new place to hide. Virginie and Francine had gone to their in-laws' place. Bazaramba and his wife Immaculée Kamuhanda had fled to hide at the place of their friend Joseph Rusadanza four kilometres away. Rusadanza had had two wives and a large house. It had been a large family. Bazaramba and his wife had stayed with the wife by the name of Skolastics. The name of the child of Skolastics and Joseph was Jean Mukama.

Witness for the prosecution **Antoine Ibambasi** recounted that Bazaramba had been involved in the acts of genocide of 1994. According to Ibambasi, at the time Bazaramba had had the same authority as a sector leader. Bazaramba had been responsible for security in the area and he had been the leader of the attackers. Ibambasi knew who Bellansilla Mugagashugi was. She had been buried close to Bazaramba's kiosk. Mugagashugi had been a part of the same family as Bazaramba was through his adoptive father. When the attacks had started, Mugagashugi had fled to Bazaramba's place in Birambo with her child. Upon arriving there, Mugagashugi had gone to the place where Bazaramba's wife worked, the health centre in Nyantanga, and had hidden there, while her son had run to the school. The son had been hit in the back of the neck with a machete and he had died later at a Red Cross hospital. Witnesses heard in a Gacaca court had said that Mugagashugi had first hid out with the others at the health centre but that then Bazaramba had invited Mugagashugi to hide out at his home, because she was his relative. Instead of hiding Mugagashugi, Bazaramba had sent men to kill her while he was sleeping in his own bed. Ibambasi found it hard to understand how Bazaramba had turned on the Tutsi and had not taken care of the children of his adoptive father John Nyunzuguru. The Tutsis whom Bazaramba supposedly had tried to shelter were now all dead. Ibambasi wondered why Bazaramba could not have given them a place to hide at his own home. Bazaramba had come up to Ibambasi at a bar to say that certainly he must have known what to expect, what would happen.

Witness for the prosecution **Mathias Munyaneza** recounted that Bazaramba's wife had hidden the woman by the name of Bellansilla Mugagashugi at the health centre. Bazaramba had had an obligation to look after the family of Mugagashugi's father because he had given Bazaramba a farm and had taken Bazaramba as his adoptive son. Bazaramba had built the house where Mugagashugi's father lived and had paid the wages to the people who farmed their land.

According to Munyaneza, at the end of the war Bazaramba and Kabaziya had gone together to the health centre at approximately five in the morning to tell Mugagashugi that she could go safely to her own home. Munyaneza had seen them walking past the market square. On that day, Bazaramba had had with him a weapon that had earlier been used as a walking cane and during the war as a weapon. It had been like an upside-down spear. Kabayiza had had a long-barrelled rifle which had not, however, been a Kalashnikov.

Bazaramba had ordered the Interahamwe to seek out and kill Mugagashugi. According to Munyaneza, he had been with the Interahamwe when the Interahamwe had found Mugagashugi outside her home. When seeing that the Interahamwe were approaching, Mugagashugi had hidden in a tree or a bush. The Interahamwe had captured Mugagashugi. Mugagashugi had asked the Interahamwe where her children were. The Interahamwe had taken Mugagashugi along with them but Mugagashugi had broken out into a run towards Bazaramba's house screaming that she was going to her brother's place. However, Mugagashugi had been killed by being struck with a sword before she had reached Bazaramba's house. She had died instantly. The killing had been carried out by Narcisse Murindabigwi. Bazaramba had still been at the market square at the time. The witness did not know that Mugagashugi had been hiding at the health centre. No one had known it.

When Mugagashugi was running away from the Interahamwe, she had screamed that Bazaramba had told her that she could return home. In addition, Munyaneza had heard Bazaramba and Kabayiza talking about the matter when they had returned from the health centre that same morning at about half past seven. They had still been carrying the same weapons as earlier in the morning. The attack squad had at this stage already gathered on the Nyantanga road at the water tap. The attack squad had been large and the people in it had come from Kibangu. Munyaneza had known some of the people in this group, for example Martin and Bertin. Since there had been so many people, he could not recall everyone who was there. The Interahamwe had asked Munyaneza if he had been sheltering Inyenzi in his house and had taken him along with them.

Witness for the prosecution **Valens Murindangabo** recounted that one day during the war, a woman by the name of Bellansilla Mugagashugi, who was also a daughter of John Nyunzuguru, had been on her way from Rushunguriro to Bazaramba's house. She had appeared as if she had been beaten with a club. Mugagashugi had asked to be left in peace and said that she was going to her brother Bazaramba to fetch water. Bazaramba had refused to let Mugagashugi into his house and had asked her what had happened. After this, Bazaramba had joined the group that had chased after Mugagashugi. Bazaramba had whispered something to a man from Kibangu, whom Murindangabo had not known. After this, the man had taken a sword and pushed it into Mugagashugi, who had fallen to the ground. Bazaramba had asked the man next to him for a club and had beaten Mugagashugi with it. There had been many people present. Murindangabo himself had watched what was happening from Birambo market square, approximately 20 metres away. According to Murindangabo, he had not remembered the killing of Mugagashugi in 2006 when questioned by the Rwandan prosecution authorities (Parquet Generale). The interview had been conducted in prison and the prisoners had not been given much time to tell their stories. According to Murindangabo, a few attempts had been made to make him change his story. These attempts were made by Jean de Dieu Maniraho, Bazaramba's wife, a Burundian police officer and Bazaramba's defence counsel Ville Hoikkala, among others.

Witness for the defendant **Immaculée Kamuhanda**, who is the wife of Bazaramba, recounted that the relatives of John Nyunzuguru were jealous of Nyunguzuru for the help Bazaramba had given him. Of the witnesses called by the prosecution, at least Antoine Ibambasi, Augustin Karambizi, Apollinaire Rugimbana, Ildephonse Rwibasira, Lavelian Rwaduka and Mathias Munyaneza were relatives of Nyunzuguru. John Nyunzuguru was a Tutsi whose acquaintance Bazaramba had made through his son Gatera. Nyunzuguru had adopted Bazaramba. Bazaramba had become the head of the family and it was his duty to take care of the members of the family and to provide them with advice and guidance. Bazaramba had helped Gatera, Bellansilla Mugagashugi and Odette Samuranga, all children of Nyunzuguru, in many ways. Bazaramba had also helped other relatives of Nyunzuguru such as Ibambasi, Karambizi and Rwibasira.

Once the troubles started, Kamuhanda had hidden Mugagashugi along with others at the health centre which she managed, after which Kamuhanda and Bazaramba had returned to their home. According to Kamuhanda, Bazaramba had been at home all night and the next two to three days, because there had been unrest outside. Kamuhanda had not seen Bazaramba go anywhere during this time; he had been either inside the house or in the inner courtyard the entire time.

According to Kamuhanda, her family had been so frightened that they had left their home to go hide out in Kibangu with a person by the name of Rusadanza for approximately two weeks. Bazaramba had been at the hiding place the entire time. He had only left the house once or twice in the company of Kamuhanda when she had been fetched to work at the health centre. Bazaramba had waited for Kamuhanda at the health centre while she worked. Kamuhanda had once gone to the health centre on her own when a woman in labour had come to ask for her help. Rusadanza's son Jean Mukama had also been at the house, but he had gone out sometimes to meet other young people. In addition, Mukama was a shopkeeper who carried out his business i.a. at the Burundian border, where he had gone from time to time.

According to Kamuhanda, the situation had gotten worse after Mugagashugi had been killed. The killers had come for her at the home of Kamuhanda and Bazaramba. According to Kamuhanda, she and Bazaramba had had two houses at the time, one in Birambo and the other in Rushunguriro. Kamuhanda and Bazaramba had been told that Mugagashugi had been fetched from the house in Rushunguriro and been killed. They had learned of this first in Kibangu. After returning to Birambo, the villagers had told them about it as well.

In the understanding of witness for the prosecution **Francois Mushimiyamana**, Bazaramba had been complicit in the killing of the three women because they had been hiding in Nyantanga health centre, which had been managed by Bazaramba and his wife. Bazaramba had been a part of the group which had gone to tell these women that it was safe to leave their hiding place even though a killing squad had been set up for them. According to the witness Bazaramba was present when these three women were killed.

Witness for the prosecution **Martin Ntahonkinye** recounted that in 1994, he had lived in Rushunguriro in Maraba sector. He had known Bazaramba, who had been the headmaster of the craft school. Ntahonkinye's house had been a 15-minute walk away from Bazaramba's house. Ntahonkinye had also heard that Bazaramba had been the youth leader for the Baptist churches. Ntahonkinye recounted that he had heard of Bazaramba's complicity in the acts of genocide at information-gathering events. He had not personally seen Bazaramba kill anyone.

When the war had started on Friday at around 11 in the morning, Mugagashugi and her three children had sought shelter at Bazaramba's place because Bazaramba was her brother. In the morning of Tuesday, 19 April, Ntahonkinye had left Birambo market square for his home to check that the doors of his house had not been broken down. When he had arrived at his house, he had seen men next to his house and Mugagashugi's house, and these men had asked Mugagashugi where she had been for all that time. Mugagashugi had replied that she had been in the maternity ward at Nyantanga health centre, where Bazaramba's family had hidden her. On Monday evening, Bazaramba had nonetheless come to tell Mugagashugi that the war was over and that she could return to her home. On Monday evening, Mugagashugi had nonetheless heard people talking and she had taken fright and hidden. On Tuesday, Mugagashugi had returned to her home. She had told a neighbour to tell Bazaramba that the war was not over after all.

On the way to Bazaramba's house, Mugagashugi had met two men from Kibangu who had asked her where she was going. Mugagashugi had replied that she was on her way to Bazaramba's place to fetch water. The men had killed her with a spear and a machete near Bazaramba's house. According to Ntahonkinye, Bazaramba had not been present when this happened. Neither had Bazaramba come to the woman's burial.

Witness for the defendant **Joy Evangelique Sifa** recounted that after the death of her husband she had moved from Kigali to Nyakizu, to a house at the edge of Birambo market square next to Bazaramba's house. Sifa had been a teacher at Nyantanga elementary school. Sifa herself was a Tutsi by ethnicity. Her husband and her mother had been Hutus.

Sifa had had a peaceful relationship with Bazaramba and his family, they had all been like one family. They had given each other water and firewood whenever necessary. The fact that Bazaramba was a Hutu and Sifa was a Tutsi was of no relevance and it caused no problems between the two.

After moving to Birambo, Sifa had learned that Bazaramba was the son of Nyunzuguru and that Bellansilla Mugagashugi was his sister. Mugagashugi had come round every now and then to help Bazaramba. After the plane of the Rwandan president had been shot down on 6 April 1994, everyone had been frightened. No one had known what they should do. A curfew had been declared in the country and most of the people had stayed in their homes. One day Sifa had heard the police officer Silas Nzagtiwami go by her house on his bicycle on the way from Maraba and shout in a loud voice that many people had died in Maraba and that the Inkotanyi had killed people. The police officer had had a firearm. People had come out of their houses into the market square and everyone had been frightened. The police officer Silas had given the order of going to the health centre. According to Sifa, everyone had gone to the health centre together with their neighbours and children, Hutus and Tutsis alike. Bazaramba had also been there. After Silas' announcement, a panic had broken out and everyone had left for the health centre, leaving their belongings behind. They could see from Birambo market square that houses were on fire in Rushunguriro.

According to Sifa, they had stayed at the health centre for a couple of days. Nothing in particular had been done there. Everyone had been frightened because they had heard that the Inkotanyi had killed people. Besides the police officer Silas, they had also heard this from a man by the name of Karimera. Karimera had said in a loud voice that the war had started and that the Inkotanyi had come to Rushunguriro. According to Sifa, there had been no soldiers present. It had nonetheless been clear that Dina, Agnes and Emmanuel had already been killed and that the killer of Dina, for example, had been a person by the name of Francois Mushimiyamana. Sifa had heard about this at the health centre together with the others. While at the health centre, Sifa had not paid attention to whether or not Bazaramba was present.

Karimera had urged everyone at the health centre to flee to Kibangu church. It was the understanding of Sifa that everyone had gone there. There had been a lot of people at Kibangu. There had also been people there who had traditional weapons such as machetes and wooden clubs. These people had said that if any people in the Inkotanyi forces were sighted, they had to be stopped and not allowed to enter Kibangu. According to Sifa, Inkotanyi referred to Tutsis. There had been so many people in Kibangu that Sifa did not recall whether she had seen Bazaramba there. At least she had not seen Bazaramba since until this trial.

According to Sifa, they had only spent one day and one night in Kibangu, after which they had heard rumours of an Inkotanyi attack and had decided to return home. Upon arriving at her home, Sifa had been unable to sleep and had stayed up with her children. In the morning, she had seen two men outside her house with spears in their hands, and there had been blood on the other man's spear. The men had ordered her to come to them but Sifa had not gone, thinking she would escape through the window and go to Bazaramba. There had been two windows in Sifa's house, one facing Bazaramba's house and the other the yard. Sifa had looked out the window to Bazaramba's house and tried to call his name, but the house had seemed to be very quiet. When she had looked out the other window, she had to her surprise seen a large group of people who were shouting at Bazaramba's house for him to bring out the Tutsis he was sheltering in his home. Sifa had been terribly frightened and she had thought that the attackers had killed her children. Francois Mushimiyamana had been surprised to see that Sifa was still alive. Mushimiyamana had said that he would let Sifa live for now but would come back later to kill her.

In Sifa's understanding, it was possible that the attackers had intended to kill Bazaramba as well because he had helped and sheltered Tutsis and was a friend of the Tutsi. On the other hand, Hutus were also killed for their property. The attackers had also shouted that if they did not find Mugagashugi, they would know that Bazaramba had hidden her like he was known to have hidden also other Tutsi women who had not been found. The attackers had been shouting words like Inyenzi, Inkotanyi, and snake.

Later on another group of attackers, comprising at least persons by the name of Kalixtre and Ruziahana, had found Mugagashugi in Rushunguriro, in the house built by Bazaramba. Mugagashugi had run for Bazaramba's house with the attackers chasing her and had screamed for help in a loud voice, asking people to help her. A second, larger group of attackers who had arrived at the scene earlier had shouted that Mugagashugi had to be killed. Sifa had watched from outside her house and had seen how Kalixte had killed Mugagashugi under a large tree by driving his spear into the back of the prone Mugagashugi's neck. Sifa had not seen other weapons besides the spear used in the killing. There had not been many other villagers watching. Afterwards, the attackers had told Sifa that it would soon be her turn.

Witness for the defendant **VASA 5** recounted that the woman by the name of Bellansilla Mugagashugi had been a personal acquaintance of his. The witness had seen Mugagashugi die. The witness had later heard from his mother that before her death, Mugagashugi had been hiding in Bazaramba's cow shed on the mountain in Rushunguriro. On the day that Mugagashugi died, the witness had seen her running down from the mountain. The witness had been standing in front of Bazaramba's house. Mugagashugi had come across the man who had led the attacks and this man had killed her with a spear in front of the gate of the witness' home. The man had attacked Mugagashugi alone and had killed her alone. The killer had been a part of a group who had come from Kibangu. There had also been other people present when Mugagashugi was killed. According to the witness, Bazaramba had not been at home at the time, the killing instead taking place during the time at which Bazaramba had not come to his house at all. No one had mentioned Bazaramba's name in connection with the killing.

VASA 10 recounted hearing that Bellansilla Mugagashugi had hidden in Bazaramba's former house, at which people had come for her and where she had been killed. Bazaramba had been in Kibangu at Rusanza's place at the time. The witness had heard about the killing of Mugagashugi while in the market square. At the same time he had seen Bazaramba and Immaculée arriving from Rusanza's place, and Bazaramba had been told of the death of Mugagashugi. Bazaramba had not heard about it earlier and he had been very much saddened, especially since Mugagashugi had been fetched from Bazaramba's house.

Witness for the defendant **Johnson Nshirimana** had been in the market square talking with friends when he had heard shouting and seen the Danish missionaries' guard running after a woman. They had not come all the way to the market square, however. Instead, the woman had run into a small stand of trees and had tried to get to a woman by the name of Sifa. When turning into the stand of trees, the woman had slipped on the grass, which had allowed the man to catch up with her, and he had cut off her head with a machete. Nshirimana had not seen there being anyone there with a spear. Neither had Nshirimana seen Bazaramba there. Nshirimana and the others had not gone to see about the woman because they had been scared. When the man had been running after the woman, the witness had not had time to observe the woman's identity. It was only after the woman had died that someone had gone to look at the body and come to tell the witness that it had been Bellansilla Mugagashugi.

Evaluation of the evidence

The genocide started in Nyakizu in earnest on Friday, 15 April 1994. Bazaramba's movements at the time in question between the health centre and the chapel in Kibangu and the hiding place situated in Kibangu are recounted in greater detail in the section dealing with Bazaramba's alibi (IV 7.1). Bazaramba has been held to have had an opportunity to take part in the offence referred to in the charge.

According to Bazaramba, they had returned from the Catholic chapel to Nyantanga health centre where Bellansilla Mugagashugi and two other Tutsi women had been hidden. As he recounts it, when leaving his house for the new hiding place in Kibangu Bazaramba had decided that Mugagashugi, who was hiding out at the health centre, would be taken to another hiding place. What progress was subsequently made on this matter has not become clear from Bazaramba's account. According to the response, Mugagashugi would have been hidden in another house owned by Bazaramba in the mountains.

Antoine Ibambasi, who served as sector advisor in his village after the genocide and took part in the investigation into the genocide, recounted his understanding to be that Bazaramba had sent men to kill Mugagashugi after first calling her back home from her hiding place at the health centre. This understanding of Ibambasi is apparently based on accounts given by witnesses heard in Gacaca proceedings and not on his own observations.

Valens Murindangabo recounted that Bazaramba had joined the group which had killed Mugagashugi. According to Murindangabo, before the killing of Mugagashugi Bazaramba had whispered something to a man from Kibangu whom Murindangabo had not known. After this, the man had taken a sword and driven it into Mugagashugi, who had fallen to the ground. Thereafter, Bazaramba had asked the man next to him for a club and had beaten Mugagashugi with it. When testifying, Murindangabo appeared nervous and related certain events from the past in far too much detail for all of it to be his personal observations. The account of Murindangabo differs from those of Sifa and Munyaneza as concerns the actions of the Bazaramba. None of the other witnesses recounted Bazaramba having beaten Mugagashugi with a club.

According to Munyaneza, Bazaramba had ordered the Interahamwe to seek out and kill Mugagashugi. At the time of her killing, Bazaramba had been in a nearby market square. Munyaneza could be presumed to be in possession of reliable information on this, as Munyaneza recounted having been with the Interahamwe the entire time that Mugagashugi was discovered and killed. On the other hand, Munyaneza did not see for himself Bazaramba go into the health centre, although his views about this fact as well were clear.

According to Mathias Munyaneza, during the war he had sold to Bazaramba eucalyptus trees and not the piece of land referred to in item 20 of the list of land holdings appearing as the prosecutor's exhibit 15, which land according to Munyaneza is in his possession. It has been claimed on behalf of Bazaramba that John Nyunzuguru had bequeathed to Bazaramba property that would otherwise have been inherited by Munyaneza. The last-mentioned facts have not been estimated to have diminished the reliability of the witness' account to any significant degree.

Conclusions

It is undisputed in the case that Mugagashugi was hidden at Nyantanga health centre and that she left there and at the time of the killing was on her way to the house of her adoptive brother Bazaramba at the edge of Birambo market square, at which juncture she was killed.

According to the charge, the order to kill Mugagashugi was given by Bazaramba. Some of the witnesses were under the impression that Bazaramba would have lured Mugagashugi away from the health centre and ordered a group who belonged to the Interahamwe to kill her.

Bazaramba was not seen going into the health centre. Bazaramba, who knew that Mugagashugi was hiding out at the health centre, related his intention of finding Mugagashugi another hiding place. In the morning of the day of the incident, Bazaramba was seen on the move, possibly in the direction of the health centre. Mugagashugi told her attackers that Bazaramba had given her permission to return home. Bazaramba and the reservist Kabayiza who stayed at his house were heard discussing the very same matter. The facts recounted

above suggest that Bazaramba would have told Mugagashugi that she could leave her hiding place at the health centre. The foregoing might have been due to Bazaramba intending to find Mugagashugi another place to hide at his house in the mountains in Rushunguriro, or to Bazaramba intending to deceive Mugagashugi into leaving her hiding place and have her killed with the help of the Interahamwe.

The order to kill Mugagashugi alleged to have been given by Bazaramba was recounted by Ibambasi, Munyaneza and Murindangabo. The account of Ibambasi is apparently not based on his personal observations. The account of Murindangabo differs from the other evidence presented with regard to the manner of killing and Bazaramba's presence. The reliability of his account is suspect. The strongest support to the charge is lent by the account of Munyaneza, according to whom Bazaramba had, however, been in the nearby market square at the time of Mugagashugi's killing. Sifa and VASA 5 also had not observed Bazaramba to have been present, let alone to have taken part in the killing of Mugagashugi. The order to kill alleged to have been given by Bazaramba as related by Munyaneza could have been given already earlier, at another juncture.

The accounts relating to the order to kill alleged to have been given by Bazaramba, the manner of killing and Bazaramba's presence contain significant discrepancies and uncertainty factors to such a degree that reasonable doubt remains as to Bazaramba's guilt in respect of the killing of Mugagashugi.

7.3.2.4 12-year-old Tutsi boy by the name of Mujemana

Charge and response

According to the charge, Bazaramba after mid-April 1994 with the intent to destroy in whole or in part the Rwandan Tutsis as a group ordered Hutus to seek out and kill Tutsis who had gone into hiding and to kill them. After the following persons were discovered, Bazaramba gave the order to kill them:

- (i) An approximately 12-year-old Tutsi boy by the name of Mujemana. As a result of an order given by Bazaramba and in his presence, the boy was clubbed to death.

Bazaramba has contested the charge.

Evidence

Witness for the prosecution **Athanase Nkurunziza**, who is a carpenter by occupation, recounted that in 1994 he lived in Rushunguriro cell in Nyakizu, in a place called Gahene close to Birambo market square. In 1994, he had been working at Charagabo's wood shop in a place called Mugaramba, three kilometres from Birambo market square. He had passed the house of Francois Bazaramba every day on his way to work. According to Nkurunziza, the Bazaramba he knew had been complicit in the acts of genocide.

According to Nkurunziza, Bazaramba and others had come to visit him early in the morning. Bazaramba had had a rifle and he had led a group consisting of Shirugigo, Gahigi, Nuoari, Murindabigwi and Ndabamenye in addition to Bazaramba and Byiringiro. They had been members of the MDR youth wing JDR. Bazaramba was their leader because he was a member of the MDR and the leader in charge of security in the area.

The purpose of the group's visit had been to locate Nkurunziza's wife's nephew Mujemana, who had been approximately nine years old at the time. The boy lived in another sector of the commune in Gikongoro but visited Nkurunziza often. The group had not discovered the boy at Nkurunziza's house, however. The group had gone to two other neighbouring houses as well to look for the boy. After this, the group had gone to the house of Nkurunziza's father Laurent Baryanga, which had stood approximately 120 metres away from

Nkurunziza's house. There the group had found the boy they were looking for. Baryanga's house was in plain sight from Nkurunziza's house and he had been able to watch what happened from his yard.

Nkurunziza had not seen what had happened inside his father's house but he had watched the situation outside and had seen the group searching for the boy in the other houses and then going into Nkurunziza's father's house. Once they had found the boy, the group had taken him and Nkurunziza's father as well as a woman who did not have an identity card. The woman had been returned after the group had been paid money. She had been let go already at Bazaramba's kiosk.

The group was taking Nkurunziza's father to the commune as well because at first he did not have anything to offer to the group, and he had sheltered the enemy, i.e. an Inyenzi. Nkurunziza had paid 3,500 francs to Byiringiro, who had taken the money to the rest of the group. As a result of this, his father had been let go. Nkurunziza did not believe that Bazaramba had taken any of the money for himself. Nkurunziza's father had told him that same day that the boy had been killed. Byiringiro had killed the boy, but of this Nkurunziza had only learned at a Gacaca trial, when people had confessed their crimes. When the boy had been taken, a person belonging to the group had taken Nkurunziza's goat.

The account of witness for the prosecution **Celestin Nkeramihigo** had not been taken into consideration as evidence on the grounds recounted in the section of the judgment concerning the allegation of torture (IV 5).

Witness for the prosecution **Apollinaire Ndamabenye** recounted having seen Bazaramba, who was known to him, take part in the genocide only at one location. Ndamabenye had been involved in the night patrols in Maraba. Bazaramba had come to Ndamabenye in Rushunguriro with the night patrollers and had asked him and others in his patrol to come to their aid in Rushunguriro, because there had been people there who had attacked them. Ndamabenye and the others had been told that Tutsis were to be killed because they were enemies of the state.

Bazaramba had sent troops to the place of Athanase Nkurunziza to fetch his wife. Ndamabenye had also gone into the house, where they had found Athanase, his wife and their children. They had been awoken by the arrival of the troops. Athanase and his wife had gotten down on their knees to ask Bazaramba not to kill Athanase's wife, as she was not the only Tutsi wife on that hill. Bazaramba had consented. Ndamabenye had been told that Bazaramba had been given a goat and yams for this. The MDR people had sold the goat and the yams and had given money to the group who had killed the boy found at Baryanga's place.

After this, Bazaramba had sent the troops to Baryanga's place to look for Tutsis. Ndamabenye had not wanted to go to Baryanga's place but Bazaramba had forced him to go there. Bazaramba had given Ndamabenye a flashlight so that he could look for a Tutsi boy who according to Bazaramba was supposed to be hiding in the house. Bazaramba had been armed with a firearm and a stick, and he had told Ndamabenye that if he refused this assignment, he would end up badly. Bazaramba had had the power and the opportunity to beat Ndamabenye if he had not obeyed.

Outside Baryanga's house Bazaramba had yelled that the door was to be opened. Ndamabenye had gone inside together with Byiringiro – who was called Shirobiko at the time – and Sinamenye. Inside, they had found a boy who had been taken to Maraba where the boy, aged 12–13, had been killed because he was a Tutsi. According to Ndamabenye, Bazaramba had led this group, which had comprised i.a. Gahigi, Mulindanwali, Byiringiro, Sinamenye and Ndibanje.

Bazaramba had also said that if the boy was discovered in the house, something had to be done to Baryanga. Bazaramba had ordered Baryanga to kill the boy, but he had refused. After this, Ndamabenye had left the others in Rubuganka and had gone home with permission from Bazaramba. Ndamabenye had had to go home to milk his cow, as he had no wife at home, only children. Later that same evening Ndamabenye had heard

from others that Baranga had been repeatedly urged to kill the boy and that he had repeatedly refused. In the end, the boy had been killed in Maraba. Ndamabenye was not given any money in connection with the killing of the boy.

Witness for the prosecution **Jean Marie Byiringiro** recounted knowing Bazaramba because they had been neighbours.

Byiringiro had also been involved in the road block patrols. When patrolling at a road block, Bazaramba and others had arrived at around half past three and told them that the patrol was to go and kill Tutsis. Byiringiro, the others on the patrol, at least Apollinaire Ndabamenye, Sinamenye and Ndibange, and Bazaramba had gone to the house of Baryanga that morning. A young Tutsi boy of approximately 12 years had been there. Byiringiro had not known the boy. At Bazaramba's urging the patrol had ordered Baryanga, who was a Hutu, to kill the boy. Baryanga had refused, however. Bazaramba had been present at the time. Bazaramba had ordered the patrol to take the boy and Baryanga to the sergeant. Bazaramba had even written a letter to the sergeant saying that Baryanga was also to be considered the enemy because he had not agreed to kill the boy. Bazaramba had given the letter to Rwanyanza, who could read. Byiringiro himself could not read back in 1994.

On the way to the sergeant, Baryanga had asked the patrol to kill the boy because he had feared that he himself would also be killed when they reached the sergeant. Since Byiringiro had been a friend of Baryanga and since Baryanga had given the witness 2,500 francs, Byiringiro had killed the young boy himself. This had taken place close to the health centre, 1.5 km from the place where the boy had been found. Apollinaire Ndamabenye had seen this act. According to Byiringiro, the patrol had thus not obeyed Bazaramba, because they had wanted to release Baryanga. Byiringiro had not understood Bazaramba to have given him any actual order to kill. There had been no consequences either when Byiringiro and others had refused to kill Emmanuel and the farmer at the meeting. According to Byiringiro, Hutus who had harboured Tutsis had also had to be killed. On the said morning, Byiringiro and the others had not even known that there was a war on. However, Bazaramba was a wise person and people therefore did what he urged them to do. According to Byiringiro, people had not agreed to do quite everything, however. Byiringiro personally had not spent much time with Bazaramba. Nonetheless, the way it had been was that when Bazaramba ordered that something be done, it had to be done.

Evaluation of the evidence

In the manner recounted in greater detail in the section of the judgment concerning the overall reliability of the evidence, it is possible that also false denunciations have been made in the Gacaca proceedings in the hopes of significantly reducing one's own sentence. Of the witnesses lending support to the charge, Nkurunziza first made statements about Bazaramba and other perpetrators in 1995. He was detained on 15 November 2006 on suspicion of complicity in genocide and released in August of 2007, having been found not guilty by an appellate court. Ndamabenye had been detained in November 2006 and released in October 2007. According to Ndamabenye, he had first spoken about Bazaramba's involvement when the nationwide gathering of information for the Gacaca trials started, estimated to have been in 2004. According to Ndamabenye, no one had ever pressured him into relating these things. At the time of the information-gathering, he had been a secretary in his home village. Ndamabenye had originally seen sentenced to 27 years. In 2007, he was given a ten-year reduction to his sentence. He had finally served 11 months in prison. He had still been in prison when the Finnish police had interviewed him, and had served community service after that. Byiringiro had been in Karubanda prison in Butare from 22 August 2000 to 27 March 2007. When he had been arrested, he had been suspected of crimes which he had not committed. Byiringiro had confessed to the authorities in 2005 that he had burned down Tutsi houses, and in 2006 that he was complicit to some degree in the killing of a 12-year-old boy. He had not dared confess to his crimes earlier because he had feared that he would be killed for them. When the Gacaca trials had started, prisoners had been given an

opportunity to confess to their crimes and thus receive a lesser sentence for them. The witness had made his full, voluntary confession in February 2007, when Byiringiro had finally confessed that he himself had killed the 12-year-old boy. The observations of the aforementioned witnesses of the events and Bazaramba's involvement are consistent in all material respects. The witnesses, as members of the same group led by Bazaramba, observed the events first hand. Hearing the witnesses left the impression that they recounted the events without any improper motivation. Their accounts have been deemed reliable in the overall evaluation, although the overall reliability of the evidence is subject to a certain degree of justified doubt.

Based on the consistent accounts of the witnesses, the following has been established in the case:

A group led by Bazaramba was looking for a Tutsi boy of approximately 12 years of age hiding in the area at a time when after the peak of the genocide, efforts were being made to locate surviving Tutsis and the Hutus who had sheltered them. The group first went to look for the boy at Nkurunziza's place and at two other neighbouring houses. Then the group went to the house of Nkurunziza's father Baryanga, which had been about 120 metres away from Nkurunziza's house. It was here that the group discovered the boy they were looking for.

In consequence of Bazaramba's urging Baryanga, who was a Hutu and had been sheltering the boy, was ordered to kill the Tutsi boy whom he had been sheltering. Baryanga refused, however. After this, Bazaramba ordered the patrol to take the boy and Baryanga to the communal authorities. According to Bazaramba, based on the order from the prefecture any apprehended enemy was to be captured and handed over to the communal authorities, who then forwarded the prisoners to the prefecture. Relating to this mission, Bazaramba had written a letter addressed to the sergeant stating that Baryanga was also to be considered an enemy because he had not agreed to kill the boy. A lady apprehended at the same juncture who did not have an identity card was released soon after the group had been paid money.

On the way to the sergeant, Baryanga asked the patrol to kill the boy because he feared that he himself would be killed once they reached the sergeant. Byiringiro, who was a friend of Baryanga, had released him against monetary payment. Byiringiro had then killed the young boy himself. According to Byiringiro, the patrol had thus not obeyed Bazaramba because they had wanted to release Baryanga.

Conclusions

According to the charge, an approximately 12-year-old Tutsi boy by the name of Mujemana was killed with blows from a club as a result of an order given by Bazaramba and in his presence.

Searches for Tutsis hiding in the area were conducted after the initial stage of the genocide. The search for the Tutsi boy organised by Bazaramba had to do with the intent to seek out and kill Tutsis because of the ethnicity. Bazaramba would seem to have had a firm intent to have the said Tutsi boy killed. The boy was not killed immediately as a result of the order from Bazaramba. A summary understanding of the course of events had been deemed to be an element of the intent required for the offence. Byiringiro had not understood Bazaramba to have given him an actual order to kill the Tutsi boy. He would seem to have arrived at this decision independently. Bazaramba ordered the patrol to take the boy and Baryanga to the communal authorities. The death of the Tutsi boy came about in a manner that relative to Bazaramba's actions was unexpected to such a degree that Bazaramba did not intentionally commit the offence referred to in the charge.

7.3.2.5 Agnes and an infant child

Charge and response

According to the charge, Bazaramba after mid-April 1994 with the intent to destroy in whole or in part the Rwandan Tutsis as a group ordered Hutus to seek out and kill Tutsis who had gone into hiding. After the following persons were discovered, Bazaramba gave the order to kill them:

(ii) A Tutsi woman by the name of Agnes and her infant child. As a result of an order given by Bazaramba and his presence, the victims were clubbed to death.

Evidence

The account of witness for the prosecution **Elias Ntezilyayo** had not been taken into consideration as evidence on the grounds recounted the in the section of the judgment concerning the allegation of torture (IV 5).

Witness for the prosecution **Valens Murindangabo** recounted having lived in 1994 in Rushunguriro cell of Maraba sector in Nyakizu commune. He had known Bazaramba very well because Bazaramba had been his immediate neighbour. Bazaramba had been responsible for the development work of the Rwandan Baptist Church (UEBR). Murindangabo recounted that Bazaramba had also been responsible for the death of a woman by the name of Beatrice and her child. Bazaramba had held a meeting in Birambo and at this meeting, he had said that every house in Rushunguriro had to be searched to discover the Tutsis who had gone into hiding. Bazaramba had left Birambo in the company of people who had come from Kibangu and gone to Rushunguriro, where they had again met up with two other attack squads from Maraba and Muhambara. This attack had resulted in the discovery of Beatrice and her child at the place of a woman by the name of Rose. Beatrice had been the wife of John Nyunzuguru and the child had been his. Rose had been a neighbour of Murindangabo and their two houses had stood very close together. Bazaramba had been in front of Murindangabo's house and had refused to let Murindangabo enter his home before he had searched the house to see if there was anyone inside.

Two men by the name of Ernest Tamweke and Rubawisa had taken Beatrice and her child out of Rose's house. Beatrice had tried to assure them that she was a Hutu but Bazaramba had said that he knew the woman to be Tutsi and had given the order to kill the woman and the child. Elias Ntezilyayo had taken a club and beaten Beatrice to death with it. Bazaramba had given the order to kill the woman's child as well. The child had been two years of age. According to Murindangabo, there was also another woman by the name of Beatrice and she was the wife of Gedeon.

Witness for the prosecution **Jean Kambanda** recounted that he had discovered the grave in which lay the body of the wife of John Nyunzuguru. The name of the woman had been Agnes and she had been a Tutsi. Agnes had not been the lawful wife of John Nyunzuguru, however. After Nyunzuguru died Agnes had gone to live with another man.

Evaluation of the evidence

According to the charge, Bazaramba ordered Hutus to seek out and kill Tutsis who had gone into hiding, as a result of which the woman by the name of Agnes and her infant child had been killed.

According to Jean Kambanda, the wife of Nyunzuguru had been called Agnes and after Nyunzuguru died, she had gone to live with another man. Although Murindangabo gave the woman's name as Beatrice, he probably means Agnes, as he recounts the woman having been the wife of Nyunzuguru. Antoine Ibambasi recounted having returned to Nyakizu in 1989, by which time John Nyunzuguru had already died. The fact that Murindangabo in 1994 believed an infant child of approximately two years of age to be the child of John Nyunzuguru, who had passed away years earlier, is not of decisive relevance.

In another context, the account of Murindangabo was considered perhaps too detailed for it to consist only of his personal recollections. In this instance, however, Murindangabo recounted a situation which he had experienced in person, of the woman and child being found at the place of Murindangabo's neighbour Rose, and of Bazaramba at the same juncture also having Murindangabo's house searched. Murindangabo's testimony in respect of the discovery of the woman and child seemed credible.

However, having regard to the time elapsed from the events and the uncertainty factors relating to the overall reliability of the evidence, based on the account of Murindangabo alone it has not been established to a sufficient degree of certainty that Bazaramba committed the offence alleged in the charge.

7.3.2.6 Tutsi man by the name of Anderea

Charge and response

According to the charge, Bazaramba after mid-April 1994 with the intent to destroy in whole or in part the Rwandan Tutsis as a group ordered Hutus to seek out and kill Tutsis who had gone into hiding. After the following persons were discovered, Bazaramba gave the order to kill them:

(iii) A Tutsi man by the name of Anderea. As a result of an order given by Bazaramba and his presence, the man was clubbed to death.

Bazaramba has contested the charge.

Evidence

Witness for the prosecution **Paul Karasira**, who lived in the Rushunguriro cell of Maraba sector in Nyakizu commune, recounted knowing Bazaramba, who had been the headmaster of the craft school and then the youth responsible of the UEBR and who had lived on Birambo market square in Rushunguriro.

Karasira recounted that on the 3rd of 4th of May he had been ordered to kill a certain man. Karasira had gotten married a few days earlier and the village had not known whether his wife was a Hutu or a Tutsi. Lazare had claimed that Karasira's wife was a Tutsi, who should have been brought to be killed. Karasira had on several occasions refused to bring his wife. Finally, Lazare had said that they would bring along a man whom Karasira was to kill. Otherwise, the wife of Karasira would be killed.

The said man, in Karasira's understanding, had come from Nyakizu and had been stopped in Birambo market square. He had been stopped by a group comprising at least Bazaramba, Lazare, Johnson, Mushimiyamana, Pheneas, Sibomana, Rugamba, Mathias Munyaneza and Tamasen. The man had had no chance to escape, as he had been surrounded. According to Karasira, the circumstances had been such that he and his wife did not feel at all secure. Had Karasira not killed this man, he and his wife would have lost their lives, because Karasira would have been considered to have collaborated with the Inyenzi. According to Karasira, Bazaramba had been a party to this matter together with Lazare. Ultimately Karasira had killed the man with a club near Bazaramba's house. Later on he had heard that the name of the killed man had been Anderea.

Witness for the prosecution **Mathias Munyaneza** recounted that he knew Bazaramba, who had first taught people to sew. Then Bazaramba had gone to Cameroon to study and had become the headmaster of the craft school. Bazaramba had been an important person because he had been a headmaster and his wife had been a midwife and had managed the health centre. According to Munyaneza, at the start of the war locals had been afraid to take part in the killings. Then Bazaramba had brought in Burundian refugees and soldiers who had

had a hut in Nyakizu commune. Together with the Interahamwe, they had taken part in the killings of Tutsis. Munyaneza had seen Karasira kill a shopkeeper by the name of Anderea who had been of Nyakizu origin. Everyone worked together to kill Tutsis. Bazaramba had helped the Interahamwe.

Evaluation of the evidence and conclusions

According to Mathias Munyaneza, during the war he had sold to Bazaramba eucalyptus trees and not the piece of land referred to in item 20 of the list of land holdings appearing as the prosecutor's exhibit 15, which land according to Munyaneza is in his possession. It has been claimed on behalf of Bazaramba that John Nyunzuguru had bequeathed to Bazaramba property that would otherwise have been inherited by Munyaneza. The last-mentioned facts have not been estimated to have diminished the reliability of the witness' account to any significant degree.

In the manner recounted in greater detail in the section of the judgment concerning the overall reliability of the evidence, it is possible that also false denunciations have been made in the Gacaca proceedings in the hopes of significantly reducing one's own sentence. Once Karasira pled guilty, he was detained on 1 November 2006 and was put in the Nyakizu commune jail. He had spent eight days at the jail and then been transferred to Gikongoro prison. Karasira's case had been heard in a Gacaca trial on 8 November 2006 and the verdict had been handed down that same day. In connection with his confession, Karasira had informed on other persons, Bazaramba included. As Karasira tells it, he was at no point pressured or coerced into relating these matters. According to Karasira, in the Gacaca court he had said what he had seen and what others had told at Gacaca trials about Bazaramba. Karasira had been sentenced to ten years' imprisonment. He had been released from prison on 2 August 2007. Karasira continued to serve a sentence of community service, however. The Finnish police interviewed Karasira on 22 May 2007.

Karasira recounted the events in a seemingly reliable manner. It is plausible that the events were memorable for him, as the life of his wife had been at risk if Karasira had not killed the Tutsi man in the manner recounted. Munyaneza, who according to Karasira was involved in the capture of the Tutsi man, recounted having seen the event but did not relate any details as to Bazaramba's involvement.

According to the charge, the killing was carried out as a result of an order given by Bazaramba. According to Karasira, Bazaramba was a part of the group which stopped the Tutsi man. In respect of the killing of the Tutsi man by the name of Anderea, based on the account of Karasira the most active role would, however, seem to have been played by a person by the name of Lazare. According to Karasira, Bazaramba had been a party to the matter along with Lazare. The fact on which Karasira bases his view of Bazaramba's complicity remains unclear. In the overall evaluation of the evidence, reasonable doubt of Bazaramba's guilt remains in this respect.

7.3.2.7 Tutsi woman by the name of Beatrice

Charge and response

According to the charge, Bazaramba after mid-April 1994 with the intent to destroy in whole or in part the Rwandan Tutsis as a group ordered Hutus to seek out and kill Tutsis who had gone into hiding. After the following persons were discovered, Bazaramba gave the order to kill them:

(iv) A Tutsi woman by the name of Beatrice, who was the wife of a man by the name of Gedeon. As a result of an order given by Bazaramba and in his presence, the woman was clubbed to death.

Evidence

Witness for the prosecution **Emmanuel Nzabandora** recounted having lived in 1994 in Rushunguriro in Maraba sector and knowing by name Bazaramba, who had been a headmaster and worked for the Protestant church.

In the morning of 15 April 1994, Nzabandora had just come from his field to Birambo where he had heard Bazaramba giving a speech near his home. There had been many people there, men, women and children alike. Bazaramba had said, “If you want to force out the enemy, you have to burn down their houses. Can you not see that others have already started.” Nzabandora had received the impression that the enemy had been the Tutsis. When Bazaramba had given his instructions to the people, a group of attackers had gone to burn down houses in Rushunguriro. Nzabandora had also gone along, as had a man by the name of Emmanuel Habonimana, although the latter would not have wanted to go. All houses owned by Tutsis had been burned. Nzabandora himself had taken part in the burning of roughly eight houses. Bazaramba and Havana and the others in their company had told them whose houses to burn, because they had known the people living in Rushunguriro. In Nzabandora’s understanding, it had been plain as day that failing to obey Bazaramba’s instructions could lead to death. Bazaramba had had a rifle. When the killing had started in Maraba, people were already being killed elsewhere.

In the morning of 16 April 1994 at around five in the morning the people who had been on night patrol had come to Mbanda’s workshop where Nzabandora worked as a guard. The people had been Bazaramba, Kabayiza, Ignace and Lazare. They had told Nzabandora that he had to come along to see the Inyenzi who were to be killed. Nzabandora had taken this to mean that the country had been attacked by the Inyenzi. Nzabandora had not gone with the group of his own free will. Lazare had stabbed Nzabandora in the leg to make him come along, however. Nzabandora had been told that he stood guard for money while the others guarded the country for no pay. Because of this, it was his duty to take part in the said activity. Lazare had ordered Nzabandora had been made to walk at the front of the group. The witness had been taken from Mbanda’s workshop to Ruhuka, where five Tutsi men in civilian clothing had been killed on the order of Kabayiza.

Later on, on 18 April 1994 at around nine in the morning the patrol group had come again to fetch the witness from Mbanda’s workshop. This time, the group had comprised at least Karangera, Bazaramba, Pheneas and Murindangabo. They had asked Nzabandora to come along because they wanted to show him something. Nzabandora had thought at first that they were going on patrol rounds, but the others had said that Bazaramba had ordered them to go the place of a man by the name of Gedeon to kill his wife. Nzabandora knew Gedeon, because he was a doctor. In Nzabandora’s understanding, Gedeon’s wife could not be allowed to live because she was a Tutsi and had spoken with the Inkotanyi. Gedeon’s wife had had a child with her and Nzabandora recalled Bazaramba saying that the child was to be taken to its father. The woman had been taken along the road to a forested valley farther away from the house. It had been the road to Butare and Birambo. In the valley Nzabandora, Murindangabo and Karangera had clubbed the woman to death. The woman had been killed on the order of Bazaramba. Bazaramba had been the leader of this group.

Witness for the prosecution **Valens Murindangabo** recounted knowing Bazaramba very well because Bazaramba had been his immediate neighbour. Bazaramba had been responsible for the development work of the Rwandan Baptist Church (UEBR). According to Murindangabo, in May Bazaramba had sent Johnson Nshirimana and Ignace to Rushunguriro, where Murindangabo had been patrolling. They had told the patrol that Bazaramba wanted to see them in Birambo. Other people from Ruhaka had also come along. Bazaramba had told the group that an Inkotanyi attack was underway in the centre of Nyantanga. Bazaramba had sent Murindangabo and the others there with Kabayiza, who had had a rifle. Bazaramba had promised to send more troops if necessary. In Nyantanga, Murindangabo had met Gedeon and asked him if the Inkotanyi were there. Gedeon had replied that there were no Inkotanyi, only his wife and child. Gedeon’s wife had been a Tutsi. Murindangabo and the others had gone back to Birambo, where they had told Bazaramba that there were no people in particular in Nyantanga, only Gedeon’s wife and child. The group had not thought it

necessary to conduct any searches there. However, Bazaramba had said that this woman was the Inkotanyi of whom he had spoken. According to Bazaramba, the woman's uncle was Habyarimana, who had been the prefect of the area. The group had gone back to Nyantanga. Ignace had taken Gedeon to Gahene. Gedeon's wife and child had been inside the house. Gedeon had locked the door but Johnson had smashed the lock with a hammer. When the woman had heard people barging into the house, she had fled the house through a window opening into the street. Pheneas Ntazaramba had pointed a flashlight at the woman and ordered her to stop. The woman had stopped at once and Kabayiza had caught her.

The group had taken the woman to the intersection of three roads some 80 metres away from her home, the roads leading to the church and the health centre. It was here that Emmanuel Nzabandora had killed the woman with a club. Murindangabo considered himself to be complicit in this killing and had confessed his crime.

Evaluation of the evidence and conclusions

In the manner recounted in the section concerning the overall reliability of the evidence (IV4), it is possible that false denunciations were also made in the Gacaca proceedings in the hopes of significantly reducing one's own sentence. Nzabandora, who was detained on 6 December 2006, served 7 months and 25 days in prison. Then, in July 2007, he continued to serve his 10-year sentence as community service. The Finnish police interviewed him in May 2007. On a general level, Bazaramba has argued that the charges are based on politically motivated false accusations by the current Rwandan government and on improperly obtained evidence against exiled Hutus who belonged to the elites. Bazaramba's wife Immaculée Kamuhanda was heard as a defence witness in February of 2006 before the ICTR. The international search warrant on Bazaramba was issued on 4 May 2006. Nzabandora's detention took place thereafter, on 6 December 2006. The Act on the new folk tribunals entered into force in 2004 (Organic law N:o 16/2004) and the nationwide handing down of sentences in Gacaca proceedings started on a wider scale in 2005. A person sentenced to community service may in Gacaca proceedings at least today serve the community service portion of the sentence first and also have the unconditional imprisonment portion of the sentence commuted to community service through exemplary performance of the community service (Article 80 as amended on 19 May 2008). The time at which Nzabandora's case came up in Gacaca proceedings and his quick release could be based on the legislation applied and be explained by practical considerations without it being a question of the unfounded vendetta alleged by Bazaramba.

As Nzabandora tells it, at no point was he pressured to tell things about Bazaramba. Nzabandora had attended a meeting where people were told about the advantages of Gacaca trials. Nzabandora had been urged to confess to his crimes. At the same time, he had been told that he also had to give the names of accomplices. They had been told that they had the right to confess their crimes and to apologise. Nzabandora had told about Bazaramba already either when confessing his crimes in 2006 or while in prison. In hearing Nzabandora, no facts in particular came to light that would undermine the reliability of his account, whereas Murindangabo seemed nervous when giving his testimony.

The main elements of the accounts of Nzabandora and Murindangabo are consistent. The woman was taken along the road to a forested valley farther away from the house, where Nzabandora, Murindangabo and a third person had then killed the woman with a club. Nzabandora and Murindangabo were in the same group which killed Gedeon's wife and they may be presumed to have first-hand knowledge of the events. In relation to the events, Nzabandora recalled Bazaramba saying that the child was to be taken to its father before the child's mother was killed. A detail such as this bolsters the credibility of Nzabandora's account. In section 7.3.2.1 A (i) of the judgment, Nzabandora relates a similar situation in which he was fetched by i.a. Bazaramba.

Bazaramba has not been established to have been at the actual scene of the killing. This fact is of no material legal relevance. Bazaramba's role, in the manner indicated in the accounts of Nzabandora and Murindangabo, was a fairly active one. Bazaramba ordered the woman to be killed. Murindangabo's account also indicates that according to Bazaramba, the uncle of the killed woman had been the Tutsi prefect of Butare, who as also killed during the genocide.

Regardless of the overall uncertainty factors attaching to the evidence, it has been established to a sufficient degree of certainty that Gedeon's wife was clubbed to death on the orders of Bazaramba.

7.3.3 Cyahinda church and its surroundings

Charge

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba between 15 and 18 April 1994 led some of the attacks on the buildings and surroundings of the church located in Cyahinda sector. Attacks of several hours' duration were made at least on 15 April and 17 April. During the attacks, Bazaramba killed several Tutsis. Bazaramba also gave orders leading to the killing of Tutsis.

When news of the threats against and first killings of Tutsis and moderate Hutus spread around the southern parts of Butare prefecture, Tutsis and moderate Hutus sought shelter and sanctuary i.a. in Cyahinda church. Churches were known as places where violence would not extend. The authorities moreover had urged the Tutsi to gather at the church, announcing that their safety could thus better be guaranteed.

Between 15 and 18 April, the church came under constant attack by several Hutu groups, each with their own leaders. The attacks were a part of the genocide planned and prepared in advance at the national level. Among the groups was also the group led by Bazaramba, which besides gendarmes and former and current soldiers also comprised civilians enlisted or coerced into participation especially from the Karamba camp of Hutu refugees from Burundi as well as from elsewhere in Nyakizu commune. At least some of these civilians had been trained in killing and acts of violence by Bazaramba and third parties. The group led by Bazaramba had the mission, along with the other groups, to kill all Tutsi who had sought refuge in the church. With this intent, Bazaramba gave orders to attack and kill. Bazaramba also personally took part in the attacks and killed several Tutsis with the gun in his possession.

Roughly 37,000 Tutsi were killed in the attacks on Cyahinda church and its surroundings. Only some of the Tutsi who had sought refuge in the church managed to escape to the nearby Mount Nyakizu and its surroundings.

Response

Bazaramba has contested the charge in this respect. He did not act in the manner argued by the prosecutor. At no time was he even in the vicinity of Cyahinda church in mid-April 1994. He did not visit the church until late April and the fact that there were bodies there came as a surprise to him.

Evidence

Bazaramba recounted that at the time in question, he had been on the run and in hiding in Birambo or Kibangu. He had not visited Cyahinda church in any capacity at the alleged time of commission, between 15 and 18 April 1994. Therefore he could not have any personal observations of what had taken place at the church at the time.

Witness for the prosecution **Timothy Longman** recounted that in his investigations after the genocide, some of the interviewees had said that Bazaramba had been present in the genocidal strike on Cyahinda church. He had been considered one of the leading figures but the chief had nonetheless been mayor of Nyakizu commune Ladislas Ntaganzwa. Military personnel had also taken part in the strike. According to the interviewees, Bazaramba had had two weapons at the church which he had not used himself but had given these to others to use. There had been few firearms but they had mattered a great deal, as they had broken down the Tutsis' defences.

Witness for the prosecution **Augustin Karambizi** recounted that Bazaramba had given orders and instructions to the Burundian refugees when they attacked Tutsis at Cyahinda church.

Witness for the prosecution **Apollinaire Karemanzira** recounted that he had fled to Cyahinda church on Friday, 15 April 1994. He had arrived there with his family at around ten in the morning. On the same day, mayor Ntaganzwa had come to the church. He had told the Tutsis who had gathered there that they had to leave the church. He had given them five minutes, after which things would start to happen. The people had not known what to do, and then the gendarmes had opened fire. Those who had not been shot had tried to escape. The witness himself had fled to Gasana. He had not seen Bazaramba in the church grounds but people who stayed at the church had told him later that Bazaramba had been there.

Witness for the prosecution **Appoloni Gatera** recounted that he had been at Cyahinda church on 15 April 1994 when the church had been attacked. Before the attack, there had been a meeting in front of the church's main doors, and Bazaramba along with mayor Ladislas Ntaganzwa had been at this meeting. There had also been police officers there. The witness had been nearby among the amassed Tutsis. Ntaganzwa had said into the microphone that Tutsis had bought cows and Hutus had bought bullets, and now cow horns would do battle with bullets. This was a way of saying that the Tutsis had no chance against the firearms of the Hutus. Immediately after this meeting, the shooting had started outside the church, causing people to flee inside the church, the witness included. He had spent 3–4 hours in the church, during which time many people had been killed both inside and outside the church. The witness did not know if Bazaramba had shot anyone. When the witness had exited the church into its inner courtyard, he and the other Tutsis had been fired upon. The police and the gendarmes had had firearms, the Interahamwe traditional weapons. People died or fled the scene. The witness himself had escaped from behind the church through a cow pen and a forest to Mount Nyakizu.

Witness for the prosecution **Joseph Rutayisire** recounted that he had fled to Cyahinda church where a large number of Tutsis had gathered, including family members of the witness. Bazaramba had arrived together with the army soldiers. They had started shooting at dawn on 16 April. The Tutsis had managed to wrest one rifle from the shooters and Bazaramba and his group had gone for reinforcements, which was why gendarmes had arrived at the scene. The witness had seen Bazaramba fire a gun. Many people had died at the church, and the rest had fled to Mount Nyakizu.

Witness for the prosecution **Ladislas Rukaka** recounted that he had sought shelter in the grounds of Cyahinda church along with other Tutsis. It was there that he had seen Bazaramba, whom he knew, together with mayor Ntaganzwa, Geoffrey Dusabe and some gendarmes. In the witness' understanding, Bazaramba and Ntaganzwa, who had given a Tutsi-menacing speech at the church and urged the gendarmes to kill the Tutsis, were friends. Bazaramba had stayed in the vicinity of the church for several days and he had had a firearm, but the witness had not seen him fire it there.

Witness for the prosecution **Esperance Mukanusi** recounted that she had fled to Cyahinda church. She had been there in the inner courtyard of the church when the killings had started at around 11–12 on 15 April 1994. Bazaramba had arrived at the church before this together with mayor Ladislas Ntaganzwa and some gendarmes. They had visited the church already the day before and urged people to go to their homes. Now Ntaganzwa had spoken over a loudspeaker and had said that all those who were not from Nyakizu were to

return to their homes. People had been given 10 minutes to comply, but the shooting had started after five minutes. Bazaramba had had a firearm and the witness had seen him shoot. When she had fled, she had not seen if anyone died in the situation where Bazaramba had fired his gun. In any case, many Tutsis had died at the church and the rest had fled.

Witness for the prosecution **Bertin Nduwayezu** recounted that he had seen Bazaramba also at Cyahinda church in the company of the mayor of Kabarule and Ntaganzwa. All three had been leading young Burundian refugees armed with guns. The refugees had stood at the front line of the attack squad and had shot Tutsis. Bazaramba had been the leader of one group of refugees. The witness estimated that the young Burundian refugees involved in the attack on Cyahinda church had numbered 30–40 men. The witness had also been at Cyahinda but he had stood behind the shooters. The witness had had a traditional weapon and it had been his job to guard the Tutsis so that they could not escape. The witness had not had visual contact with Bazaramba any longer after he had been sent to guard the exits on the side of the forest. The people whom the refugees had not managed to shoot to death had been killed with hoes. No one had managed to escape from inside the church after the troops had surrounded the church building. According to the witness, Bazaramba had worn a beige coat. Very many Tutsis died both inside and outside the church.

Witness for the prosecution **Lavelian Rwaduka** recounted that he had fled to the church along with other Tutsis on 15 April 1994, which in the witness' recollection had been a Friday. Bazaramba had arrived at the church on foot in the company of gendarmes and Burundian refugees at around nine in the morning. Bazaramba had had a firearm and he had appeared to be leading the Burundians. Mayor Ntaganzwa had told the Tutsis that now cow horns would do battle with guns. Then the shooting and the killing had started. Bazaramba had not said anything at this juncture, but he had been shooting along with the others. Many Tutsis died at the church, but the witness did not know whether Bazaramba personally killed anyone.

Witness for the defendant **Johnson Nshirimana** was not at Cyahinda church when it was under attack, and his knowledge of the killings was based on the accounts of others. He did, however, visit the church immediately following the attacks and saw a large number of Tutsi bodies there.

Witness for the defendant **VASA 6** recounted that he had been attending to his duties next to the town hall, where there had been a meeting on 15 April 1994 attended by mayor Ntaganzwa and his two assistants as well as gendarmes. Then these people had taken a pickup truck owned by the commune to the church, and shots had been heard from there. On 16 April 1994 and 17 April 1994 as well, the same people had gone to the church to shoot Tutsis. Other police officers and civilians had also taken part in the attacks and the shootings had increased day by day. Ntaganzwa had been given a rifle by the gendarmes and his assistants were given jackets. Every time Ntaganzwa had gone off in his car, the killings at the church had continued. The witness had later heard that 20,000–25,000 Tutsis had been killed at the church. The witness could not see the church from the town hall but he had had a good look at the people going there. On 15 April 1994, he had left at around noon and returned at three in the afternoon, by which time the shootings had stopped. The witness knew Bazaramba and had not seen him at all during the time of the events at the church.

Witness for the defendant **VASA 7** recounted that it had been peaceful in Nyakizu before the plane of the presidents was shot down on 6 April 1994. Life had changed after that, people had been afraid and everyone had realised that it was now war. On 8 April 1994, local Tutsis had fled to Cyahinda church. Mayor Ntaganzwa had gone by the church in the evening and asked them to return to their homes. The witness himself had transported back to their homes those who had wanted to return straight away. That same night, all Tutsis had left the church. On the following day, 9 April 1994, a very large number of refugees had gone to the church, however. They had been Tutsis for the most part, from both the town and neighbouring communes. The few Hutus among them had soon left the area. On 9 April 1994 or 10 April 1994, the witness had taken Ntaganzwa to the church, on which occasion Tutsis had thrown rocks at him. The witness himself had seen how Ntaganzwa had been hit on the forehead with a rock. Ntaganzwa had not gone to the church

any more. The witness was sure of this because he had seen Ntaganzwa every day at the town hall. The gendarmes, on the other hand, had gone to the church on either 10 April 1994 or 11 April 1994, and the Tutsis had captured one of them. After this, the gendarmes had attacked the church on three days together with local people. Of the events of the first day, witness had later on heard from the gendarmes and his neighbours that there had been war and many people had died. On the second and third day, when the fighting had subsided a little, the witness had personally observed the events. The Tutsis had had no firearms except for the one they had taken from the gendarme, but there had been so many of them that they were dangerous, too. The Tutsis nonetheless lost and after the battles, there had been dead Tutsis everywhere, including numerous women and children. The surviving Tutsis had fled the church. Hutu civilians from many sectors of Nyakizu commune were present to provide support to the gendarmes. They were from the lower classes and the witness had not seen a single teacher or shopkeeper among them. The witness did not know who had summoned the Hutu civilians or who had led them. There were many of them nonetheless and they had gathered quickly. The witness knew Bazaramba but they were not friends. He could not believe that Bazaramba would have had anything to do with the attacks on Cyahinda church. The witness had not once seen Bazaramba anywhere in the vicinity at this time. Moreover, Bazaramba was a Christian and an educated man, and he would surely not have taken the arduous and dangerous 11-km journey to kill people.

Witness for the prosecution **VASA 9** recounted that life in Nyakizu had changed after 6 April 1994. Everything had seemed to stop, people no longer felt safe and no one could go to work. The witness himself had only left his house twice, on both occasions to collect money from his employer. On the first time, he had seen gendarmes, police officers and groups of youths gathered at the town hall. The witness had not known anyone in these groups. On the next day, the witness had again walked past the town hall and seen many people in the yard of the town hall. The mayor had also been there. The gendarmes and the police officers had then left for Cyahinda church together with the gangs of youths. The witness had watched until rifle shots had rung out from the church, at which point he had become frightened and had left the scene and at no point returned again to Cyahinda church. The gendarmes and the police officers had had firearms, but on neither day had the witness seen the youths with any weapons. Neither had he noticed the mayor giving them any orders or instructions. Bazaramba had not been at the town hall. He had lived far away and the road leading to the town hall had been closed. The place could only have been reached in a commune car and even then only with a gendarme escort, and Bazaramba had no connection with the gendarmes.

Witness for the defendant **VASA 10** recounted that he had on one occasion seen a battle between Tutsis and gendarmes at Cyahinda church. On that occasion, he had been stopped before Cyahinda because of the fighting. On that occasion, the witness had also been told that one gendarme had died and the mayor had been shot at.

Evaluation of the evidence and conclusions

Factors impacting on the reliability of the witnesses on a general level have been addressed above in a separate section of the judgment (IV 4). With regard to the witnesses heard on this occasion it must be noted that Rwaduka, Mukanusi, Rukaka, Rutayisire, Gatera, Karemanzira and Karambizi are Tutsis who, unlike many of the Hutu witnesses, have not been in prison. Their accounts parallel the account of e.g. Bertin Nduwayezu, who has spent 14 years in prison.

Having regard to that stated above regarding Bazaramba's alibi (IV 7.1), it must be deemed possible that Bazaramba was at Cyahinda church or in its immediate vicinity in mid-April 1994. Witness Karemanzira was on the church grounds but he did not see Bazaramba there. The account of witness Karemanzira does not clearly indicate whether it is based on personal observations or hearsay or a combination of the two. The witnesses Gatera, Rutayisire, Rukaka, Mukanusi, Nduwayezu and Rwaduka, however, were present in person on the grounds of Cyahinda church and saw Bazaramba there. Gatera, Rukaka, Mukanusi and Rwaduka moreover recounted Bazaramba having had a firearm. No great relevance can be attached to the testimony of

Longman regarding an isolated incident such as this one, yet it is not inconsistent with the aforementioned. The fact of whether Bazaramba in the situation at issue personally used the weapon in his possession or gave it to someone else to use is irrelevant when taking into account the obvious intended use of the weapon in the circumstances of violence now at issue.

Witness VASA 6 claimed that Bazaramba could not have been at the church. However, he could not see the grounds of the church itself from the yard of the town hall. As his grounds for Bazaramba not being at the scene, VASA 6 submits that he did not see Bazaramba and that Bazaramba had lived far away from the church. Taking into account the location of the church and the town hall and the many roads leading to the church, no significance can be attached to the fact that the witness did not see Bazaramba go to the church. Witness VASA 7 also considered that Bazaramba could not have been at Cyahinda church because the witness did not see him and because Bazaramba lived so far away from the church. Witness VASA 9 also did not consider it to be plausible that Bazaramba would have been at Cyahinda church. As is the case with the witnesses VASA 6 and VASA 7, the grounds given by the witness VASA 9 for his view are implausible. The events of Cyahinda and Mount Nyakizu would not have been possible without very large numbers of people, both victims and attackers, moving about Nyakizu commune in mid-April 1994. The witnesses' views of Bazaramba not being able at this time to cover a distance of some 10 km, had he so desired, are not plausible. Neither are the other grounds put forward by the witness BASA 7, i.e. the religious beliefs and high level of education of Bazaramba, such facts that weight should be given to them in evaluating the evidence.

According to the charge, Bazaramba led some of the attacks on Cyahinda church, killed several Tutsis and gave orders which led to killings. Furthermore according to the charge, the groups of Hutus which attacked Cyahinda church also included the group led by Bazaramba, which besides gendarmes and former and current soldiers also comprised in particular civilians recruited or coerced to join from the Karamba camp of Hutu refugees from Burundi and from elsewhere in Nyakizu commune. At least some of these civilians, according to the charge, were provided training in killing and acts of violence by Bazaramba and third parties.

Based on the evidence recounted above, the District Court finds it have been established that Bazaramba was present and among the Hutu attackers at the time when the Tutsis gathered there were attacked at Cyahinda church. Bazaramba also had a firearm. Firearms played an important role in breaking down Tutsi resistance. It is also undisputed that a very large number of Tutsis were killed during the attacks on the church and its surroundings. Unlike the existence of a firearm, its use is not easy to observe in the confusion which prevailed at the church. According to the witness Mukanusi, Bazaramba had had a firearm, and the witness had seen him shoot. According to Rutayisire, Bazaramba had come to Cyahinda church together with army soldiers and they had opened fire at dawn on 16 April 1994. Rwaduka recounted that Bazaramba had had a firearm and had fired along with the others. The accounts of the aforementioned witnesses, having regard to the chaos of the situation, do not establish to a sufficient degree of certainty that Bazaramba himself would have fired a gun or killed Tutsis.

Nduwayezu recounted that he had seen Bazaramba at Cyahinda church with the mayor of Kabarule and Ntaganzwa, and that all three had led young Burundian refugees armed with firearms. Rwaduka recounted that Bazaramba had had a firearm and had seemed to lead the Burundians. Karambizi recounted that Bazaramba had given orders and instructions to the Burundian refugees when they attacked the Tutsis at Cyahinda church. The accounts of Rukaka and Rutayisire are also indicative of Bazaramba's position as one of the leaders of the attack. The observations of the Tutsi witnesses who were the victims of this attack were made on the basis of external factors and over a short period of time. Nduwayezu was one of the attackers, and according to him Bazaramba led one of the groups of refugees. In an overall evaluation of the evidence, however, sufficient proof of Bazaramba's position as one of the leaders of the attack and the giver of orders to attack and kill has not been presented.

In the manner recounted in section 7.3.1 of the judgment, it has not been established to a sufficient degree of certainty that the kind of preparatory training which could be utilised in killings and acts of violence that would have originally been intended for subsequent utilisation specifically in the killings and acts of violence relating to the genocide would have been provided by Bazaramba at or outside the refugee camp of the Burundians. The persons who attacked the church apparently as such also comprised Hutu refugees from Burundi.

The offence which remains to be attributed to Bazaramba is that while armed with a firearm, he took part in some of the attacks on Cyahinda church with the intent to destroy in whole or in part the Tutsis as an ethnic group.

7.3.4 Mount Nyakizu and its surroundings

Charge

With the intent to destroy in whole or in part the Rwandan Tutsis as a group, Bazaramba between 15 and 18 April 1994 led some of the attacks on Mount Nyakizu and its surroundings. Attacks of several hours' duration were made at least on 16 April, 17 April and 18 April 1994. During the attacks, Bazaramba killed several Tutsis. In addition, Bazaramba gave orders leading to the killings of Tutsis.

The Tutsi who had managed to escape the attacks on Cyahinda church together with other Tutsi fleeing the area fled to the nearby Mount Nyakizu and its surroundings. The Hutu groups taking part in the attacks on the church followed and together with Hutus chasing Tutsis from other areas killed thousands of Tutsi in attacks made on the mountain's slopes and peaks. Among the groups killing Tutsi was also the group led by Bazaramba, which besides gendarmes and former and current soldiers also comprised civilians enlisted or coerced into participation especially from the Karamba camp of Hutu refugees from Burundi as well as from elsewhere in Nyakizu commune. At least some of these civilians had been trained in killing and acts of violence by Bazaramba and third parties. The group led by Bazaramba had the mission, along with the other groups, to kill all Tutsi who had fled to the mountain. With this intent, Bazaramba gave orders to attack and kill. Bazaramba also personally took part in the attacks and killed several Tutsis with the gun in his possession.

In a place by the name of Gatobwe on Mount Nyakizu, Bazaramba ordered his son to fire on Tutsis with the intent to kill. Bazaramba was driving a motorcycle owned by him and his son was riding the motorcycle as a passenger. On the order of Bazaramba, the son fired the gun in his possession at the surrounding Tutsis with the intent to kill. The shooting resulted in the death of several Tutsis.

Response

Bazaramba has contested the charge in this respect. He did not act in the manner submitted by the prosecutor. At no point did he even spend any time on Mount Nyakizu in mid-April 1994.

Evidence

Defendant **Bazaramba** recounted that at the said time, he and his family were in hiding from the unrest in several different locations. He spent time at Nyantanga health centre, the Catholic chapel in Kibangu, at home in Birambo and finally with his friend Joseph Rusadanza in Kibangu. He did not visit Mount Nyakizu in any capacity at the alleged time of commission, 16–18 April 1994. Therefore he cannot have any personal observations as to what took place on the mountain at the time.

Witness for the prosecution **Timothy Longman** recounted that in the investigations conducted by him and other Human Rights Watch investigators, several interviewees had recounted that Bazaramba had been present at the genocidal attacks on Mount Nyakizu. He had been considered one of the leading figures, although the chief had been mayor Ladislas Ntaganzwa. The book *Leave No One to Tell the Story*, based on interviews conducted by Human Rights Watch, mentions Bazaramba having led troops on the attack on the mountain taking place on Sunday.

Witness for the prosecution **Antoine Ibambasi** recounted that he had been on Mount Nyakizu when it had come under attack. He had fled to the mountain on Friday, 15 April 1994 and left it on Monday night. On Tuesday, he had returned to the mountain and seen that everyone who had stayed there had been killed. On Wednesday, he had left for Burundi. The witness had seen three attacks on the mountain take place. On Saturday night, the witness had seen Bazaramba on the mountain. Bazaramba had been the leader of an attack squad and had encouraged the squad to advance. He and Kabayiza had had firearms while the rest of the squad had had traditional weapons. The witness had not seen Bazaramba fire. The witness could not say how large the squad had been. The Tutsis had defended themselves by throwing rocks and the attackers had been forced to flee. On Sunday, the attackers had had reinforcements and they had also been shooting, with the consequence that many Tutsis had died. On Tuesday, Bazaramba had brought the gendarmes along to attack. All in all, thousands of people had died on the mountain.

Witness for the prosecution **Augustin Banganakwinshi** recounted that Bazaramba had led the attack on Mount Nyakizu. The witness himself had been a part of the attack. Attacks against the mountain had been made on three days. Bazaramba had been with Vitalis at first, asking people to gather round and splitting them up into squads. On the first and second days they had not had enough people along, the attack had been fought off and no one had been killed. After the second day, Bazaramba had driven to the mayor's house to talk about "cockroaches". Mayor Ladislas Ntaganzwa had promised to send gendarmes and had taken part in the attack himself along with them on the third day. When he spoke about leading, the witness meant that Bazaramba had determined the route by which his squad was to attack. Bazaramba had had a gun, a large Kalashnikov-type rifle, but the witness had not seen Bazaramba fire it. On the third day, all of the Tutsis had been killed.

Witness for the prosecution **Clement Gasarasi** recounted that he had been on Mount Nyakizu when Tutsis had been killed there. The witness had also seen Bazaramba, who had been on the mountain together with a large group of people. The witness had not seen Bazaramba kill anyone. When the witness had arrived at the mountain, most of the Tutsis had already been killed by the army. Civilians armed with clubs had come to finish off the rest. Bazaramba had had a firearm, as had Kabayiza, who apparently was Bazaramba's bodyguard. The witness thought it possible that Bazaramba had led the group attacking the mountain via Rushunguriro. The position of leadership had been made possible by the fact that Bazaramba had had a firearm; a man armed with nothing but a club could not have led the group.

Witness for the prosecution **Viateur Rubumba** recounted that he had been involved in the attack on Mount Nyakizu in the same group as Bazaramba and that the two had left Maraba at the same time. The group had also included Kabayiza, who had been staying at Bazaramba's house. According to the witness, Bazaramba had been the leader of the group. On Mount Nyakizu, the group had been joined by another group attacking from Kibango via Mugano, and Bazaramba had given instructions to this group as well. Many Tutsis had been killed in this attack on Mount Nyakizu. Tutsis had been attacked also before this and then as well, the witness and Bazaramba had both been there. There had been few attackers, however, and the Tutsis had thrown rocks on them, which was why they had had to fetch more attackers from the sector. The witness had seen Bazaramba carry a rifle on Mount Nyakizu. Kabayiza and one person in the other group had also had firearms. The witness had not seen Bazaramba fire his gun. There was so much happening on the mountain that the witness had not seen what Bazaramba did or whose gun had killed whom. The intent of Bazaramba, like that of all of the other attackers as well, was nonetheless to kill Tutsis.

Witness for the prosecution **Augustin Karambizi** recounted that he had been forced to leave for Mount Nyakizu along with other Tutsis on the day on which the war started. The mountain had come under attack on three days, i.e. Saturday, Sunday and Monday, 16–18 April 1994. Bazaramba had been a part of the attacks on all three days. He had led the attack squad from Birambo by giving instructions to the attackers. On the first day, the attackers had come to the mountain singing MDR songs. The Tutsis had thrown large rocks on them and no one had died in the attack. The most Tutsis had died on the Monday, the final day of the attacks. As the witness recalled, it had been raining that day. Before the attacks, six rifles had been brought to Bazaramba at his home. The witness knew this because he had worked for Bazaramba as a guard. The witness did not know from where the rifles had come. Bazaramba had distributed the weapons to others. The witness had seen Bazaramba carrying a gun and firing on Tutsis on Mount Nyakizu.

Witness for the prosecution **Mathias Munyaneza** recounted that he had seen Bazaramba distributing firearms to soldiers and gendarmes, and soon thereafter climbing up the mountain with them. There had been a great many attackers and some of them had had firearms, others traditional weapons. Bazaramba had led the attackers who had come from the Maraba and Kibangu sectors. The mountain had been attacked three times altogether. The witness had been Bazaramba's neighbour and he had seen Bazaramba organise meetings, one of which had been held at Bazaramba's house, at which troops had been organised for the attack. Since the witness was a neighbour of Bazaramba, he knew that Bazaramba had also supplied guns and ammunition for Nyakizu and had brought along soldiers.

Witness for the prosecution **Theoneste Ruzigamanzi** recounted that he had personally seen Bazaramba in the attacks on Mount Nyakizu. Bazaramba had been wearing a military uniform. The witness had taken part in the first and second attack but not the third. The witness had seen Bazaramba take part in the attacks on both occasions when he had been involved. As the attack squads had passed by the witness on their way, he nonetheless knew that police officers had also taken part in the third attack. Sector advisor Vitalis had told everyone that Bazaramba had ordered everyone to go to Mount Nyakizu. Some 100 men had taken part in the first attack. The witness had heard Bazaramba saying that all Tutsis had to be killed, no one was to be left alive. The Tutsis had thrown rocks the size of fist at the attackers and the troops had retreated on the orders of Bazaramba. Bazaramba thought the troops did not have enough weapons. The attackers had gotten halfway up the mountain. Reinforcements had been obtained from Kibangu for the second attack. The witness had personally heard Bazaramba ask a man by the name of Martin to get reinforcements. The second attack had involved 600–700 men but even that attack had not been a complete success. The attackers had reached the peak of the mountain this time, but one of the attackers had been injured by rocks thrown by the Tutsis. Bazaramba had told people to throw rocks at the Tutsis so that they would scatter. Kabayiza and Ignace had been firing at the Tutsis throughout and Bazaramba had been standing between them with a stick in his hand. When Ignace's gun had jammed, Bazaramba had ordered the attackers to retreat. The witness had gone along to Mount Nyakizu on the order of Bazaramba. The witness held that Bazaramba had given them two choices: obey or die. He himself had had to go along even though his wife was a Tutsi. The witness had heard with his own ears Bazaramba saying that there were RPF troops there who wanted to kill the Hutus. The troops had probably still believed after the first attack that there were RPF troops on the mountain. After the second attack, no one could have gone on believing this, because not a single shot had been fired at the attackers from the mountain. The witness himself had known from the outset that there were not RPF people on the mountain because his brother-in-law had told him this even before the first attack. When the witness had told someone this, that person had told it on to others and the witness had been suspected of being a spy, and he had no longer dared say anything about the matter.

Witness for the prosecution **Apollinaire Rugimbana** recounted that the first attack on Mount Nyakizu had taken place on Saturday, 16 April 1994. The attack had been relatively small-scale and the attackers had had to retreat. The witness had not seen Bazaramba on the mountain for himself but he had heard that Bazaramba had been there. On Sunday, 17 April 1994 Bazaramba had led a squad which attacked Tutsis who had fled to

the mountain. The witness had been among the Tutsis and he had seen Bazaramba with his own eyes. Bazaramba had had a rifle and the squad had had three other firearms as well, one of which was carried by Kabayiza. Bazaramba had been wearing a blue tracksuit. The witness had not seen anyone else in a position of leadership on the mountain. This second attack had been much more serious than the first one and the Tutsis would have ended up badly, had they not had so many rocks with them. The witness had been on the Rushunguriro side of Mount Nyakizu and the attack team had arrived at the mountain from the centre of Birambo. During the attack, many shots were heard and some of the Tutsis on the mountain had disappeared. The witness himself had seen one Tutsi be shot. On the next day, Monday 18 April 1994, the Tutsis had fled higher up the mountain. The witness at least had not been attacked on that day.

Witness for the prosecution **Iddephonse Rwibasira** recounted that he himself had been among those fleeing to Mount Nyakizu on Friday, 15 April 1994. When he had been at the peak of the mountain, those fleeing had been attacked. The witness had not seen Bazaramba on that occasion, but he had seen him on the mountain on Saturday, 16 April 1994 and on Monday, 18 April 1994. On Saturday, the witness had seen Bazaramba from 20–30 metres' distance when Bazaramba had been ascending halfway up the mountain. Bazaramba had been in the company of Kabayiza, who had been staying with him. Both had had a firearm, as had Ignace. The guns were big and looked like rifles. Ignace and Kabayiza had been in the forefront, firing their guns. Bazaramba had been following them and the witness was not sure whether he had been firing his gun. It had been a confusing battle situation and the witness had not had sight of Bazaramba the whole time. After about half an hour, the witness' observations of Bazaramba had ended. On Monday, the attackers had arrived at around six in the morning. Bazaramba had been behind the other attackers. The witness had been fairly close to him and had identified him very easily on the Monday as well. Bazaramba had been wearing a brownish-green jacket and trousers and Kabayiza had had a red shirt. Many of the Tutsis had died although earlier, they had been able to fend off the attackers by throwing rocks. Many others on the mountain as well had identified Bazaramba, including Antoine Ibambasi and Augustin Karambizi. When refugees in Burundi, the witness and others had continued to wonder how Bazaramba could have been among the attackers although a Tutsi family had made Bazaramba a member of the family and had given him a plot of land. After the attack on Monday, the witness had left Mount Nyakizu. Bazaramba had been involved in the attacks and he had led an attack squad. The witness held that Bazaramba had clearly been the leader of the attack squad for the reason alone that on the Wednesday or Thursday preceding the attack he had talked with sub-prefect Biniga about what should be done to the Tutsis. The witness had not heard this conversation for himself but had heard when Bazaramba had talked in advance with Geoffrey Dusabe and certain others about going to ask Biniga for advice.

Witness for the prosecution **Apollinaire Karemanzira** recounted that on 15 April 1994, he had fled from Cyahinda church grounds to Gasana after the gendarmes had opened fire on the Tutsis who had gathered there. His family members had fled in different directions but had later come to Gasana. One of the witness' children had stayed at the church with the cows, however, and the witness had later found that child dead and another missing. The witness had fled Gasana for Mount Nyakizu, where he had witnessed three attacks on Saturday, 16 April 1994. One had come from the direction of Birambo, the other from Muguba and the third from the direction of Cyahinda. The witness had seen Bazaramba among the attackers arriving from the direction of Birambo. A false entry had been made in the police interviews of the witness having said that he saw Bazaramba on Friday, 15 April 1994. The witness did not know who the leader of the group of attackers had been. There had been many people in the group who had been active in organising killings, such as Geoffrey Dusabe. Bazaramba's group had chased after people who took flight. Bazaramba had had a gun and he had fired at people, and at least some of the people who he fired on had died. Bazaramba had also thrown hand grenades on people. This had taken place in the afternoon; in the morning the attackers had not yet had weapons and the Tutsis had been able to defend themselves by throwing rocks. The witness had tried to flee from Gasana to Bunge with others, but had been stopped in this by Bazaramba and the other attackers, who had already reached the peak of the mountain from the other side and had been above the witness and his companions. Many people who had been in front of the witness had died.

Witness for the prosecution **Appoloni Gatera** recounted that he had fled from Cyahinda church to Mount Nyakizu on Friday, 15 April 1994. The attackers had followed. The witness had spent one night on the 2020-metre high western peak of Mount Nyakizu. In the morning, he and the others fleeing had come under attack and he had fled towards Rushunguriro. On the way, he had seen Bazaramba arrive by car with the gendarmes along the road from the direction of Birambo. Bazaramba and the gendarmes had left the car at the foot of the mountain and had walked towards the Tutsis, starting to fire at them when they reached a small stream. In the witness' recollection, they had been firing standing up, from behind some trees. The Tutsis had been an easy target for them. The witness had seen for certain Bazaramba firing at the Tutsis, and had seen people fired on by Bazaramba die. Other attackers with traditional weapons had followed the shooters. Some of the Tutsis had died from their machetes. There had also been Burundian refugees among the attackers.

Witness for the prosecution **Ladislav Rukaka** recounted that he had sought shelter in the grounds of Cyahinda church along with other Tutsis. On Sunday night, he had fled from there to Gasasa near Mount Nyakizu. On Monday, Bazaramba had led an Interahamwe attack north of Gasasa. The witness had been lower down on the mountain than Bazaramba, whom he could see at the closest from a distance of about 50 metres. The witness had seen for himself how Bazaramba had walked ahead of the group and fired at Tutsis. The witness had seen for himself at least two Tutsis known to him killed by Bazaramba's bullets, their names had been Damien Senayagahanga and Ladislav Rugemintwaza. These killings had taken place at a distance of 100–150 metres from the witness. The Interahamwe following Bazaramba had killed any survivors. Only Bazaramba had had a firearm in that particular situation, the others had had traditional weapons. Numerous Tutsi had died on the mountain.

Witness for the prosecution **Esperance Mukanusi** recounted that she had fled Cyahinda church and arrived at Gasasa, which was a part of Mount Nyakizu, on Friday 15 April 1994. Bazaramba had attacked it on Monday. This had taken place near the road leading to Cyuna. Bazaramba had had a firearm and other attackers with traditional weapons had come with him. Bazaramba had been at the peak of the mountain and the fleeing people had been below him. In the witness' understanding, Bazaramba had been the leader of the troops together with mayor Ladislav Ntaganzwa and Geoffrey Dusabe. The witness had seen Bazaramba lead two attacks, on one occasion he had been at the mountain top and on the other, he had fired at people on Cyahinda road together with gendarmes. According to the witness, Bazaramba had shot to death at least a young man, an old woman and a young woman, all of whom she could name. There had been other attackers equipped with firearms as well, but the witness had only recognised Bazaramba. The witness had survived by hiding in the forest and fields, and on Wednesday night she had fled into Burundi.

Witness for the prosecution **Bertin Nduwayezu** recounted that Bazaramba had led the attack from Birambo to Mount Nyakizu. The witness himself had been on another attack squad which had departed for the mountain from Bugarama and which had been led by advisor Mukuyanzi. The witness had attacked the mountain on two occasions. On the first day, the Tutsis had noticed them and fended them off by throwing rocks. The attackers had only had one firearm and they had had to retreat. The witness had not seen Bazaramba on that occasion. On the second day of the attack, there had been more attackers and firearms. Those Tutsis who did not manage to escape had been killed. On this day, the witness had seen Bazaramba, who had carried a firearm during the attack. The witness had seen him fire it once. In the witness' understanding, Bazaramba had brought along two firearms from the commune. He had given one to Ignace and the other one had been used in turns by him and a relative of his wife's who lived at his house. Bazaramba had been authorised by mayor Ntaganzwa to prepare the attacks on the Tutsis in the sector. The attacks on Mount Nyakizu and Cyahinda church were the only actual attacks, but elsewhere Tutsis were constantly being killed one by one.

Witness for the prosecution **Lavelian Rwaduka** recounted that on Saturday, 16 April he had fled from Cyahinda church to the top of Mount Nyakizu. The attackers had followed those fleeing to the mountain. The

attack had taken place at around noon. On the mountain, the witness had seen Bazaramba in the front row of the attackers. In the witness' recollection, Bazaramba had attacked the mountain from the direction of Birambo. Bazaramba had been leading a group of locals but not the gendarmes. The witness had seen that Bazaramba had had a firearm and he had also used it. The group had had no other firearms. The Tutsis had started throwing rocks at the attackers and they had had to retreat. On Sunday night, the witness had fled into Burundi.

Witness for the prosecution **Paul Karasira** recounted that Bazaramba had led those attacks on Mount Nyakizu carried out from Birambo via Rushunguriro. The attacks had started perhaps two days after the killings in Birambo witnessed by the witness, i.e. on Sunday 17 April 1994. The witness had seen Bazaramba among the attackers on two separate occasions perhaps 4–5 days apart. On the first occasion, the group led by Bazaramba had comprised at least 70 persons. On the second occasion, there had been over 300 people and this had been the final attack on the mountain to seek out the Tutsis still remaining there in hiding. On this occasion, they had also gone to the other side of the mountain. Bazaramba and Ignace had had rifles while the others had been armed with traditional weapons. The witness had not seen Bazaramba fire his gun. He had had two guns, one of which he had given to Ignace and the other to the reservist who was staying with him. The witness had later on heard that Bazaramba had brought the guns from the town hall.

Witness for the prosecution **Laurent Musana** recounted that he had been a part of the attack on Mount Nyakizu. He had departed from Nhima while Bazaramba and his group had departed from Rushunguriro.

Witness for the prosecution **Emmanuel Nzabandora** recounted that he had taken part in the attack on Mount Nyakizu on 20 April 1994. He had not seen any group departing from Birambo to attack the mountain on any other days. The witness did not recall seeing Bazaramba on the mountain, but he had seen Bazaramba's employee Kabayiza there.

Witness for the prosecution **Valens Murindangabo** recounted that the genocide had started in Rushunguriro on Friday, 15 April 1994. On Saturday, 16 April 1994 Bazaramba had rounded up all men in Rushunguriro and had forced them to bring along their weapons and attack Mount Nyakizu. Bazaramba had had a rifle and he had been wearing a long white coat. After killing two youths in Mugaravera, the attack squad had attacked the Tutsis on the mountain. The Tutsis had defended themselves and the Hutus had had to return to Birambo. On Sunday, 17 April 1994 Bazaramba had organised another attack on Mount Nyakizu. The attack had been weak and the Hutus had again been forced to return. Yet another attack had taken place on Monday, 18 April 1994. This time, Bazaramba had had three firearms, carrying one himself and Ignace and Kabayiza carrying the other two. The attack had been forceful this time around, but the Tutsis had nonetheless been able to fend it off. A meeting had been held after this in Birambo market square. This had taken place sometime between 19 and 22 April 1994 and the meeting had been held in the morning. The witness had learned about the meeting when he had been on night patrol and Kabayiza, Ignace and Johnson had come to tell the patrol that all men were to come to the market square first thing the following morning. Bazaramba had further ensured that all men would attend by calling at all houses in the village. At the meeting, Bazaramba had said that the final attack was now starting and all Tutsis on the mountain had to be killed or at least gotten off the mountain. Since Bazaramba had had a rifle, he had led the attack together with Ignace and Kabayiza. On the mountain, Bazaramba's group had encountered another group which had come from Mugarama and which had been led by advisor Munyaiakazi. The two groups had encountered yet a third group which had come from Mugano and had been led by Viateur Rubumba. Further attackers had arrived from Cyahinda, Muhambara, Rutobwe and Mwoya. This attack had only been survived by a very few of the Tutsis who had been on the mountain. The survivors had fled and some of these as well had died while trying to get away.

Witnesses for the prosecution **Athanase Nkurunziza** and **Joseph Rutayisire** did not recount anything that would have an impact on the evaluation of the events on Mount Nyakizu.

Witness for the defendant **Johnson Nshirimana** recounted that he had taken part in the events on Mount Nyakizu. An order had arrived from the commune that all young and healthy men were to go to Mount Nyakizu. The witness had not had any kind of weapon with him but had mainly been there to give encouragement to the soldiers. On the mountain he had been able to do nothing but lie on the ground when the firing had started. Besides soldiers, there had also been Hutu civilians with traditional weapons there. They had been ready to fight. The witness had not seen Bazaramba on the mountain or at the foot of the mountain earlier, when the attackers had gathered. The order to ascend up the mountain had been given by mayor Ntaganzwa and an important police officer. The troops had been led on the mountain by the soldiers. Civilians from the Birambo area and other parts of the commune had taken part in the attack, as had Burundian refugees whom the witness had recognised from their dialect. The Tutsis on the mountain had been civilians but they had had firearms and they had killed many of the attackers. They had fled the mountain only when they had been fired at and had bombs thrown at them. The soldiers had gone after them. At this point, the witness had left for home together with a few friends and neighbours. Before the attack, the Hutus had been told that there were RPF members among the Tutsis and that they had to act before the Tutsis attacked them.

Witness for the defendant **VASA 6** recounted that he had seen from the town hall how people had gone to Mount Nyakizu to attack the Tutsis who were there. He had not seen Bazaramba in connection with the attacks on Mount Nyakizu.

Witness for the prosecution **VASA 7** recounted that he and two gendarmes had gone to Mount Nyakizu. He had gone there voluntarily. On the mountain, he had watched the locals attack the Tutsis from ten o'clock until two thirty. There had been two battlefields on the mountain and he had watched one of these from a distance of 700–800 metres. Tutsis had died on the mountain. The attackers were the same people who had been in the attack on Cyahinda church. The witness did not know who had led them. He had not seen Bazaramba on the mountain. The witness himself had had no part whatsoever in the battles. He had been there mainly out of curiosity.

Witness for the defendant **VASA 10** recounted that during the trouble, he had lived at the parish house near Birambo market square. The area had had a direct view of Mount Nyakizu. The surviving Tutsis had fled there with their cows, goats and sheep. There had been many Tutsis from both Nyakizu and elsewhere on the mountain. The witness had seen dead bodies on the mountain and among those killed he had recognised three people from Maraba sector. The Tutsis had in turn carried out attacks from the mountain against surrounding Hutus. One day, the witness had been at Birambo market square in front of Bazaramba's house when he had heard shots from Mount Nyakizu. The witness had just been leaving Bazaramba's house. He had been in the company of Bazaramba when the shots rang out and he had stayed in the market square until the shooting stopped, between noon and one o'clock. Then he had gone home. This had been his account in the pre-trial investigation as well and if it said differently, then there had to be some kind of misunderstanding. The witness was under the impression that there had been fighting on Mount Nyakizu on several days but shooting only on one day. The witness could not believe that Bazaramba had been involved in the events on the mountain. Bazaramba could have coped only if he had been a soldier or had carried a gun. The witness had never seen Bazaramba with a gun and had never even heard that he would have urged people to go to the mountain.

Witnesses put forward by the defendant **Immaculée Kamuhanda** and **Joy Sifa** testified relating to the events only inasmuch as Bazaramba's alibi was concerned. The same applies to witnesses for the defendant **VASA 5** and **VASA 8**. The matter in this respect has been addressed above (section IV 7.1 of the judgment).

Evidence in the incident relating to a place by the name of Gatobwe

Joseph Rutayisire, who attended the same church with Bazaramba and sang in the same choir, recounted that Bazaramba had ordered all Tutsis to be killed. In relation to this, when the genocide had actually started on 15 April 1994 Rutayisire had at first seen two children killed. Rutayisire had intended to flee to Cyahinda. He had first gone to Nyantanga but it had not been safe there. Therefore he had gone to Mount Nyakizu via Rushunguriro and onward to Cyahinda church, where Rutayisire had spent two nights.

While fleeing to Cyahinda, Rutayisire had seen Bazaramba, Johnson and Lazare at the kiosk. Bazaramba had been wearing an army green long overcoat. Rutayisire himself had been hiding nearby. Four fleeing people had arrived and been called to the aforementioned. Three of them had managed to escape, one of them had been shot by Johnson.

At Cyahinda church, there had been many Tutsis who had run away, including family members of Rutayisire. Many people had died there. Rutayisire himself had not been in the church the whole time but had spent time in the vicinity and gone into the church every now and then. Bazaramba had arrived with an army consisting of the president's bodyguards. They had started firing on Saturday, 16 April 1994, at around dawn. Rutayisire had seen Bazaramba at the end of the dirt road leading to the church with commune cars around him. The people in the church had attacked the shooters and had managed to wrest one rifle from them. Then Bazaramba and his group had gone for reinforcements and the gendarmes had arrived. Bazaramba had given the order to catch the Tutsis, promising to pay 1,000 francs for every dead Tutsi.

Rutayisire had started running when the attackers had noticed him and the other Tutsis. Rutayisire had gone to seek shelter in the direction of Bitare together with the pastor at Cyahinda and a woman. Before arriving in Bitare, Rutayisire and the others had come across Bazaramba, Kabayiza and other attackers in Gatobwe. Bazaramba had been driving a motorcycle with his son Nirisi, who had fired a rifle at the Tutsis. Bazaramba's bodyguard Kabayiza had also fired on the Tutsis. The people from Kibangu had had traditional weapons. Rutayisire had seen many people killed by the bullets. Rutayisire estimated that 50–60 people in all had died in Gatobwe.

In Bitare, Rutayisire had again seen Bazaramba and his group. They had come from Kibangu and had had 6–8 men with them, all of whom had been killed. Bazaramba had been driving another motorcycle in Bitare.

Evaluation of the evidence and conclusions

Factors impacting on the reliability of the witnesses on a general level have been addressed above in a separate section of the judgment (IV 4). With regard to the witnesses heard on this occasion it must be noted that Ibambasi, Gatera, Karambizi, Rugimbana, Rwibasira, Karemanzira, Rukaka, Mukanusi, Rwaduka and Rutayisire are Tutsis who, unlike many of the Hutu witnesses, have not been in prison.

The accounts of the witnesses differ in several respects. This must be considered natural, taking into account the time elapsed from the events and the confusion of the events in the first place, strikes being made against the Tutsis over a period of several days and over a large area. Certain events are nonetheless supported by a large number of mutually independent witnesses, some of whom were attackers and other victims. Nothing plausible to discredit their reliability has been presented.

The number of the attacks carried out on the mountain cannot be determined with certainty. The witnesses' impressions as to whether assaults from different directions and at different times on the same day are to be taken to constitute a single attack or several attacks would seem to differ. There were attacks on at least three different days, however, and of the witnesses at least Ibambasi, Banganakwinshi, Karambizi, Ruzigamanzi, Rwibasira and Karasira saw Bazaramba on the mountain on at least two separate days.

Several witnesses submitted that Bazaramba would have led the attacks against the Tutsis on Mount Nyakizu alone or together with others. Many of the accounts were undoubtedly vague and the extent of personal observation remains unclear. Of those witnesses who recounted Bazaramba having had a leadership position, Banganakwinshi, Rubumba and Ruzigamanzi testified having themselves been on an attack squad led by Bazaramba while the witnesses Gasarasi, Nduwayezu and Musana were in other groups of attackers. No credible counter-evidence to undermine the value of the accounts of the witnesses for the prosecution has been put forward. The witnesses Ibambasi, Rubumba, Karambisi and Ruzigamanzi separately related having heard Bazaramba encourage the group to attack the Tutsis and give them instructions. As such, activity such as this shall be taken for granted owing to leadership of the attack squad alone. The witness Murindangabo recounted having been on Bazaramba's attack squad, yet his account of this as well of certain other events is characterised by a degree of detail which in the District Court's view speaks more to the assimilation of material put forward in Gacaca procedure than to the witness' good memory.

The witnesses Ibambasi, Banganakwinshi, Gasarasi, Rubumba, Karambizi, Ruzigamanzi, Rugimbana, Rwibasira, Karemanzira, Gatera, Rukaka, Mukanusi, Nduwayezu, Rwaduka, Karasira and Murindangabo recounted Bazaramba having had a firearm on the mountain. Several accounts remain vague in this respect as well and the District Court is left with the impression that some of the witnesses were unable to distinguish their personal observations from stories they heard later and the collective view of reality arising in Gacaca procedure. The witnesses Banganakwinshi, Rubumba and Ruzigamanzi were nonetheless on the same attack squad as Bazaramba. In addition to them, the witnesses Rugimbana, Rwibasira, Nduwayezu and Karasira also gave a personal and credible account of the events.

Several witnesses also recounted Bazaramba having fired his rifle. As such, it is of course natural for an armed person to use his weapon in a situation of violence. Taking into account the confusion of the situation, the other armed persons about in the area, the long distance between many of the witnesses and Bazaramba, and the overall uncertainty as to the conditions in which observations could be made, the witness accounts cannot be deemed to be very reliable in this respect. This applies to an ever greater degree to the allegation that Bazaramba would have killed some Tutsis with his rifle. Only the witnesses Rukaka and Mukanusi were able to relate the casualties in greater detail. In the situation recounted by Mukanusi, other attackers armed equipped with a firearm besides Bazaramba were also present.

Witness for the defendant Nshirimana did not see Bazaramba on Mount Nyakizu or its vicinity when he himself took part in an attack there. The witness VASA 6 recounted that he had watched people going to Mount Nyakizu and had not seen Bazaramba among them, Bazaramba being known to him. Neither had the witness VASA 7 seen Bazaramba on the mountain although he had spent several hours there on one day watching the fighting. Mount Nyakizu covers a wide area, however, and it can be approached from many different directions. The witnesses were able to witness events only in a very small area. Moreover, these witnesses watched the events only sporadically. The accounts of the witnesses VASA 6 and VASA 7 thus do not impact on the conclusions to be drawn as to Bazaramba's actions. This also applies to the witness VASA 10. Bazaramba's presence on the mountain on one or more occasions was related by a very large number of witnesses. Taking into account that at the time of the events, Bazaramba was a little over 40 years of age and that most of the people moving about on the mountain did not carry firearms, no great relevance can be attached to the arguments of the said witnesses for the defendant.

Based on the above, the District Court finds it to have been established that Bazaramba took part on at least two days in the attacks on Mount Nyakizu against the Tutsis who had fled there, and that he was one of the people who had a position of leadership in the attacks. Bazaramba has also been established to have had a firearm. The fact that the mission of the group led by Bazaramba was to kill all Tutsis who had fled to the mountain, together with other similar groups, must be taken as a given, taking into consideration the situation in Nyakizu commune in general and the bloodshed at Cyahinda church which preceded the attacks.

In the manner recounted in section 7.3.1 of the judgment, it has not been established to a sufficient degree of certainty that the kind of preparatory training which could be utilised in killings and acts of violence that would have originally been intended for subsequent utilisation specifically in the killings and acts of violence relating to the genocide would have been provided by Bazaramba at or outside the refugee camp of the Burundians. The persons who attacked Mount Nyakizu apparently as such also comprised Hutu refugees from Burundi.

Evaluation of the evidence and conclusions in the incident relating to a location by the name of Gatobwe

Rutayisire recounted a situation in which Bazaramba's son, riding on a motorcycle driven by Bazaramba, fired a rifle at Tutsis. According to Rutayisire, Bazaramba's guard Kabayiza also fired a gun at Tutsis. It remains unclear whether Tutsis died specifically from bullets fired by Bazaramba's son. Based on the account of Rutayisire alone, sufficient evidence of Bazaramba, in the manner alleged in the charge, having ordered his son to kill Tutsis, has not been put forward.

8. APPLICABLE LAW

Under Chapter 11:1 of the Criminal Code in force at the time of conviction, a person who for the purpose of entirely or partially destroying a national, ethnic, racial or religious group or another comparable group

- (1) kills members of the group,
- (2) inflicts grievous bodily or mental illness or injuries on members of the group,
- (3) subjects the group to such living conditions that can cause the physical destruction of the group in whole or in part,
- (4) undertakes forcible measures to prevent procreation among the group, or
- (5) forcibly moves children from one group to another,

shall be sentenced for genocide to imprisonment for at least four years or for life. An attempt is punishable.

Under Chapter 13:4(1–2) of the Criminal Code in force at the time of commission of the acts charged (Act 987/1974), a person who with the intent to destroy in whole or in part a group of a certain race, nationality or ethnicity or a religious group kills members of the group or inflicts on members of the group grievous physical or mental injury, inflicts on the group conditions of life calculated to bring about its destruction, undertakes measures to prevent procreation among the group, or forcibly moves children from one group or another, shall be sentenced for genocide to imprisonment in the penitentiary for at least four years or for life. An attempt is punishable.

Under Chapter 3:2 of the Criminal Code, the law in force at the time an offence was committed applies to the offence. However, if the law in force at the time of conviction is different from the law in force at the time of the commission of the offence, the new law applies if its application leads to a more lenient outcome. Application of the law in force at the time of conviction does not in this case lead to a more lenient outcome. Therefore, pursuant to Chapter 3:2 of the Criminal Code, the law in force at the time of commission shall be applied in the case at hand.

9. FINDINGS OF GUILT AND DISMISSALS OF CHARGES

7.2 Inflicting on Tutsis living in Maraba sector and its surroundings conditions of life calculated to bring about their physical destruction in whole or in part (point 3.2.1 of the charge)

Bazaramba inflicted on Tutsis living in Maraba sector and its surroundings conditions of life calculated to bring about the physical destruction of the Rwandan Tutsis in whole or in part between 15 April 1994 and 31 May 1994 with the following acts:

- (i) By giving a speech of incitement against the Tutsis in Birambo market square on Friday, 15 April 1994, Bazaramba disseminated anti-Tutsi propaganda and incited Hutus to kill by fomenting hatred and contempt of the Tutsi;
- (ii) Bazaramba organised road blocks and night patrols established for the purpose of controlling the Tutsi and led this activity;
- (iii) Bazaramba forced Tutsis to leave their homes;
- (iv) Bazaramba acquired and distributed the supplies such as matches used in burning residential and other buildings owned by Tutsi, and incited and ordered Hutus to burn these buildings; and
- (v) Bazaramba distributed among the Hutu movable and immovable property which had been left behind by the Tutsi or forcibly taken from them.

7.3 Killings (point 3.2.2 of the charge)

7.3.1 Provision of preparatory training in killing and acts of violence, and procurement of weapons (point 3.2.2.1 of the charge)

The charge is dismissed.

7.3.2 Maraba sector and its surroundings (point 3.2.2.2 of the charge)

A

7.3.2.1 (i) five unidentified Tutsi men

The charge is dismissed.

7.3.2.2 (ii) Emmanuel Habonimana, Dina, Agnes Mukamutesi and an unidentified Tutsi woman

Bazaramba ordered and incited in mid-April 1994 the killing of Emmanuel Habonimana, his Tutsi wife Dina and a Tutsi woman by the name of Agnes Mukamutesi as well as unidentified Tutsi woman in their company. As a result of the order and the incitement, the victims were killed using various weapons including clubs and swords. The orders were given in a situation wherein the intent of Bazaramba was to destroy in whole or in part the Rwandan Tutsis as a group as well as Hutus known to be moderates.

7.3.2.3 (iii) Bellansilla Mugagashugi

The charge is dismissed.

B

7.3.2.4 (i) An approximately 12-year-old Tutsi boy by the name of Mujemana

The charge is dismissed.

7.3.2.5 (ii) A Tutsi woman by the name of Agnes and her infant child

The charge is dismissed.

7.3.2.6 (iii) A Tutsi man by the name of Anderea

The charge is dismissed.

7.3.2.7 (iv) A Tutsi woman by the name of Beatrice, who was the wife of a man by the name of Gedeon

Between mid-April 1994 and 31 May 1994, Bazaramba with the intent to destroy in whole or in part the Rwandan Tutsis ordered Hutus to seek out and kill Tutsis who had gone into hiding.

As a result of the order given by Bazaramba, a Tutsi woman by the name of Beatrice, who was the wife of a man by the name of Gedeon, was clubbed to death.

7.3.3 Cyahinda church and its surroundings (point 3.2.2.3 of the charge)

With the intent to destroy in whole or in part the Rwandan Tutsis as a whole, Bazaramba between 15 and 18 April 1994 took part in some of the attacks against the buildings and surroundings of the church located in Cyahinda sector.

7.3.4 Mount Nyakizu and its surroundings (point 3.2.2.4 of the charge)

With the intent to destroy in whole or in part the Rwandan Tutsis as a whole, Bazaramba between 15 and 18 April 1994 led some of the attacks on Mount Nyakizu and its surroundings, giving orders and instructions which led to the killings of Tutsis.

In acting in the manners recounted above in points 7.2, 7.3.2.2, 7.3.2.7, 7.3.3 and 7.3.4, Bazaramba has committed genocide.

10. SENTENCING

The sentence for genocide shall be imprisonment of at least four years or for life. The wide range in the scale of punishment is explained by the fact that besides the extreme situation of killing persons belonging to a certain group, a person can also commit genocide in its lesser forms by e.g. inflicting on the group conditions of life calculated to bring about their physical destruction, by destroying housing or hampering access to food.

In this case, the conduct attributed to Bazaramba contains acts for which, in the absence of genocidal intent, he would be found guilty of murder or incitement to murder, the only sanction for which is a sentence of imprisonment for life. For this reason, a sentence of imprisonment for life is a sanction which is in just proportion with the dangerousness and harmfulness of the crime attributed to Bazaramba.

OUTCOME

The District Court has resolved the case in the manner indicated in the operative part.

By virtue of section 18(2) of the Legal Aid Act and Chapter 2:10(1) of the Criminal Procedure Act, a separate decision has been issued on the fees paid to defence counsel from State funds.

APPEAL

Appeal against this judgment may be lodged with Helsinki Court of Appeal in the manner laid down in Chapter 25 of the Code of Judicial Procedure.

The matter was resolved by:

Lars Karlsson, Chief Judge of the District Court
Vesa Komulainen, District Court Judge
Mikael Selander, District Court Judge

The judgment is unanimous.

The following notifications of intent to appeal were received by the deadline:

- the prosecutors, against the judgment in full
- for the defendant, defence counsel Ville Hoikkala, LL.M. and Tommi Heinonen, LL.M. trained on the bench, against the judgment in full

Lars Karlsson, Chief Judge of the District Court