

TRIAL CHAMBER I

Before Judges: Navanethem Pillay, presiding

Erik Møse

Asoka de Zoysa Gunawardana

Registrar: Adama Dieng

Judgement of: 3 December 2003

THE PROSECUTOR

V.

FERDINAND NAHIMANA
JEAN-BOSCO BARAYAGWIZA
HASSAN NGEZE
Case No. ICTR-99-52-T

SUMMARY

Counsel for the Prosecution

Mr. Stephen Rapp

Ms. Simone Monasebian

Ms. Charity Kagwi

Mr. William Egbe

Mr. Alphonse Van

Counsel for Ferdinand Nahimana

Mr. Jean-Marie Biju-Duval

Diana Ellis, Q.C.

Counsel for Jean-Bosco Barayagwiza

Mr. Giacomo Barletta-Caldarera

Counsel for Hassan Ngeze

Mr. John Floyd, III

Mr. René Martel

I. INTRODUCTION

1. Trial Chamber I today delivers its judgement in the trial of three Accused persons: Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze. The judgement will be available in written form in English tomorrow and in French upon translation. The Chamber will deliver orally a summary of the judgement. The judgement and not this summary is the authoritative text.
2. Ferdinand Nahimana was born on 15 June 1950, in Gatonde commune, Ruhengeri prefecture, Rwanda. He was a professor of history and Dean of the Faculty of Letters at the National University of Rwanda. In 1990, he was appointed Director of ORINFOR (Rwandan Office of Information) and remained in that post until 1992. He was a founder of RTLM and a member of its comité d'initiative, or Steering Committee.
3. Jean-Bosco Barayagwiza was born in 1950 in Mutura commune, Gisenyi prefecture, Rwanda. A lawyer by training, he held the post of Director of Political Affairs in the Ministry of Foreign Affairs. He was a founder of the CDR and of RTLM and a member of the Steering Committee of RTLM.
4. Hassan Ngeze was born on 25 December 1957 in Rubavu commune, Gisenyi prefecture, Rwanda. From 1978, he worked as a journalist, and in 1990, he founded the newspaper Kangura and held the post of Editor-in-Chief.
5. The three Accused are charged in separate Indictments; they were tried jointly. The Accused are all charged on counts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity (persecution and extermination). Additionally, Hassan Ngeze is charged with crimes against humanity (murder). The Accused are charged with individual criminal responsibility under Article 6(1) of the Statute for these crimes. Nahimana is additionally charged with superior responsibility under Article 6(3) in respect of direct and public incitement to commit genocide and the crime against humanity of persecution. Barayagwiza and Ngeze are additionally charged with superior responsibility under Article 6(3) in respect of all the counts except conspiracy to commit genocide.
6. In the Indictments, Ferdinand Nahimana and Jean-Bosco Barayagwiza were also charged with the crime against humanity of murder, and Barayagwiza was charged on counts of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. On 25 September 2002, the Chamber granted the Defence motion for acquittal in respect of these counts.

7. The Accused, Jean-Bosco Barayagwiza, elected not to attend his trial, giving as his reasons that he did not have confidence that he would be afforded a fair trial in light of the Appeal Chamber's reversal of its decision ordering his release before the trial.

8. This case raises important principles concerning the role of the media, which have not been addressed at the level of international criminal justice since Nuremberg. The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences.

II. FACTUAL FINDINGS

Violence in Rwanda in 1994

9. The Chamber finds that within the context of hostilities between the RPF and the Rwandan Government, which began when the RPF attacked Rwanda on 1 October 1990, the Tutsi population within the country was systematically targeted as suspected RPF accomplices. This targeting included a number of violent attacks that resulted in the killing of Tutsi civilians. The RPF also engaged in attacks on civilians during this period. Following the shooting of the plane and the death of President Habyarimana on 6 April 1994, widespread and systematic killing of Tutsi civilians, a genocide, commenced in Rwanda.

Kangura

10. Hassan Ngeze was the owner, founder and editor of Kangura. He controlled the publication and was responsible for its contents. The first issue of Kangura was published in May 1990, the last in 1995. No issues were published between April and July 1994. Kangura was very well known in the country as well as internationally. It was probably the most well known newspaper from Rwanda during that period of time. The newspaper had two versions, one primarily in Kinyarwanda and one primarily in French, referred to as the international version.

11. On the cover of each issue of Kangura, beginning in February 1991 with the publication of Kangura No. 10, appeared the title "The Voice that Awakens and Defends the Majority People". The term "rubanda nyamwinshi", which means "majority people", was used by Kangura to refer to the Hutu majority. The Chamber has examined a number of articles and excerpts from Kangura, focusing primarily on those that addressed issues of ethnicity and on those which called on readers to take action.

12. The Ten Commandments were published in Kangura No. 6, in December

1990, within an article entitled Appeal to the Conscience of the Hutu. The introduction of this article warned readers:

The enemy is still there, among us, and is biding his time to try again, at a more propitious moment, to decimate us.

Therefore, Hutu, wherever you may be, wake up! Be firm and vigilant. Take all necessary measures to deter the enemy from launching a fresh attack.

13. The second part of the article, entitled "The Tutsi ambition", described the Tutsi as "bloodthirsty", and referred to their continuing ideology of Tutsi domination over the Hutu, and to the "permanent dream of the Tutsi" to restore Tutsi minority rule. The article referred to a plan of 1962, in which the Tutsi were to resort to two weapons they thought effective against the Hutu: "money and the Tutsi woman". One part of the article, entitled "The Tutsi woman", stated that Tutsi women were sold or married to Hutu intellectuals or highly placed Hutu officials, where they could serve as spies in influential Hutu circles and arrange government appointments, issue special import licenses, and pass secrets to the enemy. Another part, which included the The Ten Commandments, exhorted the Hutu to wake up "now or never" and become aware of a new Hutu ideology, with roots in and in defence of the 1959 revolution. Reference was made to the historical servitude of the Hutu, and readers were urged to "be prepared to defend themselves against this scourge." The Hutu were urged to "cease feeling pity for the Tutsi!" The article then set forth The Ten Commandments.

14. The first commandment warns Hutu men of the dangers of Tutsi women and deems a traitor any Hutu man who marries a Tutsi woman, keeps a Tutsi mistress, or makes a Tutsi woman his secretary or protégée. Another commandment casts as a traitor any Hutu man who enters into business with Tutsi partners, invests his or state money in a Tutsi company, or lends to or borrows from a Tutsi. Other commandments require that strategic political, economic and military positions be entrusted to the Hutu, that students and teachers should be in the majority Hutu, and that the Hutu be united in solidarity and "seek friends and allies for the Hutu cause." The ninth commandment concludes, "The Hutu must be firm and vigilant towards their common Tutsi enemy."

15. In defence of his publication of The Ten Commandments, Ngeze invoked his publication of the Tutsi 19 Commandments in Kangura No. 4, 1990, in an effort to show the even-handedness of Kangura. The 19 Commandments were addressed to Tutsi, implicitly, and called on them to get into positions of authority, to get to know others in authority, befriend them, and then replace them. There was much in the document about the importance of

undermining Hutu confidence, with phrases such as "use the educated Bahutu credulity", "show them they are incapable", "ridicule the civil servants under our authority as ignorant Bahutu people", and "do whatever you can to keep the Bahutu civil servants in an inferiority complex". Commandment 13 told readers to "Keep in mind that the Hutu are created to be servant to other", and Commandment 16 issued a special call to the "youth Tutsi", stating that if "we fail to achieve our goal, we will use violence".

16. The Chamber finds that The Appeal to the Conscience of the Hutu and The Ten Commandments of the Hutu included within it, published in Kangura No. 6 in December 1990, conveyed contempt and hatred for the Tutsi ethnic group, and for Tutsi women in particular as enemy agents. The Appeal to the Conscience of the Hutu portrayed the Tutsi as a ruthless enemy, determined to conquer the Hutu, and called on the Hutu to take all necessary measures to stop the enemy. Kangura published the 19 Commandments to alert readers to the evil nature of the Tutsi and their intention to take power and subjugate the Hutu. The Ten Commandments of the Hutu and the 19 Commandments of the Tutsi were complementary efforts to the same end: the promotion of fear and hatred among the Hutu population of the Tutsi minority and the mobilization of the Hutu population against them. This appeal to the Hutu was visibly sustained in every issue of Kangura from February 1991 to March 1994 by the title "The Voice that Awakens and Defends the Majority People".

17. Other editorials and articles published in Kangura echoed the contempt and hatred for Tutsi found in The Ten Commandments. These writings portrayed the Tutsi as inherently wicked and ambitious in language clearly intended to fan the flames of resentment and anger, directed against the Tutsi population. The cover of Kangura No. 26 answered the question "What weapons shall we use to conquer the Inyenzi once and for all?" with the depiction of a machete. The message conveyed by this cover was a message of violence, that the machete should be used to conquer the Inyenzi once and for all. By Inyenzi, Kangura meant, and was understood to mean, all Rwandans of Tutsi ethnicity, who in this issue of Kangura were stereotyped as having the inherent characteristics of liars, thieves and killers.

18. In Kangura Nos. 58 and 59, published in March 1994, a competition was launched, consisting of eleven questions, the answers to which were all to be found in past issues of Kangura. Various points were allocated to correct answers, and prizes were announced for the winners. Readers were directed to enter the competition by sending their responses to the questions to RTLM.

19. The introduction to the competition stated that the purpose of the competition was to sensitize the public to the ideas of the newspaper. The

Chamber finds that this competition was a joint undertaking of Kangura and RTLM, intended to acquaint the readers of Kangura and the listeners of RTLM with the content and ideas of Kangura as set forth in its past issues. The Chamber finds that the competition was designed to direct participants to any and to all of these issues of the publication and that in this manner in March 1994 Kangura effectively and purposely brought these back issues into circulation.

CDR

20. The Chamber finds that Jean-Bosco Barayagwiza was one of the principal founders of CDR and played a leading role in its formation and development. Barayagwiza was seen as, and was, a decision-maker for the party, working to some extent behind the scenes in the shadow of CDR President Martin Bucyana, technically as an advisor or councillor. At some time prior to February 1994, Barayagwiza became the head of the CDR in Gisenyi prefecture and a member of the national Executive Committee. In February 1994, following the assassination of Martin Bucyana, Barayagwiza succeeded Bucyana. The Chamber finds that Hassan Ngeze was a founding member of CDR and active in the party, and held the position of adviser to the party. The Chamber finds that Ferdinand Nahimana was not a member of CDR.

21. The Chamber finds that the CDR was formed to promote unity and solidarity among the Hutu popular majority and to represent its political interests. The CDR equated political interest with ethnic identity and thereby equated the RPF with the Tutsi, effectively defining the enemy as the Tutsi ethnic group. The CDR also identified as the enemy prominent political opposition leaders. The formal policy of the CDR, as reflected in its political manifesto and public statements, initially condemned ethnic violence and called for peaceful co-existence among the various ethnic groups, maintaining that these ethnic groups each had their own fixed political interests and that unity among the groups was not possible. The CDR considered the RPF to be the political representation of Tutsi interest, determined to seize power back for the Tutsi through force. In an early statement of CDR policy, Barayagwiza expressed the view that force could legitimately be used if necessary to counter this aggression. In a communiqué issued in March 1993, the CDR called on the population to rise up and unseat the President and Prime Minister for their betrayal of the country by acceptance of the Arusha Accords, and in a communiqué issued in November 1993, following massacres it attributed to the RPF, the CDR called on the Hutu population to "neutralize by all means possible its enemies and their accomplices", having defined the enemies as the Tutsi ethnic group.

22. The Chamber finds that the CDR was a Hutu party and party membership was not open to Rwandans of Tutsi ethnicity. This policy was explicitly

communicated to members and the public by Barayagwiza and Ngeze. During the year 1994, and in particular, the period 6 April to 17 July 1994, Barayagwiza continued to exercise effective leadership over the CDR Party and its members. The killing of Tutsi was promoted by the CDR.

23. The CDR had a youth wing, called the Impuzamugambi, which became the CDR militia. The CDR members and Impuzamugambi were supervised by Barayagwiza and acted under his control in carrying out acts of killing and other acts of violence. Roadblocks were erected and manned by Impuzamugambi, for the purpose of identifying and killing Tutsi civilians. Barayagwiza gave orders to the Impuzamugambi at roadblocks that Tutsi should not be allowed to pass and that they should kill them unless they had CDR or MRND cards. Barayagwiza supplied weapons to the Impuzamugambi which were used for purposes of killing Tutsi. The Impuzamugambi, together with the Interahamwe, killed large numbers of Tutsi civilians in Gisenyi Prefecture.

RTLTM

RTLTM Broadcasts

24. RTLTM started broadcasting in July 1993. A number of witnesses testified to the popularity of RTLTM when it first came on air, noting that people could be seen everywhere listening to RTLTM. Its broadcasts were a common topic of conversation in homes, offices, cafes, and on the street. Almost everyone had a radio and listened to RTLTM. After 6 April 1994, militia at the roadblocks listened to RTLTM. Radios and weapons were the two key objects to be seen at the roadblocks, according to one witness.

25. Several hundred tapes of RTLTM broadcasts have been introduced in evidence, and various particular broadcasts have been discussed at trial. The Chamber has identified several areas of inquiry in its review, looking in particular at broadcasts that raised the issue of ethnicity and broadcasts that called on the population to take action.

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

27. Many RTLTM broadcasts are excerpted in the judgement. In one such broadcast, aired on 4 June 1994, RTLTM journalist Kantano Habimana told

listeners:

They should all stand up so that we kill the Inkotanyi and exterminate them?the reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small nose and then break it.

28. Both before and after 6 April 1994, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents. In some cases, these people were subsequently killed, and the Chamber finds that to varying degrees their deaths were causally linked to the broadcast of their names. RTLM also broadcast messages encouraging Tutsi civilians to come out of hiding and to return home or to go to the roadblocks, where they were subsequently killed in accordance with the direction of subsequent RTLM broadcasts tracking their movement.

29. Radio was the medium of mass communication with the broadest reach in Rwanda. The Chamber finds that RTLM broadcasts exploited the history of Tutsi privilege and Hutu disadvantage, and the fear of armed insurrection, to mobilize the population, whipping them into a frenzy of hatred and violence that was directed largely against the Tutsi ethnic group. The Interahamwe and other militia listened to RTLM and acted on the information that was broadcast by RTLM. RTLM actively encouraged them to kill, relentlessly sending the message that the Tutsi were the enemy and had to be eliminated once and for all.

Ownership and Control of RTLM

30. A number of Prosecution witnesses testified as to the creation, ownership and management of RTLM, and the role of two of the Accused, Nahimana and Barayagwiza, in RTLM. The Chamber found the testimony of Georges Ruggiu, who testified for the Prosecution, and Valerie Bemeriki, who testified for the Defence, to be not credible, and it did not rely on the evidence of these two RTLM journalists. The Chamber finds that RTLM was owned largely by members of the MRND party, with Juvenal Habyarimana, President of the Republic, as the largest shareholder. CDR leadership was represented in the top management of RTLM through Barayagwiza as a founding member of the Steering Committee and Stanislas Simbizi, a member of the CDR Executive Committee who was added to the Steering Committee of RTLM in 1993.

31. The Chamber finds that Nahimana and Barayagwiza, through their respective roles on the Steering Committee of RTLM, which functioned as a board of directors, effectively controlled the management of RTLM from the time of its creation through and beyond 6 April 1994. Nahimana was, and was seen as, the founder and director of the company, and Barayagwiza was,

and was seen as, his second in command. They represented RTLM externally in an official capacity. Internally, they controlled the financial operations of the company and held supervisory responsibility for all activities of RTLM, taking remedial action when they considered it necessary to do so. Nahimana also played an active role in determining the content of RTLM broadcasts, writing editorials and giving journalists texts to read.

32. The Chamber finds that after 6 April 1994, Nahimana and Barayagwiza continued to have de jure authority over RTLM. They expressed no concern regarding RTLM broadcasts, although they were aware that such concern existed and was expressed by others. Nahimana intervened in late June or early July 1994 to stop the broadcasting of attacks on General Dallaire and UNAMIR. The success of his intervention is an indicator of the de facto control he had but failed to exercise after 6 April 1994.

Notice of Violation

33. The Chamber considered evidence of correspondence and meetings between the Ministry of Information and RTLM. The Chamber finds that concern over RTLM broadcasting was first formally expressed in a letter to RTLM on 25 October 1993, from Minister Faustin Rucogoza. This concern grew, leading to a meeting on 26 November 1993 and another meeting on 10 February, convened by the Minister and attended by Nahimana and Barayagwiza. At these meetings, Nahimana and Barayagwiza were put on notice of the Ministry's growing concern that RTLM was violating its agreement with the government by promoting ethnic division and opposition to the Arusha Accords, and that it was reporting news in a manner that did not meet the standards of journalism. Nahimana and Barayagwiza both acknowledged that mistakes had been made by RTLM journalists. Various undertakings were made at the meetings, relating to the broadcasts of RTLM. At the meetings Nahimana was referred to as "the Director" of RTLM, and Barayagwiza was referred to as "a founding member" of RTLM and represented the management team. Following the second meeting between RTLM and the Ministry of Information on 10 February 1994, RTLM broadcasts publicly derided the efforts of the Minister to raise these concerns and commented on his inability to stop RTLM. Nevertheless, the Minister pressed forward with a case against RTLM which he was preparing to bring to the Council of Ministers, shortly before he and his family were killed on 7 April 1994.

34. It is evident that concerns over RTLM broadcasting of ethnic hatred and false propaganda were clearly and repeatedly communicated to RTLM. RTLM was represented in discussions with the government over these concerns by its senior management, and Nahimana and Barayagwiza both participated in both meetings. Each acknowledged mistakes that had been made by journalists and undertook to correct them, and each also defended RTLM without any

suggestion that they were not entirely responsible for its programming.

Ferdinand Nahimana

Rwanda: Current Problems and Solutions

35. The Indictment alleges that in an essay he wrote entitled Rwanda: Current Problems and Solutions, published in February 1993 and recirculated with a letter in March 1994, Ferdinand Nahimana called on the population to find a final solution to the problem of Rwanda and incited the youth to organize self-defence groups to fight against the RPF. The essay called for the organization of civil defence, consisting of armed youth, to fight "the enemy", who were defined explicitly as the RPF and implicitly as "the Tutsi league", a veiled reference to the Tutsi population. In March 1994, Nahimana re-circulated this essay amidst the ongoing initiative at that time to engage armed youth organizations such as the Interahamwe in attacks against the Tutsi population as part of an effort to defeat the RPF. However, the essay stated that such initiative should be coordinated by government officials and the army. While the essay called for defeat of "the enemy", the Chamber does not find that it, or the introductory letter to it, was a direct call for violence other than a civil defence initiative to be coordinated by the Rwandan army.

36. The Prosecution alleges that between January and July 1994, Ferdinand Nahimana organized meetings with the Interahamwe in Ruhengeri Prefecture. Two such meetings are specifically alleged, one on 29 March 1994 at which Nahimana is said to have given orders for the Interahamwe to kill Tutsis from Nyarutovu commune, and one on 12 April 1994 at the communal office in Gatonde, after which the killing of Tutsis is said to have started. The Prosecution relied entirely on the evidence of one witness, Witness AEN, to support its allegations concerning the presence and participation of Nahimana at these two meetings. The Chamber did not find the testimony of Witness AEN to be credible. Therefore, the Prosecution has not met its burden of proof with regard to these allegations.

37. A number of Prosecution witnesses testified to discriminatory practices engaged in by Ferdinand Nahimana as a student against fellow Tutsi students, as a professor against his Tutsi students, in university admissions and faculty appointments, and as Director of ORINFOR against Tutsi employees. The Defence led a number of witnesses to counter these allegations, which in some cases date back to the 1970s. The Chamber considers that these allegations are too remote to the criminal charges against Nahimana, and for this reason will not make factual findings with regard to these allegations.

38. The Chamber finds that Ferdinand Nahimana, as Director of ORINFOR,

ordered the broadcast on Radio Rwanda of the contents of a communiqué based on a fax from Nairobi, a false document stating that the PL, or Liberal Party, was the internal arm of the RPF and was planning to assassinate Hutu leaders. This broadcast took place within a few days of a PL meeting in Bugesera on 1 March 1992, resulting in the killing of hundreds of Tutsi civilians. It was broadcast four or five times over the course of 3 and 4 March 1992. The editorial team had decided not to broadcast the communiqué because of their inability to confirm its authenticity. This decision was reversed by Nahimana, who by his own admission did not make an effort to ascertain the accuracy of the Radio Rwanda broadcast, which spread fear and provoked violence against the Tutsi population by Hutu who were falsely led to believe that they faced imminent attack.

Evaluation of Nahimana's Testimony

39. The Chamber has considered Nahimana's testimony and finds certain patterns in his response to questioning. With great sophistry, Nahimana often pursued many lines of argument sequentially or even simultaneously in his testimony. Nahimana was not forthcoming in his testimony. While he was not entirely untruthful, in the view of the Chamber, he was evasive and manipulative, and there were many credibility gaps in his testimony. For this reason, the Chamber has been cautious in its evaluation of Nahimana's testimony on particular matters of fact, and does not generally accept Nahimana's version of events.

Jean-Bosco Barayagwiza

40. A number of Prosecution witnesses testified to Barayagwiza's presence and participation in CDR meetings, demonstrations and roadblock activities. The Chamber finds that Jean-Bosco Barayagwiza convened CDR meetings and spoke at these meetings, ordering the separation of Hutu and Tutsi present at a meeting in Mutura commune in 1991, and asking Bagogwe Tutsi to do the *Ikinyemera*, their traditional dance, at this meeting and at another meeting in Mutura commune in 1993, publicly humiliating and intimidating them and threatening to kill them. Barayagwiza supervised roadblocks manned by the *Impuzamugambi*, established to stop and kill Tutsi. He was present at and participated in demonstrations where CDR demonstrators armed with cudgels chanted "*Tubatsembatsembe*" or "lets' exterminate them", and the reference to "them" was understood to mean the Tutsi.

41. The Chamber finds, based on the testimony of Witness AHB, that Barayagwiza came to Gisenyi in April 1994, one week after the shooting of the plane on 6 April, with a truckload of weapons, including firearms and machetes, for distribution to the local population to be used to kill Tutsi civilians. Outreach to three cellules was coordinated in advance, to recruit attackers from among the residents of these cellules and bring them

together to collect the weapons. That same day at least thirty Tutsi civilians were killed, including children and older people, with the weapons brought by Barayagwiza.

42. Omar Serushago testified that Barayagwiza raised funds for the purchase of weapons. The Chamber decided to consider the evidence of Omar Serushago with caution and require that his testimony be corroborated. This evidence was not corroborated and is not alone enough to sustain a finding by the Chamber that Barayagwiza raised funds for the purchase of weapons.

Hassan Ngeze

Radio Rwanda/RTL M Broadcasts

43. The Chamber has reviewed the Radio Rwanda and RTL M broadcasts that were introduced by the Prosecution to establish that Hassan Ngeze called for the extermination of the Tutsi and Hutu political opponents, and that he defended the extremist Hutu ideology of the CDR. The Chamber considers that through these broadcasts, Ngeze was trying to send a message, or several messages, to those at the roadblocks. One clear message was: do not kill the wrong people, meaning innocent Hutu who might be mistaken for Tutsi because they had Tutsi features, or because they did not have identification, or because they had identification marked "RPF". This is not the same as saying that the Tutsi is not the enemy and should not be killed. In the broadcasts, Ngeze did not tell those at the roadblocks not to kill the Tutsi. The message was to be careful and bring suspects to the authorities, as much to ensure that the enemy does not mistakenly get through the roadblock as to ensure that the wrong people, meaning innocent Hutu, are not killed. In his testimony, Ngeze provided many explanations for what he said, describing various scenarios, including one to suggest he was trying to trick those at the roadblock into letting him pass with Tutsi refugees carrying false Hutu identity cards. Nevertheless, in the Chamber's view, Ngeze also made it clear in his testimony that his message was not to kill Hutu by mistake.

44. The Chamber recognizes that in telling those at the roadblock not to kill Hutu by mistake, Ngeze was also sending a message that there was no problem with the killing of Tutsi at the roadblock. Such message, however, was implicit in the broadcasts, which repeatedly urged that suspects not be killed but rather be brought to the authorities. In these convoluted circumstances, the Chamber is unable to find that these broadcasts constituted a call to kill that would be clearly understood as such.

The Killing of Modeste Tabaro

45. The Indictment alleges that on 21 April 1994 in Gisenyi town, Hassan

Ngeze ordered the Interahawme to kill Modeste Tabaro, a Tutsi and a member of an opposition political party. Of the four Prosecution witnesses who gave evidence on this killing, only two testified to having witnessed the killing of Modeste Tabaro. While the testimony of these two witnesses is not necessarily inconsistent, the two witnesses presented two different accounts of the killing that do not corroborate each other. This evidence is insufficient, in the Chamber's view, to support a finding beyond a reasonable doubt that Ngeze ordered the shooting of Tabaro. Because the Prosecution has not met its burden of proof, the Chamber need not examine inconsistencies among or make a finding on the credibility of the Defence witnesses in respect of the allegation that Hassan Ngeze ordered the killing of Modeste Tabaro.

Distribution of Weapons, Demonstrations, Roadblocks and Killings in Gisenyi and at the Commune Rouge

46. A number of witnesses gave evidence on Hassan Ngeze's role in the distribution of weapons, at demonstrations and at roadblocks in Gisenyi, and on his role in killings in Gisenyi and at the Commune Rouge, a cemetery in Gisenyi.

47. Witness AHI testified that Ngeze took part in the distribution of

weapons on the evening of 8 April 1994. Witness AFX saw at least fifty guns in Ngeze's house, which Ngeze himself showed the witness. Omar Serushago testified that he saw Ngeze on the morning of 7 April transporting weapons, including guns, grenades and machetes. He saw him again between 13 and 20 April in the same vehicle, parked and containing guns, grenades and machetes. The Chamber accepts the evidence of Witness AHI, Witness AFX, and Serushago that Ngeze stored and distributed weapons, and played a role in securing weapons for the Impuzamugambi.

48. A number of Prosecution witnesses saw Ngeze dressed in military attire and carrying a gun. A number of Defence witnesses testified that he wore Muslim or civilian attire, not military attire, and that he did not carry a gun. The Chamber accepts the evidence of the Defence witnesses that they saw Ngeze in Muslim or civilian attire, unarmed. This does not preclude the possibility that there were other occasions on which he dressed in military attire and was armed.

49. Witness AHI testified that Ngeze set up and monitored roadblocks and gave instructions to others at the roadblocks: to stop and search vehicles, to check identity cards, and to "set aside" persons of Tutsi ethnicity. These Tutsi were transported to and killed at the Commune Rouge. The Chamber finds that Ngeze played an active and supervisory role in the identification and targeting of Tutsi at roadblocks, who were subsequently

killed at the Commune Rouge.

50. Many Prosecution witnesses testified that they saw Ngeze in Gisenyi in a vehicle with a megaphone, calling or leading CDR members to meetings, and transporting Imuzamugambi to demonstrations, where Tuzatsembatsembe, or "let's exterminate them", was chanted. Witness AEU heard Ngeze say through the megaphone that he was going to kill and exterminate the Inyenzi, meaning the Tutsi. A number of Defence witnesses testified that Ngeze did not have, or could not have had, a megaphone in his vehicle, although several did mention other people named Hassan who had megaphones and might have been confused with Ngeze. Again the Chamber notes that this evidence does not preclude the possibility that Prosecution witnesses did see Ngeze with a megaphone. The testimony of the Prosecution witnesses indicates that Ngeze frequently used a megaphone in conjunction with his vehicle to drive around and mobilize CDR members and others against the Inyenzi, who were understood to be the Tutsi.

51. The Chamber finds that Ngeze helped secure and distribute, stored, and transported weapons to be used against the Tutsi population. He set up, manned and supervised roadblocks in Gisenyi in 1994 that identified targeted Tutsi civilians who were subsequently taken to and killed at the Commune Rouge. Ngeze often drove around with a megaphone in his vehicle, mobilizing the population to come to CDR meetings and spreading the message that the Inyenzi would be exterminated, Inyenzi meaning, and being understood to mean, the Tutsi ethnic minority. At Martin Bucyana's funeral in February 1994, Ngeze said that if President Habyarimana were to die, the Tutsi would not be spared.

52. Witness EB gave a detailed account of an attack on 7 April against the Tutsi population in Gisenyi by the Interahamwe, an attack in which he and his family were targeted as victims. He heard Ngeze tell Interahamwe through his megaphone to kill Tutsi and said that some of the Interahamwe should go to the Commune Rouge to dig holes. Witness EB said they were then attacked. The attackers killed his younger brother and took his body to the side of the road, where the bodies were placed before being taken to the Commune Rouge. He saw the body of his younger sister, and he saw two women, one of whom was Hassan Ngeze's mother, thrusting the metal rods from an umbrella in between his sister's thighs. She was pregnant at the time of her death. There were many bodies, which were loaded on a vehicle and taken to the Commune Rouge for burial.

53. Witness EB testified that two hours later, the attackers returned and looted his parents' home. The attackers returned again at 6 p.m., and found Witness EB's mother there. They hit her on the forehead with a nail-studded club. The Interahamwe then threw a grenade into the house, and Witness EB was seriously wounded.

54. The Chamber considered Ngeze's defence of alibi for 7 April 1994, based on his evidence and the evidence of Defence witnesses. This evidence is riddled with inconsistencies, in light of which the Chamber finds that the defence of alibi is not credible.

55. The Chamber finds that Hassan Ngeze ordered the Interahamwe in Gisenyi on the morning of 7 April 1994 to kill Tutsi civilians and prepare for their burial at the Commune Rouge. Many were killed in the subsequent attacks that happened immediately thereafter and later on the same day. The attack that resulted in these and other killings was planned systematically, with weapons distributed in advance, and arrangements made for the transport and burial of those to be killed.

56. Omar Serushago testified to another scene of slaughter a week later, some time between 13 and 20 April at the Commune Rouge. Serushago said he saw Ngeze shoot a Tutsi man after asking why the man had been kept waiting and not killed immediately. The shooting was to be an example for others of how to kill. There is no corroboration of Serushago's testimony, and the Chamber cannot rely solely on his testimony to substantiate this charge against Ngeze.

57. Hassan Ngeze challenged many of the Prosecution witnesses on the grounds that they were members of or affiliated with the organization Ibuka. The Chamber finds that although several Prosecution witnesses who testified are members of Ibuka or otherwise have links with the organization, none of these witnesses was influenced in their testimony by Ibuka, which is a non-governmental organization assisting survivors of both Hutu and Tutsi ethnicity in the aftermath of the killings that took place in 1994.

Evaluation of Hassan Ngeze's Testimony

58. In addressing the charges against him, Ngeze evidenced little awareness of the lack of consistency in his testimony, often altering or contradicting what he had said within minutes of saying it. Ngeze wavered back and forth in his testimony on fundamental issues, as well as virtually every detail of his evidence. Ngeze repeatedly and insistently denied the obvious in his testimony. Ngeze uses, distorts and fabricates information freely, marshalling it for other ends. In his testimony, as well as his other conduct during the proceedings, Ngeze demonstrated a thorough disregard for the truth, and for the solemnity of his declaration to testify truthfully.

Interactions Among the Accused

59. Several witnesses testified to having seen various of the Accused together at meetings. Witness AHA, who worked for Kangura, accompanied Ngeze to meetings with Barayagwiza in his office and his house, where Barayagwiza and Ngeze discussed the CDR, Kangura and RTLM all in the context of the Hutu struggle against the Tutsi. Nahimana and Barayagwiza worked very closely together in the management of RTLM. Barayagwiza and Ngeze worked very closely together in the CDR. The Chamber notes that Nahimana and Ngeze were not seen together as much as they were each seen with Barayagwiza. Nevertheless, as evidenced by the conversation between Ngeze and Barayagwiza, an institutional link among them all was perceived. At a personal level, the point of connection for the three Accused was Jean-Bosco Barayagwiza.

60. The Prosecution introduced evidence of meetings that took place at the Hotel des Mille Collines and Hotel Diplomat, one meeting between Barayagwiza and Nahimana and another at which Barayagwiza was present. Witness WD, a waiter who worked at these hotels, testified to comments made by the two Accused that he overheard as he was serving them. The Chamber finds the testimony of Witness WD to be not credible. As he was the sole witness to the conversations about which he testified, the Chamber finds that the Prosecution did not sustain its burden of proof with regard to these allegations.

61. The Chamber finds that Nahimana, Barayagwiza and Ngeze participated in an MRND meeting in 1993 at Nyamirambo Stadium in Kigali. The meeting was attended by about 15,000 people, including Interahamwe and Impuzamugambi, who were transported to the meeting by ONATRACOM government-run buses. Nahimana, Barayagwiza and Ngeze were introduced, RTLM and Kangura journalists. The President of MRND, Ngirumpatse, spoke first and referred to RTLM as a radio they had acquired. He urged the crowd to listen to RTLM rather than Radio Rwanda, which he referred to as an Inyenzi radio. Nahimana addressed the meeting and said RTLM should be used to disseminate their ideas relating to Hutu empowerment, and he requested that people support RTLM with financial contributions. Barayagwiza spoke about collaboration with the CDR and working together to fight the Inyenzi. He also spoke of using RTLM to fight against the Inyenzi. He said the Inyenzi were not far, and were even there among them. RTLM reported on the meeting and broadcast many of the speeches, including Nahimana's.

62. The Chamber considered the interactions among CDR, RTLM and Kangura, three institutions controlled by the Accused. The Chamber finds that Kangura supported the CDR, claiming the party as its own, publishing a special issue on the occasion of its creation, with a membership application form, and urging its readers to join the party. In Kangura, Hassan Ngeze publicly acknowledged his formal role as an adviser to the CDR, and through editorials, photographs, and the publication of letters

and communiqués, Kangura endorsed and actively promoted the CDR. Kangura and RTLM functioned as partners in a Hutu coalition, of which CDR was also a part. Kangura and RTLM presented a common media front, publicly interacting and promoting each other through articles, broadcasts, and the joint initiative represented by the Kangura competition in March 1994. Kangura portrayed all three of the Accused in a common undertaking relating to RTLM. The purpose of the coalition was to mobilize the Hutu population against the Tutsi ethnic minority.

III. LEGAL FINDINGS

GENOCIDE

The Accused are charged with genocide.

Acts of RTLM

63. The Chamber has found that RTLM broadcasts engaged in ethnic stereotyping in a manner that promoted contempt and hatred for the Tutsi population and called on listeners to seek out and take up arms against the enemy. The enemy was defined to be the Tutsi ethnic group and Hutu opponents. These broadcasts called explicitly for the extermination of the Tutsi ethnic group. In 1994, both before and after 6 April, RTLM broadcast the names of Tutsi individuals and their families, as well as Hutu political opponents who supported the Tutsi ethnic group. In some cases these persons were subsequently killed. A specific causal connection between the RTLM broadcasts and the killing of these individuals -- either by publicly naming them or by manipulating their movements and directing that they, as a group, be killed -- has been established.

Acts of Kangura

64. The Chamber has found that articles and editorials in Kangura, such as *The Appeal to the Conscience of the Hutu*, conveyed contempt and hatred for the Tutsi ethnic group, and for Tutsi women in particular as enemy agents, and called on readers to take all necessary measures to stop the enemy, defined to be the Tutsi population. The cover of Kangura No. 26 promoted violence by conveying the message that the machete should be used to eliminate the Tutsi, once and for all. This was a call for the destruction of the Tutsi ethnic group as such. Through fear-mongering and hate propaganda, Kangura paved the way for genocide in Rwanda, whipping the Hutu population into a killing frenzy.

65. The nature of media is such that causation of killing and other acts of genocide will necessarily be effected by an immediately proximate cause

in addition to the communication itself. In the Chamber's view, this does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication.

Acts of CDR

66. The Hutu Power movement, spearheaded by CDR, created a political framework for the killing of Tutsi and Hutu political opponents. The CDR and its youth wing, the Impuzamugambi, convened meetings and demonstrations, established roadblocks, distributed weapons, and systematically organized and carried out the killing of Tutsi civilians. As well as orchestrating particular acts of killing, the CDR promoted a Hutu mindset in which ethnic hatred was normalized as a political ideology. The division of Hutu and Tutsi entrenched fear and suspicion of the Tutsi and fabricated the perception that the Tutsi population had to be destroyed in order to safeguard the political gains that had been made by the Hutu majority.

67. The Defence contends that the downing of the President's plane and the death of Habyarimana precipitated the killing of innocent Tutsi civilians. The Chamber accepts that this moment in time served as a trigger for the events that followed. That is evident. But if the downing of the plane was the trigger, then RTLM, Kangura and CDR were the bullets in the gun. The trigger had such a deadly impact because the gun was loaded. The Chamber therefore considers the killing of Tutsi civilians and Hutu political opponents can be said to have resulted, at least in part, from the message of ethnic targeting for death that was clearly and effectively disseminated through RTLM, Kangura and CDR, before and after 6 April 1994.

Acts of Barayagwiza

Barayagwiza distributed a truckload of weapons to the local population, which were used to kill individuals of Tutsi ethnicity. At least thirty Tutsi civilians were killed, including children and older people. Barayagwiza played a leadership role in the distribution of these weapons, which formed part of a predefined and structured plan to kill Tutsi civilians. From Barayagwiza's critical role in this plan, orchestrating the delivery of the weapons to be used for destruction, the Chamber finds that Barayagwiza was involved in planning these acts.

Acts of Ngeze

68. Hassan Ngeze on the morning of 7 April 1994 ordered the Interahamwe in Gisenyi to kill Tutsi civilians and prepare for their burial at the Commune Rouge. Many were killed in the attacks that happened immediately thereafter and later on the same day. Ngeze helped secure and distribute,

stored, and transported weapons to be used against the Tutsi population. He set up, manned and supervised roadblocks in Gisenyi in 1994 that identified targeted Tutsi civilians who were subsequently taken to and killed at the Commune Rouge. Ngeze often drove around with a megaphone in his vehicle, mobilizing the population to come to CDR meetings and spreading the message that the Inyenzi would be exterminated, Inyenzi meaning, and being understood to mean, the Tutsi ethnic minority. In this manner, Ngeze instigated the killing of Tutsi civilians.

Genocidal Intent

69. In ascertaining the intent of the Accused, the Chamber has considered their individual statements and acts, as well as the message they conveyed through the media they controlled. On 15 May 1994, the Editor-in-Chief of RTLM, Gaspard Gahigi, told listeners:

?they say the Tutsi are being exterminated, they are being decimated by the Hutu, and other things. I would like to tell you, dear listeners of RTLM, that the war we are waging is actually between these two ethnic groups, the Hutu and the Tutsi.

70. Even before 6 April 1994, RTLM was equating the Tutsi with the enemy, as evidenced by its broadcast of 6 January 1994, with Kantano Habimana asking, "Why should I hate the Tutsi? Why should I hate the Inkotanyi?"

71. With regard to Kangura, in perhaps its most graphic expression of genocidal intent, the cover of Kangura No. 26 answered the question "What Weapons Shall We Use To Conquer The Inyenzi Once And For All?" with the depiction of a machete. That the Tutsi ethnic group was the target of the machete was clear.

72. The newspaper and the radio explicitly and repeatedly, in fact relentlessly, targeted the Tutsi population for destruction. Demonizing the Tutsi as having inherently evil qualities, equating the ethnic group with "the enemy" and portraying its women as seductive enemy agents, the media called for the extermination of the Tutsi ethnic group as a response to the political threat that they associated with Tutsi ethnicity.

73. The genocidal intent in the activities of the CDR was expressed through the phrase "tubatsembembe" or "let's exterminate them", a slogan chanted repeatedly at CDR rallies and demonstrations. At a policy level, CDR communiques called on the Hutu population to "neutralize by all means possible" the enemy, defined to be the Tutsi ethnic group.

74. The editorial policies evidenced by the writings of Kangura and the broadcasts of RTLM, and the organizational policy evidenced by the activity

of CDR, constitute, in the Chamber's view, conclusive evidence of genocidal intent. Individually, each of the Accused made statements that further evidence this intent.

75. Ferdinand Nahimana, in a Radio Rwanda broadcast on 25 April 1994, said he was happy that RTLM had been instrumental in awakening the majority people, meaning the Hutu population, and that the population had stood up with a view to halting the enemy. Nahimana associated the enemy with the Tutsi ethnic group. As the mastermind of RTLM, Nahimana set in motion the communications weaponry that fought the "war of media, words, newspapers and radio stations" he described in his Radio Rwanda broadcast of 25 April as a complement to bullets.

76. Jean-Bosco Barayagwiza himself said in public meetings, "let's exterminate them" with "them" being understood by those who heard it as a reference to the Tutsi population. After separating the Tutsi from the Hutu and humiliating the Tutsi by forcing them to perform the *Ikinyemera*, a traditional dance, at several public meetings, Barayagwiza threatened to kill them and said it would not be difficult. From his words and deeds, Barayagwiza's ruthless commitment to the destruction of the Tutsi population as a means by which to protect the political gains secured by the Hutu majority from 1959 is evident.

77. Hassan Ngeze wrote many articles and editorials, and made many statements that openly evidence his genocidal intent. In one such article he stated that the Tutsi "no longer conceal the fact that this war pits the Hutus against the Tutsis." His radio broadcast of 12 June 1994 called on listeners not to mistakenly kill Hutu rather than Tutsi. Crass references to the physical and personal traits of Tutsi ethnicity permeate Kangura and his own writings in Kangura. Ngeze harped on the broad nose of the Hutu as contrasted with the aquiline nose of the Tutsi, and he incessantly described the Tutsi as evil. His role in saving Tutsi individuals whom he knew does not, in the Chamber's view, negate his intent to destroy the ethnic group as such. Witness LAG heard him say, "[I]f Habyarimana were also to die, we would not be able to spare the Tutsi". Witness AEU heard Ngeze on a megaphone, saying that he was going to kill and exterminate all the *Inyenzi*, by which he meant the Tutsi, and Ngeze himself ordered an attack on Tutsi civilians in Gisenyi, evidencing his intent to destroy the Tutsi population.

78. Based on this evidence, the Chamber finds that Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze acted with intent to destroy, in whole or in part, the Tutsi ethnic group. The identification of Tutsi individuals as enemies of the state associated with political opposition, simply by virtue of their Tutsi ethnicity, underscores the fact that their membership in the ethnic group, as such, was the sole basis on which they

were targeted.

Individual Criminal Responsibility

79. The Chamber has considered the individual criminal responsibility of Ferdinand Nahimana and Jean-Bosco Barayagwiza for RTLM broadcasts, by virtue of their respective roles in the creation and control of RTLM. Nahimana and Barayagwiza were, respectively, "number one" and "number two" in the top management of the radio. They represented the radio at the highest level in meetings with the Ministry of Information; they controlled the finances of the company; and they were both members of the Steering Committee, which functioned in effect as a board of directors for RTLM. Nahimana chaired the Program Committee of this board, and Barayagwiza chaired its Legal Committee.

80. While recognizing that Nahimana and Barayagwiza did not make decisions in the first instance with regard to each particular broadcast of RTLM, these decisions reflected an editorial policy for which they were responsible. The broadcasts collectively conveyed a message of ethnic hatred and a call for violence against the Tutsi population. This message was heard around the world. "Stop that radio" was the cry Alison Des Forges heard from Rwanda during the killings, and it was the cry conveyed to the United Nations by Reporters Without Borders in May 1994. As board members responsible for RTLM, including its programming, Nahimana and Barayagwiza were responsible for this message. Both Barayagwiza and Nahimana knew that RTLM programming was generating concern, even before 6 April 1994. Yet RTLM programming followed its trajectory, steadily increasing in vehemence and reaching a pitched frenzy after 6 April. Nahimana and Barayagwiza knew that the hate being spewed by these programs was of concern and failed to take effective measures to stop their evolution into the deadly weapon of war and genocide that was unleashed in full force after 6 April 1994.

81. After 6 April 1994, although the evidence does not establish the same level of active support, it is nevertheless clear that Nahimana and Barayagwiza knew what was happening at RTLM and failed to exercise the authority vested in them as office-holding members of the governing body of RTLM, to prevent the genocidal harm that was caused by RTLM programming. That they had the de facto authority to prevent this harm is evidenced by the one documented and successful intervention of Nahimana to stop RTLM attacks on UNAMIR and General Dallaire. The Chamber notes that Nahimana has not been charged for genocide pursuant to Article 6(3) of its Statute. For his active engagement in the management of RTLM prior to 6 April, and his failure to take necessary and reasonable measures to prevent the acts of genocide caused by RTLM that occurred after 6 April, the Chamber finds Barayagwiza guilty of genocide pursuant to Article 6(3) of its Statute.

82. The Chamber notes Nahimana's particular role as the founder and principal ideologist of RTLM. RTLM was his initiative and his design, which grew out of his experience as Director of ORINFOR and his understanding of the power of the media. Although Nahimana disclaimed responsibility for RTLM broadcasting after 6 April, the Chamber considers this disclaimer too facile. Nahimana's interview on Radio Rwanda, in which he said he was very happy with RTLM's instrumental role in awakening the Hutu population, took place while the genocide was underway; the massacre of the Tutsi population was ongoing. Nahimana may have been less actively involved in the daily affairs of RTLM after 6 April 1994, but RTLM did not deviate from the course he had set for it before 6 April 1994. The programming of RTLM after 6 April built on the foundations created for it before 6 April. RTLM was Nahimana's weapon of choice, which he used to instigate the acts of genocide that occurred. For this reason the Chamber finds Nahimana guilty of genocide pursuant to Article 6(1) of its statute.

83. Jean-Bosco Barayagwiza was one of the principal founders of CDR and played a leading role in its formation and development. He was a decision-maker for the party. The killing of Tutsi civilians was promoted by Barayagwiza himself and by CDR members in his presence at public meetings and demonstrations. Barayagwiza supervised roadblocks manned by the Impuzamugambi, established to stop and kill Tutsi. Barayagwiza was at the organizational helm of CDR. He was also on site at the meetings, demonstrations and roadblocks that created an infrastructure for the killing of Tutsi civilians. For this reason, the Chamber finds him guilty of instigating acts of genocide committed by CDR members and Impuzamugambi, pursuant to Article 6(1) of its Statute. For his individual acts in planning the killing of Tutsi civilians, the Chamber finds him guilty of genocide, pursuant to Article 6(1) of its Statute.

84. The Chamber further finds that Barayagwiza had superior responsibility over members of the CDR and its militia, the Impuzamugambi, as President of CDR at Gisenyi Prefecture and from February 1994 as President of CDR at the national level. He promoted the policy of CDR for the extermination of the Tutsi population and supervised his subordinates, the CDR members and Impuzamugambi militia, in carrying out killings and other violent acts. For his active engagement in CDR, and his failure to take necessary and reasonable measures to prevent the acts of genocide caused by CDR members, the Chamber finds Barayagwiza guilty of genocide pursuant to Article 6(3) of its Statute.

85. The Chamber finds Hassan Ngeze, as founder, owner and editor of Kangura, a publication that instigated the killing of Tutsi civilians, as well as for his acts of ordering, inciting and aiding and abetting the killing of Tutsi civilians, guilty of genocide, pursuant to Article 6(1) of its Statute.

DIRECT AND PUBLIC INCITEMENT TO GENOCIDE

86. The Chamber examined the central principles that emerge from the international jurisprudence on incitement to discrimination and violence that serve as a useful guide to the factors to be considered in defining elements of "direct and public incitement to genocide" as applied to mass media.

87. Editors and publishers have generally been held responsible for the media they control. In determining the scope of this responsibility, the importance of intent, that is the purpose of the communications they channel, emerges from the jurisprudence. The actual language used in the media has often been cited as an indicator of intent. Critical distance is a key factor in evaluating the purpose of the publication.

88. The jurisprudence on incitement also highlights the importance of taking context into account when considering the potential impact of expression. Other factors relating to context that emerge from the jurisprudence, particularly that of the European Court of Human Rights, include the importance of protecting political expression, particularly the expression of opposition views and criticism of the government.

89. In considering whether particular expression constitutes a form of incitement on which restrictions would be justified, the international jurisprudence does not include any specific causation requirement linking the expression at issue with the demonstration of a direct effect. In the well-known Nuremberg case of Julius Streicher, there was no allegation that Streicher's publication *Der Stürmer* was tied to any particular violence. Much more generally, it was found to have "injected into the minds of thousands of Germans" a "poison" that caused them to support the National Socialist policy of Jewish persecution and extermination.

90. Counsel for Ngeze has argued that United States law, as the most speech-protective, should be used as a standard, to ensure the universal acceptance and legitimacy of the Tribunal's jurisprudence. The Chamber considers international law, which has been well developed in the areas of freedom from discrimination and freedom of expression, to be the point of reference for its consideration of these issues, noting that domestic law varies widely while international law codifies evolving universal standards. The Chamber notes that the jurisprudence of the United States also accepts the fundamental principles set forth in international law and has recognized in its domestic law that incitement to violence, threats, libel, false advertising, obscenity, and child pornography are among those forms of expression that fall outside the scope of freedom of speech protection.

Charges Against the Accused

91. The Accused are charged with direct and public incitement to genocide.

92. The crime of incitement is an inchoate offence that continues in time until the completion of the acts contemplated. The Chamber accordingly considers that the publication of Kangura, from its first issue in May 1990 through its March 1994 issue, the alleged impact of which culminated in events that took place in 1994, falls within the temporal jurisdiction of the Tribunal. Similarly, the Chamber considers that the entirety of RTLM broadcasting, from July 1993 through July 1994, the alleged impact of which culminated in events that took place in 1994, falls within the temporal jurisdiction of the Tribunal.

93. In its review of Kangura and RTLM, the Chamber notes that some of the articles and broadcasts highlighted by the Prosecution convey historical information, political analysis, or advocacy of an ethnic consciousness regarding the inequitable distribution of privilege in Rwanda. Barayagwiza's RTLM broadcast of 12 December 1993, for example, is a moving personal account of his experience of discrimination as a Hutu. The Chamber considers that it is critical to distinguish between the discussion of ethnic consciousness and the promotion of ethnic hatred. This broadcast by Barayagwiza is the former but not the latter. A communication such as this broadcast does not constitute incitement. In fact, it falls squarely within the scope of speech that is protected by the right to freedom of expression. Similarly, public discussion of the merits of the Arusha Accords, however critical, constitutes a legitimate exercise of free speech.

94. The Chamber considers that speech constituting ethnic hatred results from the stereotyping of ethnicity combined with its denigration. In the Chamber's view, the accuracy of a generalization is only one factor to be considered in the determination of whether it is intended to provoke rather than to educate those who receive it. The tone of the statement is as relevant to this determination as is its content. The Chamber also considers the context in which the statement is made to be important. A statement of ethnic generalization provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal environment. It would be more likely to lead to violence. At the same time the environment would be an indicator that incitement to violence was the intent of the statement.

95. The Accused have cited in their defence the need for vigilance against the enemy, the enemy being armed and dangerous RPF forces who

attacked the Hutu population and were fighting to destroy democracy and reconquer power in Rwanda. The Chamber accepts that the media has a role to play in the protection of democracy and if necessary the mobilization of civil defence for the protection of the nation and its people. What distinguishes both Kangura and RTLM from an initiative to this end is the consistent identification made by the publication and the radio broadcasts of the enemy as the Tutsi population. Readers and listeners were not directed against individuals who were clearly defined to be armed and dangerous. Instead, Tutsi civilians and in fact the Tutsi population as a whole were targeted as the threat.

96. Both Kangura and RTLM, as well as CDR in its communiqués, named and

listed individuals suspected of being RPF or RPF accomplices. In their defence, the Accused stated that these individuals were, at least in some cases, RPF members. The Chamber accepts that the publication of official information is a legitimate function of the media. Not all lists and names published or broadcast were associated with such sources, however. To the contrary, the evidence reviewed by the Chamber indicates a pattern of naming people on vague suspicion, without articulated grounds, or in those cases where the grounds were articulated they were highly speculative or in some cases entirely unfounded. In these cases, the only common element is the Tutsi ethnicity of the persons named, and the evidence in some cases clearly indicates that their ethnicity was in fact the reason they were named.

97. Also, the names published and broadcast were generally done so in the context of a message, that was at times more or less explicit. An official list of 123 names of suspects was published in Kangura No. 40 with an express warning to readers that the government was not effectively protecting them from these people and that they needed to organize their own self-defence to prevent their own extermination. This message classically illustrates the incitement of Kangura readers to violence ? by instilling fear in them, giving them names to associate with this fear, and mobilizing them to take independent measures to protect themselves. In some instances, names were mentioned by Kangura without such an explicit call to action. The message was nevertheless direct. That it was clearly understood is overwhelmingly evidenced by the testimony of witnesses that being named in Kangura would bring dire consequences. Similarly, RTLM broadcast a message of fear, provided listeners with names, and encouraged them to defend and protect themselves, incessantly telling them to "be vigilant".

98. With regard to causation, the Chamber recalls that incitement is a crime regardless of whether it has the effect it intends to have. In determining whether communications represent a risk of causing genocide and

thereby constitute incitement, the Chamber considers it significant that in fact genocide occurred. One witness described what RTLM did as "to spread petrol throughout the country little by little, so that one day it would be able to set fire to the whole country".

RTLM

99. RTLM broadcasting was a drumbeat, calling on listeners to take action against the enemy and enemy accomplices, equated with the Tutsi population. The phrase "heating up heads" captures the process of incitement systematically engaged in by RTLM, which after 6 April 1994 was also known as "Radio Machete". The nature of radio transmission made RTLM particularly dangerous and harmful, as did the breadth of its reach. Unlike print media, radio is immediately present and active. The power of the human voice, heard by the Chamber when the broadcast tapes were played in Kinyarwanda, adds a quality and dimension beyond language to the message conveyed. Radio heightened the sense of fear, the sense of danger and the sense of urgency giving rise to the need for action by listeners. The denigration of Tutsi ethnicity was augmented by the visceral scorn coming out of the airwaves - the ridiculing laugh and the nasty sneer. These elements greatly amplified the impact of RTLM broadcasts.

100. The Chamber has found that Ferdinand Nahimana acted with genocidal intent. It has found him responsible for RTLM programming pursuant to Article 6(1) and established a basis for his responsibility under Article 6(3) of the Statute. Accordingly, the Chamber finds Ferdinand Nahimana guilty of direct and public incitement to genocide, pursuant to Article 6(1) and Article 6(3) of the Statute.

101. The Chamber has found that Jean-Bosco Barayagwiza acted with genocidal intent. It has found Barayagwiza responsible for RTLM programming pursuant to Article 6(3) of the Statute of the Tribunal. Accordingly, the Chamber finds Jean-Bosco Barayagwiza guilty of direct and public incitement to genocide, pursuant to Article 6(3) of its Statute.

CDR

102. The killing of Tutsi civilians was promoted by the CDR through the publication of communiqués and other writings that called for the extermination of the enemy and defined the enemy as the Tutsi population. For his failure to take necessary and reasonable measures to prevent the acts of direct and public incitement to commit genocide caused by CDR members, the Chamber finds Barayagwiza guilty of direct and public incitement to commit genocide pursuant to Article 6(3) of its Statute.

Kangura

103. The Chamber notes that the name Kangura itself means "to wake up others". This was the clear intent of Kangura and the publication is a litany of ethnic denigration presenting the Tutsi population as inherently evil and calling for the extermination of the Tutsi as a preventive measure. The Chamber notes the increased attention in 1994 issues of Kangura on the fear of an RPF attack and the killing of innocent Tutsi civilians that would follow as a consequence of such attack.

104. The Chamber notes that not all of the writings published in Kangura and highlighted by the Prosecution constitute direct incitement. A Cockroach Cannot Give Birth to a Butterfly, for example, is an article brimming with ethnic hatred, but it did not call on readers to take action against the Tutsi population.

105. As founder, owner and editor of Kangura, Hassan Ngeze used the publication to instill hatred, promote fear, and incite genocide. It is evident that Kangura played a significant role, and was seen to have played a significant role, in creating the conditions that led to acts of genocide. Accordingly, the Chamber finds Hassan Ngeze guilty of direct and public incitement to genocide, under Article 2(3)(c) and in accordance with Article 6(1) of the Statute.

106. For his individual acts, such as driving with a megaphone in his vehicle, mobilizing the population to come to CDR meetings and spreading the message that the Tutsi population would be exterminated, the Chamber finds Hassan Ngeze guilty of direct and public incitement to genocide, pursuant to Article 6(1) of the Statute.

CONSPIRACY

107. The Accused are charged with conspiracy to commit genocide.

108. The Musema judgement defined conspiracy to commit genocide as an agreement between two or more persons to commit the crime of genocide. The requisite intent for the crime of conspiracy to commit genocide is the same intent required for the crime of genocide.

109. The Chamber considers that conspiracy can be comprised of individuals acting in an institutional capacity as well as or even independently of their personal links with each other. Institutional coordination can form the basis of a conspiracy among those individuals who control the institutions that are engaged in coordinated action. The Chamber considers the act of coordination to be the central element that distinguishes conspiracy from "conscious parallelism", the concept put forward by the Defence to explain the evidence in this case.

110. Nahimana and Barayagwiza collaborated closely as the two most active members of the Steering Committee, or provisional board, of RTLM. Barayagwiza also collaborated closely with Ngeze in the CDR. The Chamber finds that Barayagwiza was the lynchpin among the three Accused, collaborating closely with both Nahimana and Ngeze. Institutionally also, there were many links that connected the Accused to each other through RTLM, Kangura and CDR. The evidence establishes, beyond a reasonable doubt, that Nahimana, Barayagwiza and Ngeze consciously interacted with each other, using the institutions they controlled to promote a joint agenda, which was the targeting of the Tutsi population for destruction. There was public presentation of this shared purpose and coordination of efforts to realize their common goal. The Chamber finds that the Accused are guilty of conspiracy to commit genocide, pursuant to Article 6(1) of its Statute.

CRIMES AGAINST HUMANITY (EXTERMINATION)

111. The Accused are charged with crimes against humanity (extermination).

112. Based on its factual findings, and the legal findings set forth under Genocide, the Chamber finds Ferdinand Nahimana guilty of extermination, pursuant to Article 6(1) of the Statute. The Chamber finds Jean-Bosco Barayagwiza guilty of extermination, pursuant to Article 6(3) of the Statute of the Tribunal for the broadcasts of RTLM, pursuant to Article 6(1) and 6(3) for the activities of CDR, and pursuant to Article 6(1) for his own acts. The Chamber finds Hassan Ngeze guilty of extermination, for the publication of Kangura and for his own acts, pursuant to Article 6(1).

CRIMES AGAINST HUMANITY (PERSECUTION)

The Accused are charged with persecution.

113. Unlike the other crimes against humanity enumerated in the Statute of the Tribunal, the crime of persecution specifically requires a finding of discriminatory intent on racial, religious or political grounds. In Rwanda the targets of attack were the Tutsi ethnic group and the so-called "moderate" Hutu political opponents who supported the Tutsi ethnic group. The Chamber considers that the group against which discriminatory attacks were perpetrated can be defined by its political component as well as its ethnic component. RTLM, Kangura and CDR essentially merged political and ethnic identity, defining their political target on the basis of ethnicity and political positions relating to ethnicity. The Chamber considers that the discriminatory intent of the Accused falls within the scope of persecution on political grounds of an ethnic character.

114. The crime of persecution has been held by ICTR jurisprudence to

require "a gross or blatant denial of a fundamental right reaching the same level of gravity" as other enumerated crimes against humanity. The Chamber considers it evident that hate speech targeting a population on the basis of ethnicity, or other discriminatory grounds, reaches this level of gravity and constitutes persecution. Hate speech is a discriminatory form of aggression that destroys the dignity of those in the group under attack. It creates a lesser status not only in the eyes of the group members themselves but also in the eyes of others who perceive and treat them as less than human. The denigration of a person on the basis of his or her ethnic identity or other group membership in and of itself, as well as in its other consequences, can be an irreversible harm.

115. Unlike the crime of incitement, which is defined in terms of intent, the crime of persecution is defined also in terms of impact. Persecution is not a provocation to cause harm. It is itself the harm. Accordingly there need not be a call to action in communications that constitute persecution. For the same reason, there need be no link between persecution and acts of violence. The Chamber notes that Julius Streicher was convicted at Nuremberg of persecution for anti-semitic writings that significantly predated the extermination of Jews in the 1940's. In Rwanda, the virulent writings of Kangura and the incendiary broadcasts of RTLM functioned in the same way, conditioning the Hutu population and creating a climate of harm, as evidenced in part by the extermination and genocide that followed. Similarly, the activities of the CDR, a Hutu political party that demonized the Tutsi population as the enemy, generated fear and hatred that created the conditions for extermination and genocide in Rwanda.

116. Freedom of expression and freedom from discrimination are not incompatible principles of law. Hate speech is not protected speech under international law. In fact, governments have an obligation under international law to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. A great number of countries around the world, including Rwanda, have domestic laws that ban advocacy of discriminatory hate, in recognition of the danger it represents and the harm it causes. The Chamber considers, in light of these well-established principles of international and domestic law, and the jurisprudence, that hate speech that expresses ethnic and other forms of discrimination violates the norm of customary international law prohibiting discrimination. Within this norm of customary law, the prohibition of advocacy of discrimination and incitement to violence is increasingly important as the power of the media to harm is increasingly acknowledged.

117. Having established that all communications constituting incitement were made with genocidal intent, the Chamber notes that the lesser intent requirement of persecution, the intent to discriminate, has been met with

regard to these communications. Having also found that these communications were part of a widespread or systematic attack, the Chamber finds that these expressions of ethnic hatred constitute persecution. Persecution is broader than direct and public incitement, including advocacy of ethnic hatred in other forms. For example, the Kangura article, *A Cockroach Cannot Give Birth to a Butterfly*, constitutes persecution. In this article, the Tutsi were described as biologically distinct from the Hutu, and inherently marked by malice and wickedness. The Tutsi were portrayed as mean and vengeful, and their weapons were defined to be women and money. The RTLM interview broadcast on June 1994, in which Simbona, interviewed by Gaspard Gahigi, talked of the cunning and trickery of the Tutsi, also constitutes persecution.

118. The Chamber notes that Tutsi women, in particular, were targeted for persecution. The portrayal of the Tutsi woman as a *femme fatale*, and the message that Tutsi women were seductive agents of the enemy was conveyed repeatedly by RTLM and Kangura. The Ten Commandments, broadcast on RTLM and published in Kangura, vilified and endangered Tutsi women. By defining the Tutsi woman as an enemy in this way, RTLM and Kangura articulated a framework that made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them.

119. Activities and communications of the CDR, as well as acts personally committed by Barayagwiza, that advocated ethnic hatred constitute persecution.

120. For these reasons, the Chamber finds Ferdinand Nahimana guilty of persecution pursuant to Article 6(1) and Article 6(3) of the Statute for the broadcasts of RTLM. The Chamber finds Jean-Bosco Barayagwiza guilty of persecution, pursuant to Article 6(3) for the broadcasts of RTLM and the activities of CDR, and pursuant to Article 6(1) for the activities of CDR and for his own acts. The Chamber finds Hassan Ngeze guilty of persecution, pursuant to Article 6(1), for articles in the publication Kangura.

CRIMES AGAINST HUMANITY (MURDER)

121. Hassan Ngeze is charged with crimes against humanity (murder). The Prosecution conceded during its Closing Arguments that it was not pursuing the allegation in the Indictment of the shooting of a Tutsi girl. The Prosecution failed to prove that Ngeze ordered the killing of or killed Modeste Tabaro, as alleged in the Indictment. The Prosecution also failed to prove that Ngeze killed a man in the Commune Rouge, as alleged in the Indictment. The Chamber therefore finds that Hassan Ngeze is not guilty of murder.

IV. VERDICT

FOR THE FOREGOING REASONS, having considered all of the evidence and the arguments:

THE CHAMBER unanimously finds Ferdinand Nahimana:

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Guilty of Direct and Public Incitement to Commit Genocide

Count 4: Not Guilty of Complicity in Genocide

Count 5: Guilty of Crimes Against Humanity (Persecution)

Count 6: Guilty of Crimes Against Humanity (Extermination)

Count 7: Not Guilty of Crimes Against Humanity (Murder)

THE CHAMBER unanimously finds Jean-Bosco Barayagwiza:

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Not Guilty of Complicity in Genocide

Count 4: Guilty of Direct and Public Incitement to Commit Genocide

Count 5: Guilty of Crimes Against Humanity (Extermination)

Count 6: Not Guilty of Crimes Against Humanity (Murder)

Count 7: Guilty of Crimes Against Humanity (Persecution)

Count 8: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

Count 9: Not Guilty of Serious Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II

THE CHAMBER unanimously finds Hassan Ngeze:

Count 1: Guilty of Conspiracy to Commit Genocide

Count 2: Guilty of Genocide

Count 3: Not Guilty of Complicity in Genocide

Count 4: Guilty of Direct and Public Incitement to Commit Genocide

Count 5: Not Guilty of Crimes Against Humanity (Murder)

Count 6: Guilty of Crimes Against Humanity (Persecution)

Count 7: Guilty of Crimes Against Humanity (Extermination)

V. SENTENCING

Having found the three Accused guilty, the Chamber now proceeds to the sentencing of the Accused.

Ferdinand Nahimana

I call on Ferdinand Nahimana to rise for sentencing and face the Court.

Ferdinand Nahimana, you were a renowned academic, Professor of History at the National University of Rwanda. You were Director of ORINFOR and founded RTLM radio station as an independent private radio. You were Political Adviser to the Interim Government sworn in after 6 April 1994 under President Sindikubwabo.

You were fully aware of the power of words, and you used the radio ? the medium of communication with the widest public reach ? to disseminate hatred and violence. You may have been motivated by your sense of patriotism and the need you perceived for equity for the Hutu population in Rwanda. But instead of following legitimate avenues of recourse, you chose a path of genocide. In doing so, you betrayed the trust placed in you as an intellectual and a leader. Without a firearm, machete or any physical weapon, you caused the deaths of thousands of innocent civilians. Representations were made by your witnesses as to your good character and high standing in society but in the Chamber's view, these circumstances are not mitigating. They underscore your betrayal of public trust.

Having considered all the relevant factors, the Chamber sentences you in respect of all the counts on which you have been convicted to imprisonment for the remainder of your life.

Hassan Ngeze

I call on Hassan Ngeze to rise for sentencing and face the Court.

Hassan Ngeze, as the owner and editor of a well-known newspaper in Rwanda, you were in a position to inform the public and shape public opinion towards achieving democracy and peace for all Rwandans. Instead of using the media to promote human rights, you used it to attack and destroy human rights. You had significant media networking skills and attracted support earlier in your career from international human rights organizations who perceived your commitment to freedom of expression. However, you did not respect the responsibility that comes with that freedom. You abused the trust of the public by using your newspaper to instigate genocide. The Chamber notes that you saved Tutsi civilians from death by transporting them across the border out of Rwanda. Your power to save was more than matched by your power to kill. You poisoned the minds of your readers, and by words and deeds caused the death of thousands of innocent civilians.

Having considered all the relevant factors, the Chamber sentences you in respect of all the counts on which you have been convicted to imprisonment for the remainder of your life.

Jean-Bosco Barayagwiza was Director of Political Affairs in the Ministry of Foreign Affairs and a founder of RTL. He was also the founder of CDR and its President in Gisenyi Prefecture, later National President of CDR. He is a lawyer by training and in his book professes a commitment to international human rights standards. Yet he deviated from these standards and violated the most fundamental human right, the right to life. He did so both through the institutions he created, and through his own personal acts of participation in the genocide. He was the lynchpin of the conspiracy, collaborating closely with both Nahimana and Ngeze.

Having considered all the relevant factors, the Chamber considers that the appropriate sentence for Jean-Bosco Barayagwiza in respect of all the counts on which he has been convicted is imprisonment for the remainder of his life. However, in its decision dated 31 March 2000, the Appeals Chamber decided:

[T]hat for the violation of his rights the Appellant is entitled to a remedy, to be fixed at the time of judgement at first instance, as follows:

If the Appellant is found not guilty, he shall receive financial compensation;

If the Appellant is found guilty, his sentence shall be reduced to take account of the violation of his rights.

The Chamber considers that a term of years, being by its nature a reduced sentence from that of life imprisonment, is the only way in which it can implement the Appeals Chamber decision. Taking into account the violation of his rights, the Chamber sentences Barayagwiza in respect of all the counts on which he has been convicted to 35 years' imprisonment. Pursuant to Rule 101(D) of the Rules, Barayagwiza is further entitled to credit for time served, to be calculated from the date of his initial arrest in Cameroon, on 26 March 1996. Credit for time served has been calculated as seven years, eight months and nine days. Therefore, Barayagwiza will serve twenty-seven years, three months and twenty-one days, being the remainder of his sentence, as of 3 December 2003.

Pursuant to Rules 102 (A) and 103, the three Accused shall remain in the custody of the Tribunal pending transfer to the State where they will serve their sentences.