

## **PART FOUR: RESPONSE TO THE PROSECUTION BRIEF**

### **I. INTRODUCTION**

2202. Rather than relating the evidence presented in the Prosecution case to the Indictment, as experienced members of the bench and bar might expect, the Prosecution has chosen to present its case against Major Ntabakuze in the form of narrative “Chapters”, as one might organize a work of fiction. The Ntabakuze Defence, of course, asserts that this method of presenting the Prosecution case requires no response because it is not related to any of the specific paragraphs and counts in the Indictment. This unusual presentation of the case by the Prosecutor is presumably intended to hide the fact that the vast majority of his allegations are found nowhere in the indictment.

2203. The Chamber will also note that the Prosecution was invited to amend the Indictment by the Defence Motion challenging the Prosecutor’s Pre-Trial Brief filed on 3 May 2002<sup>2443</sup> and the Defence 98 *bis* arguments at the close of the Prosecution case, but has failed to do so. Thus, the only document to which the Defence is privy, which explains how the Prosecution considers its evidence to be linked to any particular offenses, the Prosecution Brief was not served on the Defence until March 2, 2007, long after both the Prosecution and Defence had closed their respective cases. The Ntabakuze Defence will endeavor to respond to the “Chapters” of the Prosecution Brief, without fully understanding how those “Chapters” relate evidence to the “Counts” in the Indictment and, certainly, without having had notice of the Prosecution’s estimate of what their evidence had proved, until after the close of the Defence case.

2204. However, the following outline of the “Chapters” in the Prosecution Brief and paragraphs of that Brief that refer, in some way, to Major Ntabakuze or the Para Commandos are each treated in detail in the analysis of each of the Allegations outlined in the Defence Brief. The Defence will also link these Allegations to the Paragraphs and Counts in the original Indictment, to demonstrate that a case against Major Ntabakuze has not been proved beyond a reasonable doubt, with respect to *any* aspect of the Prosecution Brief.

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<sup>2443</sup> In paragraph 15 of its decision of 23 May 2002 granting the Defence Motion, the Trial Chamber held that “*It is clear that pre-trial documents cannot add new charges beyond those included in the indictments or serve to unilaterally amend the indictment.*”

## **II. DEFENSE RESPONSE TO PARAGRAPHS REFERRING TO MAJOR NTABAKUZE IN “CHAPTER IV” OF THE PROSECUTION BRIEF (IV. EVIDENCE ON VARIOUS COUNTS)**

### **A. Crimes of Genocide**

#### 1. Conspiracy to commit genocide: Paragraphs 29-62

2205. Paragraphs 28- 35 do not mention Major Ntabakuze, but make sweeping allegations about the nature of the four year War and engulfed Rwanda and that important issues related to the War have been decided as a matter of “judicial notice.” However, as the Chamber is aware, the “judicial notice” announced *sua sponte* in the Karemera Appeals Chamber Decision was specifically held to exclude the Military 1 case from being bound by that Decision. *Karemera Decision*, October 4, 2006.

2206. Paragraphs 36-39 which mention Major Ntabakuze/Para Commandos in the context of: “the Definition of the Enemy”, the Commission which drafted the Definition and alleged meetings at Camp Kanombe before 1994, which are allegedly evidence of “conspiracy.” These allegations are addressed in detail, and rebutted, in the Defence Brief Section entitled: *ALLEGATIONS REGARDING DISCRIMINATION AND “DEFINITION OF THE ENEMY.”*

2207. Paragraphs 36-62 is a summary of allegations contained in other paragraphs which are addressed in the Sections of the Ntabakuze Defense Brief entitled: *ALLEGATIONS REGARDING DISCRIMINATION AND “DEFINITION OF THE ENEMY;” ALLEGATIONS ABOUT DEATH SQUADS: AMASASU AND RELATED ORGANIZATIONS; ALLEGATIONS ABOUT CONSPIRACY AT A BUTATORI MEETING AND OTHER MEETINGS BEFORE 06 APRIL 1994; ALLEGATIONS OF MAJOR NTABAKUZE’S OPPOSITION TO THE ARUSHA ACCORDS; ALLEGATIONS OF TRAINING OF MILITIAS; ALLEGATIONS ABOUT MEETINGS BETWEEN MAJOR NTABAKUZE, BAGOSORA AND OTHER OFFICERS AND CAMP KANOMBE AFTER THE CRASH OF THE PRESIDENTIAL PLANE; CONSPIRACY: ALLEGATIONS ABOUT BAGOSORA ORDERING “MUHERE ARUHANDE”; ALLEGATIONS OF PHYSICAL PRESENCE AT A GENERAL ASSEMBLY ON 06 OR07 APRIL 1994 AND PHYSICALLY COMMITTING CRIMINAL ACTS BY UTTERING ORDERS TO HARM CIVILIANS, ETC.*

#### 2. Genocide: Paragraph 63

2208. Paragraph 63 mentions alleged statements made by Major Ntabakuze to Para Commandos to “avenge” the assassination of President Habyarimana that allegedly focused on “Tutsi,” rather

than the RPA/F forces that were threatening the stability of the country. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS OF PHYSICAL PRESENCE AT A GENERAL ASSEMBLY ON 6 OR 7 APRIL 1994 AND PHYSICALLY COMMITTING CRIMINAL ACTS, BY UTTERING ORDERS TO HARM CIVILIANS*

### 3. Complicity

2209. Major Ntabakuze is not mentioned.

### 4. Incitement

2210. Major Ntabakuze is not mentioned and is not charged with this offense.

## **B. Crimes Against Humanity**

### 5. Murder as a Crime Against Humanity: Paragraph 111

2211. Paragraph 111 mentioned Major Ntabakuze in connection with the “constitutional killings” on the night of April 6-7. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT KIMIHURURA INCIDENTS* and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witness XAQ. Note: Prosecution witness XAO testified that Major Ntabakuze was not involved in these allegations.

### 6. “Extermination” as a Crime Against Humanity: Paragraph 126, 129, 133, 136

2212. Paragraph 126 alludes to allegations by witness DCH which is addressed in the Defence Brief entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DCH.

2213. Paragraph 129 mentions the alleged role of Major Ntabakuze and Para Commandos in training “Interahamwe.” These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS OF TRAINING OF MILITIA*. Further, even if the allegations were found credible, which they are not, it is submitted that the facts alleged do not make out the elements of any crime.

2214. Paragraph 133 mentions the alleged role of Major Ntabakuze and Para Commandos in crimes committed at IAMSEA in late April.” These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S)*

2215. Paragraph 136 mentions the alleged involvement of Major Ntabakuze and Para Commandos at ETO/Nyanza. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE SONATUBE INCIDENT(S)*

## 7. Rape as a Crime Against Humanity: Paragraph 142-179

### A. Superior Responsibility

2216. Major Ntabakuze is not specifically mentioned except insofar as Paragraph 142 alleges that he had reason to know about rapes committed by subordinates. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S); ALLEGATIONS ABOUT RAPE* and Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DBQ and AAA.

### B. Systematic Attacks on Tutsi Civilians: Paragraph 147-154

2217. Paragraph 147 mentions the Sonatube incident through Alison Desforges. A full description of that incident, including UNAMIR reports are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE SONATUBE INCIDENT(S)* and Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*.

2218. Paragraph 151 mentions rape allegations regarding IAMSEA made by witness DBQ. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S); ALLEGATIONS ABOUT RAPE*; the Section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility of Prosecution Witness DBQ.

2219. Paragraph 152 refers to alleged rapes committed in that Nyakabanda/Kabusunzu area according to Prosecution witness AAA. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT KILLINGS IN NYAKABANDA SECTOR*,

*ALLEGATIONS ABOUT RAPE* and Section on the *CREDIBILITY OF PROSECUTION WITNESSES* which analyzes the credibility of Prosecution Witness AAA.

C. *Knowledge that others would be or had been raped: Paragraph 154-158.*

2220. Paragraph 154 refers to allegations that members of the FAR were not permitted to marry Tutsi women and allegations that Tutsi's were singled out in a meeting in Camp Kanombe on April 7. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS OF PHYSICAL PRESENCE AT A GENERAL ASSEMBLY ON 6 OR 7 APRIL 1994 AND PHYSICALLY COMMITTING CRIMINAL ACTS, BY UTTERING ORDERS TO HARM CIVILIANS; ALLEGATIONS REGARDING DISCRIMINATION AND "DEFINITION OF THE ENEMY."* Section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility of Prosecution Witness LN, XAP, DBQ
2221. Paragraphs 155 and 156 refer to allegations that Major Ntabakuze/Para Commandos were somehow involved in mutilating the body of the deceased PM Madame Agathe, apparently in Camp Kanombe as alleged by Prosecution witness KJ. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *UTTERANCE OVER THE DEAD BODY OF PRIME MINISTER AGATHE*
2222. Paragraph 157 refers to allegations by Prosecution witness AAA that Major Ntabakuzes failed to properly respond to the witness's warnings about civilians being harmed in the Nyakabanda/Kabusunzu area. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT KILLINGS IN NYAKABANDA SECTOR* and Section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility of Prosecution Witness AAA.
2223. Paragraph 158 includes a very curious quote, if the Prosecution intends to show animus by Major Ntabakuze toward Tutsi civilians, and Tutsi women in particularly. The quote from Prosecution witness LN alleges that on the night of April 6-7, in a meeting of Para Commandos, Ntabakuze instructed the Para Commandos ...."NOT engage in looting, the looting of property or taking over Tutsi women" LN 03/30/04 p. 65, lines 13-14.
2224. The Prosecution attempts to turn logic on its head by arguing that this alleged statement shows Major Ntabakuze's dislike or distrust of Tutsi women. One might think that the meaning was

just the opposite. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS OF PHYSICAL PRESENCE AT A GENERAL ASSEMBLY ON 6 OR 7 APRIL 1994 AND PHYSICALLY COMMITTING CRIMINAL ACTS, BY UTTERING ORDERS TO HARM CIVILIANS; ALLEGATIONS REGARDING DISCRIMINATION AND "DEFINITION OF THE ENEMY* and the "Section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility of Prosecution Witness LN

D. Knowledge that soldiers had or would commit rape: Paragraph 162-174.

2225. Paragraph 162 refers to allegations made by Prosecution witness LN regarding armed civilians carrying out rapes in Butare, in which Major Ntabakuze and Para Commandos are not implicated, but just to be safe, we are mentioning "Section on the *CREDIBILITY OF PROSECUTION OF WITNESSES* that analyzes the credibility of Prosecution Witness LN.
2226. Paragraph 163 mentions testimony of witness Hutsebaut regarding events in on the night of April 7 at the Ngango Residence. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT KIMIHURURA INCIDENTS*.
2227. Paragraph 167 repeats allegations regarding rapes committed at IAMSEA by Prosecution witness DBQ. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S); ALLEGATIONS ABOUT RAPE*; the Section on the *CREDIBILITY OF PROSECUTION OF WITNESSES* that analyzes the credibility of Prosecution Witness DBQ.
2228. Paragraph 169 does not mention Major Ntabakuze specifically but alleges generally that all four of the "accused ...traveled extensively" to learn of events "throughout Rwanda." However, the evidence shows that Major Ntabakuze was at the Giporoso/Sonatube military defence line until May 21-22 and then systematically withdrew under combat conditions until he left for the Congo in mid-July 1994. Prosecution witness XAB confirmed that the Para Commandos did not commit crimes during that entire period.
2229. The Chamber will note that, although testimony of Prosecution witness XAB regarding hearsay allegations of rapes committed near Sobolirwa/Giporoso was excluded by the Trial Chamber Decision of June 29, 2006, the Prosecution saw fit to make this allegation in paragraphs 168 and 170 without bringing its exclusion to the attention of the Chamber.

2230. Paragraph 170 asserts that Major Ntabakuze was at or near the Sobolirwa/Giporoso roundabout during April and May 1994 but this is not denied, since this is spot where the Para Commandos had a defense line to prevent the RPF from seizing the Airport. *passim*
2231. Paragraph 173 refers to allegations that Prosecution witnesses DBN and XAB placed Col. Bagosora was present at Camp Kanombe on the morning of April 7, 1994. These allegations are addressed in detail, and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT MEETINGS BETWEEN NTABAKUZE, BAGOSORA AND OTHER OFFICERS AT CAMP KANOMBE AFTER THE CRASH OF THE PRESIDENTIAL PLANE* on the *CREDIBILITY OF PROSECUTION OF WITNESSES* that analyzes the credibility of Prosecution Witness DBQ, DBN, XAB and LN.
2232. Paragraph 174 refers to witness DI-35 of the Defence confirming that soldiers were, at some point, in Kabgayi. This does not state an offense and does not implicate Major Ntabakuze or Para Commandos. However, other allegations regarding Kabgayi are addressed in detail, and rebutted in the Ntabakuze Defence Brief Section entitled *ALLEGATIONS RELATING TO KABGAYI HOSPITAL* and the section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility Witnesses XXY and XAI.

E. Failure to Protect: Paragraph 176-179

2233. Paragraph 176 refers, as do many others, to Prosecution witness DBQ, who alleged that rapes were committed by FAR soldiers, and Para Commandos in particular at Christus Centre over a six week period, and that none were punished. However, other allegations regarding Christus Centre are addressed in detail, and rebutted in the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT RAPE*; the Section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility of Prosecution Witnesses DBQ and AAA.
2234. Paragraph 177 alleges that on the night of April 6 at Camp Kanombe Major Ntabakuze ordered the killing of civilians, citing Prosecution witness 4/6 LN 03/30 p. 65. These allegations are addressed in detail, and rebutted in the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS OF PHYSICAL PRESENCE AT A GENERAL ASSEMBLY ON 6 OR 7 APRIL 1994 AND PHYSICALLY COMMITTING CRIMINAL ACTS, BY UTTERING ORDERS TO HARM CIVILIANS; ALLEGATIONS*

*REGARDING DISCRIMINATION AND "DEFINITION OF THE ENEMY and the"Section on the CREDIBILITY OF PROSECUTION WITNESSES that analyzes the credibility of Prosecution Witness LN.*

2235. Paragraph 179 refers once again to Prosecution witness DBQ who alleged that Tutsi women were killed or turned into concubines, engaging in "consenting sex" to be protected by armed civilian "Interahamwe." And the Prosecution quite rightly notes that "any form of captivity" means a lack of consent. While this may have occurred during the War in Rwanda, as it has most probably been a factor in any war. Witness DBQ was not in a position to place Major Ntabakuze as involved with this offense. These allegations are discussed and rebutted in the Ntabakuze Brief Sections entitled: *ALLEGATIONS ABOUT RAPE*; the Section on the *CREDIBILITY OF PROSECUTION WITNESSES* that analyzes the credibility of Prosecution Witness DBQ.

#### 8. Persecution as Crime Against Humanity:

2236. Paragraph 193 *et seq.*: allegation does not include mention of Major Ntabakuze//Para Commandos.

2237. These paragraphs are a recapitulation of the Alison Desforges "theory of Rwanda" which has been discredited by subsequent events. As this Chamber is aware and as described in the Defence Brief Section entitled: *THE ALTERNATIVE EXPLANATION FOR EVENTS DURING THE RWANDA WAR*. Expert witnesses Desouter, Lugan, Strizek, as well as numerous fact witnesses, including former U.S. Amb. Flaten; Gen. Dallaire; UNAMIR Documents; US Gov. Documents; the Bruguiere Report and the witnesses who were part of the RPA/F have established that the RPF refused the Arusha Accords (April 1 Cable from Kigali to Kamala, U.S. Amb. Rawson), and the RPF was the aggressor, and the side that refused to abide by a ceasefire.

#### 9. Inhumane Acts as a Crime Against Humanity: Paragraph 212 and 217.

2238. Paragraph 212 refers to allegations of such events in Nyamirambo April 14 by Prosecution witness Ruggio, but does not implicate Major Ntabakuze.

2239. Paragraph 217 mentions the involvement of Major Ntabakuze/ Paracommandos in massacres at Nyanza, as described by witness AR. These allegations are addressed in detail, and rebutted in the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE SONATUBE INCIDENT(S)*.



**C. Crimes against Geneva Convention: Paragraph 218.**

2240. Paragraph 218 asserts that the four-year Rwanda War was a “non- international armed conflict...not subject of dispute” relying on the Karamera Decision of June 2006. However, as the Chamber well knows, in response to the Ntabakuze Appeal of the “Judicial Notice” taken by the Appeals Chamber, that Chamber specifically stated that the findings in that matter were not binding on the Chamber in Military 1.

2241. In addition, the international nature of this War was the subject of testimony of U.S. Amb. Robert Flaten, former RPF officer Abdul Ruzibiza, witness DM-91 who witnesses the invasion from Uganda, and was confirmed by UNAMIR and other document regarding incursions into Rwanda and support for the RPF from Uganda during the entirety of the War. This is fully revealed in UN and US government documents listed as Exhibits associated the Section entitled: *THE ALTERNATIVE EXPLANATION FOR EVENTS DURING THE RWANDA WAR.*

**10. Violence to Life: Paragraph 232-234**

2242. Paragraph 232 refers to allegations made by witness DBN regarding meetings at Camp Kanombe in 1992 involving Major Ntabakuze. In paragraph 234, the Prosecution claims that Major Ntabakuze promoted ideology of genocide during the meetings, referring to DBN. However, even under the worst interpretation of the testimony of this witness, there is no evidence promoting “ideology of genocide” in record before the Chamber. These allegations are addressed in detail, and rebutted in the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS REGARDING DISCRIMINATION AND “DEFINITION OF THE ENEMY”* and the Section *CREDIBILITY OF PROSECUTION WITNESSES* with respect to witness DBN. However, even if these allegations were found credible, which they are not, the allegations themselves do not include the elements of the alleged offense.

**11. Outrage regarding dignity of the Persons.**

2243. Paragraph 245 refers to allegations by witness AR regarding infants killed at Nyanza. These allegations are addressed in detail, and rebutted in the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE SONATUBE INCIDENT(S).*

### **III. DEFENSE RESPONSE TO PARAGRAPHS IN “CHAPTER V” OF THE PROSECUTION BRIEF REFERRING OR AFFECTING MAJ NTABAKUZE (V. EVIDENCE ON VARIOUS TOPICS)**

#### **A. Events**

##### **1. Military takeover: paragraphs. 249-254**

2244. The Prosecution reveals a disturbing tendency to discount historical accuracy in the effort to make a case out of facts that are contrary to the “story” told by Alison Desforges upon which the Prosecution “theory” is based. This is particularly telling with respect to the “willful ignorance” of the assassination of President Habyarimana, in the context of contemporaneous events in the region, and the four year war for power launched by the RPF in October 1990. The Section of the Defence Brief entitled: *THE ALTERNATIVE EXPLANATION FOR EVENTS DURING THE RWANDA WAR*, and the supporting documents described in the footnotes show that Ms. Desforges is not supported by contemporaneously created documents, or eyewitnesses.
2245. Whether President Habyarimana was assassinated by “hardliners” in his own government, who had long been plotting to displace him and to carry out genocidal violence to secure power, as originally theorized by Alison Desforges, OR, whether the assassination of the “father of the country” was part of a long-planned “seizure of power by force” by the RPA, raises very different implications regarding the actions and motives of actors on both side of the War after April 6, 1994.
2246. As the Chamber knows, such figures as U.S. Amb. Robert Flaten, UN SRSG Booh-Booh, UNAMIR Second in Command Col. Marchal, UNAMIR Col. Dewez, UNAMIR Capt. Amadou Deme, Expert Witnesses Desouter, Strizek and Lugan all testified that none of the intelligence systems active in Rwanda had any information to support the existence of a pre-existing “plan to commit genocide.” And, even Prosecution Expert Witness Reyntjens testified that, if it became clear that the RPF were responsible for the assassination of Habyarimana, the entire story of the Rwanda War would have to be re-evaluated. That time has come.
2247. The Chamber has heard former RPA/F non-uniformed “infiltrators” who entered Kigali through the CND and relied on the “Interahamwe” to travel throughout the nation, including former Lt.

Abdul Ruzibiza, and former RPA/F uniformed soldiers such as BRA-1, and others, who testified about the long-standing RPA/F planning for a “final assault” to seize power, and the role that the assassination of Habyarimana had in destabilizing the government in power, and reducing its capacity to resist the RPF advance.

2248. The Prosecution also asserts that there was a “military takeover” which, of course, General Dallaire said was not the case in his April 13, 1994 Code Cable to DPKO, in which he reported that “there could have been a coup...but there wasn’t....a “democratic government supported by the military” is how he viewed the situation a week after the “crisis committee” had stopped meeting. Colonel Marchal was more categorical denying the theory of military coup. The fact that the civilian government to which he referred was the “legitimate successor government” under the 1991 Constitution was further confirmed by the May 25, 1994 legal opinion issued by Ralph Zacklin of the UN Office of Legal Affairs.

2249. These paragraphs also refer to “death squads” operating in Kigali shortly after the President’s plane was shot down. But, it was Prosecution Expert Witness Reyntjens who documented that many of the killings on the night of April 6-7 were, in fact, carried out the RPF “death squads” intent on furthering the destabilization of the existing government. Assuming that members of President Habyarimana’s formal security force, the Presidential Guard, may also have been involved in killing opponents to the Habyarimana government, is not a unknown phenomenon in many countries of the world, not just those in Africa, following the apparent assassination of a revered national leader.

2250. This is even more the case when, as even Prosecution witnesses testified in this case, the Prime Minister herself, Madame Agathe, was known to have been meeting with military officers from the south of the country who she tried to enlist in a “coup” to displace Habyarimana on April 4, 1994.

2251. In any case, there is no evidence linking Major Ntabakuze to the alleged “Military Takeover”.

## 2. “Constitutional” Killings, paragraphs 258-304

2252. In, the Prosecution attempts to portray the “constitutional killings” as evidence of a plan for mass killing on the part of the FAR, according to the opinion of Alison Desforges. However, this treatment of the facts completely ignores the research and testimony of the Prosecution’s

own Expert Witness Filip Reyntjens that details the fact that many of these killings on April 6-7 were committed by the RFP.

Responsibility of accused: paragraphs 264-270

2253. The Prosecution relies on testimony of witness LN to attempt to link Major Ntabakuze to these “constitutional” killings, and to meeting in Camp Kanombe in 1992. The allegations of this witness are addressed in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS ABOUT KIMIHURURA; ALLEGATIONS REGARDING DISCRIMINATION AND ‘DEFINITION OF THE ENEMY’; ALLEGATION ABOUT BUTOTORI MEETING AND MEETINGS BEFORE 1994* and the Section about *CREDIBILITY OF PROSECUTION WITNESSES*, Witness LN.

History of Violence: paragraphs 273-278

2254. These paragraphs refer to testimony by witness DBQ and DBY regarding “list prior to 1994” but which don’t directly involve Major Ntabakuze and alleged events in 1990 at “Cyonyo Ranch.” First it is plain that the 1990 events were ruled non admissible by the Chamber especially the alleged killing at Cyonyo and of arrested people in October 1990<sup>2444</sup> as outside the temporal jurisdiction of the Tribunal. The rest of the allegations are addressed in Sections entitled: *ALLEGATIONS ABOUT THE ARREST OF PEOPLE IN OCTOBER USING LISTS; ALLEGATIONS ABOUT DEATH SQUADS: AMASASU AND OTHER RELATED ORGANIZATIONS; ALLEGATIONS ABOUT CONSPIRACY AT BUTUTORI MEETING AND OTHER MEETINGS BEFORE 06 APRIL 1994* and the Section on *CREDIBILITY OF PROSECUTION WITNESSES*, witnesses DBQ, XAQ, DBN.

Targeted Killings: Kavaruganda/ Nzamurambaho/ Lando/Rucogoza: paragraphs 283 to 304

2255. These paragraphs include a series of allegations regarding the so-called “constitutional” killings on the night of April 6-7. These allegations are addressed, and refuted, in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS ABOUT KIMIHURURA* and *CREDIBILITY OF PROSECUTION WITNESSES*, Witness XAQ.

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<sup>2444</sup> Trial Chamber decision on 18/09/2003

### 3. Belgian Peace Keepers: paragraphs 306-329

2256. Paragraphs 306-329 related to the deaths of Belgian PeaceKeepers at Camp Kigali during the meeting being attended by Gen. Dallaire not far away at ESM on the morning of April 7. These Peace Keepers were killed in a “mutiny” in which their own commanding officers were threatened, according to Prosecution witnesses. UNAMIR Belgian Col. Dewez testified that Gen. Dallaire had not warned him about any specific threats facing the Belgian UNAMIR contingent, and that he was “out jogging” on the morning of April 6, 1994. Belgian Col. Marchal confirmed that he was not aware that this was related to supposed warnings by “Jean-Pierre” on January 11, 1994, as testified to by Capt. Beardsley and Gen. Dallaire. Neither of whom warned the Belgian contingent that they took Jean Pierre seriously between January 1994 and November 1995

### 4. Sonatube/ ETO/Nyanza: paragraphs 330-360.

2257. In Paragraph 360, the Prosecution candidly admits that, with respect to an alleged massacre at Nyanza on April 11, 1994, that there is...“no direct testimony of an order out of the mouth of any of the accused.”

2258. However, in these paragraphs, the Prosecution attempts to link Major Ntabakuze and the Para Commandos, who had a military check-point at Sonatube through which UNAMIR convoys passed on a regular basis, with alleged killings that occurred at the Nyanza School, some 6-7 kilometers from the Sonatube Junction in the evening on April 11. These allegations are discussed in detail, and rebutted, in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS ABOUT THE SONATUBE ‘INCIDENT(S)’*.

2259. Without duplicating the detailed analysis to be found in the above-referenced Section of the Brief, several specific paragraphs in the Prosecution Brief are called to the attention of the Chamber. First, paragraphs 334-359 ignore the testimony of Prosecution witness AFJ, who describes a completely different set of events that occurred at a completely different part of the day than witness AR, and that no Prosecution witnesses can place Major Ntabakuze or Para Commandos at the Nyanza massacre site on April 11, or any other day.

2260. In paragraph 334, the Prosecution Brief asserts, without supporting evidence, that Major Ntabakuze should have responded to “shooting from Nyanza which would have been audible

from...Sonatube.” The Chamber will note that there is no testimony supporting this assertion, and that both Prosecution witness AFJ and AR concur that Major Ntabakuze was not at Sonatube in the late-afternoon/evening, when the killings at Nyanza allegedly occurred.

2261. Prosecution witness AFJ testified that Major Ntabakuze returned to his command post at the Airport; as did UNAMIR Col Dewez who met Major Ntabakuze at Sonatube during mid-day on April 11 (according to the KIBAT Chronique); and, AR testified that the officer at Sonatube later in the day was not Major Ntabakuze. The Prosecution concedes that Major Ntabakuze was several kilometers from the scene of this offense, which requires the “stretch” to connect earlier events at Sonatube with event later in the day, not involving Para Commandos, at Nyanza, according to Prosecution witness DR.
2262. In Paragraphs 341-351, the Prosecution Brief attempts to convert the massacre at Nyanza into a planned military exercise by asserting, again without evidence, that the “military strategy” was to create a mound of bodies in a vain attempt to block RPF troops that were advancing on Mt. Rebero overlooking Nyanza on April 11. The Chamber will note that there is no evidence from any Prosecution witness to support this wild assertion about an event which, taken at face value was a tragedy, but which can hardly be described as a “military strategy” without at least some evidence to support the assertion.
2263. In paragraphs 352-359, the Prosecution attempts to convert the testimony of UNAMIR Col. Dewez and that of Major Ntabakuze regarding the actual events at Sonatube into admissions of criminality. Major Ntabakuze has always maintained that he requested instructions from superiors about the proper response to the refugees who arrived at Sonatube, while Major Ntabakuze was located at his command post near Kanombe Airport. His instructions to the Kicukiro Gendarme Brigade to return them to ETO, rather than permit them to enter a combat zone was not, and is not, a criminal act. These allegations are addressed in detail on the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE SONATUBE ‘INCIDENT(S)’*.

## B. PLACES

### 1. Butare Massacres:

2264. No allegations related to Major Ntabakuze

## 2. Gitarama Massacres: paragraph 410-415

2265. The allegations in paragraph 410-415 refer to testimony of Prosecution witness XXY regarding hearsay allegations involving Major Ntabakuze at Kabgayi Hospital in Gitarama Prefecture, and Alison Desforges who testified that, despite what she and the Prosecution have characterized a “systematic genocide,” when the RPF overran the seat of the Rwandan government in Gitarama (town)...there remained some “24,300 Tutsi” who were rescued.

2266. If these estimates are correct, Alison Desforges has described a particularly ineffective “genocide” given that these Tutsi survivors were in the very seat of the government which was, supposedly, using its military in a planned fashion to “exterminate” such survivors. With respect to Kabgayi Hospital and events in Gitarama Prefecture more generally, these allegations are discussed in detail, and rebutted, in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS RELATING TO KABGAYI HOSPITAL; ALLEGATIONS ABOUT REINFORCING INTERAHAMWE IN GITARAMA, KIBUYE AND NGORORERO*; and the section regarding *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses XAI and XXY.

## 3. Kigali Massacres: paragraphs 419-432

2267. Paragraph 419 refers to an alleged meeting with Col. Bagosora in Camp Kanombe on the night or early morning of April 6-7, 1994. This allegation is contradicted by the testimony of several UNAMIR witnesses with respect to the whereabouts of Col. Bagosora. These allegations are discussed in detail, and rebutted, in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS ABOUT MEETINGS BETWEEN NTABAKUZE, BAGOSORA AND OTHER OFFICERS IN CAMP KANOMBE AFTER THE CRASH OF THE PRESIDENTIAL PLANE*, and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses DBQ, DBN, LN and XAB.

2268. Paragraph 419 also refers to allegations relating to improper statements allegedly made by Major Ntabakuze to Para Commando assemblies. *ALLEGATIONS OF PHYSICAL PRESENCE AT A GENERAL ASSEMBLY ON 6 OR 7 APRIL 1994 AND PHYSICALLY COMMITTING CRIMINAL ACTS, BY UTTERING ORDERS TO HARM CIVILIANS* and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses DBQ, LN, DBN, XAQ, XAP, XAI and XAB.

2269. Paragraphs 421-425 refer to alleged killings by Para Commandos in the areas immediately surrounding Camp Kanombe. Before relating this paragraphs to the Ntabakuze Defence Brief, the Chamber will note that the Prosecution concedes in fn. 654 the following exchange with its witness BC:

Q. No such instructions were issued?

A....I saw bodies [no answer]..ask the commander how it happened.

Q. Did you see your colleagues kill Tutsi.

A. I did not see them with my own eyes...<sup>2445</sup>

2270. The particular areas mentioned are: Christus Centre. These allegations are discussed in detail, and rebutted, in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS ABOUT KILLING AT CHRISTUS CENTRE* and the Section addressing *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses DBQ and XAB.

2271. Paragraphs 425-433 refer to allegations made by Prosecution witness DBQ regarding killings in Akajagali. These allegations are discussed in detail, and rebutted, in the Section of the Ntabakuze Brief entitled: *ALLEGATIONS ABOUT THE AKAJAGALI INCIDENT; ALLEGATIONS ABOUT INCIDENTS IN REMERA AND ENVIRONS; KILLING AT CHRISTUS CENTRE*; and the Section addressing *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses DBQ, DBN, XAQ, XAP, XAI and XXY.

2272. Paragraphs 425-433 refer to allegations made by Prosecution witness AH and DBN regarding a “pattern” in “Kabeza.” These allegations are addressed, and rebutted, in the Sections of the Defence Brief entitled: *ALLEGATIONS ABOUT KABEZA and ALLEGATIONS RELATING TO KABEZA 1*, and the Section addressing *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DBN and AH.

2273. Paragraphs 425-433 refer to allegations made by Prosecution witness WB regarding events at IAMSEA on about April 15, 1994 at about the time that UNAMIR soldiers were evacuating foreigners. These allegations are addressed, and rebutted, in the Sections of the Defence Brief entitled: *ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S)* and the Section addressing *CREDIBILITY OF PROSECUTION WITNESSES*, Witness WB.

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<sup>2445</sup> 10 Dec. 2003 pp 81; 83; 85-87 (above: 87, lines 23-30)



2274. Paragraphs 425-433 refer to allegations made regarding events at Masaka on about April 15, 1994. These allegations are addressed, and rebutted, in the Sections of the Defence Brief entitled: *ALLEGATIONS ABOUT THE KILLINGS AT MASAKA*.
2275. Paragraphs 425-433 refer to allegations made regarding events at IWACU Center in Kabusunzu/Nyakabanda. These allegations are addressed, and rebutted, in the Sections of the Defence Brief entitled: *ALLEGATIONS ABOUT THE KILLINGS IN NYAKABANDA SECOTOR; ALLEGATIONS ABOUT THE KILLINGS IN AT KABUSUNZU* and the Section entitled *CREDIBILTY OF PROSECUTION WITNESSES*, Witnesses DBN and AAA.
2276. Paragraphs 425-433 refer to allegations made solely by Prosecution witness DBQ regarding events at the College of St. Andre and Rwampara. The Prosecution conveniently ignores the testimony of DH-90 and DH-91 at this point, but cites it favorably in another part of the brief, without a reference to the balance of the testimony. Further, the reference to the “militia attack at St. Charles Lwanga....for which the Defence witnesses sought help on June 10, is fully described in their testimony and occurred long after Para Commandos left Kigali for west of Rwanda.
2277. These allegations are addressed, and rebutted, in the Sections of the Defence Brief entitled: *ALLEGATIONS ABOUT RWAMPARA INCIDENT*, which details the testimony of DH-90 and DH-91, the two [REDACTED] who were present at the College of St. Andre and Rwampara who completely contradict the testimony of witness DBQ. The credibility of witness DBQ is also addressed in the Section of the Ntabakuze Brief entitled *CREDIBILITY OF PROSECUTION WITNESSES*.

#### Gisenyi massacres

2278. These allegations do not implicate Major Ntabakuze

#### C. MEANS AND METHODS:

1. ENI document: paragraphs 508-523.

2279. Initially, the Ntabakuze Defence takes note that the “*DEFINITION AND IDENTIFICATION OF THE ENEMY*” (K1020477) document,<sup>2446</sup> provided by the OTP pursuant to disclosure requirements was an English translation from the original *French*. The English translation appears exactly as follows:

#### A. DEFINITION OF THE ENEMY

The enemy can be subdivided into two categories:

- the *primary* enemy
- enemy supporters

1. The *primary* enemy are the *extremist Tutsi* within the country and abroad who are nostalgic for power and who have NEVER acknowledged and *STILL DO NOT* acknowledge the realities of the Social Revolution of 1959, and who wish to regain power in RWANDA by all possible means, *including the use of weapons*. (emphasis added).

2. Enemy supporters are all who lend support to the primary group

#### B. IDENTIFICATION OF THE ENEMY

The ENEMY<sup>2447</sup>, or their supporters, be they Rwandan or foreign nationals within the country or abroad, *can be identified with the following acts*:

- *Taking up arms and attacking RWANDA*;
- *Purchasing arms* for ENEMY soldiers;
- *Contributing money* to support the ENEMY;
- *Providing any form of material support* to the ENEMY;
- *Spreading propaganda* favorable to the ENEMY;
- *Recruiting* for the ENEMY;
- *Contaminating public opinion by spreading false rumors* and information;
- *Spying* for the ENEMY;
- *Divulging military secrets* to the ENEMY;
- *Acting as a liason officer or runner* for the ENEMY;
- *Organizing or performing acts of terrorism and sabotage* in support of ENEMY activities;
- *Organizing or inciting revolts, strikes* or any form of disorder to support ENEMY activities;
- *Refusing to fight* the ENEMY;
- *Refusing to comply with war requisition*.

Political opponents who desire power or peaceful and democratic change in the current political regime in RWANDA are NOT to be confused with the ENEMY or supporters of the ENEMY.

2280. The Chamber will note that this full translation differs significantly from the truncated excerpts cited in these Paragraphs of the Prosecution Brief.

<sup>2446</sup> Prosecution Exhibit P.13.1(b), introduced 10/09/2002

<sup>2447</sup> The Chamber will note that, throughout the document in full translation “the *primary* enemy” are differentiated from “*supporters*,” and are defined not as all “Tutsi” as an ethnic group, but rather, “the *extremist Tutsi*...who are nostalgic for power...and who wish to *regain* power in RWANDA by all possible means, *including the use of weapons*. (emphasis added). Given the history of Rwanda this can only mean members of the former “ruling class” who were largely “tutsi”...as was, and is, the RPF.

2281. Allegations about the improper nature of the ENI document and the ENI Commission are addressed in the Ntabakuze Defence Brief Section entitled: *ALLEGATIONS REGARDING DISCRIMINATION, AND THE 'DEFINITION OF THE ENEMY.'*
2282. The Chamber will note that, throughout the Prosecution discussion of the document, the main phrase at issue is intentionally truncated to prevent the Chamber from considering the entire phrase, and the entire phrase in context.
2283. The Chamber will note that, in both paragraphs 508 and 509, the Prosecution Brief fails to provide the full context of the opening sentence either in French or English, and does not even mention introduction to item 1. in the "Definition of the Enemy" at all. In 508, the Brief cites: "Bagosora Commission" " P. 13.1" and quotes the document as defining the "principle enemy as the Tutsi.... In paragraph 509, the document is rendered in French as "L'ennemi principal est le Tutsi....." and leaves off the rest of the sentence in both cases.
2284. Paragraph 511 alleges that the Nsengiyumva/Ntabakuza were members of Commission that defined the ENEMY as.... "Tutsi le interieur ou de l' exterieur extemistse et nostalgique eu pourvoir..." When the complete original French document, as well as the translation provided by the Prosecution on 10/09/2002, the quoted phrase takes on a complete different, and "political" not ethnic meaning. The ENEMY is "identified" by acts, not ethnicity.
2285. The acts by which the ENEMY could be identified included: armed attack of Rwanda, purchasing arms, providing material support, spreading propaganda, spying, divulging military secrets, inciting revolts, refusing to fight....and ENEMY, who are "the extremist Tutsi...who are nostalgic for power...and who wish to regain power by all possible means, including the use of weapons."
2286. The document specifically excludes from acts identifying the ENEMY, "[p]olitical opponents who desire power or peaceful and democratic change in the current political regime in RWANDA are NOT to be confused with the ENEMY or supporters of the ENEMY. (emphasis in the original).
2287. In paragraphs 519-522, the Prosecution Brief attempts to make a crime out of a "definition" that includes references to the former ruling class of Rwanda, that as seeking to return to power, NOT an *ethnic* group. There is no dispute that the RPF was made up largely of "tutsi" and its

leaders were former members of the ruling class who, according to indigenous, French-speaking “tutsi” RPF recruits, like Lt. Joshua Ruzibiza, they were misled by the naked seizure of power for and English-speaking, largely Uganda-based expatriot “ruling class” army.

2288. Paragraphs 513 asserts that this “definition” was distributed to the troops, but this the Prosecution admits can only be inferred from a partial cover letter, and attempts to use convert the normal exercise any army, distinguishing “combatants” from “non-combatants,” which those who have followed events in Abu Graib, Guantanamo, and Bagram is a necessary part of responsible military planning in any armed conflict.

2289. The Ntabakuze Defence submits that, and the United States applied a similar this “Definition of the Enemy” to its wars in Afghanistan and Iraq, the non-violent people in both countries would have been far better off. This *DEFINITION OF THE ENEMY* simply does not make out any crime, no matter how carefully crafted the Prosecuton’s re-construction of the facts that are the face of the document.

2290. The fact that this document was not used for purposes of targeting Tutsi, as an ethnicity was made by Prosecution witness DBN, who served under Major Ntabakuze in the Para Commandos and testified that *he* was of Tutsi ethnicity.

2291. All Para Commando soldiers of both Hutu and Tutsi ethnicity<sup>2448</sup> who testified for the Defence, including Major Ntabakuze himself, were corroborated Prosecution witness DBN, also member of the Para Commando Battalion who testified that he was of Tutsi ethnic origin and said during the examination in chief that:

A. The word “umwanzi” means someone you are fighting against; in other words, an enemy.

[...]

A. The word meant that the Tutsi Inyenzi who had attacked the country from Uganda wanted to conquer our country, therefore, we had to fight against them.

Q. In which fora was the word "umwanzi" used?

A. The word "umwanzi", or the “enemy”, was used at meetings which were held. That word was also used when we were at the front.

[...]

Q. During these meetings that you attended, who told you about the enemy?

A. The meetings were presided over by Major Ntabakuze, so Major Ntabakuze spoke to us about them.

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<sup>2448</sup> Defense witnesses DK-11, DK-110 and DK-120,

- Q. What did he say about the enemy during these meetings that you attended?
- A. He told us that the country had been attacked by the enemy, and the enemy was the Tutsi, and that they had attacked the country from Uganda, and they wanted to conquer our country, and they wanted to drive away people who were inside the country; therefore, they were enemies and we had to fight them.<sup>2449</sup>

It is absolutely that DBN was talking about the RPF which attacked the country from Uganda, which was comprised overwhelmingly on English-speaking former members of the ruling class, who called themselves “Tutsi” as Ms. Des Forges testified before the Chamber.<sup>2450</sup> However, witness DBN did not say that *he* felt threatened by this “definition of the enemy.”

Had this definition of the ENEMY been understood as targeting members of the Tutsi ethnicity, as opposed to the Tusti “invaders,” the Inyenzi-Inkotanyi, it is not conceivable that this soldier or others would have continued to serve in the FAR for the entire course of the WAR. The Chamber knows that this WAS the case with all members of the Para Commandos, Tutsi soldiers included.

However, the Prosecution claimed in his Final Trial Brief, in paragraph 39, that this very witness testified in support of the Prosecution “theory” of and ethnic “Definition of the ENEMY.” And, that Major Ntabakuze promoted the ideology of genocide against Tutsi by referring to this testimony of this very witness, DBN. Like the use of truncated sentences and mistranslation to make a well-accepted militarily proper document into something it is not, truncated and misrepresented witness testimony is cited by the Prosecution to support its confabulated re-writing of history.<sup>2451</sup> The testimony of Prosecution witness DBN, a Tutsi member of the Para Commandos through the entire war, which referred to by the Prosecution does not even make a slight allusion about the ideology of genocide being present in the Para Commandos.

### 3. RTLM: paragraphs 547-548.

2292. Although these paragraphs do not directly implicate Major Ntabakuze, the Ntabakuze Defence notes that in attempting to makes its case for the negative role played by RTLM the Prosecution

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<sup>2449</sup> T. 31/03/04, p. 66-67, lines 31-37 and lines 1-18

<sup>2450</sup> T. 16/09/02, p. 28, lines 27-29

<sup>2451</sup> Prosecution Final Trial Brief, para 39 and para 1325, which improperly characterize the testimony of this witness.

refers to the [REDACTED] Defence witness DH-90. The Prosecution fails to note that this witness confirms the international nature of the War; the strategy of destabilization that began in 1990 and reached Kigali in 1993-94; and, who completely contradicted Prosecution witness DBQ.

2293. One would have expected a more subtle, if not a more honest presentation of this witness's testimony in the Prosecution Brief. This witness's testimony is discussed in greater detail in the Defence Brief Sections entitled: *THE ALTERNATIVE EXPLANATION FOR EVENTS DURING THE RWANDA WAR; ALLEGATIONS ABOUT RWAMPARA*; and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DBQ.

4. Message to stay indoors on April 6-7, 1994: paragraph 549-550

2294. The allegation does not implicate Major Ntabakuze.

5. Use of Interahamwe/Civ. Defense: paragraphs 551-566 (allegations do not implicate Major Ntabakuze)

2295. In these paragraphs the Prosecution invites the Chamber to speculate about the ability, or inability of the FAR and Gendarmes to respond to armed civilians and civilian roadblocks as a general matter without suggesting a single specific event. Prosecution Exhibit P-415 is dated April 1995 and refers to events outside the Temporal Jurisdiction of the Tribunal and does not shed light on any direct relationships during 1994.

2296. The Ntabakuze Defence would ask the Chamber to note that the Reconnaissance Report of General Dallaire made clear that in September 1993, long before the calculated assassination of President Habyarimana by the RPA/F, and the resumption of the War on April 6, 1994:

a. Armed civilians and uniformed deserters were common in Rwanda as a consequence of the four years of war, not because of any crimes being committed by the FAR.

b. General Dallaire admitted in his March 30, 1994 proposed Code Cable that the Gendarmes were incapable of quelling ordinary civilian lawlessness.

c. The FAR had only about the same number of trained and provisioned troops that General Dallaire would have required to stop civilian violence after April 6, and that the same number of troops could not stop civilian violence and fight a war.

d. FAR officers attempted to reach a ceasefire agreement on many occasions and that, according to Gen. Dallaire the RPF would not stop fighting until it seized power because it was winning the War.

e. Prosecution witnesses BY and Prosecution witness A testified by videolink from Europe that civilian roadblocks were intended for self-defence of unprotected civilians and only a very few civilians were provided with registered firearms. Most civilians had traditional weapons, but deserters and former military personnel (described by Gen. Dallaire in his Sept. 1993 Recon. Report) and had not been armed by the FAR.

#### 6. “Arms searches” Pretext for killing Tutsi

2297. The allegation does not implicate Major Ntabakuze.

#### 7. Lists, paragraphs 592-595

2298. The “lists” referred to in these paragraphs have, in part, been excluded from evidence as the Prosecution well knows. These allegations are addressed and rebutted in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE ARREST OF PEOPLE IN OCTOBER 1990 USING LISTS; ALLEGATIONS ABOUT DEATH SQUADS: AMASASU AND OTHER RELATED ORGANIZATIONS; ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S)*; and the Section of the Brief entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses DBQ, XAQ and WB.

2299. In these paragraphs, the Prosecution use of the allegation that “lists” were used, actually *contradicts* the allegation that violence in Rwanda fit the definition of “genocide.” As the Chamber knows, violence that is “political” or that arises from a struggle to gain, or retain “political power” does NOT fit the legal definition of “genocide.” This point was made by Prosecution Expert Witness Filip Reyntjens as noted in paragraph 595, when he testified that “Hutu and Tutsi *opponents* (of the former Habyarimana government)...” were the subject of “lists.”

2300. This conclusion is further re-inforced by the testimony of all Prosecution Expert Witnesses, and many others, that Rwanda is a country in which all people in a given area were well known to each other. The “ethnicity” of each was known to his or her neighbors. “Lists” would only have been necessary to identify people for reasons *other than* “ethnicity, as confirmed by Prof. Reyntjens and Defence witness DM-25, who stated that the “lists” he was aware of identified “accomplices of Inkotanyi”<sup>2452</sup>....in modern language.... “supporters of the armed opposition...or the terrorists”

2301. In paragraph 594, the Prosecution Brief misstates the evidence of Prosecution witness WB, who testified that he was actually assisted by FAR soldiers at IAMSEA. This allegation is more fully discussed in the Section entitled: *ALLEGATIONS ABOUT THE IAMSEA INCIDENT(S)* and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witnesses DBQ and WB.

8. Roadblocks: paragraphs 606-615

2302. The allegations regarding Roadblocks and Major Ntabakuze arming civilians at a Roadblock are addressed in Defence Brief Sections entitled: *ALLEGATIONS ABOUT ROADBLOCKS*; *ALLEGATIONS ABOUT SUPPLYING WEAPONS AND AMMUNITION TO THE INTERAHAMWE*; *ALLEGATIONS ABOUT KILLINGS IN KABUGA*; and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DCH. The Chamber will also note that, although not mentioned by the Prosecution Brief, allegations by DCH regarding a civilian roadblock near Kabuga involving a civilian named “Maga” was excluded by the Chamber in its Decision of June 29, 2006.

9. Fuel and Buses: paragraph 626

2303. The allegations regarding supply of civilians from the stores at Camp Kanombe by Major Ntabakuze are addressed in Defence Brief Sections entitled: *ALLEGATIONS ABOUT SUPPLYING WEAPONS AND AMMUNITION TO THE INTERAHAMWE*; *ALLEGATIONS ABOUT KILLINGS IN KABUGA*; and the Section entitled: *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DCH and XAB.

10. Looting:

2304. No specific allegations related to Major Ntabakuze.

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<sup>2452</sup> DM-25 ( ) .....lists were of accomplices of Inkotanyi  
fn 1244. Ex. P-22



11. Pacification: paragraph 647

2305. No specific allegations related to Major Ntabakuze.

2306. Paragraph 647 concedes that a message to stop civilians killings after they began, following the assassination of President Habyarimana on April 6, 1994, was broadcast over RTLM....“please no more killings” RTLM. The Chamber will recall that Prosecution Witnesses A and BY, who were national leaders of the MRND “Interahamwe,” the formal youth group, as opposed to the unorganized armed groups of civilians also called “interahamwe.”

2307. Both of these Prosecution witnesses testified that they each took the “Pacification” program seriously, that there never was a plan to kill Tutsi civilians, that “Civil Defence” was a legitimate attempt by civilians to provide security in their neighborhoods when the Gendarms and FAR were not able to protect them from the RPA/F. In order to make this allegation, the Prosecution must ignore the cross-examination testimony of its own witnesses, Prosecution witness A and BY.

12. Passports and Travel Documents: Paragraph 653

2308. During his testimony, Major Ntabuze explained that, after 1994, he used a non-Rwandan passport in his surname of Mpozembizi (not familiar outside his family circle) name of another person, as well as the passport Rwandan passport he had been issued. After the RPF seized power, the use of the Rwandan passport was too dangerous given the presence of Rwandan security forces. This is not evidence of having committed a crime, but is evidence that those who are vanquished in War are constantly at threat from the government in power. Furthermore, this incident is outside the Temporal Jurisdiction of the Tribunal.

14. Kabiligi’s command: Paragraphs 712-714

2309. These paragraphs confound earlier allegations in the Prosecution’s Brief which are discussed in the Defence Brief Section entitled: *ALLEGATIONS ABOUT THE SONATUBE INCIDENT(S)* and ignore the mention of Major Ntabakuze at Sonatube early in the day by Prosecution witness AFJ, Col. Dewez and the KIBAT *Chronique*.

15. Bagosora's words on April 7 at ESM: Paragraph 726

2310. These allegations were addressed in detail, and rebutted with respect to Major Ntabakuze in Defence Brief Section entitled: *CONSPIRACY: ALLEGATIONS ABOUT BAGOSORA ORDERING "MUHERE ARUHANDE"*;

V. bis EVIDENCE ON VARIOUS TOPICS: NOT INCLUDED IN CHAPTER V OF THE PROSECUTION BRIEF TO WHICH THE NTABAKUZE DEFENCE RESPONDS OUT OF NECESSARY CAUTION, GIVEN THE ABSENCE OF AN AMENDED INDICTMENT

A. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE NZABONARIBA INCIDENT*. (XAB and LN only).

B. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE NYABYENDA INCIDENT*. (omitted entirely).

C. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE REMERA INCIDENT – NSENGUMUREMYI* (Prosecution witness XAP) (omitted entirely).

D. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT KABEZA 1* (Prosecution witness DBN describes a different area than Prosecution witness AH).

E. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE KICUKIRO AND SAHARA NEIGHBORHOOD* (Prosecution witness XAB).

F. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE KABUGA INCIDENT* (Prosecution witness DCH).

G. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT THE RUHANGA INCIDENT* (Prosecution witness DCH).

H. See, Ntabakuze Defence Brief Section entitled: *ALLEGATIONS ABOUT GUERRILLA WARFARE* (omitted entirely)

#### **IV. DEFENCE RESPONSE TO SELECTED PARAGRAPHS REFERENCING SPECIFIC EXHIBITS IN “CHAPTER VI” OF THE PROSECUTION BRIEF (VI. EVIDENCE IN VARIOUS EXHIBITS)**

##### **Paragraphs 763-768: Exhibit P.18 Col. Nsengiyumva letter**

2311. The alleged “special alliance” between Ntabakuze and Nsengiyumva is pure speculation. During the testimony of Mme Des Forges, the Ntabakuze Defence objected to Des Forges’ speculation about the mention of Ntabakuze in the Nsengiyumva letter referring to a letter written by Major Ntabakuze, since the letter of Ntabakuze, itself, was not available to be commented on by the Expert. The objection was granted and Des Forges was forbidden to comment on a missing document.<sup>2453</sup> Even if this evidence properly before the Chamber, which the Prosecution must certainly know it is *not*, the “speculations” of Ms. Desforges are not evidence, do not make out a crime in any event.

##### **Paragraphs 821- 828: Exhibit P-149, KIBAT *Chronique***

2312. This discussion of Exhibit P-149 distorts the contents of this document with respect to Major Ntabakuze’s presence at Sonatubes on April 11, 1994. This Exhibit is more fully discussed in the Defence Brief Sections: *ALLEGATIONS ABOUT THE SONATUBE INCIDENT(S); ALLEGATIONS ABOUT KABEZA* and *ALLEGATIONS RELATING TO KABEZA I*.

##### **Paragraphs 829-831: Exhibit P-334, Fr. Otto Mayer Diary**

2313. The Prosecution discussion of this Exhibit focuses entirely on comments regarding RTL, but ignores the bulk of the entries. Exhibit P-334 confirms that Prosecution witness DBQ misled the Chamber regarding alleged massacres at St. Andre College and Rwampara in late May 1994. Exhibit P-334 establishes in a day-by-day record that this massacre did not

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<sup>2453</sup> T. 11/09/02, p. 52-59 especially in lines 20-21 on page 59

occur. This Exhibit is more fully discussed in the Defence Brief Sections: *ALLEGATIONS ABOUT RWAMPARA INCIDENT* and *CREDIBILITY OF PROSECUTION WITNESSES*, Witness DBQ.

**Paragraphs 832-834: Exhibit P-278, Major Ntabakuze Diary**

2314. Contrary to the Prosecution allegations in these paragraphs, Major Ntabakuze never denied that the diary in question was his. However, he DID deny that the lists which Prosecution witness Nyanjwa identified as having been written by Major Ntabakuze were actually written by him.<sup>2454</sup> This Exhibit is discussed more fully in relation to the Nyanjwa Report *infra*.

**Paragraphs 837-840: Exhibit P-109, Video**

2315. The Prosecution failed to bring any witnesses who were able to identify the locations portrayed in this video, nor were Defence witnesses able to accurately identify the locations portrayed. This is not evidence relating to events in any particular location.

**Paragraphs 877-888: Exhibit P-415/419, RDR Documents 1995**

2316. These exhibits report events outside the Temporal Jurisdiction of the Tribunal and relate to discussions by members of a government and military that has been deposed by military force, discussing means to return to power. If this is an indication of criminal acts, the entire RPF campaign to seize power must similarly be considered to have been criminal in planning and execution.

**Paragraphs 889-891: Exhibit P-2/P-2bis, Expert Report of Alison Desforges**

2317. The Ntabakuze Defence requests that the Chamber recalls that this Report and its content are *not* evidence; significant portions of this Report relies on facts that have never been made part of the evidence; other portions of this Report rely on facts that have been contradicted by both Prosecution and Defence evidence.

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<sup>2454</sup> T. 21/06/04, p. 18-21.

2318. The “theory of history” advanced by the Desforges Report was contradicted in significant ways by the Reports and testimony of Prosecution Expert Dr. Filip Reyntjens, Defence Expert Witnesses Fr. Desouter, Dr. Helmut Strizek and Dr. Bernard Lugan. In addition the Bruguere Report, eyewitnesses and documentary evidence all make clear that Ms. Desforges theories from 2002 and earlier have been overtaken by more recent factual and historical revelations. The *ALTERNATIVE EXPLANATION OF EVENTS DURING THE WAR IN RWANDA* Section of the Defence Brief addresses these issues.

**Paragraphs 892-894: Exhibit P-278, Nyanjwa Expert Report**

2319. Insofar as Witness Nyanjwa testified about the diary of Major Ntabakuze and its similarity to two letters written by him, the Ntabakuze Defence did not challenge the conclusions of this witness regarding the diary or letters.

2320. However, during the *Voir Dire* of this witness he admitted that he had erred with respect to the examination of two handwritten lists, which his Report erroneously attributed to Major Ntabakuze.<sup>2455</sup> During his testimony, he did not refer to these lists in relation to Major Ntabakuze, which the Ntabakuze Defence drew to the attention of the Chamber, to consider when assessing the testimony of the witness.<sup>2456</sup>

2321. Defence Expert Langlois testified that the lists attributed to Ntabakuze in the Nyanjwa Report were not written by the same hand<sup>2457</sup> that had produced documents that were those written by Major Ntabakuze.<sup>2458</sup> The Ntabakuze Defence considers that the Expert Report of M. Nyanjwa linking Major Ntabakuze to alleged lists has been thoroughly impeached.

**Paragraphs 927-930: Exhibit DNS-35, FAR Communiqué of 12/04/94**

2322. This Exhibit actually supports the *ALTERNATIVE EXPLANATION OF EVENTS DURING THE WAR IN RWANDA* by confirming that the FAR attempted on numerous occasions to secure a ceasefire, after the RPF assassination of Habyarimana, and that the FAR lacked the force capability to

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<sup>2455</sup> T. 21/06/04, p. 18-21.

<sup>2456</sup> T. 22/06/04

<sup>2457</sup> T.05/04/06, pp. 9-10, 16-18.

<sup>2458</sup> K00091632-K0091627-K0016650

both defend against the RPF assault, and put down the civilian massacres. This communiqué is signed by the commanding officer of Major Ntabakuze, Col. Muberuka. As noted on numerous occasions in the Defence Brief, neither Col. Muberuka, nor any other officer who was the superior of Major Ntabakuze, accused Major Ntabakuze of abusing his command. Nor were his superior officers prosecuted at the Tribunal or in Rwanda. This document confirms that Major Ntabakuze was not part of any “conspiracy” alleged by the Prosecution.

**Paragraphs 943: DNT-33, Book of Gen. Dallaire**

2323. The contents of this book are not evidence. The testimony of Gen. Dallaire, itself, is the evidence before the Chamber has having been given under oath, and subject to cross-examination. The book was put into the record, not for the truth of matters asserted in the book, but as a record of the numerous contradictions between the testimony of Gen. Dallaire and how events were portrayed in the book. To the extent that the Prosecution attempts to replace testimony with unsworn statements in a book, it invites the Chamber to base its decision on untested and unsubstantiated hearsay.

2324. For example, Gen. Dallaire testified that he received written reports that his informant “Jean-Pierre” wanted to know when UNAMIR would search MRND Headquarters so he could bring weapons to be found by UNAMIR. Copies of the written reports were put into evidence. This information was not included anywhere in the Book and casts the reliability of the informant in a completely different, and less reliable, light.

2325. Moreover, General Dallaire admitted that on January 13, 1994, he received a written report in which he was informed that Jean-Pierre want to know when UNAMIR would search MRND Headquarters, so that he could “bring weapons to be found” there. This evidence of a “set-up” was admitted in Gen. Dallaire’s cross-examination, but never mentioned in his book. Neither were copies of this report ever made public by Dallaire, until he was cross-examined by the Ntabakuze Defence.

**Paragraphs 945-947: DNT-120, Bushnell Memo of April 6, 1994**

2326. This memo must be interpreted in light of the April 13, 1994 Code Cable of General Dallaire reporting that a “military coup” could have taken place, but did not. And, the May 25, 1994

Legal Opinion of Ralph Zacklin of the United Nations Office of Legal Affairs, which stated that the civilian government established on April 8, 1994 was a legal successor government under the 1991 Rwandan Constitution, which was the proper response after the resumption of the War by the RPF on April 6, made the Arusha Accords obsolete.

2327. Rather the Bushnell April 6, 1994 memo warned that the assassination of the Hutu Presidents of both Rwanda and Burundi, following the recent assassination of the previous and first Hutu President of Burundi, could trigger massive, unplanned violence in *both* countries. It is evidence that the U.S. State Department understood that this danger existed without there being a “plan for a genocide” as suggested by Ms. Desforges. The Chamber will also recall that former U.S. Ambassador to Rwanda Robert Flaten testified that he had no observations or information between 1990 and 1994 that would lead him to think that there was a “plan for a genocide.”

**Paragraphs 948-950: DNT-263, DPKO-USG Special Report, September 1994**

2328. This Exhibit must be compared with Gen. Dallaire’s Reconnaissance Report of September 1994, Gen. Dallaire’s March 30, 1994 Code Cable discussing the capability of the Gendarmes. The most important aspect of this “after action” report is that it confirms the assessment of the Reconnaissance Report and Gen. Dallaire testimony regarding the force imbalance between the FAR and the RPF with respect to combat capability. Moreover, the success of the RPF assault in February 1993 and the final assault to seize power on April 6, 1994 confirmed the assessment made by General Dallaire in the Recon Report and his March 30 Code Cable. This was also confirmed by the testimony of former RPF Intelligence officer, Abdul Joshua Rusibiza.

**Paragraphs 969-971: DB-133 Various Handwritten Notes**

2329. In these paragraphs, in addition to Exhibit DB-133, the Prosecution talked about Exhibit P-278 and P-387 trying to suggest that Major Ntabakuze was one of the authors of list of people to be trained and, therefore, was linked to Interahamwe according to those documents. The Exhibit DB-133 which was tendered by the Bagosora Defence has only four handwritten pages in which there is no lists, no mention of Ntabakuze at all.

2330. The Exhibit P-278 is the Nyanjwa Report discussed on § 892 – 894 *supra* whereas P-387 is the Supplementary Forensic Handwriting Document not testified to by any witness which has nothing to do with DB-133. The OTP is either confused, or is attempting to confuse or mislead the Chamber about the alleged link between Ntabakuze and Interahamwe when there is no evidence to that effect. The Ntabakuze Defence would prefer to assume the former.

**Paragraphs 972-978: DB-249 U.S. State Department Report**

2331. This document is about the US information concerning the massacres. It says that Government forces and RPF forces and RPF forces are engaged in killing civilians. The report does not specify which FAR troops, and whether those troops were reservists, deserters, or troops under command authority. The RPF, however, was all under very strict command authority and these “systematic” killings were documented in the UNCHR Report of May 17, 1994 and the “Gersony Report” and other reports by Human Rights Watch and Amnesty International in September and October 1994.



## **V. LIST OF EXCLUDED EVIDENCE INAPPROPRIATELY MENTIONED IN THE PROSECUTOR'S FINAL TRIAL BRIEF<sup>2459</sup>**

- a. Allegation of rape by Witness XAB<sup>2460</sup> which were excluded by the Trial Chamber decision of 29 June 2006.
- b. Allegation by Witness DCH of Ntabakuze's participation in meetings at Kabuga<sup>2461</sup> which were also excluded by the Trial Chamber decision of 29 June 2006.
- c. Allegation by Witness DBQ and Witness DBY about killing people arrested in 1990<sup>2462</sup> excluded by the Trial Chamber decision of 18 September 2003, which exclusion was upheld by the 19 December 2003 Appeal Decision.
- d. Allegation by Witness DBQ about that people were taken away to be killed was excluded following Defence objection raised on 23 September 2003 (see lines 42-43).<sup>2463</sup>
- e. Allegation by Witness DBQ and DBY about killing of people at Cyonyo in October 1990<sup>2464</sup> excluded by the Trial Chamber decision of 18 September 2003, which exclusion was upheld by the 19 December 2003 Appeal Decision.
- f. Allegation by Witness DCH that Major Ntabakuze visited a roadblock near Kabuga promised to give weapons<sup>2465</sup> is connected to the allegation that Ntabakuze gave at that occasion a pistol to a person named Maga with which he killed in the presence of Ntabakuze an individual owner of a Mazda car. This last allegation was excluded by the Trial Chamber decision of 29/06/06. Moreover, there is no evidence that the promise was fulfilled. DCH alleged that he collected weapons from camp Kanombe in order to attack Ruhanga not for the alleged roadblock. Therefore there is no point to mention this allegation.

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<sup>2459</sup> The list is established in application of the Trial Chamber decision of 29 March 2007

<sup>2460</sup> See for example, paragraph 1991 of the Prosecution Final Trial Brief.

<sup>2461</sup> See for example, paragraphs 1494-1495 of the Prosecution Final Trial Brief.

<sup>2462</sup> See for example, paragraphs 273, 277 and 278 of the Prosecution Final Trial Brief.

<sup>2463</sup> See for example, paragraph 1109 of the Prosecution Final Trial Brief.

<sup>2464</sup> See for example, paragraph 278 of the Prosecution Final Trial Brief.

<sup>2465</sup> See for example, paragraph 615 of the Prosecution Final Trial Brief.